

**INTERGOVERNMENTAL AGREEMENT  
REGARDING WHEATLANDS RECREATION CENTER**

This **INTERGOVERNMENTAL AGREEMENT REGARDING WHEATLANDS RECREATION CENTER** (this “**Rec Center IGA**”) is entered into this 4<sup>th</sup> day of February, 2019, by and between the WHEATLANDS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”), and the WHEATLANDS PARK AND RECREATION AUTHORITY, a contractually established entity and political subdivision of the State of Colorado (the “**Authority**”) (the District and the Authority are individually referred to herein as a “**Party**” and collectively referred to herein as the “**Parties**”).

**RECITALS**

**WHEREAS**, the District was formed and exists as a special district pursuant to § 32-1-101, *et seq.*, C.R.S., generally for the purposes of providing certain public improvements, facilities and services to and for the use and benefit of the District, its residents, users, property owners and the public; and

**WHEREAS**, pursuant to § 32-1-1001(1)(d), C.R.S., the District is permitted to enter into contracts affecting its affairs; and

**WHEREAS**, the Authority was formed pursuant to an intergovernmental agreement consistent with the provisions of § 29-1-203, C.R.S. (the “**Establishing Agreement**”), generally for the purposes of providing recreation center facilities and related park and recreation improvements and services for the benefit of the Authority and its residents, users, property owners and the public, and, pursuant to the Establishing Agreement, the Authority is permitted to enter into contracts affecting its affairs; and

**WHEREAS**, pursuant to § 29-1-203, C.R.S., the Parties are permitted to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the Parties; and

**WHEREAS**, as of the date of this Rec Center IGA the District owns an undeveloped parcel of land more particularly described as Lot 1, Block 5, Wheatlands Subdivision Filing No. 6, City of Aurora, County of Arapahoe, State of Colorado (the “**Land**”); and

**WHEREAS**, this Rec Center IGA is entered into by the District and the Authority in connection with the sale and conveyance of the Land to the Authority by Special Warranty Deed (the “**Deed**”) under the terms and conditions of this Rec Center IGA and a Purchase and Sale Agreement dated of even date herewith; and

**WHEREAS**, as further set forth herein, the Authority intends to utilize the Land to construct, operate and maintain a public recreation center/facility (the “**Recreation Center**”); and

**WHEREAS**, the Recreation Center may be constructed and/or financed and/or placed into use in phases (each a “**Phase**”); and

**WHEREAS**, as further set forth herein, as additional consideration for the District's conveyance of the Land to the Authority, certain District residents shall be afforded access to the Recreation Center (as may from time to time be placed in operation) at reduced membership rates in compliance with the applicable rules and regulations of the Recreation Center; and

**WHEREAS**, as provided in the Deed, the Authority's use of the Land will be limited to those uses further described in this Rec Center IGA; and

**WHEREAS**, the Parties desire to enter into this Rec Center IGA to set forth the terms and conditions upon which the District agrees to convey the Land to the Authority.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and promises set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **ARTICLE I PURPOSE**

1.1 Purpose. The purpose of this Rec Center IGA is to document the terms and conditions upon which the District agrees to convey the Land to the Authority and of the Authority's use of the Land following the Effective Date as defined below.

1.2 Effective Date. This Rec Center IGA shall be effective as of the date first set forth above (the "**Effective Date**").

1.3 Recordation. The Parties agree this Rec Center IGA will be recorded in the real property records of the Arapahoe County Clerk and Recorder prior to the recordation of the Deed.

### **ARTICLE II PURCHASE**

2.1 Financing. All or part of the Authority's purchase of the Land may be financed through a loan provided by one or more Institutional Lenders (as defined below) who will be granted a lien and security interest on the Land and Recreation Center.

### **ARTICLE III USE OF THE LAND**

3.1 Permitted Uses of the Land. The Land shall be used by the Authority for the limited purpose of constructing, operating and maintaining the Recreation Center and related public park and recreation improvements, as well as any water, sewer, storm water, utility, landscaping, parking, trails, pedestrian ways and other related public improvements not inconsistent with the foregoing limited purpose. The Parties expressly covenant and agree that the Land may not be used

except in a manner consistent with this Article III.

### 3.2 District Resident Access to Recreation Center; Membership Payment.

3.2.1 The Parties understand and agree that the Authority intends to finance, construct, own, operate and maintain the Recreation Center on the Land as a public recreation facility; provided, the Parties understand and agree that the Authority may, from time to time, contract with a third party to own, operate and/or manage the Recreation Center (each a “**Third Party Operator**”). The Parties further understand and acknowledge that as of the date of this Rec Center IGA, the Authority intends to enter into that certain Management Agreement (Authority Facility) (the “**Management Agreement**”) with the Young Men’s Christian Association of Metropolitan Denver D/B/A YMCA of Metropolitan Denver, a 501(c)(3) organization (the “**YMCA**”), as the initial Third Party Operator, pursuant to which the YMCA will provide those services described in the Management Agreement.

3.2.2 Commencing with the calendar month of January 2019, the District agrees it will pay to the Authority on a monthly basis, by no later than the end of the following month, an amount equal to the District Rate (defined herein) multiplied by each then-completed (e.g., certificate of occupancy has been issued) single-family residence, including both attached single-family (e.g., townhomes, duplexes, fourplexes,) and detached single-family residences, located within the District’s boundaries (collectively, the “**Member Residences**”) in order to secure membership access to the Recreation Center on behalf of all District residents residing in the Member Residences as further set forth herein (the “**Membership Payment**”). The Membership Payment may be paid by the District from any legally available funds of the District in the District’s sole discretion. The number of Member Residences will be determined by the District as of the first day of each calendar month, so, for example, in the month of January 2019, the District will determine the number of Member Residences as of January 1, 2019. By way of further illustration and example, the Membership Payment for January 2019 must be made by no later than February 28, 2019.

3.2.3 Upon the official opening of the Recreation Center, all District residents residing in the Member Residences shall be entitled to access and obtain general memberships to the Recreation Center at no cost to the residents. It is the intent of the Parties that the membership provided to District residents pursuant to this Rec Center IGA shall afford them full use of the Recreation Center in a manner equivalent to any other general membership offered to the general public. The Parties understand and agree that all District residents desiring to access the Recreation Center shall be responsible for providing any information and taking any actions as may be reasonably necessary to obtain actual membership to access the Recreation Center, including but not limited to providing proof of residency, names and contact information for users, and agreeing to standard facility patron agreements or waivers. Neither the District nor the Authority will be responsible for providing such information or obtaining actual membership for the District residents. The Parties further understand that the general membership provided to Member Residences may not include additional fees for other programs, etc.

3.2.4 The “**District Rate**” is defined and shall be calculated as follows: commencing January 1, 2019, the District Rate shall not exceed Thirty Dollars (\$30.00) per month for each of the Member Residences. The District Rate may be increased from time to time consistent with rate increases for other memberships to the Recreation Center, as reasonably necessary in the discretion of the Authority; provided, the District Rate may be increased no more frequently than on an annual basis and at a percentage rate of increase no greater than the rate increase applicable to the general membership rate made available to the public for use of the Recreation Center. Subject to any limitation established in the Applicable Loan Documents (as defined below), the District Rate may be decreased at any time upon written agreement of the Parties.

3.2.5 The Authority expressly understands and agrees that the District is relying upon the reduced District Rate and the benefit thereof to the District residents residing in the Member Residences as consideration for entering into this Rec Center IGA and conveying the Land to the Authority. The Authority expressly agrees that it shall include in any agreement with a Third Party Operator, including but not limited to the Management Agreement, sufficient terms and conditions to ensure that the residents of the Member Residences are entitled to access the Recreation Center and to obtain valid general memberships to the Recreation Center as set forth in this Rec Center IGA. Further, any such agreement(s) with the YMCA and any other Third Party Operator, including but not limited to the Management Agreement, shall expressly identify the District and any Institutional Lenders as a third party beneficiary to the agreements for the foregoing purpose.

### 3.3 Reserve Fund Payment.

3.3.1 Separate and apart from the Membership Payment, commencing January 1, 2019, the District agrees it will pay to the Authority on a monthly basis, in the same manner and at the same time as the Membership Payment described in Section 3.2.2 above, an amount equal to Five Dollars (\$5.00) multiplied by the number of then-existing Member Residences for the purposes of funding the Recreation Center and reserve funds as further set forth herein (the “**Reserve Fund Payment**”).

3.3.2 The Reserve Fund Payment may be paid by the District from any legally available funds of the District in the District’s sole discretion.

3.3.3 Subject to any limitation established in the Applicable Loan Documents (as defined below), the Reserve Fund Payment may be utilized by the Authority, in the Authority’s reasonable discretion, for the limited purpose of funding operation, maintenance, debt service and capital expenses associated with the Recreation Center; provided, the Authority agrees that it will endeavor to first utilize the Reserve Fund Payment for the purpose of establishing, building and maintaining reserve funds to support the foregoing expenses, and will only utilize the Reserve Fund Payment for direct expenditures when necessary in the Authority’s discretion.

3.3.4 Subject to any limitation established in the Applicable Loan Documents (as defined below), if the Reserve Fund Payment is deemed, by the Authority in its discretion, to be no longer necessary for the purposes set forth above, the Authority may, upon written agreement of the Parties, waive in whole or in part the District's obligation to pay the Reserve Fund Payment and/or return to the District any unused Reserve Fund Payment funds held by the Authority.

3.4 Future Property Maintenance and Snow Removal. The Parties acknowledge that, prior to the execution of this Rec Center IGA, general discussions have taken place between the District and the Authority regarding the need for future ongoing landscape maintenance and snow removal services associated with the Recreation Center and the Land. The Parties agree that to the extent the Authority is at any time unable to provide for such services, the District shall endeavor to assist the Authority in meeting such needs as mutually agreed in writing by the Parties at that time. Such assistance is intended by the Parties to be limited to landscape maintenance and snow removal services only and to expressly exclude any assistance related to any capital repairs, maintenance or improvements. As of the date of this Rec Center IGA, the District has obtained preliminary quotes providing that landscape maintenance services will cost approximately \$25,000 per year and snow removal services will cost approximately \$15,000 per year.

#### **ARTICLE IV**

##### **EVENT OF DEFAULT, REMEDIES, AND CONFLICT RESOLUTION**

4.1 Breach and Enforcement; Event of Default. It is specifically understood that, by executing this Rec Center IGA, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a default hereunder ("**Event of Default**"). The Parties agree that this Rec Center IGA may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado and as further set forth herein. If either Party takes legal action against the other in order to enforce or interpret the terms of this Rec Center IGA, the Party in whose favor final judgment is entered will be entitled to recover from the other Party any reasonable legal expenses incurred in the preparation, prosecution or appeal thereof, including its costs and reasonable attorneys' fees.

4.2 Remedies. Upon an Event of Default, the non-defaulting party shall provide notice to the other party, which notice shall state explicitly the Event of Default. The allegedly defaulting party shall have thirty (30) days to cure such Event of Default, or, to commence to cure such Event of Default if the default is of a nature that a cure cannot be completed within thirty (30) days. If the allegedly defaulting party fails timely to cure such Event of Default, the Parties agree that prior to initiating any litigation regarding such dispute, they shall submit their dispute to a mutually agreeable mediator for the purposes of conducting non-binding mediation in an effort to resolve the dispute without the necessity of litigation. If an Event of Default or dispute cannot be resolved by the Parties or through mediation, the Parties may seek any remedies available in law or equity.

4.3 Right of Reentry. Notwithstanding the foregoing provisions of this Article IV, the Parties expressly agree that it shall be considered an Event of Default for the Authority to utilize the Land in a manner inconsistent with the provisions of Article III herein. In the event the

Authority fails to comply with the restrictions and provisions of Article III herein at any time during the term of this Rec Center IGA, then the District, or its successor in interest, may, in its sole and absolute discretion but subject to Section 6.4 hereof, reenter and reacquire the Land subject to the terms and conditions set forth below.

4.4 Exercising Right of Reentry. Prior to exercising its right of reentry, the District shall be required to adhere to the notice and dispute resolution procedures provided herein. Thereafter, the District may exercise its right of reentry by delivering written notice of such intent together with payment in cash or other immediately available funds in the amount of the Purchase Price to the Authority or any applicable Institutional Lender. Except as otherwise established in the Applicable Loan Documents, title to the Land shall then be conveyed by the Authority to the District by special warranty deed, free and clear of any mortgages, liens or other encumbrances not of record, and any costs associated with closing and transferring title shall be paid by the Authority. In the event the Authority fails to convey the Land to the District as required by this Article IV, the Authority expressly agrees that the District may seek specific performance in addition to any other remedies available to it in equity or law.

## ARTICLE V GENERAL PROVISIONS

5.1 Term; Termination. This Rec Center IGA shall be effective upon the Effective Date for an initial term of 40 years; provided, this Rec Center IGA shall thereafter automatically renew for successive five (5) year terms unless one Party provides written notice to the other party at least ninety (90) days in advance of (but no earlier than 180 days in advance of) the end of the then-current term that it does not wish to renew the term of this Rec Center IGA. This Rec Center IGA may be terminated at any time by written agreement signed by the Parties. In the event this Rec Center IGA is terminated for any reason, a notice of termination shall be recorded in the real property records of Arapahoe County, but failure to record such notice of termination shall not affect the validity of the termination.

5.2 Relationship of Parties. Nothing contained in this Rec Center IGA shall be construed as making the District or the Authority the partner, agent or joint venturer of the other.

5.3 No Third-Party Beneficiaries. This Rec Center IGA is between the District and the Authority; provided, the Authority's rights hereunder may be collaterally assigned by the Authority to an Institutional Lender for the limited purpose of allowing the exercise of the Authority's rights as reasonably necessary pursuant to the Applicable Loan Documents. Nothing contained herein shall be construed as providing rights to any third-party.

5.4 Amendment. No amendment or modification of this Rec Center IGA will be valid or binding unless reduced to writing and executed by the Parties hereto to be charged with the amendment or modification.

5.5 Controlling Law/Venue. The Parties hereto expressly agree that the terms and conditions hereof, and subsequent performance hereunder, will be construed and controlled by the laws of the State of Colorado. Venue for any dispute under this Rec Center IGA shall be in the

State of Colorado Arapahoe County District Court.

5.6 Interpretation. Captions and headings used in this Rec Center IGA are for convenience of reference only and will not affect the construction of any provision of this Rec Center IGA. As used herein, the singular will include the plural, and vice versa; any gender will be deemed to include the masculine, feminine and neuter gender; and the terms “**including**,” “**include**” or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean “including, but not limited to,” or “including, by way of example and not limitation.”

5.7 Severability. Should any term or condition hereof be deemed void or unenforceable, the remaining provisions of this Rec Center IGA will remain in full force and effect.

5.8 Waiver. No exercise or waiver, in whole or in part, of any right or remedy provided for in this Rec Center IGA will operate as a waiver of any other right or remedy, except as otherwise provided herein. No delay on the part of any party in the exercise of any right or remedy will operate as a waiver thereof.

5.9 Article X, Section 20/TABOR. The Parties understand and acknowledge that each Party is subject to Article X, § 20 of the Colorado Constitution (“**TABOR**”). It is understood and agreed that this Rec Center IGA does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of a Party are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Party’s current fiscal period. Financial obligations of a Party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the applicable rules, regulations, and resolutions of the Party and any other applicable law.

5.10 Entire Agreement. This Rec Center IGA embodies the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements and understandings, written or oral, formal or informal with respect thereto.

5.11 Assignment. No Party shall assign this Rec Center IGA or any interest hereunder in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment attempted without the prior written consent of the other Party hereto shall be deemed void ab initio and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment.

5.12 Notices. All notices required or permitted by this Rec Center IGA shall be in writing and shall be given by personal delivery or sent to the address of the Party set forth below by registered, certified or express mail, postage prepaid, return receipt requested, or by reputable overnight courier, prepaid, receipt acknowledged. Notices shall be deemed received on the earlier of the date of actual receipt or, in the case of notice by mail or overnight courier, the date of receipt marked on the acknowledgment of receipt. Rejection or refusal to accept or the inability to deliver because of change of address of which no notice was given shall be deemed to be received as of the date such notice was deposited in the mail or delivered to the courier.

To the District:

Wheatlands Metropolitan District  
c/o White Bear Ankele Tanaka & Waldron, PC  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122

With a copy to:

Wheatlands Metropolitan District  
c/o Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, Colorado 80202

To the Authority:

Wheatlands Park and Recreation Authority  
c/o White Bear Ankele Tanaka & Waldron, PC  
2154 East Commons Avenue, Suite 2000  
Centennial, Colorado 80122

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

5.13 Counterpart Execution. This Rec Center IGA may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Rec Center IGA and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

5.14 Governmental Immunity. Nothing in this Rec Center IGA shall be construed as a waiver of the rights and privileges of the Parties pursuant to the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as the same may be amended from time to time.

5.15 No Personal Liability. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Rec Center IGA, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Rec Center IGA.

## ARTICLE VI INSTITUTIONAL LENDER PROTECTIONS

6.1 Generally. The District acknowledges that the Authority may grant a lien, security interest, or pledge its interests in the Land and some or all of the improvements, personal property,



and rights related to the Land and its use and operations to one or more commercial lender or third party lender (collectively, each called an “**Institutional Lender**”). These grants and/or pledges and/or assignments may include a deed of trust or mortgage and a security interest in the Authority’s rights to payments under this Rec Center IGA. Further, as part of the obligations of the Authority as borrower under the documents (collectively, the “**Applicable Loan Documents**”) that evidence, secure, and/or guaranty any loan to the Authority related to the Land (called, as applicable, a “**Wheatlands Authority Loan**”), the Authority may be required to direct that the payments of the Membership Payment and/or Reserve Fund Payment be made to a custodian bank or escrow agent (“**Custodian**”) for use and application as established in the Applicable Loan Documents.

6.2 Specific Lender Requirements. The Authority and the District acknowledge and agree that the exercise of certain of the Authority’s rights, duties and obligations under this Agreement may be constrained, obligated or otherwise influenced by certain provisions of the Applicable Loan Documents. The Authority agrees that it will in good faith adhere to any applicable provisions of the Applicable Loan Documents in exercising any of its rights, duties or obligations under this Agreement.

6.3 Notice of Default and Cure Rights. Prior to the District exercising any remedy under this Rec Center IGA, the District also will provide to each applicable Institutional Lender a notice (called a “**Lender Cure Notice**”) of any claimed default by the Authority. Each applicable Institutional Lender will have until the later of the notice and cure period described in Section 4.2 above (called the “**IGA Cure Period**”) or 60 days after the delivery of the Lender Cure Notice (called an “**Alternate Cure Period**”) within which to cure the default by the Authority or to commence a judicial foreclosure, trustee’s sale, or forfeiture action (“**Enforcement Action**”) under the Applicable Loan Documents. So long as all District residents residing in the Member Residences continue to be entitled to access and obtain general memberships to the Recreation Center consistent with the provisions of this Agreement during the pendency of any Enforcement Action, the District will continue to make the Membership Payments and Reserve Fund Payment to the applicable Institutional Lenders or any applicable receiver.

6.4 Right of Reentry. Notwithstanding anything to the contrary in Article IV above, any exercise of the right of reentry by the District will be subject to the liens and security interests established under the Applicable Loan Documents by all Institutional Lenders, and the rights of the Institutional Lenders to commence an Enforcement Action.

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**SIGNATURES BEGIN ON THE FOLLOWING PAGE.]**

IN WITNESS WHEREOF, the Parties hereto have duly executed this Rec Center IGA as of the day and year first above written.

DISTRICT:

WHEATLANDS METROPOLITAN DISTRICT

By: Kathy Barela

Name: Kathy Barela

Its: Vice President

State of Colorado )  
 ) ss.  
County of Arapahoe )

The foregoing was acknowledged before me this 5 day of February, 2019, by Kathy Barela as Vice President of Wheatlands Metropolitan District.

Witness my hand and official seal.

My commission expires: 06/29/2019

(S E A L)

R. Baker  
Notary Public



