

INTERGOVERNMENTAL FINANCING AND CONSTRUCTION AGREEMENT

THIS INTERGOVERNMENTAL FINANCING AND CONSTRUCTION AGREEMENT ("Agreement") is made and entered into as of this 30th day of April, 2001, between the PARK CREEK METROPOLITAN DISTRICT ("Park Creek") and the WESTERLY CREEK METROPOLITAN DISTRICT ("Westerly Creek"; collectively, "Districts"), quasi-municipal corporations and political subdivisions of the State of Colorado operating within the City and County of Denver ("City"), Colorado, organized under the provisions of Article 1 of Title 32, C.R.S.

RECITALS

A. The Districts were organized to facilitate the development of the Stapleton Service Area by cooperatively providing for the financing and Processing of Construction of the Infrastructure, including In-Tract Infrastructure and Trunk Infrastructure, and furnishing services for the use and benefit of the property owners, residents and users of the Infrastructure within the Service Area.

B. The Service Plans of the Districts, which have been previously approved by the City, require that the Districts enter into an intergovernmental agreement to, among other matters, coordinate the financing, Processing of Construction, and the operation and maintenance of the Infrastructure and the provision of services needed within the Stapleton Service Area.

C. The Baseline Financial Plan in the Service Plans of the Districts provides that Park Creek will provide for the financing and Processing of Construction of the Infrastructure needed within the Stapleton Service Area, and Westerly Creek will impose a property tax levy on all taxable property within Westerly Creek boundaries and remit the taxes and other revenue collected by Westerly Creek to Park Creek.

D. Section 18(2)(a), Article XIV of the Colorado Constitution, Section 29-1-203, C.R.S., and Section 32-1-1001, C.R.S., empower the Districts to enter into contracts and agreements with one another to provide intergovernmental services and facilities, including the sharing of costs, the imposition of taxes, and the incurring of debt, when so authorized by their respective Boards of Directors.

E. At the public election held on November 7, 2000, the electors of the Districts authorized the Districts to incur Obligations and to enter into agreements relating thereto, including this Agreement, and Westerly Creek's electors also authorized Westerly Creek to levy property taxes, incur general obligations, and enter into agreements relating thereto, including this Agreement, in order to provide for the financing and Processing of the Infrastructure and to furnish the services needed within the Stapleton Service Area. Such electoral action constitutes the legal authorization for this Agreement, and the performance of the terms of this Agreement requires no further electoral approval from either District.

F. The Boards of Directors of the Districts hereby determine that the terms, conditions, and provisions of this Agreement are in the best interests of the Districts and are necessary to implement the provisions of the Service Plans with respect to the intergovernmental cooperation between the Districts and to establish the respective duties and responsibilities of the Districts concerning the economic and

efficient development of the Infrastructure and the provision of services within the Stapleton Service Area.

### AGREEMENT

In consideration of the agreements, terms and conditions set forth in this Agreement, the adequacy and sufficiency of which are mutually acknowledged, the Districts agree as follows:

#### SECTION 1. DEFINITIONS AND CONSTRUCTION OF AGREEMENT

Section 1.1 Definitions. For all purposes of this Agreement, unless the context expressly indicates differently, the terms defined in this Section shall have the following meanings. If any term is capitalized in this Agreement but not defined hereunder, it shall have the meaning set forth in the Service Plans.

a. "Agreement" means this Intergovernmental Financing and Construction Agreement between the Districts, as may be amended or supplemented in writing from time to time.

b. "Baseline Financial Plan" means the financial plan of each District as set forth in the Service Plan, including any amendment or modification thereof approved by the City.

c. "Board" or "Boards" means the Board of Directors of Park Creek, Westerly Creek or both Districts, as applicable.

d. "City" means the City and County of Denver, Colorado, a home rule municipality.

e. "City Cooperation Agreement" means the Cooperation Agreement dated as of July 15, 2000, between the City and DURA, as may be amended or supplemented in writing from time to time.

f. "Cooperation Agreement" means the Cooperation Agreement dated as of March 1, 2001, between DURA, Park Creek and Westerly Creek, as may be amended or supplemented in writing from time to time, and

all applicable provisions of the City Cooperation Agreement and Redevelopment Services Agreement.

g. "Default" or "Event of Default" means one or more of the events described in Section 6.1.

h. "Developer Advances" means all funds advanced to Park Creek by developers or other persons pursuant to any reimbursement, acquisition or redevelopment agreements, including without limitation the Reimbursement Agreements, and any bonds, notes or other obligations evidencing or securing such borrowing, that are applied for payment of costs incurred for the organization and operations of the Districts, Process of Construction of the Infrastructure, management fees, interest, and other public purposes, and are repayable from Pledged Revenues in accordance with the terms of the Property Tax Indenture or Tax Increment Indenture, or from other legally available revenues of the District.

i. "District" or "Districts" means either Park Creek or Westerly Creek, as applicable, or both Park Creek and Westerly Creek.

j. "DURA" means the Denver Urban Renewal Authority, a body corporate duly organized and existing as an urban renewal authority under State law, and any successor or assign.

k. "Election" means the special election conducted by each District on November 7, 2000, at which the electors of each District authorized the Districts to incur Obligations and enter into agreements related thereto, including without limitation this Agreement.

l. "Fiscal Year Budget" means the annual District budget and appropriation resolution duly adopted or amended by the Board in accordance with State law.

m. "IFDA" means any or all Individual Facilities Development Agreements entered into by Park Creek pursuant to the MFDA.

n. "Infrastructure" means the In-Tract Infrastructure and Trunk Infrastructure as described in the Service Plan.

o. "In-Tract Infrastructure" means the In-Tract public improvements as described in the Service Plan.

p. "Master Redevelopment Agreement" means the Master Redevelopment Agreement dated as of March 1, 2001, between DURA and Park Creek, as may be amended or supplemented in writing from time to time, all Supplemental Redevelopment Agreements, and all applicable provisions of the City Cooperation Agreement.

q. "MFDA" means the Master Facilities Development Agreement dated as of February 12,



2001, between the City, District, and Forest City Enterprises, Inc., and any successor or assign, as may be amended or supplemented in writing from time to time, and all IFDA's.

r. "Mill Limitation" means the limitations on the Required Mill Levy as set forth in the Service Plans.

s. "Minimum Criteria" means the financial criteria set forth in the Service Plans that must be complied with before issuance of any Obligations.

t. "Obligations" means all limited or unlimited tax bonds, revenue bonds, notes, contracts, or reimbursement, acquisition or redevelopment agreements of Park Creek, including Developer Advances and refunding Obligations, subject to the "Maximum Debt Authorization" for In-Tract Infrastructure and Trunk Infrastructure as set forth in the Service Plan of Park Creek, that are

secured by Pledged Revenues as provided (i) in the Property Tax Indenture or otherwise payable from Pledged Revenues pursuant to the Cooperation Agreement or this Agreement, or (ii) in the Tax Increment Indenture or otherwise payable from Pledged Revenues pursuant to the Master Redevelopment Agreement or Redevelopment Services Agreement

u. "Operating Revenues" means all revenues received from (i) the Required Mill Levy to be used for administrative and operating purposes; (ii) specific ownership taxes; and (iii) all rates, fees, tolls, and charges imposed or collected within the Districts.

v. "Park Creek" means the Park Creek Metropolitan District (originally named Stapleton Metropolitan District), a Colorado special district, and any successor or assign.

w. "Pledged Revenues" means all amounts payable to Park Creek (i) as "Tax Increment Revenues" under the Cooperation Agreement or otherwise attributable to the Required Mill Levy and pledged to the repayment of the Obligations issued or incurred in connection with, or specified for repayment under the Property Tax Indenture, and (ii) as "Pledged Sales Tax Revenues" and "Pledged Property Tax Revenues" under the Master Redevelopment Agreement or Redevelopment Services Agreement and pledged to the repayment of the Obligations issued or incurred in connection with, or specified for repayment under the Tax Increment Indenture.

x. "Process of Construction" or "Processing of Construction" or "Process" means activities, in part or all together, of the District with respect to providing and/or acquiring the Infrastructure, including without limitation the planning, designing, engineering, testing, permitting,

inspecting, Construction, construction management, installation or completion of the Infrastructure.

y. "Property Tax Indenture" means the Trust Indenture dated as of May 1, 2001, between Park Creek and U.S. Bank National Association, as Trustee, securing the Limited Property Tax Supported Revenue Bonds, Series 2001, and any additional Obligations issued in accordance with the Property Tax Indenture or any supplemental indenture, as may be amended or supplemented in writing from time to time, and any other property tax indenture that is not in conflict with the Property Tax Indenture, as may be amended or supplemented in writing from time to time.

z. "Redevelopment Services Agreement" means the Redevelopment Services Agreement dated as of April 15, 2001, between the City and Park Creek, as may be amended or supplemented in writing from time to time.

aa. "Reimbursement Agreements" means the Reimbursement Agreement for In-Tract Infrastructure and the Reimbursement Agreement for Trunk Infrastructure, each dated April 30, 2001, between Park Creek and Stapleton Land LLC, a Colorado limited liability company.

bb. "Required Mill Levy" means the mill levy required to be imposed in accordance with State law upon all real and personal property in Westerly Creek, at the rate determined annually by Park Creek, and the property tax revenue generated therefrom, subject to the following limitations:

(i) all terms and limitations set forth in the ballot questions authorizing the Obligations and mill levies approved at the Election; (ii) for collection in tax collection years 2002 through 2042 or until the date of repayment of all Obligations, whichever last occurs; (iii) which shall be imposed without limitation and at a rate sufficient to pay, when due, the Obligations not subject to the Mill Limitation, if any; (iv) which

shall be imposed at a rate sufficient to pay, when due, all other Obligations and administrative and operating expenses of the Districts, subject to the Mill Limitation, but combined with the mill levy rate imposed in subpart (iii) above, not to exceed an aggregate of 50 mills; (v) with no more than 1.5 mills of the Required Mill Levy to be used for payment of administrative and operating expenses; and (vi) with no less than 48.5 mills of the Required Mill Levy to be used for payment of Obligations, until Park Creek approves a lesser mill levy for such purpose. In the event that the method of calculating the assessed valuation of property within Westerly Creek or the percentage of actual valuation used to determine assessed valuation of the District is changed by State law during the Term, the Required Mill Levy shall be adjusted in accordance with the provisions of the Service Plans.

cc. "Service Area" means the Stapleton Service Area as described in the Service Plan of Park Creek.

dd. "Service Plan" or "Service Plans" means the Service Plan of either District, or the Service Plans of both Districts, if applicable, as may be amended or modified in writing from time to time with the approval of the City. If there is a conflict between the provisions of the Service Plans, the Service Plan of Park Creek shall be controlling.

ee. "Supplemental Redevelopment Agreement" means any or all Supplemental Redevelopment Agreements entered into by DURA and Park Creek pursuant to the Master Redevelopment Agreement.

ff. "Tax Increment Indenture" means the Trust Indenture dated as of May 1, 2001, between Park Creek and U.S. Bank National Association, as Trustee, securing the Tax Increment Supported Revenue Bonds, Series 2001, and any additional Obligations issued in accordance with the Tax Increment Indenture or any supplemental indenture, as may be amended or supplemented in writing from

time to time, and any other tax increment indenture that is not in conflict with the Tax Increment Indenture, as may be amended or supplemented in writing from time to time.

gg. "Term" means the period of time commencing on the date when this Agreement has been executed by each District and ending when Park Creek has Processed all Infrastructure, repaid all Obligations, and been dissolved in accordance with the provisions of the Service Plan of Park Creek.

hh. "Trunk Infrastructure" means the Trunk public improvements as described in the Service Plan.

ii. "Trunk Open Space Infrastructure System Development Fee" means the fee set forth in Section 4.6.

jj. "Trustee" means the Trustee designated under the Property Tax Indenture or the Tax Increment Indenture.



kk. "Westerly Creek" means the Westerly Creek Metropolitan District, a Colorado special District, and any successor or assign.

Section 1.2 Construction of Agreement. For all purposes hereunder, unless the context expressly indicates differently, all definitions, terms, and words shall include both the singular and plural. Whenever "shall" or "will" is used herein, it shall be mandatory; "may" denotes that it is preferable or permissible, but not mandatory. Whenever "Party" or "Parties" is used herein, it shall refer to either District or both Districts. A reference herein to an act of "approval" may, if applicable, include a determination of either approval or disapproval. References to sections herein are to sections of this Agreement, unless otherwise specified.

## **SECTION 2. PURPOSE**

The purpose of this Agreement is to establish the intergovernmental relationship between the Districts and to implement the terms of the Service Plans with respect to the financing, Processing of Construction, operation and maintenance

of the Infrastructure, and the provision of services within the Service Area. The Districts contemplate that other intergovernmental agreements may be entered into, from time to time, with other Service Districts organized within the Service Area. This Agreement shall, in all circumstances, be interpreted consistently with the Service Plans and the intended responsibilities of each District in implementing the Service Plans.

### SECTION 3. REPRESENTATIONS AND WARRANTIES

#### Section 3.1 Representations and Warranties by Districts.

The Board of each District represents, acknowledges, warrants, and agrees for the benefit of the other District that to the best of its actual knowledge:

a. The District knows of no litigation, proceeding, initiative, referendum, investigation, or threat of any of the same contesting the organization or powers of the District or its officials or its authority to enter into and perform its obligations under this Agreement;

b. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (1) conflict with or contravene any law, order, rule or regulation applicable to the District or to the District's governing documents; (2) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the District is a party or by which it may be bound or affected; or (3) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the District;

c. The Board has duly approved this Agreement;

d. This Agreement is a valid and binding obligation of the District enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity, and subject to all limitations set forth herein;

e. All property tax revenue from the Required Mill Levy (except for Operating Revenues) received by Park Creek or the Trustee shall be used only for the (i) repayment of the Obligations issued pursuant to the Property Tax Indenture, and (ii) if the Property Tax Indenture is not in effect, payment of Process of Construction costs of the In-Tract Infrastructure and any reimbursement, acquisition or redevelopment agreement, or as may otherwise be provided in this Agreement;

f. Each District may rely upon and enforce all representations, warranties, and agreements set forth in this Agreement; and

g. The Districts, and not the City, shall be responsible for paying all debts and liabilities of the Districts, including without limitation the Obligations, as provided in this Agreement.

Section 3.2 Performance of Agreement. The Districts each acknowledge that the performance of this Agreement over the full Term is essential to the complete implementation of the Service

Plans and that any material departure from the terms of this Agreement by either District, or any unilateral attempt by either District to materially alter the terms of or to terminate this Agreement, except as authorized hereunder, is and shall constitute a material departure from the Service Plan which, in addition to any other remedy set forth herein, the other District shall be entitled to enjoin in accordance with Section 32-1-207, C.R.S.

#### SECTION 4. PARK CREEK RESPONSIBILITIES

Section 4.1 General Responsibilities. Park Creek shall exercise such duties and authority and shall have all the powers as are generally provided by State law and in the Service Plans. Park Creek, in its discretion, shall perform the following services and exercise the following powers for and on behalf of Westerly Creek:

a. Manage and control the financing of the Infrastructure, the Processing of Construction of the Infrastructure, the administration and operations of the Districts, and the completion of all actions, activities and work required to implement the Service Plans;

b. Budget and appropriate monies for public purposes and provide for the payment of all expenses of the Districts;

c. Establish uniform rules and regulations for the inclusion of property into Westerly Creek and other Service Districts in accordance with the provisions of the Service Plans;

d. Adopt and enforce uniform rules and regulations for administrative and operational purposes applicable throughout the Service Area;

e. Establish all necessary service charges, connections fees, tap fees, system development fees, the Trunk Open Space Infrastructure System Development Fee, and other rates, fees, tolls and charges for the provision of Infrastructure and services within and without the boundaries of the Districts;

f. Negotiate, prepare and enter into all applications, permits, licenses, agreements or other documents necessary to secure all applicable federal, State, regional, and local approvals or other governmental authorizations for the

financing and Process of Construction and operation and maintenance of the Infrastructure;

g. Own, operate and maintain the Infrastructure until transferred to the City or another public agency; and

h. Take all other actions required to implement and comply with the Service Plans and all agreements affecting the business affairs and interests of the Districts to which Park Creek is or may become a party.

Section 4.2 Financing of Infrastructure. Park Creek shall finance and provide for the Process of Construction of the Infrastructure, as required for each phase of Infrastructure development, by incurring Obligations in accordance with the Service Plan of Park Creek. The Obligations incurred by Park Creek shall be issued, paid and discharged, and proceeds of the Obligations shall be applied and expended in accordance with the Service Plan of Park Creek, MFDA, Property Tax Indenture, and Tax Increment Indenture, as applicable. Park Creek will incur no Obligation in excess of the "Maximum Debt Authorization" for In-Tract Infrastructure and Trunk Infrastructure set forth in the Service Plan of Park Creek, as may be subsequently amended with

the approval of the City. Park Creek shall apply and expend the Required Mill Levy, except for Operating Revenues, only for (i) the repayment of Obligations incurred for In-Tract Infrastructure, including without limitation all Obligations issued pursuant to the Property Tax Indenture and Developer Advances, and (ii) payment of Process of Construction costs of the In-Tract Infrastructure, until such Obligations have been discharged, and the In-Tract Infrastructure has been completed. Park Creek shall apply and expend Pledged Revenues received pursuant to the Master Redevelopment Agreement or Redevelopment Services Agreement for the (i) repayment of Obligations incurred for Trunk Infrastructure, including without limitation all Obligations issued pursuant to the Tax Increment Indenture and Developer Advances, and (ii) payment of Process of Construction costs of the Trunk Infrastructure only.

Section 4.3 Completion of Infrastructure. Park Creek shall be responsible for the completion of the Infrastructure in accordance with the provisions of this Agreement, the Service Plans, MFDA and Master Redevelopment Agreement. Park Creek



shall, in its discretion, make all determinations relating to the expenditure of proceeds of the Obligations for Processing of Construction of the Infrastructure and the payment of all Process of Construction costs, or for any other purpose with respect to the implementation, performance, or enforcement of the terms of this Agreement. Westerly Creek shall have no responsibility for the financing or Processing of Construction of the Infrastructure. Park Creek shall transfer the Infrastructure, except for certain designated improvements, to the City or another public agency for future ownership, operation and maintenance in accordance with the provisions of an IFDA. Park Creek shall own, operate and maintain for the benefit of the Districts any Infrastructure which is not transferred to the City or another public agency.

Section 4.4 Management of Districts. Park Creek shall manage and administer all business affairs of the Districts, including without limitation the hiring and engagement of all employees, independent contractors, consultants, advisors, accountants, auditors, attorneys and other personnel, record-keeping, accounting and financial services, and all actions relating to statutory compliance.

Section 4.5 Costs of Administration and Operations. To the extent that adequate funding is available from Operating Revenues and other legally available sources as provided in the Fiscal Year Budget, Park Creek shall (i) manage, operate, maintain, repair and replace all Infrastructure not transferred to the City or another public agency, and (ii) generally administer the operations and business of the Districts, including without limitation the payment of all costs associated therewith. On or before September 15 of each year during the Term, Park Creek shall advise Westerly Creek of the costs of administration and operations and the funding requirements, including projected Operating Revenues, subject to any limitation under the Required Mill Levy, for the next budget period and present a preliminary Fiscal Year Budget for adoption by the Board of Westerly Creek in accordance with statutory requirements.

Section 4.6 Trunk Open Space Infrastructure System Development Fee. The Districts have established and will impose a one-time Trunk Open Space Infrastructure System Development Fee in the amount of \$15,000 per acre on all property within Westerly

Creek and any other Service District. Park Creek shall administer, collect and expend revenue from the Trunk Open Space Infrastructure System Development Fee within the Service District Future Taxing Area, including without limitation in Westerly Creek, for the purpose of funding in part Trunk Open Space Infrastructure in accordance with the Service Plan and resolutions of Park Creek.

**SECTION 5. WESTERLY CREEK RESPONSIBILITIES**

Section 5.1 Imposition of Required Mill Levy. Until such time as all Obligations, including all Obligations issued pursuant to the Property Tax Indenture and Developer Advances, have been paid in full or payment thereof has been provided for, and all of the Infrastructure has been completed and paid for, Westerly Creek shall:

a. Certify the Required Mill Levy at least 15 days before all applicable timelines in accordance with State law and provide notice of such certification to Park Creek. On or before September 15 of each year during the Term, Park Creek shall determine and advise Westerly Creek of the Required Mill

Levy to be included in the Fiscal Year Budget for the next fiscal year, and Westerly Creek shall then adopt a resolution establishing the Required Mill Levy. When collected, the Required Mill Levy, together with any specific ownership taxes received by Westerly Creek, shall be remitted to Park Creek and the Trustee in accordance with the provisions of this Agreement and the Property Tax Indenture as follows: (i) all Pledged Revenues shall be remitted to the Trustee, and (ii) Operating Revenues and the balance of the Required Mill Levy, if any, shall be remitted to Park Creek.

b. The provisions of this Section are hereby declared to be the certificate of the Board of Westerly Creek to the City authorizing the Required Mill Levy to be levied by the City, from year to year, as required by law for the purposes set forth herein.

c. It shall be the duty of the Board of Westerly Creek annually, at the time and in the manner provided by law for the adoption of the Fiscal Year Budget and the levy of property taxes, to ratify and carry out the provisions of this Section with reference to the establishment, levy and collection of the

Required Mill Levy, subject to the provisions of the Cooperation Agreement. The Board of Westerly Creek shall levy, certify, and collect the Required Mill Levy for the purposes and in the manner provided by law and for the purposes and in the manner set forth in the Property Tax Indenture and this Agreement. Westerly Creek in cooperation with Park Creek shall pursue any reasonable remedy available to collect, or cause the collection of, delinquent property taxes and remit amounts realized from the sale of any property for delinquent taxes to Park Creek or the Trustee in accordance with the provisions of this Agreement.

d. Westerly Creek shall be prohibited from retaining, appropriating, expending, pledging or otherwise encumbering any portion of the Required Mill Levy, any specific ownership taxes, or any Pledged Revenues or Operating Revenues that are received by Westerly Creek for any purpose, and all of such revenues and monies shall be immediately transferred and paid to Park Creek or the Trustee in accordance with the provisions of this Agreement.

e. At any and all times, Westerly Creek shall, to the extent authorized by law, pass, make, do, perform,

execute, acknowledge and deliver any and all further acts, conveyances, assignments, transfers, certifications, and assurances as may be necessary or desirable for the better assuring, effecting, confirming, undertaking and completing any and all obligations, duties, responsibilities, and acts; or as may be reasonably required to carry out the terms and purposes of this Agreement and to comply with the Service Plans, MFDA, Reimbursement Agreements, Property Tax Indenture, and Tax Increment Indenture, as applicable.

Section 5.2 Rates, Fees and Charges. During the Term, Westerly Creek shall adopt, impose and remit to Park Creek such rates, fees, tolls and charges as are established by Park Creek pursuant to Section 4 in order to fund the administrative and operating expenses of the Districts. The procedures for adopting, budgeting and transferring such fees will be established by Park Creek.

Section 5.3 Westerly Creek Obligations. Westerly Creek shall incur no Obligations, Developer Advances, or direct costs for Processing of Construction of the Infrastructure or any other purpose, unless otherwise approved in writing by each District.

Section 5.4 Inclusion and Exclusion of Service District Future Taxing Area. Upon petition of any property owner within the Service District Future Taxing Area, the Board of Westerly Creek shall, to the extent required by law, include such property into the taxing boundaries of Westerly Creek in accordance with State law. Any condition of such inclusion imposed by Westerly Creek shall first be approved by Park Creek. Westerly Creek shall exclude no property without the prior written approval of Park Creek.

Section 5.5 Dissolution of Park Creek. Upon receipt of notice and the dissolution of Park Creek in accordance with its Service Plan, Park Creek shall transfer, and Westerly Creek shall accept responsibility for the operation and maintenance of any Infrastructure located within Westerly Creek, which has not been transferred to the City or another public agency.

**SECTION 6. EVENTS OF DEFAULT AND REMEDIES**

Section 6.1 Events of Default by Districts. Subject to the terms of Section 6.5, Default or an Event of Default by either Party under this Agreement shall mean one or more of the following events:

a. Any representation or warranty made in this Agreement by a Party which was materially inaccurate when made or shall prove to be materially inaccurate during the Term; or

b. A Party fails to substantially observe, comply with or perform any material responsibility, obligation, or agreement required of it under this Agreement; provided, however, that failure on the part of Park Creek to observe or perform any responsibility or obligation hereunder shall not relieve or release Westerly Creek from imposing the Required Mill Levy, and that failure by either District to observe or perform any other responsibility or obligation hereunder shall not relieve or release the other District from making any payment or otherwise performing its responsibilities hereunder.

Section 6.2 Cure Period. Upon the occurrence of an Event of Default by either Party, such Party shall, upon written notice



from the other Party, proceed promptly to cure or remedy such Default. Such Default shall be cured within 30 days (immediately with respect to a Required Mill Levy or monetary payment Default) after receipt of such notice, or, if such default is of a nature which is not capable of being cured within such time period, curative action shall be commenced within the cure period and diligently pursued to completion.

Section 6.3 Remedies on Default. Whenever an Event of Default occurs and is not cured or cure undertaken in accordance with the provisions of Section 6.2, the non-defaulting Party may take any one or more of the following actions:

a. Recovery of actual costs and damages, including reasonable attorney fees and related expenses, through any action available at law or in equity, including without limitation the right to certify to the City for collection against all taxable property within Westerly Creek, the amount of such costs and damages as a delinquent fee for services provided by Park Creek in accordance with the procedures set forth in Section 32-1-1101(1)(e), C.R.S., or other special proceedings;

b. In the event that Westerly Creek has not certified the Required Mill Levy, Park Creek may enforce Westerly Creek's obligation to certify the Required Mill Levy by mandamus or other action or special proceeding; and

c. Any other remedy available at law, in equity, or specified under the terms of this Agreement or the Service Plans, including without limitation specific performance.

Section 6.4 Waivers. Except as otherwise expressly provided in this Agreement, any delay by either Party in asserting any right or remedy under this Agreement shall not operate as a waiver of any such right or limit such right in any way. Any waiver in fact made by such Party with respect to any Default by the other Party shall not be considered as a waiver of rights with respect to any other Default by the non-defaulting Party or with respect to the particular Default, except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a

time when it may still hope to resolve any problem created by such Default.

Section 6.5 Unavoidable Delay in Performance. Whether stated or not, all periods of time in this Agreement are subject to this Section. Neither Party shall be considered in Default of its obligations under this Agreement in the event of enforced delay due to (i) causes beyond its control and without its fault or negligence, including without limitation acts of God, public enemies, the City, Federal, State or other local governments, the other Party or third parties, litigation concerning the validity and enforceability of the Service Plans, contracts implementing the Service Plan, or this Agreement or relating to transactions contemplated herein (including the effect of petitions for initiative or referendum), fires, floods, epidemics, restrictions, strikes, embargoes, and unusually severe weather or the delays of contractors or materialmen due to such causes; (ii) bankruptcy, insolvency or similar action, or any foreclosure or other exercise of remedies of any creditor or lender; and (iii) without limiting the foregoing, any action or inaction of the City or DURA, its officers, agents, agencies, departments, committees, Council or commissioners which delays, directly or

indirectly, the District's ability to comply with any construction schedule or requirement imposed by the MFDA or the Master Redevelopment Agreement for any Infrastructure project. In the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming delay shall be extended for the period of the enforced delay; provided that the Party seeking the benefit of the provisions of this Section shall, within 30 days after such Party knows of such enforced delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the enforced delay; provided, further, that either Party's failure to notify the other of an event constituting an enforced delay shall not alter, detract from or negate its character as an enforced delay, if such event of enforced delay was not known or reasonably discoverable by such Party.

Section 6.6 Rights and Remedies Cumulative. The rights and remedies of the Parties under this Agreement are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy specified herein for any other Default by the other Party.

SECTION 7. MISCELLANEOUS PROVISIONS

Section 7.1 Title of Sections. Any title of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 7.2 Effective Date. This Agreement shall be in full force and effect and be legally binding upon Park Creek and Westerly Creek upon the date of its execution by the Parties.

Section 7.3 No Third-Party Beneficiary. Except as provided in the Property Tax Indenture with respect to the Trustee thereunder, no third-party beneficiary rights shall be created in favor of any person not a Party to this Agreement, unless the Parties mutually agree otherwise in writing.

Section 7.4 Applicable Law. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement. Venue shall be exclusive to the State District Court in and for the City.

Section 7.5 Assignment. Except as provided in the Property Tax Indenture, this Agreement shall not be assigned, in whole or in part, by either Party without the approval in writing of the other Party. This Agreement shall be binding on the Parties, their successors and assigns.

Section 7.6 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, under present or future laws effective during the Term, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by the severance of such provision from this Agreement. Further, in lieu of such illegal, invalid or unenforceable provision, there shall be added, as part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and still be legal, valid and enforceable, and this Agreement shall be deemed reformed accordingly. Without limiting the generality of the foregoing, if all or any portion of the

payments required by the terms of this Agreement are determined by a court of competent jurisdiction in a final non-appealable judgment to be contrary to public policy or otherwise precluded, the Parties shall proceed in good faith to promptly restructure and/or amend this Agreement, or to enter into a new agreement to effectuate such purpose.

Section 7.7 Service Plan Modifications. Neither District shall publish, without providing prior written notice to the other District and the City, any notice pursuant to Section 32-1-207(3), C.R.S., of its intent to undertake the construction of any Infrastructure, the issuance of Obligations, the imposition of the Required Mill Levy or any other tax, rate, toll, fee or charge, or any other proposed activity of such District which is not consistent with the terms of the Service Plans or this Agreement and which would require that any action to enjoin such activity as a potential or actual material departure from the Service Plan of such District be brought within 45 days of such notice.

Section 7.8 Cooperation Regarding Other Service Districts. Subject to the terms of the Service Plans, the

Districts will cooperate with one another and with any other Service District organized within the Service Area to finance the Process of Construction of Infrastructure needed within the Service Area. Park Creek may, from time to time, enter into intergovernmental agreements similar to this Agreement with other Service Districts organized within the Service Area.

Section 7.9 Amendments. This Agreement may be amended, in whole or in part, by written instrument executed by the Parties. Each amendment, which is in writing and signed and delivered by the Parties, shall be effective to amend the provisions hereof.

Section 7.10 Entirety. Except for the Cooperation Agreement, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and replaces in their entirety any prior agreements, understandings, warranties or representations between the Parties with respect to the subject matter hereof.



Section 7.11 Counterparts. This Agreement may be executed in counterparts, each of which shall constitute one and the same instrument.

Section 7.12 Notices. A notice or demand under this Agreement by either Party to the other Party shall be in writing and shall be deemed sufficiently given if delivered in person, by prepaid overnight express mail or national overnight courier service, or if forwarded by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

a. Until subsequently changed, to:

Park Creek Metropolitan District or  
Westerly Creek Metropolitan District  
Attention: Chairman  
3333 Quebec Street, Suite 8100  
Denver, Colorado 80207

With a copy to:

Paul R. Cockrel  
Collins Cockrel & Cole, P.C.  
390 Union Boulevard, Suite 400  
Denver, Colorado 80228-1556

b. Or to such other address with respect to either Party as that Party may, from time to time, designate in writing and forward to the other Party as provided in this Section. Notices shall be deemed given upon such personal,

courier or express mail delivery, or on the third business day following deposit in the U.S. Mail as provided herein.

Section 7.13 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, the Parties agree that in the performance of this Agreement or in considering any requested extension of time, each Party will act in good faith and shall not act unreasonably, arbitrarily, capriciously, or unreasonably withhold or delay any approval required by this Agreement.

Section 7.14 Time. Unless the context indicates differently, all references herein to days shall be to calendar days, and all references herein to periods of time shall be to consecutive days or continuous periods of time. If the day for any performance or event provided for herein is a Saturday, Sunday or other day on which either national banks or the office of the Clerk and Recorder of the City are not open for the regular transaction of business, such day shall be extended until the next day on which such banks and office are open for the transaction of business. All times shall be of the essence.

Section 7.15 Further Assurances. The Parties agree to adopt or approve such resolutions, regulations and agreements, to execute such documents or instruments, and to take such action as shall be reasonably requested by the other Party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained and the intent hereof. If all or any portion of the Infrastructure improvements, Obligations or agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties shall cooperate in the joint defense thereof, and if such defense is unsuccessful, the Parties will use reasonable, diligent, good faith efforts to amend, reform or replace such precluded matters.

Section 7.16 Certifications. The Parties agree to execute such documents or instruments as the other Party may reasonably request to verify or confirm the status of this Agreement, the Property Tax Indenture or Tax Increment Indenture, or other intergovernmental agreements between the Districts, and of the performance of the obligations hereunder and such other matters as the requesting Party may reasonably request.

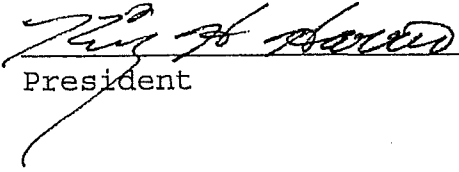
Section 7.17 Survival of Representations and Warranties.

No representations or warranties whatever are made by any Party to this Agreement, except as specifically set forth in Section 3. The representations and warranties made by the Parties to this Agreement, and all covenants and agreements to be performed or complied with by the Parties under this Agreement shall be continuing to the end of the Term.

In Witness Whereof, the Districts have caused this Agreement to be duly executed as of the day first above written.

PARK CREEK METROPOLITAN DISTRICT

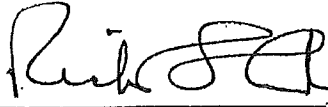
By: \_\_\_\_\_

  
President

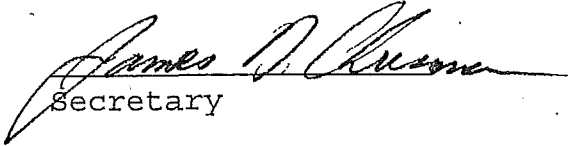
ATTEST:

  
Secretary

WESTERLY CREEK METROPOLITAN DISTRICT

By:   
/ President  
First Vice

ATTEST:

  
Secretary