

**INTERGOVERNMENTAL AGREEMENT
BY AND BETWEEN
PARK MEADOWS METROPOLITAN DISTRICT AND
PARK MEADOWS BUSINESS IMPROVEMENT DISTRICT
REGARDING LANDSCAPE MAINTENANCE OF THE PUBLIC RIGHT-OF-WAY
ADJACENT TO THE PARK MEADOWS MALL**

This **INTERGOVERNMENTAL AGREEMENT** (the "Agreement") is entered into effective as of the 22nd day of April, 2015, by and between the **PARK MEADOWS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") and the **PARK MEADOWS BUSINESS IMPROVEMENT DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "BID"), (collectively referred to herein as the "Parties" or each individually as a "Party").

RECITALS

WHEREAS, the District was organized pursuant to §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, operating and maintaining certain public facilities and improvements in accordance with its approved service plan, as amended from time to time; and

WHEREAS, the BID was organized pursuant to §§ 31-25-1201, *et seq.*, C.R.S. for the purpose of constructing, operating and maintaining certain public facilities and improvements as authorized by the ordinance creating the BID, as amended from time to time; and

WHEREAS, the District and the BID, as Colorado governments, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18 and § 29-1-201, *et seq.*, C.R.S. to contract via intergovernmental agreement to provide functions, services or facilities authorized to each cooperating government; and

WHEREAS, the District is responsible for maintaining landscaped areas within the public right-of-way located in proximity to the Park Meadows Mall, Lone Tree, Colorado 80124 as more fully depicted on **Exhibit A**, attached hereto and incorporated herein by this reference (the "Landscape Area");

WHEREAS, the BID has been maintaining the Landscape Area; and

WHEREAS, the District and the BID wish to continue their present landscape maintenance program as they have each determined that maintenance of the Landscape Area by the same contractor will be more convenient and efficient and will be in the best interests of the public; and

WHEREAS, the District and the BID desire to enter into this Agreement to establish the terms and conditions by which the landscaping in the Landscape Area will continue to be maintained by the BID.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. MAINTENANCE OF LANDSCAPE AREA. The Parties covenant and agree that the BID shall maintain, repair, replace and/or remove landscape, including any irrigation system, and any and all necessary appurtenances related thereto that are located within the Landscape Area (the "Improvements") for the term of this Agreement in accordance with the landscape standards attached hereto as **Exhibit B** and incorporated herein by this reference (the "Landscape Standards") and to a level at least commensurate with the overall quality of other landscaping within the boundaries of the District (the "Services").

1. TERM. The term of this Agreement shall begin on the date set forth above, shall be effective as of such date regardless of the date of execution hereof, and shall expire on December 31, 2017.

2. PAYMENT FOR SERVICES. The District shall pay the BID a not-to-exceed annual amount of Eighteen Thousand Five Hundred Thirty-Eight Dollars and Sixty-Eight Cents (\$18,538.68) for the Services. The total amount shall be paid in twelve (12) equal monthly installments of One Thousand Five Hundred Forty-Four Dollars and Eighty-Nine Cents (\$1,544.89) (the "Monthly Payment") regardless of the amount of specific Services provided within each monthly period so long as the Services are performed to the standards described herein. The District shall pay the Monthly Payment to the BID by the 15th of each month during the term of this Agreement unless the District notifies the BID in writing that the Services have not been provided in accordance with this Agreement and the BID has failed to cure the deficiency within five (5) business days of such notice. If such noted deficiency has not been cured or provision made for curing same within the five (5) business days following notice, the District may withhold a portion of the Monthly Payment directly attributable to the deficient performance until the same is cured and shall pay the remainder of the Monthly Payment to the BID. If the deficient performance has not been cured, the District may pursue its remedies provided hereunder, including but not limited to termination of this Agreement. If additional work not included in the Services is requested by the District or recommended by the BID, the Parties shall prepare a written scope of the additional work and the charges for such work. Upon approval by the District, the BID shall provide the additional work and shall invoice the District for the pre-approved amount(s). The District shall pay such amount to the BID within thirty (30) days of invoice. If additional work recommended by the BID is not approved by the District the BID shall have no liability or responsibility for any damages or other consequences resulting from the recommended additional work not being provided.

3. LANDSCAPE LICENSE. The District hereby grants to the BID and its agents, successors, and permitted assigns, a non-exclusive license, subject to the terms of the License Agreement by and between the City of Lone Tree and the District attached hereto as **Exhibit C** and incorporated herein by this reference (the "City License Agreement"), for the term of this Agreement, to maintain, repair, replace and/or remove the Improvements, in, to, through, over, under and across the Landscape Area (the "License"). Pursuant to Paragraph 10 of the City

License Agreement, the City has consented in writing to the granting of this License. The BID and its agents, successors and permitted assigns shall have and exercise the right of ingress and egress in, to, through, over, under and across the Landscape Area for any purpose necessary for the maintenance, repair, replacement and/or removal of the Improvements. The BID and its agents, successors and permitted assigns shall have the right, upon reasonable notice, to use so much of the adjoining premises of the District during maintenance, repair, replacement and/or removal of the Improvements as may be reasonably required; provided, however, that such activities shall not interfere unreasonably with the District's use and enjoyment of such adjoining premises and provided that the BID shall restore all such adjoining premises as nearly as possible to the condition it was in immediately prior to the date of its use.

4. TERMINATION. This Agreement may be terminated by either Party as to the other Party upon the provision of thirty (30) days written notice by the terminating Party to the other Party and upon the date of such termination shall thereafter have no further obligations, duties, or rights hereunder; provided, however, that as a condition precedent to termination by any Party, the Parties shall have mutually agreed that, prior to the time of termination, adequate arrangements have been made for maintenance of the landscaping in the Landscape Area.

5. INDEMNIFICATION AND INSURANCE. Any contract for the maintenance of the Landscape Area contemplated in this Agreement shall provide for contractor indemnity and insurance for the Parties hereto and shall comply with the requirements of Paragraph 11(d) of the City License Agreement.

6. LIABILITY OF THE DISTRICT. No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the District or the BID shall constitute or create an indebtedness or debt of the District or the BID within the meaning of any Colorado constitutional provision or statutory limitation.

7. SUBJECT TO ANNUAL BUDGET AND APPROPRIATION. Neither the District nor the BID intends hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the District and the BID hereunder are subject to annual budgeting and appropriations.

8. NOTICES. Any notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally, sent by facsimile with a hard copy sent immediately thereafter via First Class U.S. Mail, or sent via First Class U.S. Mail, postage prepaid and return receipt requested, and addressed to the Parties at the information set forth below.

If to the District: Park Meadows Metropolitan District
c/o Clifton Larson Allen, LLP
8390 E. Crescent Parkway, Suite 500
Greenwood Village, CO 80111-2814
Attn.: Bob Blodgett, District Manager
Telephone: 303.265.7916
Facsimile: 303.773.2050

With a copy to: ICENOGLÉ | SEAVER | POGUE
A Professional Corporation
Attn: Tamara K. Seaver
4725 South Monaco Street, Suite 225
Denver, Colorado 80237
Telephone: 303.867.3004
Facsimile: 303.292.9101

If to the BID: Park Meadows Business Improvement District
Attn: President
6501 Fiddler's Green Circle, Ste. 110
Greenwood Village, Colorado 80111-4931

With a copy to: Seter & Vander Wall
Attn: Kim Seter
7400 E. Orchard Road, Suite 3300
Greenwood Village, Colorado 80111

Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Party in the manner provided in this Paragraph.

9. PERSONS INTERESTED HEREIN. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to any person, other than the Parties hereto, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties. Notwithstanding the foregoing, the City shall be deemed a third party beneficiary for the limited purposes of the insurance requirements in Paragraph 5 of this Agreement.

10. MODIFICATION/ASSIGNMENT. This Agreement may be modified, amended, assigned or changed, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties.

11. SEVERABILITY. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this

Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provisions.

12. NON-WAIVER. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed to be a waiver of any subsequent default hereunder.

13. GOVERNMENTAL IMMUNITY. Nothing in this Agreement or in any actions taken by the Parties pursuant to this Agreement shall be deemed a waiver of either Party's sovereign immunity under the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, as amended from time to time.

14. INTEGRATION. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement shall be valid or binding.

15. HEADINGS FOR CONVENIENCE ONLY. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to construe the provisions hereof.

16. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written. By signature of its representatives below, each Party affirms it has taken all necessary action to authorize said representative to execute this Agreement.

PARK MEADOWS METROPOLITAN DISTRICT

By: *John J. Herbolich*
Its: John J. Herbolich
President

ATTEST:

Stacie L. Pacheco

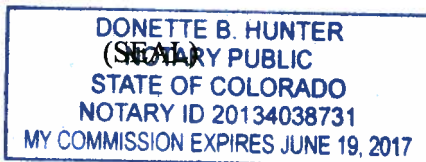
STATE OF COLORADO)
CITY AND)
COUNTY OF ~~DOUGLAS~~ DENVER) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2015 by John J. Herbolich and _____ as President and _____ of the **PARK MEADOWS METROPOLITAN DISTRICT.**

WITNESS my hand and official seal.

My commission expires:

6.19.2017
DB Hunter
Notary Public



**PARK MEADOWS BUSINESS
IMPROVEMENT DISTRICT**

By: *John M. Mullins*
Its: JOHN M. MULLINS
DISTRICT MANAGER

ATTEST:

STATE OF COLORADO)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 4th day of may, 2015 by John M. Mullins and _____, as District Manager of the **PARK MEADOWS BUSINESS IMPROVEMENT DISTRICT.**

WITNESS my hand and official seal.

My commission expires:

8/3/2018
Catherine Bright
Notary Public

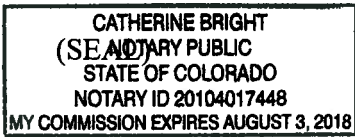


EXHIBIT A

The Landscape Area



EXHIBIT B

Landscape Standards

<u>Turf (April 1, 2011 through October 15, 2011)</u>	<u>Times/Year</u>
Mowing	28
Edging Walks	14
Edging Curbs	7
Pre-Emergent Weeds (All turf areas)	2
Fertilizing	3
Broadleaf Weeds	2
Spot Spraying of Individual Broadleaf Weed	as needed
Thatch Removal	as needed
Aeration	2
<u>Trees/Shrubs/Beds</u>	
Pruning (trees under 12' and shrubs)	2
Arbor Care inspection and report	2
Mulch	per Schedule C
Round-up Application	as needed
Pre-Emergent Weeds (All areas)	2
Post-Emergent Weeds/Spot Treatment (including paved and pebbled walks)	as needed
<u>Irrigation Systems</u>	
Inspection	weekly
Winterization	N/A
Spring Mobilization	N/A
<u>Miscellaneous</u>	
Ground Policing (April through October 15)	weekly or more if needed
Ground Policing (January through March, October through December)	weekly
Leaf Removal	1
Deep Root Watering	3

EXHIBIT C

License Agreement Between City of Lone Tree and Park Meadows Metropolitan District (2009)

LICENSE AGREEMENT BETWEEN THE CITY OF LONE TREE AND PARK MEADOWS METROPOLITAN DISTRICT (2009)

THIS LICENSE AGREEMENT (the "Agreement") is made between the City of Lone Tree, a home-rule municipal corporation of the State of Colorado (the "City"), and the Park Meadows Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"). The District and the City may be individually referred to as a "Party" and collectively as the "Parties".

RECITALS

A. Governmental entities are authorized to enter into intergovernmental agreements pursuant to provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-203, C.R.S.

B. The City and the District entered into a License Agreement Between The City of Lone Tree and Park Meadows Metropolitan District (2008) on April 1, 2008 (the "2008 Agreement"). The Parties wish to modify the 2008 Agreement.

C. The District desires to provide landscape services within City rights-of-way that are located within the District. These landscape services promote the public health, safety, and welfare and will otherwise benefit District residents and property owners.

D. The City desires to grant a license to the District to provide landscape services within City rights of way.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the Parties agree as follows:

1. Modification of 2008 Agreement. The terms and provisions of this Agreement replace and supersede the terms and provisions of the 2008 Agreement in their entirety.

2. Grant of License. The City grants to the District a license over, under, and on or the surface of any City rights of way within which the District provides landscape services, and any adjacent City owned property which the District uses in connection with providing such landscape services ("License Areas"). Landscape Services include the construction, repair, maintenance, reconstruction, replacement, and/or enhancement of any Landscape Improvements, which term is defined below.

3. **Exclusion.** The District provides landscape services within a license area ("North Taos Trail Landscape Area") that is more specifically described in the Intergovernmental Agreement Between City of Lone Tree and Park Meadows Metropolitan District Regarding Installation and Maintenance of Landscape Improvements dated May 3, 2007 ("North Taos Trail Landscape IGA"). The terms and provisions under which the District provides landscape services to the North Taos Trail Landscape Area, which is specifically excluded from this Agreement, are specifically addressed in the North Taos Trail Landscape IGA.

4. **Landscape Improvements.** Landscape improvements consist of hardscape medians, trees, shrubs, flowers, ground cover and other plantings, and irrigation system facilities located within City rights-of-way (the "Landscape Improvements"). The Parties acknowledge that the Landscape Improvements conform to the City of Lone Tree Comprehensive Plan currently in effect. The Parties acknowledge that no redesign, expansion, vacation, or safety improvements within the License Areas which would require significant deletions or removal of any Landscape Improvements are contemplated in the City of Lone Tree Comprehensive Plan.

5. **Use of License Areas.** Use of License Areas by the District is subject to all existing easements, restrictions, and reservations of record at the Office of the Clerk and Recorder of Douglas County, Colorado, as of the date of recordation of this Agreement. All activities of the District within License Areas shall comply with applicable laws, ordinances, and regulations of the United States, State of Colorado, the City, or any other governmental entity having jurisdiction over License Areas, or the uses thereof.

6. **Utility Services.** The District shall pay for the cost of providing utility services, including electrical and water service to serve the Landscape Improvements within the License Areas.

7. **Reconstruction and Major Alterations.** The District shall not make any major alterations or additions to the existing Landscape Improvements within License Areas without the prior written approval of the City's designated representative. The District agrees to keep the Landscape Improvements in good repair and to redeliver any License Area to the City in good order and condition upon the expiration or termination of this Agreement with respect to such License Area, subject to the terms hereof.

8. **Entry and Use by the City.** The City reserves the right to enter upon the License Areas, at any hour of the day, for the purpose of inspecting the same, conducting surveys, and taking such other actions as it deems appropriate or necessary to protect and/or promote the public health, safety, or welfare. The City reserves the right to use the License Areas it deems necessary or appropriate in its operation of public streets, drainage, and other public infrastructure for which the

City is responsible. In addition, the City reserves the right to operate, maintain, install, repair, remove, or reconstruct any City facilities located within or affecting the License Areas, as it deems necessary or appropriate to protect and/or promote the public health, safety, or welfare. However, upon undertaking any activities that may affect the License Areas, the City will exercise its best efforts to minimize any damage to the Landscape Improvements. If practical, the City shall give the District's designated representative not less than three (3) days prior written notice of its intent to undertake activities that may affect a License Area or the Landscape Improvements located therein, to facilitate coordination between the City and the District to prevent or minimize damage to the Landscape Improvements. However, no notice need be given to the District if such activities are in connection with any emergency or if it is not otherwise practical to provide advance notice prior to undertaking such activities. In such case, the City shall inform the District's designated representative as soon as reasonably practical as to the location and extent of any damage to the Landscape Improvements of which the City has knowledge. The City shall bear the cost of restoring any damaged portions of any License Areas and Landscape Improvements (to the extent reasonably practical) to their condition prior to the activity causing such damage.

9. Notice. All notices, consents or other instruments or communications provided for under this Agreement shall be in writing, signed on behalf of the Party giving the same, and shall be deemed properly given and received, (a) when actually delivered and received in person, (b) on the next business day after deposit for delivery with a nationally recognized overnight carrier service during business hours on a business day, or (c) four (4) business days after deposit in the United States mail, by certified mail with return receipt requested. All such notices or other instruments shall be transmitted with delivery or postage charges prepaid, addressed to the Party at the address below or to such other address as such Party may designate by written notice to the other Party:

If to the City: City of Lone Tree
 Attention: Jack Hidahl, City Manager
 9220 Kimmer Drive, Suite 100
 Lone Tree, CO 80124

With copy to: White Bear & Ankele Professional Corporation
 Attn: City Attorney
 1805 Shea Center Drive, Suite 100
 Highlands Ranch, Colorado 80129

If to the District: Park Meadows Metropolitan District
 Attention: Bob Blodgett, District Manager
 c/o R.S. Wells, LLC
 8390 E. Crescent Parkway, Suite 500

Greenwood Village, CO 80111-2814

With copy to: Folkestad Fazekas Barrick & Patoile, P.C.
Attention: Ernest F. Fazekas II, District Legal Counsel
18 S. Wilcox Street, Suite 200
Castle Rock, CO 80104

Each Party may designate a representative for purposes of communication, which may be changed from time to time by such Party providing notice of such change to the other Party. The City's initial designated representative shall be the City Manager, Jack Hidahl. The District's initial designated representative shall be the District Manager, Bob Blodgett.

10. Assignment or Sub-License. The District covenants and agrees not to assign this Agreement or to enter into any sub-license for any portion of the License Area without obtaining the prior written approval of the City. Any assignment or sub-license in violation of this Agreement shall be null and void. However, the District may use contractors to provide Landscape Services within the License Areas.

11. Insurance. The Parties shall maintain the following types of insurance coverage:

(a) General Public Liability Coverage. The City and the District shall each maintain insurance coverage in the minimum amounts of \$150,000 per person and \$600,000 per occurrence or such greater amounts as may be recoverable under the Colorado Governmental Immunity Act, as set forth in C.R.S. 24-10-101, *et seq.*, as it may be amended from time to time.

(b) Automobile and/or Non-Owned/Hired Automobile Liability Coverage. The City and the District shall each maintain insurance coverage in the minimum amounts of \$1,000,000 per occurrence.

(c) Property Casualty Insurance. The City and the District agree that the District has an insurable interest in the Landscape Improvements. The District may, at its option, maintain property damage insurance equal to the replacement cost of the Landscape Improvements. If the Landscape Improvements are damaged, and repair or replacement of the damaged Landscape Improvements are covered by property damage insurance policy maintained by the District, the District shall repair or replace the damaged Landscape Improvements to their pre-existing condition up to but not to exceed the amount of the insurance proceeds received by the District, unless otherwise agreed to by the Parties. In the event that the Landscape Improvements are damaged, and to the extent that such damage is

not covered by the District's Property Casualty Insurance, or is not otherwise addressed in this Agreement, the Parties shall endeavor in good faith to reach agreement on sharing the cost of repair or replacement of damaged Landscape Improvements.

(d) Personnel Insurance. The District shall require that all of its contractors and other persons who perform services in connection with the repair, maintenance, reconstruction, or replacement of the Landscape Improvements are in compliance with all Colorado and federal laws pertaining to workman's compensation insurance, and unemployment insurance. The City shall require that all of its employees and contractors who perform services for the City that may affect or be affected by the License Area or the Landscape Improvements are in compliance with all Colorado and federal laws pertaining to workman's compensation insurance, and unemployment insurance.

(e) Insurance Certificates. Within thirty (30) days of a written request, either Party shall furnish to the other Party current certificates or memoranda of insurance showing compliance with the foregoing requirements. All policies maintained by either Party shall name the other Party as an additional insured. All such policies, certificates, and memoranda shall state that the policy or policies to which they pertain cannot be cancelled or altered with less than thirty (30) days prior written notice to both the City and the District.

12. Term. The initial term of this Agreement shall be effective as of the execution by both Parties and shall continue until December 31, 2009. This Agreement shall be subsequently renewed for successive one-year terms beginning on January 1, 2010, unless terminated in accordance with the provisions of Section 13.

13. Termination. This Agreement may be terminated by the City or the District on the following terms and conditions.

(a) Termination by the City. This Agreement may be partially terminated by the City, with respect to a License Area, upon six (6) months prior written notice to the District if the City vacates a portion of the right-of-way within any License Area, which vacation will require the removal of all or a portion of the Landscape Improvements contained therein; or the City materially redesigns a portion of street located in any License Area for safety or capacity expansion purposes, which, when implemented, will require in the removal of all or a portion of the Landscape Improvements contained therein.

(b) Termination by the District. This Agreement shall terminate at the end of the then current term, if the District's Board of Directors fails to appropriate funds for the next renewal term sufficient to permit the District to perform its responsibilities and obligations

hereunder. In such event, the District shall endeavor in good faith, to provide the City with notice of non-renewal not less than three (3) months prior to the termination of the then-current term, but in any event within a reasonable time after action resulting in a failure to appropriate. Failure to provide three (3) months notice shall not affect the validity of the non-renewal of this Agreement and its termination on December 31 of the then current year.

(c) Pre-existing Liability. Any liability or obligation, which either Party incurs under this Agreement prior to its termination date shall survive the termination of this Agreement. Upon termination of this Agreement, the District shall have no responsibility to remove any of the Landscaping Improvements or to pay the cost of removing any of the Landscaping Improvements.

14. Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, it shall not affect the validity of this Agreement as a whole or any part thereof other than the part declared to be invalid and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision.

15. Pre-Existing License Agreements. Except as set forth in the Agreement, execution of this Agreement by the Parties shall replace any existing license agreements between the Parties that pertain to any License Area that is the subject of this Agreement.

16. Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to any person other than the Parties, any right, remedy, or claim under or by reason of this Agreement or any covenants, terms conditions, or provisions thereof, and all of the covenants, terms and provisions in this Agreement by and on behalf of the Parties shall be for the sole and exclusive benefit of the Parties.

17. Governmental Immunity. Both the City and the District, their officials, officers, directors, agents and employees, are relying on, and neither the City nor the District waive or intend to waive by any provision of this Agreement, any rights, immunities, and/or other protections provided by the Colorado Governmental Immunity Act, set forth in C.R.S. 24-10-101, *et seq.*, or otherwise available to the City and/or the District.

18. Consent to Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either Party to this Agreement with respect to this Agreement shall be proper only if such action is commenced in the District Court for Douglas County, Colorado. The Parties expressly waive the right to bring such action in or to remove such action to any other court, whether state or federal.

19. **Force Majeure.** Neither Party shall be liable for failure to perform hereunder if such failure is the result of Force Majeure and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any Force Majeure. "Force Majeure" shall mean causes beyond the reasonable control of a party such as, but not limited to, accidents, weather conditions, acts of God, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

20. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon any permitted successors or assigns of the Parties.

21. **Entire Agreement.** This Agreement, and any agreement or document referred to herein, constitutes the entire understanding between the Parties with respect to the subject matter hereof and all other prior understandings or agreements shall be deemed merged into this Agreement.

22. **Authority.** Each Party represents to the other that such Party has full power and authority to execute, deliver, and perform this Agreement; that the individuals executing this Agreement on behalf of said Party are fully empowered and authorized by all requisite action to do so; that this Agreement constitutes a valid and legally binding obligation of such Party enforceable against such Party in accordance with its terms; that such execution, delivery, and performance will not contravene any legal or contractual restriction binding upon such Party; and that there is no legal action, proceeding or investigation of any kind now pending or to the knowledge of such Party threatened against or affecting such Party or the execution, delivery, or performance of this Agreement.

23. **Counterparts.** This Agreement may be signed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one, and the same, instrument.

In witness whereof, the Parties have executed this Agreement on the dates set forth below.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

DISTRICT:

**PARK MEADOWS METROPOLITAN
DISTRICT, a quasi-municipal corporation and
political subdivision of the State of Colorado**

Date: 11 - 23 - 09

By: 
Glen E. Neidert, President

ATTEST:

By: 
Dale Norblom, Secretary

CITY:

CITY OF LONE TREE,
a home-rule municipal corporation
of the State of Colorado

Date: 1/5/10

By: *James D. Gunning*
James D. Gunning, Mayor

ATTEST:

By: *Jennifer Pottinger*
Jennifer Pottinger, CMC, City Clerk

