

**AMENDED AND RESTATED COOPERATIVE AGREEMENT**

**BETWEEN**

**THE CITY AND COUNTY OF DENVER, COLORADO**

**AND**

**EVERGREEN METROPOLITAN DISTRICT**

**REGARDING DEDISSE PARK  
WATER INFRASTRUCTURE AND SERVICE**

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## AMENDED AND RESTATED COOPERATIVE AGREEMENT

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

### RECITALS:

**A.** The Denver Mountain Parks are a collection of parks and open space owned by Denver and located in three counties in Colorado. Since 1912, Denver has acquired, and opened to the public, several Denver Mountain Parks in Jefferson County. The Denver Mountain Parks are administered by the Denver Department of Parks and Recreation and its Denver Mountain Parks division.

**B.** EMD is a special district that was converted to a metropolitan district in 1979 for, among other things, the purpose of improving, constructing, repairing, maintaining and operating those certain water facilities, water infrastructure, and water and wastewater systems for residents in and around Evergreen, including but not limited to Evergreen Lake and Evergreen Dam located in Dedisse Park.

**C.** Dedisse Park is a Denver designated Park in accordance with § 2.4.5 of the Denver City Charter, the largest part of which was acquired by Denver in 1920. The Evergreen Dam was constructed by Denver and the Evergreen Lake was formed within Dedisse Park. The Evergreen Dam (“**Dam**”) is owned by Denver, and Denver holds rights to certain water storage within Evergreen Lake (“**Lake**”).

**D.** On April 15, 1980, Denver and EMD entered into that certain Cooperative Agreement that set forth the terms and conditions by which EMD assumed responsibility for the operation and maintenance of the Evergreen Dam and Lake. EMD was, among other things, authorized under the Cooperative Agreement to enter into a contract with another governmental entity for the purpose of providing recreational programs and facilities at the Lake.

**E.** Through an Agreement dated March 13, 1981, EMD granted to Jefferson County the right to provide recreational facilities and programs at the Lake. At the same time or soon thereafter, Jefferson County entered into an Assignment Agreement with Evergreen Park and Recreation District (“**EPRD**”) (then known as Evergreen Metropolitan Recreation and Park District) by which EPRD largely assumed the rights, duties and obligations of Jefferson County under the Agreement dated March 13, 1981.

**F.** Since that time, EPRD has operated and maintained recreational facilities and programs within that portion of Dedisse Park located on and in the vicinity of the Lake, and has constructed and installed improvements to Dedisse Park.

**G.** EPRD is expected to enter into a new, separate agreement with Denver (“**EPRD Cooperative Agreement**”) under which EPRD will continue to operate and maintain certain recreational facilities and programs within Dedisse Park for the benefit of the public. The EPRD Cooperative Agreement will, when executed, terminate and supersede the 1981 Agreement between EMD and Jefferson County.

**H.** Likewise, this Agreement between Denver and EMD is intended to set forth the rights, obligations and responsibilities of Denver and EMD with respect to the Lake and Dam, and by its execution and terms, shall amend and restate the 1980 Agreement.

**I.** It is in the interest of Denver and EMD, and the public they both serve, that the 1980 Agreement is amended and restated between Denver and EMD whereby EMD shall continue 1) to coordinate with Denver and, in particular, its Department of Parks and Recreation, with respect to the existing and future public benefits from EMD’s operations and services within Dedisse Park; 2) to operate and maintain such facilities, both as currently in place or as developed in the future, in accordance with this Agreement; and 3) to provide water and wastewater service to Dedisse Park as currently provided and for uses and needs developed in the future.

**NOW, THEREFORE,** in consideration of the above recitals, which are hereby incorporated herein, and the mutual promises and covenants contained in this Agreement, Denver and EMD agree as follows:

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

**(a) Entities and Officials.**

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

(2) The acronym “**DPR**” shall mean the Denver Department of Parks and Recreation, including its Denver Mountain Parks division, and those officials, officers and employees of DPR with authority to act on behalf of DPR. The Executive Director of DPR, or the Executive Director’s designee, shall be the point of contact for DPR.

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

(4) The phrase “**EMD Manager**” shall mean the General Manager of EMD or the EMD Manager’s designated representative(s).

**(b) Legal Sources.**

(1) The phrase “**Applicable Law**” shall mean all federal, state, and local laws applicable in the context of the specific matter addressed in this Agreement, including but not limited to: 1) the constitutions, laws, and rules and regulations of the United States of America and the State of Colorado; 2) the City Charter and the Denver Revised Municipal Code, as either

may be amended from time to time; 3) rules and regulations promulgated by DPR and applicable to Denver Mountain Parks (unless expressly modified or waived in this Agreement); 4) any rules and regulations promulgated by other City departments and agencies and applicable to EMD actions and activities under this Agreement; 5) executive orders issued by Denver's Mayor; 6) the applicable special district provisions of Article 1 of Title 32 of C.R.S. ("**Title 32**"); 7) any law or regulation adopted by EMD not in conflict with the laws and regulations of Denver applicable to the Denver Mountain Parks; 8) any court order, judgment, or decree or any appellate decision; and 10) any applicable federal or state administrative decision.

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

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

(4) The acronym "**DRMC**" shall mean the Denver Revised Municipal Code, as it may be or may have been amended or re-codified from time to time.

(5) The phrase "**DPR Park Rules**" shall mean the "Park Use Rules and Regulations" adopted by DPR on May 11, 2012, and as amended and restated May 27, 2015, and as the DPR Park Rules may be amended in the future as provided in paragraph 8 of this Agreement. DPR Park Rules shall also include the corresponding enforcement ordinance set forth in Article I of Chapter 39, DRMC.

(6) The phrase "**EMD Rules and Regulations**" shall mean the duly adopted EMD Rules and Regulations, as they may be amended from time to time.

(c) **Parks and Facilities.**

(1) The phrase "**Denver Property**" shall mean any real property identified, depicted or described in this Agreement; including Dedisse Park and other Denver Mountain Parks, which are operated and managed by DPR. Denver Property that is within EMD's service area is depicted in **Exhibit A**, attached hereto and incorporated herein by reference ("**EMD Service Area**"). Denver Property also includes permanent improvements such as trails and trailheads, presently existing or as may be constructed, installed, expanded, renovated, or replaced in the future by Denver, EPRD, Jefferson County, the State of Colorado, or any other entity except as otherwise stated in this Agreement, over which EMD may assume operational and management responsibilities in accordance with this Agreement. If EMD should expand the EMD Service Area so as to include additional Denver Property, as approved by Denver in accordance with Title 32, the additional Denver Property shall be included in this Agreement unless an amendment is executed by Denver and EMD so as to exclude Denver Property.

(2) The phrase "**Dedisse Park**" shall mean that portion of Denver Property designated as Dedisse Park that includes the Lake and Dam as depicted in **Exhibit B** attached hereto and incorporated hereby reference, within which EMD Facilities are located and operated. For purposes of this Agreement, Dedisse Park shall also include the Evergreen Golf Course or any portion of Dedisse Park lying to the west of the Evergreen Golf Course, north of

Upper Bear Creek Road, and north and east of Evergreen Parkway, to the extent EMD provides water service to these areas.

(3) The phrase “**EMD Facilities**” shall mean all permanent water and wastewater improvements of the District presently existing, or as may be constructed, installed, expanded, renovated, rehabilitated or replaced in the future, on, below or above ground within Denver Property, and equipment, furnishings and other fixtures appurtenant to such permanent improvements. EMD Facilities shall exclude any facility owned by Denver, including but not limited to park land, roads, trails, the Lake, Dam and other Denver facilities and property.

## **2. AUTHORITY; PURPOSE; and LICENSE.**

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

(1) The City Charter, including (a) Section 2.4.4 and, authorizes i) the entry into agreements, subject to approval by City ordinance, with a public agency for the development of park facilities and ii) the delegation, subject to approval by City ordinance, of the function of the Manager (now Executive Director) of the Denver Department of Parks and Recreation as specified in the agreement.

(2) Home rule authority of Denver under Article XX of the State Constitution and any other applicable provision of the State Constitution, including Section 18(2)(A) of Article XIV and the implementing statutes found in section 29-1-203, C.R.S., regarding intergovernmental agreements (but excluding the establishment of a separate governmental entity).

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

(4) The special district provisions of Title 32 or other provisions in C.R.S., as they pertain to the authority and powers of EMD operating as a metropolitan district, including the authority to enter contracts and agreements as specified in section 32-1-1001(1)(d).

(b) Purposes of Agreement. EMD shall use its best efforts, for the benefit of the residents of Jefferson County served by EMD, the citizens of Denver, and for the benefit of Dedisse Park, Denver Property and for the general public to provide water services in accordance with EMD’s Rules and Regulations, Title 32 and the terms of this Agreement.

(c) License.

(1) The EMD Facilities. Denver hereby grants a license to EMD for the use, operation, maintenance, administration, development, and care of the EMD Facilities currently existing, installed and operating within Denver Property in accordance with EMD’s

authority and with this Agreement. The license granted herein (“**License**”) shall extend to the EMD Facilities constructed, re-constructed, installed, replaced, expanded, rehabilitated or renovated in the future, subject to adherence to this Agreement regarding new improvements, and subject to the prior approval by Denver as provided in this Agreement. This License and Agreement also grants to EMD full use and access to any Denver Property as may be convenient or necessary consistent with the services provided by EMD, including the maintenance and operation of the EMD Facilities. EMD shall provide Denver reasonable notice as required under this Agreement of any access to Denver Property, except for emergencies or when impractical, by EMD, its employees or contractors.

(2) **Limitations.** The granting of any rights under this Agreement, now or in the future, is not intended to create or grant, nor shall be construed as creating or granting, a property interest or title on the part of or to EMD in Denver Property, other than such license rights specified in this Agreement; nor is this Agreement intended to grant to Denver any ownership or property rights held by EMD regarding any of the EMD Facilities in or outside of Denver Property. Denver does not make, and disclaims, any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting property being licensed to EMD for EMD’s use. EMD accepts, without assuming or accepting any obligation or liability whatsoever for, the licensed property in its current environmental condition, including any asbestos and lead-based paint, if any, and without any expectation that Denver will remove or remediate the environmental conditions unless conditions become such that Denver or some other responsible entity is compelled by federal or state law to do so.

(3) **Right of Access.** Any license granted by this Agreement is not intended to prevent or restrict the right of Denver to access, inspect, or use Denver Property, provided that such access or use is in keeping with the terms and conditions of this Agreement, is not inconsistent with the terms of this Agreement.

**3. TERM and EXTENSION.** This Agreement shall commence as of the Effective Date of this Agreement and shall expire on December 31, 2072, provided, however, that this Agreement may be extended with the same terms and conditions for an additional twenty-five (25) years at the mutual agreement of the Parties (“**Expiration Date**”), unless otherwise terminated or extended as provided herein. Any other change to the terms and conditions of this Agreement must be approved and executed by the Parties in the same manner as this Agreement.

**4. REAL and PERSONAL PROPERTY.**

(a) **Real Property Ownership.** Fee title to Denver Property, including the Lake, Dam, and trails, shall remain solely with Denver. EMD shall have no authority, under any circumstance, to sell, convey or grant any permanent property interest, including any easement or license, in Denver Property. Any EMD Facilities constructed or installed by or on behalf of EMD in, on, or under Denver Property shall remain the property and responsibility of EMD.

(b) **Use of Denver Property.** EMD shall have no authority to make any use, or allow any use to be made, of Denver Property except as allowed by, or authorized under, this Agreement. Under no circumstances shall EMD make any use, or allow any use to be made, of

Denver Property in violation of federal, state or local law. EMD shall have no authority to grant any lease, sub-license, concession license, user right, or permit to a third party for occupancy or use of any Denver Property except as expressly authorized in this Agreement.

(c) Fixtures. Any Fixtures installed by or on behalf of EMD on Denver Property but onto or affixed to EMD Facilities shall remain the property of EMD. Fixtures may be installed, replaced and/or disposed of by EMD, and the proceeds received for the sale of Fixtures shall be retained by EMD to be utilized as provided in this Agreement.

**5. PRIOR AGREEMENTS AMONG DENVER, EMD, JEFFERSON COUNTY, and EPRD.**

(a) Prior Agreements.

(1) 1980 and 1981 Agreements Restated. By the terms of this Agreement, the 1980 Cooperative Agreement between EMD and Denver, by mutual agreement and assent of EMD and Denver, is hereby amended, restated and superseded by this Agreement. The 1981 Cooperative Agreement between EMD and Jefferson County, by mutual agreement and assent of EMD and Jefferson County, as well as by Denver and EPRD (as assignor or assignee), is amended, restated and superseded by this Agreement and the EPRD Cooperative Agreement. To the extent the 1980 Cooperative Agreement or the 1981 Cooperative Agreement granted EMD rights, obligations and responsibilities with regard to the Lake and Dam and EMD Facilities, those rights, obligations and responsibilities are intended to continue and to be incorporated and subsumed into this Agreement. To the extent the 1980 Cooperative Agreement or the 1981 Cooperative Agreement granted EMD rights, obligations and responsibilities regarding recreational programming of Dedisse Park, those rights, obligations and responsibilities are terminated and no longer in effect as to EMD, and are now intended to rest with EPRD in accordance with the terms of the EPRD Cooperative Agreement.

(2) Trails. From time to time Denver or other parties authorized by Denver, which may include EPRD, will either perform construction of trails, which may be built over existing underground EMD Facilities or near other EMD Facilities; or perform maintenance to trails that currently extend over existing underground EMD Facilities, or are currently near existing EMD Facilities. Such trails may also abut or extend to EMD Facilities. If Denver wishes to perform construction or maintenance to such trails it shall notify, coordinate with and cooperate with EMD for the work. If other parties authorized by Denver, including EPRD, wish to perform such work to trails, the EPRD Cooperative Agreement shall provide that EPRD will coordinate and cooperate with EMD to the extent it affects, and is limited to, Denver Property managed by EPRD in accordance with EPRD's obligations under the EPRD Cooperative Agreement. EMD may also request to perform such work in accordance with this Agreement, or may request that Denver perform such work, subject to Denver's discretion.

**6. EMD SERVICES.**

(a) Operation and Maintenance of EMD Facilities. EMD shall, as needed and at its own expense, both in its discretion, operate, maintain, improve, repair and replace the EMD Facilities, including without limitation water tanks and pump stations, water and sewer lines and

all associated permanent improvements in all areas on and within Dedisse Park or, if applicable, other Denver Property in a safe and usable condition. This paragraph 6(a) shall apply to existing and future permanent improvements. Subject to notice and approval provisions under this Agreement that may apply, EMD shall, as and if needed and at its own expense, promptly repair or replace all damaged, defective, broken, or worn out EMD Facilities, unless the use thereof is being discontinued, and shall, and at its own expense, in its discretion, promptly make such emergency repairs of EMD Facilities as necessitated by exigent circumstances as provided in this Agreement. Facilities in which use has been permanently discontinued and presents a safety or health risk or is a visual disruption shall be removed at EMD's cost. All work or service which EMD may perform under this paragraph 6 may be performed by EMD employees or contracted to a third-party contractor. All EMD Facilities shall at EMD's sole expense remain in compliance with Applicable Laws.

(b) Operation and Maintenance of Dam and Lake. EMD shall operate and maintain the Dam, including the Outlet Works (as defined in Paragraph 6(b)(2), below); shall manage and administer water storage in the Lake consistent with and not to unreasonably interfere with recreational and irrigation use; shall, consistent with the purposes of this Agreement, protect against the pollution of the Lake from recreational and irrigation uses within Dedisse Park; and shall assist with the maintenance of the Lake to the extent such maintenance is consistent with EMD's services, does not unreasonably interfere with recreational operations, and otherwise meets and protects the essential water supply and recreational purposes of the Dam and Lake. EMD shall not grant storage or reservoir rights to any other party with respect to the Lake.

(1) If EMD determines, in its discretion, to make a substantial repair to, reconstruct or renovate the Dam as may be reasonably needed, EMD shall 1) confer and agree with the DPR Executive Director on the necessity, scope and costs of any such work; 2) obtain the DPR Executive Director's approval consistent with Denver rules, regulations, laws and policies; and 3) agree with the DPR Executive Director on the procurement, delivery and contracting requirements for the work. EMD, in its discretion, may at its own cost and expense, unless otherwise agreed to by the DPR Executive Director, perform such work subject to notice to, and approval by, the DPR Executive Director in accordance with this Agreement. Contractors hired by EMD to perform services as described in this Paragraph 6(b)(1) shall be required to obtain and carry workers' compensation and employers liability insurance and commercial general liability insurance with EMD and Denver included as additional insureds. Design and engineering contractors must carry professional liability insurance with indemnification in favor of EMD and Denver. Construction contractors must carry builders' risk or an installation floater on an all risk, replacement cost basis, including coverage for soft costs, flood and earth movement, with EMD and Denver included as additional named insureds.

(2) EMD shall operate and maintain the Dam outlet gates, pipes, lines and other appurtenances (all together, the "**Outlet Works**") presently installed in the Dam and specifically for the operation of the Lake itself. All on-going maintenance and repairs of the Outlet Works previously approved by DPR will not require further approvals. This sub-paragraph (2) does not include roads, culverts, trails or other facilities providing access to the Lake and Dam and surrounding area, except for the access road along the Bear Creek channel between Dedisse Park bridge and the Lake.



(c) Water and Wastewater Service. During May through September, EMD shall not interfere with Denver's use of non-potable water pumped from the Lake by Denver, as is reasonably necessary for Denver's irrigation of Evergreen Golf Course in Dedisse Park at no cost to Denver. Denver will use its best efforts in complying with EMD Rules and Regulations regarding restrictions on reasonable water use imposed by EMD on its customers, and in operating and maintaining the water pump and irrigation system for the Evergreen Golf Course in an efficient manner to prevent leakage and waste of water. EMD shall provide notice to Denver of any drought or other use restrictions. EMD may install, maintain, inspect and verify the calibration of measuring devices for the Evergreen Golf Course irrigation system. EMD will maintain an appropriate accounting and reporting system for the use of EMD and Denver water rights in the Lake, including replacing evaporation from the Lake. The water rights used for such purposes will be a combination of Denver's storage rights in the Lake and EMD's water rights as required by State water administrators.

(1) EMD currently provides and will continue to provide to Denver ten (10) residential-equivalent taps to EMD's water system, and eleven (11) residential-equivalent taps to EMD's sewer system, both without any tap fees, for use within Dedisse Park. If Denver requests additional taps, EMD will endeavor to provide those additional taps based on then-existing terms and rates in effect at the time of the request. EMD shall have no obligation to extend currently existing water or sewer lines or other EMD Facilities to serve Denver Property. Use of such existing taps shall be subject to all EMD Rules and Regulations and all other rates, fees and charges of the District. All such water taps shall be connected to the District's wastewater system. EMD potable water shall not be used for irrigation of Denver Property.

(2) In the event a private user licensed by Denver to operate Denver facilities utilizes EMD's water system, EMD may charge its regular rates, fees and charges and invoice either the licensed operator or Denver. Such use shall be subject to all EMD Rules and Regulations.

(3) EMD shall operate and maintain the water and sanitary sewer mains within Denver Property, except for the service lines to the Evergreen Golf Course facilities, clubhouse, restaurant and the Lake House, at no cost to Denver. In the event a private user licensed by Denver to operate Denver facilities utilizes EMD's wastewater system, EMD may charge its regular rates, fees and charges and invoice either the licensed operator or Denver. Such use shall be subject to all EMD Rules and Regulations.

(d) Lake Storage. Except as provided in sub-paragraph 6(c) of this Agreement, EMD is hereby leased use of the Lake and Denver's decreed "Lake Storage Rights," which are defined as Reservoir Domestic Priority No. 10 dating from December 31, 1915 in Water District No. 9, as adjudicated by the District Court in and for the City and County of Denver on September 24, 1935. The Lake and Lake Storage Rights are to be used for water storage purposes without any adverse claim by either Party against the other Party's property or water rights, in order for EMD to utilize the Lake for storage of water up to the maximum allowable amounts decreed by the Water Court. EMD shall have the right to store and use water from the Lake and any water rights that EMD has transferred or exchanged to the Lake for EMD's water supply, treatment and distribution system, as it so determines. Such use shall not interfere with Denver's storage or other water rights, or with Denver's recreational, municipal and park uses of the Lake. EMD shall use

its best efforts to maintain a minimum Lake storage levels at 7,069 feet elevation above mean sea level to support recreation, municipal and other authorized uses of the Lake surface by exercise of the Lake Storage Rights in conjunction with EMD's water rights as decreed for storage and municipal uses in the Lake. Each Party acknowledges that Lake surface levels may fluctuate below the 7,069 feet elevation mark at times due to drought conditions or administration of water rights by State water administrators. EMD shall not convey, lease, sublease, assign, pledge, lien or encumber the Lake or the Lake Storage Rights.

(e) Exercise of the Lake Storage Rights. EMD shall diligently exercise and administer the Lake Storage Rights. Therefore, EMD agrees:

(1) Within one hundred eighty (180) days of execution of this Agreement, EMD shall, through its monthly water rights accounting submitted to the Colorado Division of Water Resources, demonstrate the exercise of the Lake Storage Rights. Such accounting may include documenting compliance with the carryover storage accounting guidelines found in the Colorado Division of Water Resources General Administration Guidelines for Reservoirs.

(2) EMD shall annually exercise, and confirm through its accounting submitted to the Colorado Division of Water Resources, the Lake Storage Rights, to the extent allowed by hydrologic and administrative conditions, in conjunction with the use of EMD's water rights.

(3) EMD shall maintain monthly accounting documentation verifying the exercise of the Lake Storage Rights and EMD's water rights and provide such information annually to Denver.

(f) EMD shall, upon reasonable request, provide Denver with maps or other information depicting the location of EMD Facilities on, within or near Denver Property.

## **7. EMD FACILITIES.**

(a) Obligations. EMD may, as needed in its discretion and at its own expense, repair, re-construct, renovate, rehabilitate and replace (unless the use thereof is being discontinued) the EMD Facilities, or may construct or install new permanent improvements, on or within Denver Property subject to this paragraph 7 and sub-paragraph 6(a). EMD shall, promptly and at its own expense, make emergency repairs on the EMD Facilities as necessitated by exigent circumstances and as provided in sub-paragraph 7(c) of this Agreement. EMD, at its own expense, may also conduct dredging and related work on the Lake as necessary to maximize the storage capacity of the Lake. Dredging and related work requires notification to and approval by Denver, and shall be conducted in accordance with Denver procedures, laws, rules and regulations.

(b) Initiation. In the event that Denver or EMD, jointly or individually, should determine that new or replacement permanent improvements are needed on Denver Property that is not for the primary purpose of improving or repairing EMD Facilities (for example, the construction of trails), Denver and EMD shall cooperate and coordinate in an effort to develop plans to evaluate the need for such improvements and the costs and to develop a strategy and plans

for procuring funds necessary to complete such improvements in a timely and efficient manner, subject to the terms and conditions of this Agreement. Nothing in this sub-paragraph 7(b) shall obligate Denver to approve the plans for the proposed improvements, except upon satisfaction of such requirements as expressly provided in this paragraph 7, and neither Party shall be obligated to join in the funding for, or taking on the responsibility of performing, the proposed improvements. Unless set forth in this Agreement or otherwise agreed upon, any permanent improvements constructed under this sub-paragraph 7(b) (not intended to be an EMD Facility) shall be owned by Denver.

(c) Notice to Denver. EMD shall provide prior notice to Denver for any proposed major or significant construction work to EMD Facilities. Review and approval, which shall not be unreasonably withheld, by DPR is required prior to such work. Any work and installation must conform with park use and park purposes. Prior notice is not required for routine or minor inspection, maintenance or repair work on EMD Facilities.

(d) Emergency. In the event of an existing or imminent emergency, not including an emergency regarding water quality, where Denver Property or EMD Facilities are at substantial risk, or neighboring property or residents are at substantial risk, due to unsafe or unhealthy conditions in or at Denver Property, either Party is authorized, without notice to the other Party, to take such prompt and prudent measures as necessary to secure, protect, and preserve Denver Property, EMD Facilities, neighboring property, and public health and safety, including any necessary repair or improvement. The repair or improvement work shall not exceed what is necessary to mitigate the immediate danger or risk. Notice shall be provided as soon as reasonably possible to the other Party as to reasons for the emergency work, the time, place, and manner of the emergency work, and the costs incurred due to the emergency work. Both Parties shall communicate and work, in good faith, for the resolution of the payment of the incurred costs for the emergency work in accordance with this Agreement. This sub-paragraph 7(d) shall be applicable to emergency repairs as addressed in sub-paragraph 7(a) of this Agreement. If EMD determines there is an immediate threat to public health or some other immediate hazard that may adversely affect water quality, then EMD may in its discretion instruct EPRD and Denver to temporarily limit or close access to the Lake until the emergency is addressed. EMD shall promptly notify Denver of the emergency and EMD's intended actions to resolve the emergency. Otherwise, EMD shall first notify DPR of any non-emergency regarding water quality and assist DPR in determining whether limited access to or closure of the Lake is appropriate.

(e) Historic Preservation. Non-emergency work to be undertaken by EMD or its contractors or subcontractors on or in historic structures designated as Denver landmarks or listed on the National Registry of Historic Places shall not be performed unless all approvals required under Section 30-6, DRMC, for landmark designated structures are obtained and all applicable requirements and restrictions are complied with.

(f) License to EMD for Location of Utilities; No Easements. Along with the other rights set forth herein, this Agreement shall also act as a license for the installation, operation, maintenance and repair of utilities within Denver Property consistent with Denver rules, regulations and policies. No easements shall be granted to EMD or any other utility provider or any other entity that would burden Denver Property. Existing easements on Denver Property, as recognized under DPR's Utility Policy, shall be honored. Any previous easement or other utility

rights held by EMD shall continue and will be honored under this Agreement. If EMD or Denver determines that other utilities are needed for EMD to fully and properly operate the EMD Facilities consistent with the rights and obligations under this Agreement, then that other utility provider shall be required to obtain a utility permit for the installation and operation of the other utility.

(g) Assignment of Authority. Upon written request by EMD and at Denver's discretion (and subject to approval by the Denver City Council if the project costs more than \$500,000), EMD may be assigned the responsibility for the design, planning, construction, re-construction, expansion, rehabilitation and renovation of new or replacement permanent improvements to facilities or land that is considered Denver Property or intended to be transferred to Denver, and for the demolition of any existing improvements (if applicable), subject to the satisfaction of the following conditions:

(1) The design and construction of such improvements on or for Denver Property shall be undertaken subject to the requirements and approvals of Denver in accordance with this sub-paragraph (1) and an assignment agreement entered between EMD and Denver for the proposed improvement project. Based on the nature and circumstances of the proposed improvement project and in accordance with any changes to Applicable Law or Denver's design and construction standards and specifications, Denver reserves the right to modify the terms and conditions of the assignment agreement.

(2) Unless funding for all or part of such improvement has been duly procured and made available by Denver in accordance with its City Charter and DRMC, all costs incident to an improvement project that has been requested by EMD shall be borne solely by EMD, other than the costs incurred through work by Denver employees or agents incidental to the project. EMD may procure additional funding or cost sharing from other entities, including grants. Any arrangement requiring the owner of the property to approve the grant or other funding or cost sharing agreement shall be submitted, in advance of any execution, to the DPR Executive Director. As the property owner, Denver may, in its complete discretion, decide whether to extend property owner's approval to such a grant or funding or cost sharing agreement.

(3) For all such proposed improvements, EMD shall submit complete and accurate plans and specifications for the proposed improvement to the DPR Executive Director or a designee who must approve, approve with conditions, or disapprove, in writing, the plans and specifications in accordance with the requirements and timeframes specified in the assignment agreement. Any deficiencies in said plans and specifications shall be remedied by EMD, to the satisfaction of the DPR Executive Director or other applicable and responsible Denver agency prior to the commencement of work. All reviews of plans and specifications by Denver shall be conducted at Denver's cost.

(4) Unless otherwise authorized by the DPR Executive Director in advance and in writing for a specific improvement, and limited to work performed on Denver owned land or facilities, or facilities intended to be transferred to Denver, EMD shall be responsible for seeking qualifications, competitively selecting, and retaining qualified and licensed engineers, architects, surveyors, or other consultants who will prepare the design and construction plans and specifications for the improvement project and for bidding, competitively selecting, and letting out the construction work to qualified, licensed and experienced contractors. EMD shall

be responsible for overseeing and supervising the work of the professionals and contractors, including all sub-consultants and sub-contractors, in order to assure compliance with this Agreement and the assignment agreement. EMD shall be solely responsible for paying all professionals and contractors amounts due under their contracts.

(5) EMD shall observe and strictly abide by, and shall require all of its consultants, sub-consultants, contractors and subcontractors to observe and strictly abide by, all requirements of this Agreement, any assignment agreement and Applicable Laws, including but not limited to the DRMC provisions related to payment of prevailing wages, minimum wages, minority and women business enterprise participation, Americans with Disability Act and related laws, Public Art requirements under the DRMC, audits, indemnification, liens, bonding, non-discrimination, employment of undocumented workers, and subcontracting. EMD shall also provide, or cause its contractors to provide, adequate documentation of expenditures, including invoices and payroll, with respect to any such improvement project for land or facilities considered Denver Property.

(6) All consultants, sub-consultants, contractors and subcontractors shall procure and maintain sufficient insurance for consultants, contractors and subcontractors as specified by Denver.

(7) Improvements on or for Denver Property that are required by State or federal agencies may be undertaken by EMD per the procedures set forth in this subparagraph 7(g).

## **8. RULES and REGULATIONS.**

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

(b) Exception for EMD to the Application of DPR Park Rules. To the extent that an activity or use is expressly and unqualifiedly authorized under this Agreement and EMD Rules and Regulations but which would otherwise be in violation of DPR Park Rules, such activity shall be regarded as an exception from the application of the DPR Park Rules. If EMD determines that a proposed activity or use which would otherwise be in violation of DPR Park Rules should be allowed, the EMD Manager shall submit a prior written request to the DPR Executive Director requesting such an exception and explaining the circumstances and conditions under which an exception is necessary and appropriate.

(c) Limitations on Use of Lake. DPR will make reasonable efforts to notify EMD prior to adoption of DPR Park Rules, performance of maintenance or operation of programs within Dedisse Park, including without limitation Evergreen Golf Course, or any use of the Lake or operation within Dedisse Park that could adversely affect water quality in the Lake, particularly for domestic water consumption. Motorized watercraft and swimming shall be prohibited on the Lake. DPR, EMD and EPRD shall collectively develop and implement operating protocols uniformly applicable to all recreational users to protect the Lake from pollution, including aquatic nuisance species and other pollutants detrimental to water quality, particularly for domestic water

consumption. DPR shall approve the protocol for the Lake. EMD may in its discretion provide routine recommendations and advice to Denver regarding the use and management of Dedisse Park and other facilities affecting water, water use and water quality in the Lake.

**9. UTILITIES, UTILITY POLICY and PERMITS.** The DPR Utility Policy is applicable to Denver Property. If a utility provider, other than EMD, requires installation of any utilities consistent with EMD's services and to allow the utilities to provide direct and substantial service to Denver Property, then a utility permit issued to that other utility provider shall be required for the installation by that other utility provider for the location of utilities on Denver Property. The EMD Manager shall provide, in writing, information to the DPR Executive Director as to the nature of and the need for the other utility service. If the request is in accordance with DPR's Utility Policy, a utility permit will be issued to the utility provider.

**10. INSURANCE; LOSS OR DAMAGE; and PERSONAL PROPERTY.**

(a) General Conditions. EMD agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. EMD shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof. The required insurance shall be underwritten (i) by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better or (ii) by a self-insurance pool for Colorado governmental entities established in accordance with State law. Each policy shall contain a valid provision or endorsement requiring notification to Denver in the event any of the required policies be canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties identified in the Notices section of this Agreement. Such notice shall reference Denver contract number listed on the signature page of this Agreement. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, EMD shall provide written notice of cancellation, non-renewal and any reduction in coverage to the parties identified in the Notices section by certified mail, return receipt requested within three (3) business days of such notice by its insurer(s) and referencing Denver's contract number. If any policy is in excess of a deductible or self-insured retention, Denver must be notified by the EMD. EMD shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the EMD. The EMD shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

The type or amount of insurance or self-insurance coverage retained by EMD or the failure to obtain or maintain insurance or self-insurance shall not obligate Denver to provide such insurance or to incur or pay any liability which is the responsibility of EMD under this Agreement if EMD has inadequate or no insurance or self-insurance coverage. The minimum insurance requirements set forth in paragraph 15 shall not be deemed to limit, modify or define the obligations of EMD under this Agreement.

(b) Proof of Insurance. EMD shall provide a copy of this Agreement to its insurance agent or broker. EMD may not commence services or work relating to the Agreement

prior to placement of coverages required under this Agreement. EMD certifies that the certificate of insurance attached as **Exhibit C** preferably an ACORD certificate, complies with all insurance requirements of this Agreement. Denver requests that Denver's contract number be referenced on the Certificate. Denver's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this Agreement shall not act as a waiver of EMD's breach of this Agreement or of any of Denver's rights or remedies under this Agreement. Denver's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

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

(d) Additional Insureds. For Commercial General Liability, EMD shall include the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

(e) Waiver of Subrogation. For all coverages required under this Agreement, EMD's insurer shall waive subrogation rights against Denver.

(f) Commercial General Liability. EMD shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, and \$2,000,000 policy aggregate.

(g) Property Insurance. EMD shall maintain All-Risk Form Property Insurance, on a replacement cost basis, for EMD Facilities, and EMD personal property. Denver shall maintain All-Risk Form Property Insurance coverage for Denver facilities.

(h) Loss or Damage. Neither Party shall be liable or responsible to the other Party for any loss or damage to any property or person occasioned by theft, flood, fire, vandalism, unforeseeable events or occurrence outside of either Parties' control, public enemy, injunction, riot, strike, insurrection, war, pandemic or epidemic, court order, or requisition or regulatory order of any governmental entity. In the event of a flood, fire or other casualty in or to the Denver Property, the EMD Manager shall immediately give notice thereof to the DPR Executive Director. If a permanent improvement is totally destroyed by flood, fire or other casualty, or partially damaged thereby, so as to render the permanent improvement untenable or unusable, whether or not the flood, fire or casualty is due to fault or neglect of EMD, its agents, employees, contractors, volunteers, or invitees, then EMD may, in its discretion, elect to repair or replace the damaged or destroyed permanent improvement or to terminate its use of the damaged or destroyed permanent improvement. If EMD elects to repair or replace damaged or destroyed permanent improvement,

the work shall be done in accordance with the requirements of paragraph 7 of this Agreement regarding improvements projects.

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

## 11. LIABILITY.

(a) EMD. To the extent authorized by, and subject to any Applicable Law and except as otherwise provided in this Agreement, EMD shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any action or omission of EMD or its officials, officers, employees, and agents in connection with the subject matter of this Agreement.

(b) Denver. To the extent authorized by, and subject to any Applicable Law and except as otherwise provided in this Agreement, Denver shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by Denver, or its officials, officers, employees, and agents in connection with the subject matter of this Agreement.

(c) Officials and Employees. EMD and Denver are each responsible for its own negligence and that of their officials, officers, employees, and agents, to the extent and subject to the limitations, immunities and defenses provided in the Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

(d) Governmental Immunity. Nothing in this paragraph 11 or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations of liability the Parties may have under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, or to any other defenses, immunities, or limitations of liability available to Denver and EMD against third parties by Applicable Law.

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

(f) Claims and Liabilities. EMD shall be responsible for defending against any claims, demands, suits, judicial actions, administrative proceedings and similar legal actions made or brought by members of the public, vendors, contractors, subcontractors, consultants or sub-consultants, concessionaires, permittees and invitees who are or were authorized by EMD to be on Denver Property and are or were engaged in EMD-related uses and activities on Denver Property under this Agreement (“**Claims**”). These Claims shall include but not be limited to those pertaining to payments for work contracted by or on behalf of EMD, worker's compensation claims of EMD



employees, debts created or owed by EMD, violation of civil rights caused or allowed by EMD, and damage to property and/or injury to persons (including death) caused, or contributed to, by EMD or its officials, officers, employees, agents, contractors, subcontractors, consultants, sub-consultants, concessionaires, permittees and/or invitees. This sub-paragraph 11(f) shall apply whether the Claims are brought against EMD, Denver, or both EMD and Denver. To the extent that a legal liability should arise from such Claims for any judgment, damages, moneys owed, garnishment or execution, costs, expenses, attorney's fees or similar financial liabilities except as provided in sub-paragraph 11(b) of this Agreement ("**Liabilities**"), Denver shall have no responsibility for paying or settling such Liabilities, except to the extent that the court finds Denver is liable for any portion of such claims.

(g) Notice of Claims. In the event that any Claim is made or brought by any person or entity against EMD or Denver related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said Claim to the other Party. The Parties shall cooperate in defending against the Claim subject to sub-paragraph 11(f) of this Agreement and to the extent such common defense is consistent with each Party's rights and obligations under this Agreement.

## **12. TAXES; LICENSES; LIENS, and DEBTS.**

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

(b) Licenses. EMD shall take out, keep current, and comply with all licenses, permits, or other authorizations (local, state, or federal) required for the performance of this Agreement.

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

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

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

**13. ENVIRONMENTAL COMPLIANCE.** EMD shall obtain all federal, state, and local environmental permits necessary for any work performed on Denver Property under this Agreement and shall comply with all Applicable Laws and environmental permit requirements. EMD shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos, asbestos-containing soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

**14. TERMINATION; DEFAULT.**

(a) Mutual Termination. Denver and EMD may mutually agree to terminate this Agreement at any time. In such event, the Parties shall enter into a termination agreement setting forth mutually acceptable terms of such termination, including any time frames for EMD to vacate any portion of the Denver Property and its use of the Lake.

(b) Default. Denver may, in its reasonable discretion, terminate this Agreement in the event that EMD shall default or substantially breach, on its part, in the performance or fulfillment of one or more material terms, promises, or conditions of this Agreement (“**EMD Default**”) and shall fail to cure or correct such EMD Default within thirty (30) days or such later date as specified by the DPR Executive Director as is reasonably necessary for EMD to correct such default (the “**Termination Date**”) following delivery of written notice from the DPR Executive Director to the EMD Manager specifying the EMD Default and the Termination Date on which Denver may exercise its right to terminate the Agreement if such EMD Default is not cured or corrected. Likewise, the Agreement may be terminated, in whole or part as appropriate, with respect to any EMD Facility in Dedisse Park, if EMD discontinues the use of, or otherwise abandons, such EMD Facility, or any portion thereof, for a period of twelve consecutive months, and EMD fails to cure or correct such condition within six (6) months following delivery of written notice from the DPR Executive Director to the EMD Manager specifying such abandoned EMD Facility; provided, however, that no other rights and obligations of the Parties under this Agreement shall be affected by such action (other than the abandoned EMD Facility itself). Non-use of any EMD Facility shall not be deemed an abandonment if DPR Executive Director receives written acknowledgment of EMD that the use will be restarted within a specified time period or upon the occurrence of a specified event.

**15. GENERAL PROVISIONS.**

(a) Nature of Agreement. This Agreement is not intended, nor shall be deemed

to create, an agency, partnership or joint venture relationship between Denver and EMD. In addition, Denver does not employ or hire EMD to provide services by this Agreement.

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

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

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

(e) Financial Interests and Encumbrances. Except for financial interests expressly authorized by both Denver and EMD in accordance with their respective governing laws, any financial interests or obligations created or used by EMD or its agent(s) to secure financing and payment for the costs of any work performed or improvements made under this Agreement, including but not limited to any bonds, certificates of participation, purchase agreements, Uniform Commercial Code filings, or other debt or financial security instruments, shall expressly exclude any property right, title and interest held by Denver in Denver Property. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created or used by the financial instrument(s) are subordinate to this Agreement and may not encumber Denver's right, title and interest in Denver Property.

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

of the Agreement, as specified in this Agreement.

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

(h) Fair Dealing. In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of the Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms and conditions hereof; provided, however, that, except as expressly provided in this Agreement, nothing in this paragraph (1) shall be construed as imposing on either Party any greater non-contractual duty or obligation to the other Party or a third party other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arm's length.

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

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

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

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

(m) Adoption and Interpretation of Law. No Party shall enact or adopt, or take action to interpret in a new or different way, any ordinance, resolution, rule, regulation, policy, directive, standard, or similar legal authority which would directly and substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this

Agreement, in whole or part. Nothing in this sub-paragraph shall limit the powers and authority of the Parties in adopting any ordinance, resolution, rule, regulation, policy, directive, standard, or similar action, which is of broad and general applicability, or restrict either Party in exercising existing lawful regulatory or taxing powers and authority so long as this exercise is not done in a discriminatory manner against the other Party nor is done in a manner that fails or refuses to recognize the other Party's governmental tax exemption.

(n) Taxes and Charges. To the extent that it is within its legal authority and except as otherwise provided herein, EMD shall waive, or compensate Denver for, any taxes, assessments, fees, charges, or costs imposed by EMD and applicable to Denver Property; imposed by Jefferson County or the State of Colorado and applicable to Denver Property as the result of the exercise of rights or obligations under this Agreement by EMD or its officials, employees, agents, contractors, concessionaires, or permittees; or imposed by EMD or any other taxing authority due to purchases, uses, or activities of Denver directly related to the performance of 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, the applicable provisions of the Denver City Charter, the Denver Revised Municipal Code, and Executive Orders of Denver's Mayor, and the EMD Rules and Regulations. Venue for any legal action relating to this Agreement shall lie either in the District Court in and for Denver and County of Denver or the District Court for Jefferson County, as the Party bringing the legal action may choose.

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

(q) Examination of Records and Audit. Any authorized agent of Denver, including the City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at Denver's election in paper or electronic form, any pertinent books, documents, papers and records related to EMD's performance pursuant to this Agreement, provision of any goods or services to Denver, and any other transactions related to this Agreement. EMD shall cooperate with Denver representatives and Denver representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the 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 EMD to make disclosures in violation of state or

federal privacy laws. EMD shall at all times comply with DRMC 20-276.

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

To EMD:                   Manager  
Evergreen Metropolitan District  
30920 Stagecoach Blvd.  
Evergreen, Colorado 80439

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

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

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

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

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

(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 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) Severability. Should any one or more provisions of this Agreement be

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

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

(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 and conditions. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.

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

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

**[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.  
SIGNATURE BLOCK ON NEXT PAGE.]**

**Contract Control Number:** PARKS-202263483-00  
**Contractor Name:** EVERGREEN 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:**

PARKS-202263483-00  
EVERGREEN METROPOLITAN DISTRICT

By: DocuSigned by:  
James Viellenave  
-191D0684FAB240D...

Name: James Viellenave  
(please print)  
Title: Director  
(please print)

By: DocuSigned by:  
Mark Davidson  
A9DAD8D7DC40411...

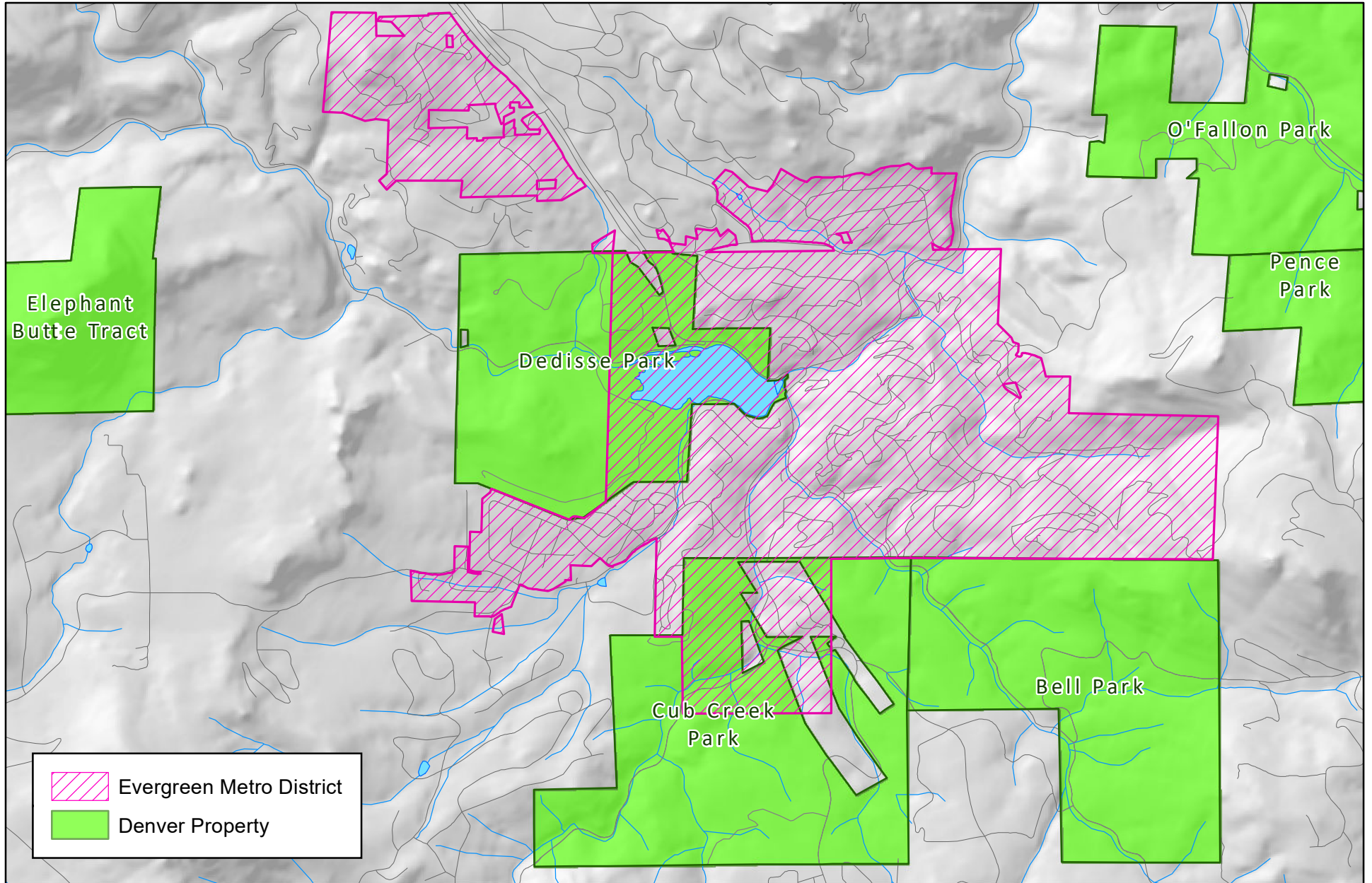
Name: Mark Davidson  
(please print)  
Title: President  
(please print)

ATTEST: [if required]

By: \_\_\_\_\_

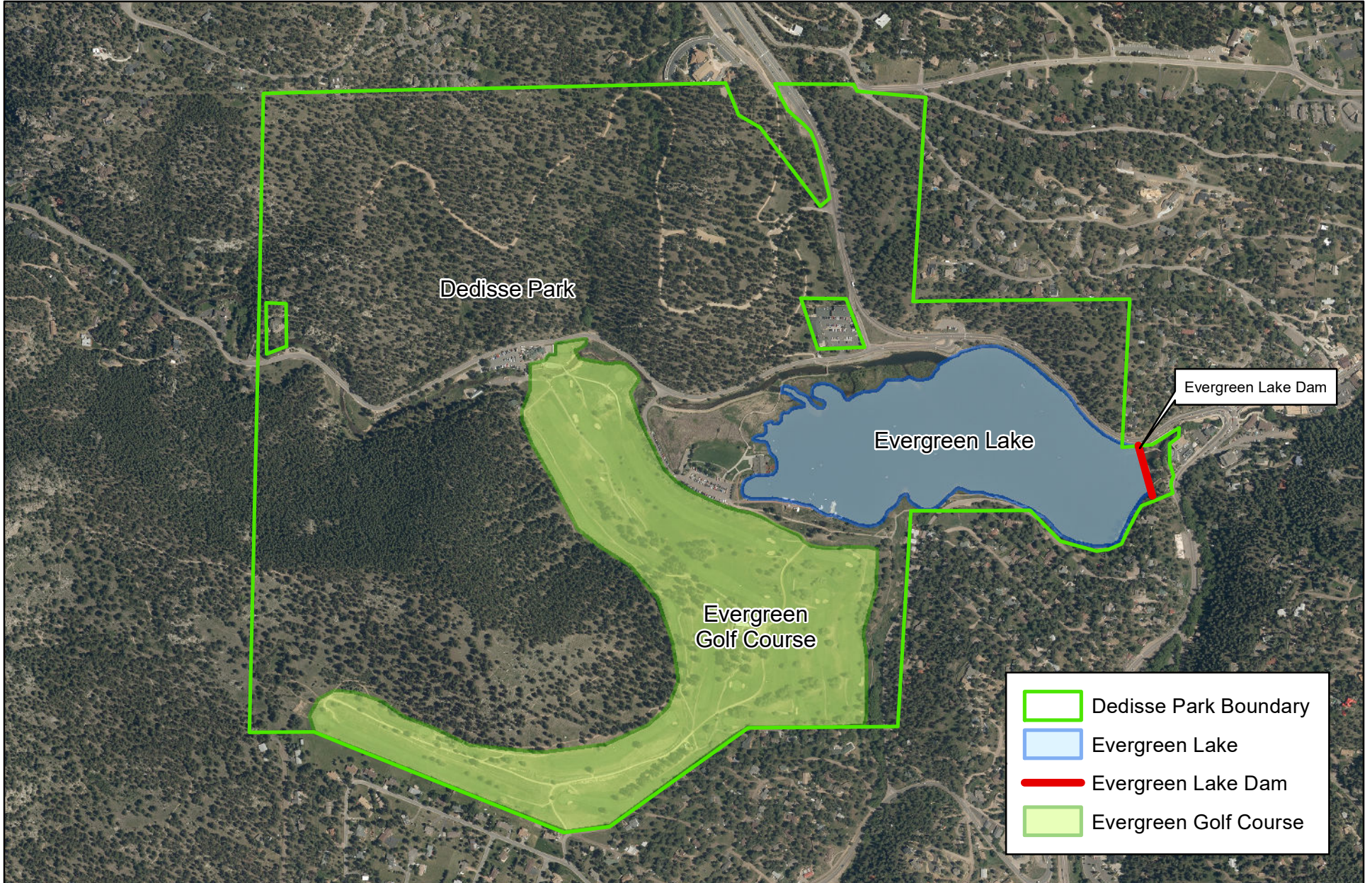
Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



## Exhibit A: Denver Property





## Exhibit B: Dedisse Park



**EXHIBIT C****CERTIFICATE OF COVERAGE**Certificate Number  
CERT-007563

<b>ADMINISTRATOR</b> Colorado Special Districts Property and Liability Pool c/o McGriff Insurance Services, Inc. PO Box 1539 Portland, OR 97207-1539	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
<b>NAMED MEMBER</b> Evergreen Metropolitan District 30920 Stagecoach Blvd Evergreen, CO 80439	<b>COMPANIES AFFORDING COVERAGE</b> COMPANY A: Colorado Special Districts Property and Liability Pool COMPANY B: COMPANY C: COMPANY D:

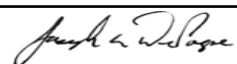
**COVERAGES**

THIS IS TO CERTIFY THAT COVERAGE DOCUMENTS LISTED HEREIN HAVE BEEN ISSUED TO THE NAMED MEMBER HEREIN FOR THE COVERAGE PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE COVERAGE AFFORDED BY THE COVERAGE DOCUMENTS LISTED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH COVERAGE DOCUMENTS.

CO LTR	Type of Coverage	Coverage #	Effective Date	Expiration Date	LIMITS	
A	General Liability	POL-0010363	01/01/22	12/31/22	General Aggregate	Unlimited
	<input checked="" type="checkbox"/> Commercial General Liability <input checked="" type="checkbox"/> Public Officials Liability <input checked="" type="checkbox"/> Employment Practices <input checked="" type="checkbox"/> Occurrence	*Except that for claims, occurrences or suits to which the monetary limits of the Colorado Immunity Act, C.R.S. & 24-10-101, et.seq., as amended, apply, there shall be a further sublimit of (a) \$424,000 for an injury to any one person in any single occurrence; and (b) \$1,195,000 for an injury to two or more persons in any single occurrence; but in the event of an injury to two or more persons in any single occurrence, the sublimit shall not exceed \$424,000 for each injured person.		Each Occurrence*	\$2,000,000	
	Automobile Liability <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos <input type="checkbox"/> Non-Owned Autos				Each Occurrence*	
	Auto Physical Damage <input type="checkbox"/> Scheduled Autos <input type="checkbox"/> Hired Autos					
	Excess Liability <input type="checkbox"/> Other Than Umbrella Form				General Aggregate	
					Each Occurrence*	
A	Property <input checked="" type="checkbox"/>	POL-0010363	01/01/22	12/31/22	See below if applicable.	

**Description:**

The City and County of Denver, its elected and appointed officials, employees and volunteers are listed as additional covered members under Commercial General Liability as outlined under written contract. Only those liabilities covered by the Pool's coverage document for the Member District shall apply and is subject to the provisions and limitations contained in the Colorado Governmental Immunity Act C.R.S. 24-10-101, as amended.

<b>CERTIFICATE HOLDER</b>  Denver Parks and Recreations 678 S. Jason St Denver, CO 80223	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED COVERAGES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE COVERAGE FORM PROVISIONS.  AUTHORIZED REPRESENTATIVE: By: Joseph E. DePaepe  Date: November 23, 2022
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# CERTIFICATE OF COVERAGE

<b>ADMINISTRATOR:</b> Colorado Special Districts Property and Liability Pool c/o McGriff Insurance Services, Inc. PO Box 1539 Portland, OR 97207-1539  <b>NAMED MEMBER:</b> Evergreen Metropolitan District 30920 Stagecoach Blvd Evergreen, Colorado 80439	<b>CERTIFICATE NO.:</b> CERT-009638
	<b>DATE:</b> 11/10/2022
	This certificate is issued as a matter of information only and confers no rights upon the certificate holder other than those provided in the coverage document. This certificate does not amend, extend, or alter the coverage afforded by the coverage documents listed herein.
	<b>COMPANIES AFFORDING COVERAGE</b>
	<b>COMPANY A:</b> Colorado Special Districts Property and Liability Pool
	<b>COMPANY B:</b> Safety National Casualty Corporation

## COVERAGES

This is to certify that the coverage documents listed herein have been issued to the Named Member herein for the coverage period indicated. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which the certificate may be issued or may pertain, the coverage afforded by the coverage documents listed herein is subject to all the terms, conditions, and exclusions of such coverage documents.

CO LTR	TYPE OF COVERAGE	LIMITS		COVERAGE NUMBER	EFFECTIVE DATE	EXPIRATION DATE
AB	Workers' Compensation	WC STATUTORY LIMITS		POL-0010103	1/1/2022	12/31/2022
AB	Employer's Liability	EL EACH ACCIDENT	\$2,000,000			
		EL DISEASE – EACH EMPLOYEE	\$2,000,000			
		EL DISEASE – POLICY LIMIT	\$2,000,000			

### Description:

*Subject to the terms and conditions of the Workers' Compensation Coverage Document.*

Evidence of coverage only.

### CERTIFICATE HOLDER

Denver Parks and Recreations 678 S. Jason St Denver, CO 80223	Should any of the above described coverages be canceled before the expiration date thereof, notice will be delivered in accordance with the coverage and policy for provisions.
	<b>AUTHORIZED REPRESENTATIVE:</b> Joseph E. DePaepe 