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**WHEATLANDS PARK AND RECREATION  
AUTHORITY  
ESTABLISHMENT AGREEMENT**

by and between

**WHEATLANDS METROPOLITAN DISTRICT**

and

**HIGH PLAINS METROPOLITAN DISTRICT**

Dated as of January 19, 2017

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**WHEATLANDS PARK AND RECREATION AUTHORITY  
ESTABLISHMENT AGREEMENT**

**THIS WHEATLANDS PARK AND RECREATION AUTHORITY ESTABLISHMENT AGREEMENT** (“Agreement”), entered into as of the 19 day of January, 2017, by and between **WHEATLANDS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Wheatlands”) and **HIGH PLAINS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“High Plains”) (each a “District” and together the “Districts”).

**WITNESSETH :**

WHEREAS, the Districts are quasi-municipal corporations and political subdivisions of the State of Colorado, organized for the purpose, among others, of assisting in the financing and construction of public improvements within certain areas located within the City of Aurora; and

WHEREAS, in accordance with their respective service plans and pursuant to Section 32-1-101, *et seq.*, C.R.S., the Districts are each authorized to provide park and recreation improvements and services; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(a), provides that the Constitution shall not be interpreted to prohibit the state or any of its political subdivisions from making the most efficient and effective use of their powers by cooperating and contracting with each other; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(b), provides that the Constitution shall not be interpreted to prohibit the enactment of a statute authorizing political subdivisions to establish a separate entity to provide any function, service, or facility lawfully authorized to each of the contracting political subdivisions; and

WHEREAS, Section 29-1-201, C.R.S., permits and encourages governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governments to contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units through the establishment of a separate entity; and

WHEREAS, certain park and recreation improvement projects are contemplated that will benefit the Districts, their constituents and the public (the “Park and Rec Improvements”); and

WHEREAS, the initial Park and Rec Improvements are anticipated to include an approximately 65,000 square foot recreation facility with associated parking and landscaping, as further detailed in Exhibit A attached hereto; and

WHEREAS, the Districts have a compelling mutual interest in developing and coordinating plans, present and future, for the Park and Rec Improvements to promote the public welfare; and

WHEREAS, the Districts desire to enter into this Agreement to establish a separate legal entity as a political subdivision and public corporation of the State in conformity with and subject to Section 29-1-203.5, C.R.S., to provide the Park and Rec Improvements and for any related functions, services, or facilities permitted by the Constitution and laws of Colorado and in accordance with the provisions of this Agreement; and

WHEREAS, the Districts intend by entering into this Agreement, that the Authority hereby created be a political subdivision with the duties and immunities set forth in Part 1 of Article 10, Title 24, C.R.S., as amended; and

WHEREAS, it is in the best interest of the Districts and for the public health, safety, convenience, and welfare of the residents of the Districts and of the general public that the Districts enter into this Agreement for the purpose of forming the Authority to provide the functions and services necessary to acquire, construct, finance, maintain and manage the Park and Rec Improvements that may be identified and agreed upon by the Districts or Members (as defined below) from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed in this Agreement, it is agreed by and between the Districts, as follows:

## ARTICLE I

### CREATION OF THE AUTHORITY

**Section 1.01. Creation.** Pursuant to C.R.S. § 29-1-203 and in conformity with C.R.S. § 29-1-203.5, upon the mutual execution of this Agreement by the Districts, there is hereby established by this Agreement a separate political subdivision of the State of Colorado to be known as the Wheatlands Park and Recreation Authority (the “Authority”). The Authority shall be separate and distinct from the Districts and Members, as defined herein.

**Section 1.02. Purpose.** The Authority is organized for the purpose of planning, financing, designing, constructing, installing, operating, maintaining, repairing and replacing park and recreation improvements and facilities. The initial Park and Rec Improvements are shown in Exhibit A. Exhibit A may be amended from time to time without amending the Agreement.

**Section 1.03. Boundaries.** The initial area comprising the territory within the Authority shall consist of, and be conterminous with, the territory of Wheatlands, as of the date hereof, and in the future the territory within the Authority shall include territory included within Wheatlands and exclude territory excluded from Wheatlands.

**Section 1.04. Immunity.** The Authority shall be a political subdivision, and therefore a “public entity” as defined by the Colorado Governmental Immunity Act, Part 1 of Article 10, Title 24, as amended.

**Section 1.05. Indemnification.** To the extent permitted by law, the Authority shall indemnify, defend, and save harmless the Members, their officers, agents, consultants and employees from and against any and all claims and losses whatsoever occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials, or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any person, firm, or corporation, for damage, injury or death arising out of or connected with the Authority’s performance of its obligations under this Agreement.

## ARTICLE II

### MEMBERSHIP/ORGANIZATIONAL STRUCTURE

**Section 2.00. Members Defined.** A “Member” shall be any special district, city, county or other political subdivision of the state that is lawfully authorized to provide park and recreational facilities, services, or programs, that is approved for membership on the Authority under the terms of this Agreement as it may be amended from time to time.

**Section 2.01. Initial Members.** The initial Members of the Authority shall be the Districts.

**Section 2.02. Board of Directors.** The Authority shall be governed by a Board of Directors of the Authority (the “Board”), in which all of the legislative power of the Authority is vested and which shall exercise and perform all the powers, rights and duties vested in and imposed on the Authority by this Agreement. Each Board member (a “Director”) shall serve at the will and pleasure of the Member that appointed the Director. Directors shall receive compensation for their services in the maximum amount allowed for the directors of special districts by Section 32-1-902(3), C.R.S. and reasonable expenses related to the exercise of Board functions shall be reimbursed by the Authority from funds that may be available for such purpose.

**Section 2.03. Composition of Board.** Initially, Wheatlands shall be entitled to appoint two Directors, and High Plains shall be entitled to appoint one Director. Unless otherwise agreed for a New Member as described below, each Director shall have one vote and shall be an elected official of the respective Member or other person designated by the applicable Member as its Director. Each Member shall appoint its Director(s) and establish their terms of office by motion or resolution, a copy of which shall be provided to the Authority. Each Director shall subscribe to an oath of office substantially in the form of the oath described in Section 32-1-901, C.R.S. Notwithstanding the filing requirements of Section 32-1-901, C.R.S., the oath of each Director need only be filed with the respective Member.

**Section 2.04. Vacancies.** Vacancies on the Board shall be filled within a reasonable time by the Member as to which the vacancy occurs.

**Section 2.05. Addition of New Members.** Additional Members (in addition to the Initial Members) (each, a “New Member”) may be included into the Authority upon unanimous approval of the Board and upon the execution of a written amendment to this Agreement approved in writing by all the Members. The Board may establish criteria for the addition of a New Member, including fees for joining the Authority, voting privileges, and Board membership. Additional New Members may be allowed to appoint Directors to the Board as set forth in a written amendment to this Agreement.

**Section 2.06. Voting and Quorum.** The Board shall act only upon a duly taken vote of the Directors. A vote of the Board shall be deemed duly executed if approved by a majority vote of a Quorum of the Board (as defined below). Unless otherwise agreed by the Authority and a New Member, each Director appointed by a Member shall have one vote. A quorum of the Board shall consist of a majority of the Directors as measured by voting power (“Quorum”). No official action may be taken by the Board on any matter unless a Quorum is present. Attendance at meetings by Directors may be held by telephone or other electronic means, provided that all persons attending the meeting, including the public, can hear and be heard. A Director may vote by written proxy given to another Director. All meetings of the Board shall be done in the manner required by the Colorado Open Meetings Act, Section 24-6-401, *et seq.*, C.R.S.

**Section 2.07. Officers.** The officers of the Authority shall be a President, Secretary and Treasurer. The Board may appoint a Vice President and as many assistant Treasurers and assistant Secretaries as the Board sees fit. In addition to duties designated by the Board, the duties of the officers shall include:

- (a) The President shall be authorized to preside at all meetings of the Board and, except as otherwise delegated by the Board or provided in this Agreement, shall execute all legal instruments of the Authority. In the event a Director other than the President is designated to execute any legal instrument, such designation shall be reflected in the minutes of the meeting in which the action was approved.

(b) The Vice-President, if any, shall, in the absence of the President, or in the event of the President's inability or refusal to act, perform the duties of the President and when so acting shall have all the powers of and be subject to all restrictions upon the President.

(c) The Secretary shall maintain the official records of the Authority, including the minutes of the meetings of the Board, and a register of the names and addresses of the Members, Directors, and officers, and shall issue notice of meetings, attest and affix the corporate seal, as applicable, to all documents of the Authority, and perform such other duties as the Board may prescribe from time to time. The Secretary may be a Director, consultant, or other person appointed by the Board.

(d) The Treasurer shall serve as the financial officer of the Authority.

(e) The officers of the Authority shall be elected by a majority vote of a Quorum of the Board.

**Section 2.08. Bylaws and Regulations.** The Authority shall have the power to adopt such bylaws and regulations as are necessary or convenient for the conduct of the Authority so long as such bylaws and regulations are not in conflict with the provisions of this Agreement or law.

**Section 2.09. Withdrawal.** Prior to the issuance of debt by the Authority, a Member may be released from this Agreement upon written notice to the other Members. Upon approval of the issuance of debt by the Authority, a Member may be released from this Agreement only upon (a) a unanimous vote of a Quorum of the Board approving a plan for either (i) dissolution of the Authority, if High Plains and Wheatlands are the only Members of the Authority, or (ii) withdrawal of a Member, if there will be at least two Members of the Authority upon the withdrawal of a Member; and (b) receipt of an opinion from bond counsel that said withdrawal will not jeopardize the tax-exempt status of any debt then outstanding.

**Section 2.10. Conflict Disclosures.** Directors shall disclose conflicts of interest in the same manner required of directors of special districts under Colorado law, as the same may be amended from time to time.

**Section 2.11. No Restriction on Powers of Members.** Nothing in this Agreement shall be deemed or construed to restrict, prohibit or otherwise limit the power of any Member, and no action of the Authority shall be attributable to the Members.

**Section 2.12. Dissolution of Member.** If a Member is dissolved or otherwise ceases to exist then either (a) the plan for dissolution shall contain adequate provisions acceptable to the Authority for the performance of all such Member's obligations to the Authority, or (b) all such obligations shall be fully paid and performed prior to the effective date of dissolution.

**Section 2.13. Advisory Committees.** The Board may establish one or more advisory committees. Any committee established by the Board shall serve solely in an advisory capacity to the Board. The members of any advisory committee shall serve at the pleasure of the Board.

### **ARTICLE III**

#### **POWERS OF THE AUTHORITY**

**Section 3.01. Plenary Powers.** Except as otherwise limited by this Agreement, the Authority, in its own name and as provided in this Agreement, shall exercise all powers lawfully authorized in Section 29-1-203 and 29-1-203.5, C.R.S., as amended, including all incidental, implied, expressed or such other powers as necessary to execute the park and rec purposes of this Agreement. The Authority shall act through its Board, its officers and employees as authorized by the Board pursuant to any motion, resolution, bylaws, and regulations. The Authority shall not have the power to represent itself as, or act as agent for, or on behalf of, an individual Member without such Members' written consent.

**Section 3.02. Enumerated Powers.** The Authority's park and rec powers shall include the following:

- (a) to acquire, operate, manage, own, lease (as lessee or lessor), sell, construct, reconstruct, maintain, or repair, or dispose of real and personal property, buildings, works, improvements, or other facilities necessary to carry out the purposes of this Agreement in the name of the Authority;

(b) to make and enter into contracts, including, without limitation, contracts with local governmental entities, including the Members, and other special districts, authorities, corporations, cities, counties and state or federal agencies, provided, however, that the power shall be limited as provided in C.R.S. § 32-1-1001 and other laws applicable to special districts;

(c) to accept gifts, grants, and revenue from any lawful source;

(d) to sue and be sued in the Authority's own name;

(e) to hire and fire agents, employees, consultants and professionals;

(f) to approve and modify master plans, provide for the furnishing of Park and Rec Improvement services, privileges, works or facilities; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the Authority provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(g) to prepare and approve an annual budget and any necessary amended or supplemental budgets, as set forth in Section 4;

(h) to approve, set, impose, collect, pledge, spend, reserve, and use rates, fees, tolls, charges and penalties for facilities, services, and programs furnished or to be furnished by the Authority;

(i) to adopt, modify, and amend bylaws and regulations pursuant to Section 2.08, above;

(j) to enter into agreements for the purpose of securing any necessary professional, administrative, or support services;

(k) to keep and maintain financial books and records to account for all expenditures of funds, and to obtain an independent audit (or audit exemption) by

certified public accountants selected by the Board, of such records annually with the results of same submitted to the Members;

(l) to accept contributions, grants, or loans from any public or private agency, individual, or the United States or the State of Colorado or any department, instrumentality, or agency thereof, for the purpose of financing its activities;

(m) to adopt financial and investment policies and invest monies remaining in any fund which are available for investment in accordance with the laws of the State of Colorado including Articles 10.5 and 47 of Title 11, C.R.S., as amended, for the investment of public funds or by public entities;

(n) to contract for real estate, financing, goods or services;

(o) to issue revenue bonds, notes or other obligations subject to the provisions of Section 29-1-203.5(3)(a) C.R.S., and to finance Park and Rec Improvements in accordance with Section 4;

(p) to enter into lease-purchase agreements which may be offered either as whole leases or with certificates of participation in accordance with Section 29-1-101, *et seq.*, C.R.S., as amended;

(q) to take all actions necessary or appropriate to carry out and implement the provisions of this Agreement;

(r) to have and use a corporate seal;

(s) to control and accept public rights of way; and

(t) to exercise any general power of a special district specified in part 10 of Article 1 of Title 32, C.R.S., as long as each of the Members may lawfully exercise the power.

**Section 3.03. Limitation on Express and Implied Powers.** In determining the express and implied powers that the Authority has under this Agreement, the Authority shall not have the following powers:

- (a) taxation;
- (b) special assessments pursuant to Article 25 of Title 31, and Article 1 of Title 32, C.R.S., as amended;
- (c) zoning or other governmental powers over land use;
- (d) building, fire code, public health and safety regulations; and
- (e) eminent domain.

**Section 3.04. Spending Authority.** The Authority is limited in its spending powers to the annual total budget approved by a majority of the votes of a Quorum of the Board, as said budget may be amended.

**Section 3.05. No Private Inurement.** No part of the assets or net earnings of the Authority shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the Authority shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement in reasonable amounts for expenses actually incurred in exercising the powers or carrying out the purposes of the Authority.

## **ARTICLE IV**

### **BUDGETS/FUNDING/DEBT**

**Section 4.01. Annual Budget.** No later than October 15 of each year, the Board shall cause a proposed annual budget for the next fiscal year to be prepared and shall submit a copy of the proposed annual budget to the Members. The budget adopted by the Board shall conform to the requirements of Section 29-1-101, *et seq.*, C.R.S., as amended, and the additional

requirements set forth in this Agreement. The Board may amend the budget in accordance with Section 29-1-101, *et seq.*, C.R.S.

**Section 4.02. Funding.** The Authority may fund its Park and Rec Improvements from any lawful source allowed by this Agreement and applicable law. The Authority shall be authorized to provide for the planning, design, acquisition, construction, and installation of Park and Rec Improvements from the proceeds of revenue bonds to be issued by the Authority (“Authority Bonds”), or subject to approval of the Member, may delegate and assign those rights and responsibilities to an individual Member. It is anticipated that the Authority Bonds will be secured by a monthly user fee related to use of the Park and Rec Improvements (the “Membership Fee”) and fees imposed by Wheatlands. It is agreed that no funds are required to be provided by High Plains as a condition of its membership in the Authority. High Plains may, but is not required to, pledge any revenues towards repayment of Authority Bonds. It is further agreed that residents of High Plains shall receive a discount of ten dollars (\$10) on the Membership Fee. Members may make loans or grants to the Authority provided such loans or grants do not result in the loss of any applicable enterprise status of the Authority that may exist under Colo. Const. Art. X. Sec. 20 unless approved by the Authority and all of the Members and loss of enterprise status does not adversely affect any outstanding debt of the Authority as determined by the Authority’s bond counsel.

**Section 4.03. Operations Costs.** The Authority may fund its operations from rates, fees, tolls, penalties, or charges and with any revenues transferred to the Authority by the Members or others. The amount of money necessary to fund the operations of the Authority shall be determined each year as a part of the budget process.

**Section 4.04. Books and Records.** The Authority shall provide for the keeping of accurate and correct books of account on an accrual basis in accordance with the Local Government Uniform Accounting Law, Part 5 of Article 1, Title 29, C.R.S., as amended. Unless eligible for any exemption from audit, the Board shall provide for the auditing of all books and accounts and other financial records of the Authority on an annual basis in accordance with the Colorado Local Government Audit Law, Part 6 of Article 1, Title 29, C.R.S., as amended. Any audit exemption or audit shall be completed within six months after

the close of the fiscal year and shall be presented to the Members no later than 30 days after receipt of the audit exemption application or audit report by the Board. All funds received by the Authority shall be invested in accordance with state statutory requirements. Pursuant to Section 29-1-603(1), C.R.S., as amended, the Authority shall not be required to file an audit as long as the financial activities of the Authority are fully reported in the audits of the Members.

**Section 4.05. Revenue Bonds.** The Authority may, from time to time, issue revenue bonds or other financial obligations for any of its purposes. The bonds shall be issued pursuant to a written resolution approved by the Board and shall be payable solely out of all or a specified portion of the revenues of the Authority as designated by the Board. In addition, no debt of the Authority shall constitute the debt or financial obligation or become the responsibility of the Members. The Authority may issue bonds, notes, or other financial obligations as provided in C.R.S. § 29-1-203.5(3).

## ARTICLE V

### ASSETS OF THE AUTHORITY

**Section 5.01. Asset Inventory Schedule.** The Authority shall maintain an asset inventory list for any and all real or personal property acquired by the Authority by lease, purchase, donation or governmental conveyance and either held by it or transferred to others. This list shall designate how the asset was acquired, the date of acquisition, and the date of any sale or other disposition of any asset transferred by the Authority, together with the amount of consideration received or paid by the Authority.

**Section 5.02. Insurance.** The Authority shall maintain the following insurance coverages:

- (a) General liability coverage protecting the Authority and its officers, directors, and employees against loss, liability, or expense whatsoever from personal injury, death, property damage, or otherwise, arising from or in any way connected with management, administration, or operations in amounts not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

(b) Directors and officers liability coverage (errors and omissions) protecting the Authority and its directors and officers against any loss, liability, or expense whatsoever arising from the actions and/or inactions of the Authority and its directors and officers in the performance of their duties.

## ARTICLE VI

### TERMINATION

**Section 6.01. Termination By Notice.** This Agreement will terminate, after notice has been provided to each Member, and provision has been made for the discharge of any debt issued by, and financial obligation of, the Authority, by a vote of the Board in accordance with Section 2.06.

**Section 6.02. Wind-Up and Liquidation.** In the event of termination of this Agreement, the Board, or a person or persons appointed by the Board, shall wind-up and liquidate the assets of the Authority. Upon dissolution of the Authority, and in consultation with the Authority's bond counsel, all of its property will be transferred to Wheatlands or other governmental entities approved by the Members of the Authority immediately prior to dissolution.

## ARTICLE VII

### DEFAULT

**Section 7.01. Events of Default.** The occurrence of any one or more of the following events, and/or the existence of any one or more of the following conditions shall constitute an "Event of Default" under this Agreement:

(a) The failure to perform or observe any material, covenant, agreement, or condition in this Agreement on the part of any Member and to cure such failure within thirty (30) days of receipt of notice from one of the other Members or the Authority of such failure unless such default cannot be cured within such thirty (30) day period, in which event the defaulting Member shall have an extended period of time to complete the

cure, provided that action to cure such default is commenced within said thirty (30) day period and the defaulting Member is diligently pursuing the cure to completion.

**Section 7.02. Remedies on Occurrence of Events of Default.** Upon the occurrence of an Event of Default, a Member and the Authority (together) shall have the following rights and remedies:

(a) The non-defaulting Member(s) and/or the Authority may ask a court of competent jurisdiction to enter a writ of mandamus to compel the board of directors of the defaulting Member to perform its duties under this Agreement, and/or to issue temporary and/or permanent restraining orders, or orders of specific performance, to compel the defaulting Member to perform in accordance with this Agreement.

(b) The non-defaulting Member(s) or the Authority, or both, may protect and enforce their rights under this Agreement by such suits, actions, or special proceedings as they shall deem appropriate, including, without limitation, any proceedings for the specific performance of any covenant or agreement contained in this Agreement, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages, including attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

(c) The non-defaulting Member(s) shall have the right to budget and expend funds as necessary to enforce the terms of this Agreement.

## **ARTICLE VIII**

### **MISCELLANEOUS PROVISIONS**

**Section 8.01. Notices.** Any notice required hereunder shall be given in writing, delivered personally, or sent by registered mail, postage prepaid, and addressed to the Members at the addresses set forth below or at such other address as a Member may hereafter or from time to time designate by written notice to the other Member given in accordance herewith. Notice shall be considered given when personally delivered or mailed, and shall be considered

received in the earlier of the day on which such notice is actually received by the Member to whom it is addressed, or the third day after such notice is mailed.

to Wheatlands: Wheatlands Metropolitan District  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

With a copy to: Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203

to High Plains: High Plains Metropolitan District  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

With a copy to: Collins Cockrel & Cole  
390 Union Boulevard, Suite 400  
Denver, CO 80228

to the Authority: Wheatlands Park and Recreation Authority  
2154 E. Commons Avenue, Suite 2000  
Centennial, CO 80122

**Section 8.02. Consent.** Whenever any provision of this Agreement requires consent or approval of the Members hereto, the same shall not be unreasonably withheld.

**Section 8.03. Amendments.** No alterations, amendments or modifications hereof shall be valid unless approved by the Board and the Members and executed by an instrument with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by the instrument in writing, and no prior, contemporary, or subsequent oral agreement shall have any validity whatsoever.

**Section 8.04. Severability.** If any clause or provision in this Agreement contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

**Section 8.05. Binding Effect.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Members and to their respective successors and permitted assigns.

**Section 8.06. Assignment and Delegation.** No Member shall assign any of the rights nor delegate any of the duties by this Agreement without a majority vote of the whole membership of the Board. Any attempted assignment or delegation not in conformance with this provision shall be void.

**Section 8.07. Applicable Laws.** This Agreement shall be governed by and construed in accordance with the Constitution and laws of the State of Colorado. The Members agree not to institute any legal action or proceeding against the Authority or any of its directors, officers, employees, agents or property concerning any matter arising out of or related to this Agreement in any court other than the Arapahoe County District Court.

**Section 8.08. Paragraph Headings.** The paragraph headings are inserted in this Agreement only as a matter of convenience and reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

**Section 8.09. Singular and Plural.** Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

**Section 8.10. Negotiated Provisions.** This Agreement shall not be construed more strictly against one Member than against another Member merely by virtue of the fact that it may have been prepared by counsel for one of the Members, it being acknowledged that each Member has contributed substantially and materially to the preparation of this Agreement.

**Section 8.11. No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Members and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third Party. It is the express intention of the Members that any person, other than the Members, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**Section 8.12. Counterparts.** This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

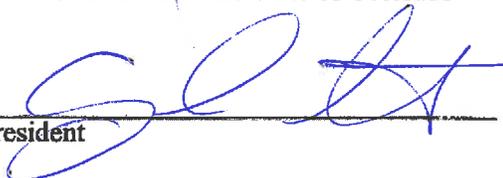
**Section 8.13. Governmental Immunity.** Nothing herein shall be construed as a waiver of the rights and privileges of the Members or the Authority pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S., as amended from time to time

[Remainder of this page intentionally left blank]

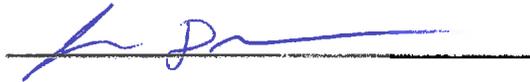
IN WITNESS WHEREOF, the Members have caused this Agreement to be executed as of the day and year first hereinabove written.

WHEATLANDS METROPOLITAN  
DISTRICT, a quasi-municipal corporation and  
political subdivision of the State of Colorado

By \_\_\_\_\_  
President

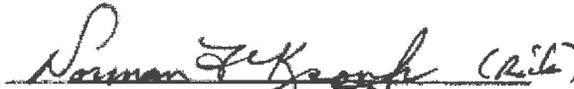


ATTEST:



APPROVED AS TO FORM:

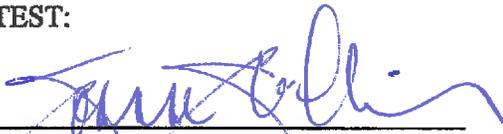
SPENCER FANE LLP  
Attorneys at Law

  
Special Counsel to the Wheatlands Metropolitan District

HIGH PLAINS METROPOLITAN DISTRICT,  
a quasi-municipal corporation and political  
subdivision of the State of Colorado

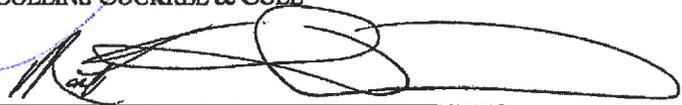
By   
President

ATTEST:



APPROVED AS TO FORM:

COLLINS COCKREL & COLE



Special Counsel to the High Plains Metropolitan District

**EXHIBIT A**  
**Initial Park and Rec Improvements**

An approximately 65,000 square foot recreation center with associated outdoor facilities, landscaping and parking. The improvements may also include nearby or otherwise related park and recreation amenities within the vicinity of the recreation center.