

**INTERGOVERNMENTAL AGREEMENT
BETWEEN PARK CREEK METROPOLITAN DISTRICT AND
THE CITY AND COUNTY OF DENVER FOR PAYMENT OF LEGAL EXPENSES**

THIS INTERGOVERNMENTAL AGREEMENT FOR PAYMENT OF LEGAL EXPENSES (this “**Agreement**”) is entered into to be effective as of the date of mutual execution (the “**Effective Date**”) by and between PARK CREEK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “**City**”), each a “**Party**” and collectively the “**Parties**.”

RECITALS

A. The District is a quasi-municipal corporation and political subdivision of the State of Colorado, organized in accordance with the provisions of Article 1, Title 32, Colorado Revised Statutes (as amended, the “**Special District Act**”), with the power to provide certain public infrastructure, improvements, facilities and services described in the Special District Act, and as authorized by the Service Plan approved by City Council on April 24, 2000 (as amended, the “**Service Plan**”).

B. The City is a home-rule city and municipal corporation duly organized and existing under and pursuant to Article XX of the Colorado Constitution and the Charter of the City.

C. Pursuant to C.R.S. § 29-1-203, the City and the District may cooperate or contract with one another to provide any function, service, or facility authorized to each of the Parties, including the sharing of costs.

D. The District and the City are parties to that certain Master Facilities Development Agreement dated February 12, 2001 (the “**MFDA**”), as amended, which establishes a method for coordinating the review of the phasing of Trunk Infrastructure and In-Tract Infrastructure (as such terms are defined in the Service Plan) through the execution of Individual Facilities Development Agreements (“**IFDAs**”).

E. The MFDA and the IFDAs, *inter alia*, set forth the respective responsibilities of the District and the City for the ownership, operation, maintenance, repair, and replacement of both the Trunk Infrastructure and the In-Tract Infrastructure.

F. The District is in the process of conveying ownership of certain Trunk Infrastructure, specifically, the streets and parks listed in Exhibit A attached hereto and incorporated herein, to the City through a series of separate conveyances (collectively, the “**Conveyances**”) accordance with the requirements of the MFDA and applicable IFDAs.

G. The Parties acknowledge that time is of the essence in completing the Conveyances as various City fees, including, without limitation, sidewalk fees and storm drainage fees, continue to accrue to the District until such Conveyances are completed.

H. The City Attorney's Office presently has limited staffing resources available to review and process the Conveyances.

I. In order to facilitate and expedite such review and processing of the Conveyances, the District has agreed to provide funding to enable the City to retain outside legal counsel to assist the City Attorney's Office to review and process the Conveyances on behalf of the City.

J. The District is willing to provide, and the City is willing to accept, the sum of Fifty Thousand Dollars (\$50,000.00) for such purpose with no obligation of repayment by the City.

NOW THEREFORE, in consideration of the promises and mutual agreements set forth herein, the benefits of which will inure to each Party and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District and the City agree as follows:

AGREEMENT

1. Recitals. The Recitals are hereby expressly incorporated into this Agreement.

2. Conveyance of Trunk Infrastructure; Cooperation.

(a) The City shall retain outside legal counsel ("**Outside Counsel**") to assist the City Attorney's Office in the review and processing of all title documents, instruments, and materials necessary to effectuate the Conveyances from the District to the City. Such Outside Counsel shall be retained by the City at its discretion and in accordance with applicable City rules and laws.

(b) The District shall reasonably cooperate with the City and Outside Counsel and shall promptly provide such information, documents, instruments, and materials as may be required to facilitate review and completion of the Conveyances.

(c) The Parties shall use commercially reasonable and diligent efforts to complete the Conveyances as promptly as practicable. The Parties acknowledge and agree that time is of the essence with respect to the performance of their respective obligations under this Agreement.

3. Funding for Outside Legal Counsel.

(a) Within seven (7) days after the Effective Date, the District shall transfer to the City the sum of Fifty Thousand Dollars (\$50,000.00) (the "**Funding Amount**") for the sole purpose of enabling the City to retain Outside Counsel to assist the City Attorney's Office in reviewing and processing the Conveyances.

(b) The Funding Amount is provided as a nonrefundable payment to support the City's engagement of Outside Counsel, and the City shall have no obligation to repay or reimburse the Funding Amount to the District, except as expressly set forth below.

(c) The City shall use the Funding Amount solely to fund Outside Counsel's work in effectuating the Conveyances and for no other purpose.

(d) To the extent any portion of the Funding Amount is not expended for such purpose, the City shall promptly return the unexpended balance to the District following completion of the Conveyances.

4. No Guarantee of Timing. While the Parties agree to use diligent efforts to complete the Conveyances as expeditiously as possible, nothing herein shall be construed as a guarantee or warranty by the City that the Conveyances will be completed by a date certain. All Conveyances shall be subject to applicable City rules, laws and processes.

5. Term and Termination. This Agreement shall terminate upon completion of the Conveyances and a final accounting of the Funding Amount from the City to the District in the form of copies of payments made to Outside Counsel.

6. When Rights and Remedies Not Waived. In no event will performance by a Party constitute or be construed to be a waiver by that Party of any breach of term, covenant, or condition or any default that may then exist on the part of the other Party, and the tender of any such performance when any breach or default exists (or is claimed to exist) impairs or prejudices any right or remedy available to the other Party with respect to the breach or default. No assent, express or implied, to any breach of any one or more terms, covenants or conditions of this Agreement is or by be construed to be a waiver of any succeeding or other breach.

7. Status of Parties. Neither Party is an employee of the other; no officer, employee, agent or contractor of one Party is an officer, employee, agent or contractor of the other Party for any purpose, including unemployment compensation and worker's compensation. Even though the Funding Amount shall be provided by the District and used by the City to engage the Outside Counsel, the Outside Counsel shall be retained by the City, and an attorney/client relationship shall be only established between the City and the Outside Counsel.

8. No Third-Party Beneficiary. The enforcement of this Agreement, and all rights of action relating to enforcement, are strictly reserved to the Parties. Nothing in this Agreement gives or allows any claim or right of action by any person or other entity on this Agreement, including subcontractors and suppliers. Any person who or other entity other than the Parties that receives services or benefits under this Agreement is an incidental beneficiary only.

9. Governing Law; Venue. Each term, provision and condition of this Agreement is subject to the provisions of Colorado law, the Charter of the City and County of Denver, and the ordinances and regulations enacted pursuant thereto. Unless otherwise specified, any general or specific reference to statutes, laws, regulations, charter or code provisions, ordinances, executive orders (including memoranda thereto), or contracts, means statutes, laws, regulations, charter or code provisions, ordinances, and executive orders (including memoranda thereto) and contracts as amended or supplemented from time to time and any corresponding provisions of successor statutes, laws, regulations charter or code provisions, ordinances, or executive orders (including memoranda thereto) and contracts. Venue for any legal action relating to or arising out of this Agreement will be in the District Court of the Second Judicial District of the State of Colorado.

10. Severability. Except for the provisions of this Agreement requiring appropriation of funds, if a court of competent jurisdiction finds any provision of this Agreement or any portion thereof to be invalid, illegal or unenforceable, the validity of the remaining portions or provisions will not be affected, if the intent of the Parties can be fulfilled.

11. Paragraph Headings. The captions and headings set forth in this Agreement are for convenience of reference only and do not define nor limit its terms and may not be construed to do so.

12. Survival of Certain Provisions. The terms of this Agreement and any exhibits and attachments that by reasonable implication contemplate continued performance, rights or compliance beyond expiration or termination of this Agreement, survive this Agreement and will continue to be enforceable.

13. Notices. Notices concerning termination of this Agreement, alleged or actual, violation(s) of the terms or conditions of this Agreement, and notices of similar importance, as well as bills, invoices, or reports required under this Agreement, if any, must be mailed by United States mail, postage prepaid, at the addresses listed below. Notices must be delivered by prepaid U.S. mail and become effective 3 days after deposit with the U.S. Postal Service. The Parties may from time to time designate substitute addresses or persons where and to whom such notices are to be mailed or delivered, but these substitutions are not effective until actual receipt of written notification.

To the City: City and County of Denver
 Department of Finance
 101 W Colfax Ave. 10th Floor
 Denver, Colorado 80202
 Attn: Director, Capital Planning and Programming

With Copies to: Office of the Mayor
 1437 Bannock Street, Room 350
 Denver, Colorado 80202

 Denver City Attorney's Office
 1437 Bannock Street, Room 353
 Denver, Colorado 80202

To the District: Park Creek Metropolitan District
 Attn: Tammi Holloway
 7350 E. 29th Avenue, Suite 300
 Denver, Colorado 80238

With a Copy to: Cockrel Ela Glesne Greher & Ruhland, P.C.
 Attn: Paul Cockrel
 44 Cook Street, Suite 620
 Denver, Colorado 80206

14. Colorado Governmental Immunity Act. Neither Party shall have any liability or responsibility to anyone for any act or omission of the other. Each Party will be liable for the actions and omissions of its respective officers, agents, employees and subcontractors, to the extent provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.* ("CGIA"). Nothing in this Section 14 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the District or the City may have under the CGIA or to any other defenses, immunities, or limitations of liability available to the District or the City by law.

15. Disputes. All disputes of any nature between the District and the City regarding this Agreement will be resolved by administrative hearings pursuant to D.R.M.C. 56-106(b)(f). For purposes of that procedure, the Executive Director of the Office of Emergency Management is the City official to render a final determination.

16. Order of Precedence. In the event of any conflict between the terms contained in the numbered sections, including subparts to them, of this Agreement and those of any exhibit such that the full effect cannot be given to both or all provisions, then the terms contained in the numbered sections, including subparts to them, of this Agreement control.

17. Agreement as Complete Integration; Amendments. This Agreement is the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or other amendment has any force or effect, unless embodied herein in writing. Amendments to this Agreement will become effective when approved by both Parties and executed in the same manner as this Agreement.

18. Legal Authority. The Parties represent and assure that each possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action necessary, to enter into this Agreement. The persons or person signing and executing this Agreement on behalf of a Party represent(s) that he or she is fully authorized to execute this Agreement on behalf of their respective jurisdiction and to validly and legally bind their jurisdiction to all the terms, performances, and provisions herein set forth. If there is a dispute as to the legal authority of either the District or the person signing this Agreement to enter into this Agreement, at its option, the City may temporarily suspend or permanently terminate this Agreement or both. The City will not be obligated to perform any of the provisions of this Agreement after it has suspended or terminated this Agreement as provided in this Agreement.

19. Survival of Certain Provisions. The Parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication or express statement, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

20. Appropriation. It is understood and agreed that any payment obligations of the City hereunder, whether direct or contingent, shall extend only to funds which may be

appropriated by the Denver City Council from time to time for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The District acknowledges that: (i) the City does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City. Further, all obligations of the District hereunder are subject to annual appropriation and budget approval, and shall not be considered to create a multi-fiscal year direct or indirect debt or financial obligation of the District.

21. Examination of Records. Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at City's election in paper or electronic form, any pertinent books, documents, papers and records related to the District's performance pursuant to this Agreement, provision of any goods or services to the City, and any other transactions related to this Agreement. The District shall cooperate with City representatives and City 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 termination of this Agreement according to its terms or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City 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 District to make disclosures in violation of state or federal privacy laws. The District shall at all times comply with D.R.M.C. 20-276

22. Compliance with Denver Wage Laws. To the extent applicable to the District's provision of services hereunder, the District shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. sections. By executing this Agreement, the District expressly acknowledges that the District is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the District, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. sections shall result in the penalties and other remedies authorized therein. The District shall insert the foregoing provision in all subcontracts.

23. Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures by the District and the City. This Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City, and by the District. 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, 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.

EXECUTED as of the date first written above.

PARK CREEK METROPOLIAN DISTRICT

By 
King Harris, Chairman

Attest:


Matthew Blackburn, Secretary

SAMPLE CITY SIGNATURE PAGE
ACTUAL SIGNATURE PAGE WILL BE SEPARATELY INSERTED

CITY AND COUNTY OF DENVER

By: _____
Mayor

Attest:

By: _____

Title: _____

Date: _____

(S E A L)

APPROVED AS TO FORM:

Attorney for the City and County of Denver

By: _____

Title: _____

REGISTERED AND COUNTERSIGNED:

By: _____

Title: Chief Financial Officer

By: _____

Title: Auditor

Exhibit A

Streets

- Central Park Boulevard Filing No. 1: Tract C
- Filing No. 9: Tracts M and AG
- Filing No. 13: Tract A
- Filing No. 14: Tract E
- Filing No. 20: Tract A
- Filing No. 21: Tracts N and P
- Filing No. 34: Tracts A, B, C, D, F, G, and H
- Filing No. 36: Tracts A and AP
- Filing No. 39: Tracts A and B
- Filing No. 52: Tracts A, B, and C
- Filing No. 54: Tracts A, C, D, E, F, G, H, J, K, L, M, N, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AJ, AH, AJ, AK, AL, AM, AN, AP, AQ, AR, AS, AT, AU, AV, AW, and AX
- Filing No. 57: Tracts A, B, C, D, E, F, G, H, J, K, L, M, N, P, Q, R, S, T, U, V, W, X, Y, Z, AA, AB, AC, AD, AE, AF, AJ, AH, AJ, AK, AL, AM, and AN
- Filing No. 59: Tracts A and B
- Filing No. 60: Tract A
- Filing No. 63: TBD

Parks

- Filing No. 4: Tract G (Greenway Park)
- Filing No. 14: Tracts A and C
- Filing No. 36: Tract CM (West Detention Pond Park)
- Filing No. 45: Tracts CV and CW (Northwest Detention Pond Park); Tracts CX and CY (56th Avenue Greenway); Tract CZ (Sandhills Prairie Park); Tract DA (Prairie Meadows Park); and Tract DB (Cottonwood Gallery Park)
- 56th Avenue Park (unplatted area south of Filing No. 52)
- Filing No. 54: Tracts CU, CX, and DK (56th Avenue Park); Tract CV (Open Space, Phase 3, Regional Urban Park); Tract CW (Sports Field); Tracts CY, CZ, DA, and DB (north End Parks); Tract DC (Big Green Park); Tracts DD and DE (Wind Break Park); Tract CX (Perimeter Park); and Tract DD (Detention Pond Park)
- Filing No. 57: Tract CH (Perimeter Park)
- Section 10 Open Space/Detention Pond (Regional Urban Park/Channel)
- Westerly Creek Regional Park (Sand Creek)

Contract Control Number:

ATTNY-202684501-00

Contractor Name:

PARK CREEK METROPOLITAN 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:

ATTNY-202684501-00
PARK CREEK METROPOLITAN DISTRICT

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)