

**LORETTO HEIGHTS COMMUNITY AUTHORITY  
ESTABLISHMENT AGREEMENT**

**BY AND BETWEEN**

**LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1  
LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 2  
LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 3  
AND  
LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 4**

**DATED AND EFFECTIVE:**

May 19, 2021

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**LORETTO HEIGHTS COMMUNITY AUTHORITY  
ESTABLISHMENT AGREEMENT**

THIS **LORETTO HEIGHTS COMMUNITY AUTHORITY ESTABLISHMENT AGREEMENT** (“**Establishment Agreement**”) is made and entered into this 19<sup>th</sup> day of May, 2021 by and between the **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1** (“**District No. 1**”), **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 2** (“**District No. 2**”), **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 3** (“**District No. 3**”), and **LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 4** (“**District No. 4**”), (collectively, the “**Districts**”), all being quasi-municipal corporations and political subdivisions of the State of Colorado.

**RECITALS**

A. The Districts were organized pursuant to Service Plans, defined below, approved by the City Council of the City and County of Denver, Colorado (the “**City**”).

B. Pursuant to the Colorado Constitution, Article XIV, Sections 18(2)(a) and (b), and Section 29-1-203, C.R.S., metropolitan districts may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt.

C. Pursuant to Section 29-1-203.5, C.R.S., metropolitan districts may contract with one another to establish a separate legal entity as a political subdivision and public corporation of the State of Colorado for the joint exercise of any function, service or facility lawfully authorized to each.

D. The Districts exist for the purpose of designing, acquiring, constructing, installing, financing, operating, and maintaining certain water, sanitation (including storm drainage), street, park and recreation, transportation, television relay and translation, and mosquito control and other facilities and services, all in accordance with the Service Plans (the “**Public Improvements**”).

E. The Service Plans contemplate the Districts would enter into one or more intergovernmental agreements to specify rights and responsibilities concerning the financing, acquisition, construction, operation and maintenance of the Public improvements within the Districts.

F. At elections of the qualified electors of each of the Districts, in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at such elections, voted in favor of the Districts entering into intergovernmental agreements. To the extent that this Establishment Agreement, as an intergovernmental agreement, constitutes a Multiple-Fiscal Year Financial Obligation of one or more of the Districts, the same has received voter approval in such elections.

G. The Service Plans describe certain Public Improvements to be financed in accordance with general plans of finance described or permitted in the Service Plans, from either: (i) revenues received from the imposition of mill levies, other than the Regional Mill

Levies, within the Districts; (ii) revenue received from Fees collected by the Districts; (iii) PILOT Revenue (as defined herein); (iv) PIF Revenue (as defined herein); or (v) the proceeds of Bonds and other available revenues (including Developer Advances).

H. The Districts agree that the Public Improvements are needed by the Districts and that such Public Improvements will benefit the residents and property owners in the Districts in terms of cost, quality, and level of service.

I. The Districts agree the coordinated construction, financing, completion and availability of the Public Improvements in a timely fashion within the Districts' Service Area will promote the health, safety, prosperity, security, and general welfare of the residents and current and future property owners within the Districts, and will benefit the residents and property owners in the Districts.

J. The Districts desire to establish the Loretto Heights Community Authority (the "**Authority**"), which shall finance, plan, design, engineer, test, construct, operate, and maintain the Public Improvements and shall provide services authorized by the Service Plans, and to which each District shall transfer certain revenues received by such respective Districts in order to fund the Actual Administrative Costs (as defined in this Establishment Agreement).

K. The Districts intend by entering into this Establishment Agreement that the Authority hereby created be a political subdivision for federal income tax purposes as well as for state law purposes, with the duties and immunities set forth in part 1 of Article 10, Title 24, C.R.S., as amended.

L. Each District has agreed that the Authority finance and provide for the construction of the Public Improvements throughout the Districts' Service Area for the benefit of the Districts, and that each of the Districts will contribute to the costs of construction of such Public Improvements from such respective District's taxes and fees.

M. It is the purpose of this Establishment Agreement to bind the Districts concerning capital expenditures so that the cost of providing facilities and services to the approximately 70-acre development known as Loretto Heights, located in the City and County of Denver, State of Colorado (the "**Development**"), will be shared by the property owners, taxpayers, and fee payers in the Districts' Service Area under the numerous circumstances which could occur in the future.

N. It is the intent of the Districts that all Bonds (as defined herein) shall be issued by the Authority, from time to time, for the financing of the Public Improvements as set forth herein.

O. It is the intent of the Districts that the Authority shall enter into contracts to plan, design, construct, and acquire the Public Improvements or to cause such things to occur.

P. The amount of any Bonds issued by the Authority will be based upon estimates of the capital costs of construction of portions of the Public Improvements as they are and will be needed to complete the Development, plus reserve funds, capitalized interest, legal fees, and any other costs associated with the financing or refinancing of the Bonds.

Q. The Districts agree that the provision of services by the Authority will be financed, primarily, by mill levies, PIF Revenue, PILOT Revenue, and/or Fees imposed by each of the Districts for such purposes.

R. The Districts desire to set forth their agreement regarding the implementation of guidelines and objectives set forth in the Service Plans for the financing and construction of the Public Improvements and services described in the Service Plans.

S. The Service Plans contemplate that District No. 1 would be organized to finance, construct, own, manage, and operate the Public Improvements (the “**Management District**”). It further anticipated that District No. 2, District No. 3, and District No. 4 would be organized in order to generate revenue to pay costs of the Public Improvements (the “**Taxing Districts**”).

T. As contemplated in the Service Plans, the Districts entered into a Memorandum of Understanding dated March 27, 2020 (the “**MOU**”), pursuant to which District No. 1 agreed to provide for the construction, administration, and operation and maintenance of certain Public Improvements for the benefit of the Districts.

U. Concurrent herewith, the Districts, along with Loretto Heights Metropolitan District No. 5 and Loretto Height Programming Metropolitan District anticipate entering into an Operations Intergovernmental Agreement (“**Operations IGA**”), which will further specify the rights and responsibilities of the Management District and the Taxing Districts with regards to the ownership and operation of the Public Improvements and provision of administrative services for the Districts.

V. Further, it is the intention of the Districts that, from and after the date of this Establishment Agreement, the Management District shall coordinate the financing, planning, design and construction of the Public Improvements. Accordingly, the Districts agree that the Authority shall enter into one or more agreements with the Management District pursuant to which the Management District will coordinate the financing, planning, design and construction of certain of the Public Improvements and that nothing in this Establishment Agreement is intended to limit the authority of the Management District or the Authority to enter into such agreements.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants in this Establishment Agreement, the Districts agree as follows:

## **ARTICLE I GENERAL PROVISIONS**

1.1 Interpretation. This Establishment Agreement shall be subject to the following rules of interpretation:

(a) The terms “herein”, hereunder”, “hereby”, “hereto”, “hereof”, and any similar terms, refer to this Establishment Agreement as a whole, including all exhibits, addendums, and amendments, and not to any particular article, section, or subdivision of this Establishment Agreement unless otherwise specifically stated to the contrary.



(b) All definitions and terms shall include both the singular and the plural, and all capitalized words or terms shall have the definitions set forth in the Recitals and Section 2.1.

(c) The captions or headings of this Establishment Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision, article, or section of this Establishment Agreement.

(d) The term “and” can mean “or” and the term “or” can mean “and” in any provision, article, or section of this Establishment Agreement.

1.2 Effective Date and Term. This Establishment Agreement shall be effective as of the Effective Date and shall continue to be in full force and effect unless each District agrees to terminate this Establishment Agreement; provided, however, that no District shall be permitted to terminate this Establishment Agreement if there is outstanding Debt. Prior to termination of this Establishment Agreement, another governmental entity must assume the Public Improvements owned, and the services performed, by the Authority.

1.3 Purpose and Scope of Establishment Agreement. This Establishment Agreement shall be governed, in general, by the following provisions in this Section 1.3. The Districts agree that the statements of intention set forth in this Section 1.3 are essential to the proper interpretation of this Establishment Agreement and are intended to clarify the general intent of specific provisions contained in this Establishment Agreement. This Establishment Agreement will enhance the ability of the Districts, through the Authority, to effectively coordinate the provision of, and financing of, the Public Improvements and services set forth in the Service Plans, and will further facilitate the build-out of the Development in accordance with the City’s land use regulations and development standards. The following statements are illustrative of the Districts’ intentions and while they are to be used to construe and govern this Establishment Agreement, the statements are not intended to constitute an inclusive statement of the intentions of the Districts. Reference shall also be made to the Service Plans for the purpose of construing this Establishment Agreement.

(a) The Service Plans describe the individual Districts and contemplate that the Districts will provide services and Public Improvements to serve the Development. The ability of the Districts to effectively coordinate the provision of and financing of the Public Improvements and services set forth in the Service Plans will serve to effectuate the development of the Development in accordance with the City’s land use regulations and development standards.

(b) The Districts intend to cooperate with one another and with the Authority to effectuate the financing of the Public Improvements and services in a manner that is allocated among the Districts and the residents and taxpayers of the Districts.

(c) The Districts shall be responsible for the Multiple-Fiscal Year Financial Obligation as set forth in this Establishment Agreement to fund the Actual Administrative Costs and Actual Capital Costs.

(d) The Districts acknowledge and agree that only the Districts, the Authority, and to the extent provided herein, the Developer, have the right to enforce this Establishment

Agreement. It is expressly declared by the Districts that no other person or entity shall be construed as a third-party beneficiary of this Establishment Agreement.

1.4 Addition of Members. Any metropolitan district organized pursuant to the Act may request to become a member of the Authority upon its organization. The addition of any additional district(s) to the Authority shall be subject to the unanimous agreement of the Authority Board and the requesting district's board of directors, and the requesting district's execution of this Establishment Agreement, and the prior delivery of a written opinion of nationally recognized municipal bond counsel that such addition will not adversely impact the Authority's compliance with the terms of any existing or anticipated financing documents.

1.5 Inactive Status and Return to Active Status. The Districts acknowledge that one or more of the Districts may elect to become inactive pursuant to the Act, and may determine to remain inactive, in any one or more of the years this Establishment Agreement is in effect.

1.6 Incorporation of Recitals. The Recitals set forth above are incorporated into the body of this Agreement by this reference.

## ARTICLE II DEFINITIONS

2.1 Definitions. As used in this Establishment Agreement, unless the context indicates otherwise, the words and terms defined below and capitalized throughout the text of this Establishment Agreement shall have the meanings set forth below.

(a) **“Act”** shall mean Title 32, Article 1, C.R.S., as the same may be amended from time to time.

(b) **“Actual Administrative Costs”** shall mean the costs incurred by the Authority for the purpose of providing Administrative Services and shall include the reimbursement to the Developer of the Developer Operating Advances.

(c) **“Actual Capital Costs”** shall mean those costs which are to be incurred by the Authority for the purpose of planning, designing, constructing, financing, and acquiring the Public Improvements, including, but not limited to, the following:

(i) All costs of labor and materials attributable to the actual construction or acquisition of the Public Improvements from Third-Persons and all related components and materials used therein, and all other costs or fees due or paid under cost recovery or other agreements with Third-Persons, together with all costs incurred to obtain financing for the Public Improvements;

(ii) All costs attributable to the construction or acquisition of the Public Improvements or any part or component thereof incurred as a result of change orders approved in accordance with any construction contract;

(iii) All costs incurred for planning, design, engineering, construction, management, landscape architecture and engineering, soil testing and inspection,

and line and systems testing and inspection attributable to the Public Improvements, including legal fees; including legal fees;

(iv) Site, permit, and right-of-way or easement acquisition costs,

(v) All bond costs, including the principal and redemption price of, and interest and premium on, any Bonds, including any scheduled mandatory or cumulative sinking fund payments and any mandatory redemption or principal prepayment amounts as provided in the bond documents and accumulation or replenishment of any reserves or surplus funds relating to the Debt, customary fees related to the issuance of the Debt (including, but not limited to, fees of a trustee, paying agent, rebate agent, and provider of liquidity or credit facility), remarketing the debt, and any reimbursement due to a provider of liquidity or credit facility securing any Debt;

(vi) All legal, bond issuance, credit enhancement, accounting, interest costs, and reserve funds incurred in connection with the financing, construction, or acquisition of the Public Improvements;

(vii) All costs for Bonds, insurance, construction administration, financial, inspections, appraisals, and other professional fees;

(viii) Any other capital costs, expenses, or expenditures associated with the financing, construction, or acquisition of the Public Improvements; and

(ix) Reimbursement to the Developer for Developer Capital Advances to fund items in Section 2.1(b)(i)-(viii) above.

(d) “**Administrative Services**” shall mean those costs incurred in the administration of the Authority, including, but not limited to, the cost of assuring compliance with this Establishment Agreement and all applicable statutory and regulatory provisions; the costs of administering the Funding Account, generally including, without limitation, costs of management, legal, accounting and other professional services, insurance, bonds, and other governmental approvals.

(e) “**Alternate Board Member**” shall mean an alternate Authority Board Member, appointed from among a District’s Board of Directors and authorized to serve on the Board in the event the District’s regular Authority Board Member does not attend a meeting or is no longer qualified to serve. Each District appointing more than one Alternate Board Member shall establish an order according to which each shall be authorized to serve on the Authority Board.

(f) “**Amended Final Budget**” shall have the meaning set forth in Section 8.2 of this Establishment Agreement.

(g) “**Authority**” shall mean the Loretto Heights Community Authority, established pursuant to this Establishment Agreement.

(h) “**Authority Board**” shall mean the Board of Directors of the Authority.

(i) “**Authority Manager**” shall mean a professional manager or management company, hired by the Authority Board who is experienced and knowledgeable in the management of authorities or local governments.

(j) “**Board Meeting**” shall mean a regular or special meeting of the Board Members convened pursuant to Section 3.4(d) herein.

(k) “**Board Member**” shall mean a director of the Authority Board of Directors.

(l) “**Bonds**” shall mean bonds or other obligations for the payment of which the Authority has promised to impose an *ad valorem* property tax mill levy or collect Fee revenue.

(m) “**Budget Year**” shall mean the year during which the Actual Administrative Costs and Actual Capital Costs are to be incurred.

(n) “**Bylaws**” shall mean any bylaws adopted by the Authority Board, as the same may be amended from time to time. In the absence of any bylaw(s) adopted by the Authority Board or addressing a particular circumstance or interpretation of bylaws adopted by the Authority Board, the Authority Board and any committees established by the Authority Board shall refer to *Robert’s Rules of Order*.

(o) “**City**” shall mean the City and County of Denver, Colorado.

(p) “**Construction**” shall include, but not be limited to, construction, expansion, acquisition, capital maintenance, repair, and replacement of the Public Improvements.

(q) “**Construction Schedule**” shall mean the schedule showing the Public Improvements planned for Construction to commence during the Budget Year.

(r) “**C.R.S.**” shall mean the Colorado Revised Statutes as such statutes are amended from time to time. In the event of a repeal of a statute cited herein, the procedure contained in the statute immediately prior to repeal shall apply; provided, however, that if such repealed statute is replaced by another statute, then the new statute shall apply.

(s) “**Debt**” shall mean any Bonds, notes, agreements, instruments, or other obligations issued or incurred by the Authority, and payable from *ad valorem* property taxes of the Districts, and other District revenues, including, but not limited to, Fees, rates, tolls, and charges or any other multiple fiscal year financial obligation whatsoever for payment of which any of the Districts has promised to impose an *ad valorem* property tax mill.

(t) “**Declaration(s)**” shall mean a Declaration of Covenants recorded against property within the boundaries and/or Service Area of the Districts naming the Authority and/or Districts as an enforcing entity, and any associated design guidelines.

(u) “**Developer**” shall mean ACM Loretto VI LLC, a Delaware limited liability company, or its designated successors and permitted assigns.

(v) “**Developer Advances**” shall mean, collectively, the Developer Capital Advances and the Developer Operating Advances.

(w) “**Developer Capital Advances**” shall mean funds advanced by the Developer for payment of Actual Capital Costs, including the amounts previously advanced by the Developer for this purpose.

(x) “**Developer Operating Advances**” shall mean funds advanced by the Developer for payment of Actual Administrative Costs including the amounts previously advanced by the Developer for this purpose.

(y) “**Development**” shall have the same meaning set forth in Recital L of this Establishment Agreement.

(z) “**District Administrative Costs**” shall mean the costs incurred by the Districts directly related to administrative functions of each applicable District, including, but not limited to, costs related to accounting, audit, insurance, management, and legal, and those costs which are incurred by each applicable District related to administrative functions, plus costs for the audit and insurance.

(aa) “**District Board**” or “**District Boards**” shall mean the lawfully organized Board or Boards of Directors of the District(s), as applicable.

(bb) “**Districts**” shall mean all districts formed and operating pursuant to Title 32, C.R.S., which agree to the terms and conditions set forth in this Establishment Agreement, and which are unanimously accepted as members of the Authority, including, initially: (i) District No. 1, (ii) District No. 2, (iii) District No. 3, and (iv) District No. 4.

(cc) “**D.R.M.C.**” shall have the meaning set forth in Section 14.2(a) of this Establishment Agreement.

(dd) “**Establishment Agreement**” shall mean this Loretto Heights Community Authority Establishment Agreement and any exhibits, addendums, and amendments hereto made in accordance herewith.

(ee) “**Effective Date**” shall mean May 19, 2021.

(ff) “**Event of Default**” shall mean any one or more of the events or the existence of one or more of the conditions set forth in Section 12.1 hereof.

(gg) “**Expanded Notice**” shall mean, in addition to notice being posted as required by the Act, notification being provided by one of the following methods: (a) publication in a newspaper circulated within the City; or (b) email or comparable then-current technology to all property owners. To constitute an Expanded Notice, publication must be made by one of the foregoing methods no less than thirty (30) days prior to the date of the meeting at which consideration of a final decision on the matter will be considered and not more than sixty (60) days before the date of such meeting. Such Expanded Notice shall include the address of the

Authority's office where the names and addresses of the Authority Members and its officers and the address, telephone number, fax number and email address of the Authority may be obtained.

(hh) **"Fee"** shall mean, collectively: (i) any type of charge by a District or the Authority to any portion of the Service Area within the Authority for any services, or facilities provided through the Authority; or (ii) any other community-wide services or facilities provided through the Authority.

(ii) **"Final Budget"** shall mean the final budget in any year, and as may be amended within the fiscal year, as established and approved by the Authority Board following public hearings for the payment of projected Actual Administrative Costs and Actual Capital Costs.

(jj) **"Funding Account"** shall mean the account owned, established, and managed by the Authority Board.

(kk) **"Management District"** shall have the meaning set forth in Recital R of this Establishment Agreement.

(ll) **"MOU"** shall have the same meaning set forth in Recital T of this Establishment Agreement.

(mm) **"Multiple-Fiscal Year Financial Obligation"** shall mean the obligation of the Districts evidenced hereunder, whereby the Districts covenant to pay their respective shares of the Actual Administrative Costs and their respective share of the Actual Capital Costs.

(nn) **"Operations IGA"** shall have the meaning as set forth in Recital U of this Establishment Agreement.

(oo) **"PIF Revenue"** shall mean any revenue derived from (i) the Declaration of Covenants Imposing and Implementing the ACM Loretto VI, LLC Lodging Add On Public Improvement Fee, as recorded with the Clerk and Recorder for the City and County of Denver on October 2, 2020, as the same may be amended from time to time; (ii) the Declaration of Covenants Imposing and Implementing the ACM Loretto VI, LLC Sales Add On Public Improvement Fee, as recorded with the Clerk and Recorder for the City and County of Denver on October 2, 2020, as the same may be amended from time to time; or (iii) any additional Declaration imposing a public improvement fee pledged to the District(s) and/or Authority.

(pp) **"PILOT Revenue"** shall mean any revenue received from (i) the Declaration of Payment in Lieu of Taxes entered into between ACM Loretto VI, LLC and District No. 1, as recorded with the Clerk and Recorder for the City and County of Denver on October 2, 2020, as the same may be amended from time to time; (ii) any other covenant recorded against the property, or a portion of the property, within the Development, requiring a payment in lieu of taxes if such property is not subject to *ad valorem* property taxation, as the same may be amended from time to time; or (iii) any additional Declaration imposing a payment in lieu of taxes pledged to the District(s) and/or Authority.

(qq) “**Plans**” shall mean the plans, documents, drawings, and other specifications prepared by or for the Authority or the Management District for the Construction of any Public Improvements.

(rr) “**Present**” or “**Present at the Meeting**” shall mean either being physically present at a Board Meeting or attending a Board Meeting via phone or some other electronic device.

(ss) “**Public Improvements**” shall mean those improvements and facilities to be financed and constructed as authorized under the Service Plans necessary for the completion of the Development.

(tt) “**Regional Improvements**” shall mean any regional public improvements identified by the City for funding, in whole or in part, by a Regional Mill Levy levied by the Districts.

(uu) “**Regional Mill Levy(ies)**” shall mean an *ad valorem* property tax levied upon taxable real and personal property for planning, design, acquisition, funding, construction, installation, relocation and/or redevelopment of Regional Improvements and/or to fund the administration and overhead costs related to the provision Regional Improvements.

(vv) “**Service Area**” shall mean Service Area as defined in Section 3.2.

(ww) “**Service Plans**” shall mean the Service Plans, as amended or restated from time to time, for each District, which were approved or will be approved by the appropriate jurisdiction and which include, initially, the following:

(i) The Service Plan for the Loretto Heights Metropolitan District No. 1 approved by the City on August 26, 2019.

(ii) The Service Plan for the Loretto Heights Metropolitan District No. 2 approved by the City on August 26, 2019.

(iii) The Service Plan for the Loretto Heights Metropolitan District No. 3 approved by the City on August 26, 2019.

(iv) The Service Plan for the Loretto Heights Metropolitan District No. 4. Approved by the City on August 26, 2019.

(xx) “**Specific Ownership Tax Revenues**” shall mean the specific ownership taxes remitted to the Districts pursuant to Section 42-3-107, C.R.S., or any successor statute, as a result of its imposition of their respective mill levies.

(yy) “**Taxing Districts**” shall have the meaning set forth in Recital R of this Establishment Agreement.

(zz) “**Third-Persons**” shall mean any individual, corporation, joint venture, estate, limited liability company, trust, partnership, association, or other legal entity, including governmental entities other than the Districts, the Developer, or the Authority.

### **ARTICLE III ESTABLISHMENT OF AUTHORITY**

3.1 Establishment of Authority. The Authority is organized as a separate legal entity to be a political subdivision and public corporation of the State of Colorado pursuant to the power of Article XIV of the Colorado Constitution and in conformity with the provisions of Sections 29-1- 203 and 203.5, C.R.S.

3.2 Service Area. The Service Area of the Authority shall consist of the combined service areas of the Districts, as the same may change from time to time.

3.3 Purpose. The purpose of the Authority is to effectuate the development of the Public Improvements for the benefit of the Districts, the residents, and property owners. By the establishment of the Authority, the Districts will be able to achieve efficiencies in coordinating the designing, planning, construction, acquisition and financing.

3.4 Governing. The Authority shall be governed and directed by the Authority Board, according to the following:

(a) Appointment of Board Members by Districts. Each District may appoint one (1) Board Member to the Authority Board.

(i) Eligibility to Serve as a Board Member. To be eligible to be appointed as a Board Member the candidate must be currently serving on the District Board that it is being appointed to represent.

(1) To the extent reasonably possible, each District agrees to the appointment of a resident of the District, rather than a representative of the Developer, as its delegate to the Authority Board.

(ii) Alternate Board Members. Each District may appoint from among its Board of Directors one or more Alternate Board Members to serve as an Alternate Board Member in the event such District’s appointed Board Member does not attend an Authority meeting or is no longer qualified to serve.

(1) Each District shall provide the Authority Board with written documentation evidencing the appointment of its appointed Board Member and any designated Alternate Board Members, and the order in which each Alternate Board Member is authorized to serve as Alternate Board Member in the event of absence of the appointed Board Member.

(iii) Vacancies. In the event of a vacancy on the Authority Board, whether by expiration of term, resignation, by virtue of the fact that the Board Member is no longer qualified to serve on the applicable District Board, or for any other reason, the applicable District shall appoint a successor Board Member within thirty (30) days of such vacancy.



(iv) Vacancy Notice. The Authority shall comply with all statutory requirements providing notice of special district regular and special elections, including, but not limited to, Part 6, Article 1, Title 32, C.R.S., and Articles 1 to 13.5 of Title 1, C.R.S. Notwithstanding the foregoing, beginning three (3) years from the Effective Date, the Authority shall provide supplementary written notice to all addresses within any District for any election at which one or more seats on the District's Board of Directors is subject to election twice, not more than one (1) year prior nor less than six (6) months prior to such election.

(v) Contact Notice. Each District shall provide the Authority Board with written notice of the appointment and the name and contact information for each Board Member and Alternate Board Members appointed.

(b) Term. Each Board Member's term on the Authority Board shall be coincident with their term on the District Board from which they have been appointed. There shall be no limit on the number of terms a Board Member may serve on the Authority Board.

(c) Compensation. Board Members may receive compensation from the Authority for their service as a Board Member in a manner similar to directors of special districts under the Act. The Authority Board shall adopt a resolution implementing this provision before any compensation is paid to any Board Member.

(d) Meetings.

(i) Regular meetings of the Authority Board shall be held at such place, on such date, and at such time as the Authority Board shall, by resolution or motion, establish from time to time, and in accordance with the requirements for special districts under the Act.

(ii) At least two (2) meetings of the Authority Board shall be held annually.

(iii) Special meetings of the Authority Board may be held at such place, on such day, and at such hour as the Authority Board may determine.

(iv) Notices of all meetings shall be the same as meetings for special districts under the Act, except for those matters requiring Expanded Notice as more fully set forth in this Establishment Agreement.

(v) Action of the Authority Board shall be taken at a duly noticed regular or special meeting; provided, however, that after the closing on the first sale of a residential unit by a homebuilder to an end user, the following items shall require approval of the Authority Board after provision of Expanded Notice and discussion at a minimum of two (2) public meetings prior to approval (approval may be at the second meeting, except for any bona-fide emergency action):

- (1) Adoption of the Final Budget; and
- (2) Issuance of Bonds.

3.5 Quorum. A Quorum is established by a majority of the Board Members being Present. If less than a majority of the Board Members then in office is Present at a Meeting, a majority of the Board Members Present shall constitute a quorum for the Meeting. If no Board Members are Present, the Secretary or other officer may continue the Meeting to a different time and place, and in such case the Secretary shall notify absent Board Members of the time and place of such continued Meeting.

(a) Voting Process.

(i) Each serving Board Member or Alternate Board Member shall have one (1) vote; provided however, if the same person is appointed by multiple Districts to serve as Board Member or Alternate Board Member, that person shall have the number of votes corresponding to the number of Districts that the Board Member is representing.

(ii) Each serving Board Member shall vote according to the policy established by the District the Board Member is representing.

(iii) Voting by proxy is prohibited.

(iv) In the event a vacancy is not filled as described herein, that Board Member's vote, which was caused by such vacancy, shall be waived on any matter coming before the Authority Board and the related voting requirement, if any, shall be reduced, until such time as the vacancy is filled.

(v) The Authority intends to transition control of the Authority Board to residents of the Districts. To that end, if residential representation on the Authority Board does not constitute at least a simple majority within five (5) years of the Effective Date, District No. 2 and District No. 3 will have their votes weighted such that District No. 2 and District No. 3 will each have two (2) votes and District No. 1 and District No. 4 will each have one (1) vote, until such time as residential representation on the Authority Board constitutes at least a simple majority.

(b) Public Improvement Fees; Payments in Lieu of Taxes. Any PILOT Revenue and PIF Revenue pledged by the Taxing Districts and/or District No. 1 to the Authority pursuant to a pledge agreement or pledge agreements shall be collected by the Authority and applied as set forth under such pledge agreements to the repayment of the obligations secured under the pledge agreements.

(c) Conflict Disclosures. All Board Members shall disclose conflicts of interest as required of officers or board members of special districts in accordance with Colorado law, as the same may be amended from time to time.

(d) Oath. Each Board Member shall take an oath of office substantially as required of directors of special districts under the Act.

(e) Officers. The officers of the Authority shall be a President, Vice-President, Secretary, Treasurer, and Assistant Secretary (individually, an "**Officer**"), and

collectively, the “**Officers**”). In addition to the duties designated by the Authority Board, the duties of the Officers shall include:

(i) The President shall preside at all meetings of the Authority Board and, except as otherwise delegated by the Authority Board or provided in this Establishment Agreement, shall execute all legal instruments of the Authority.

(ii) The Vice-President shall, in the absence of the President, or in the event of the President’s conflict or inability or refusal to act, perform the duties of the President and shall have all the powers of and be subject to all restrictions upon the President.

(iii) The Secretary shall maintain the official records of the Authority, including the minutes of meetings of the Authority Board, and a register of the names and addresses of the Districts, Board Members, Alternate Board Members, 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 Authority Board may prescribe from time to time. The Secretary may be a non-Authority Board Member.

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

3.6 Powers. In general, the Authority shall have the power to exercise all powers which are now or may in the future be conferred by law upon a political subdivision and public corporation organized pursuant to Sections 29-1-203 and 29-1-203.5, C.R.S., or essential to the provision of its functions, services, and facilities, subject to such limitations as are or may be prescribed by law or in this Establishment Agreement. In accordance with Subsection 29-1-203.5(2)(a), C.R.S., the Authority is expressly authorized to exercise any general power of a special district specified in Part 10 of Article 1, Title 32, C.R.S., so long as each of the Districts may lawfully exercise the power; provided, however, that pursuant to Subsection 29-1-203.5(2)(b), C.R.S., the Authority may not levy a tax or exercise a power of eminent domain. The Authority is further authorized to exercise the powers established in Subsection 29-1-203.5(3), C.R.S. To the extent permitted by law and subject to the limitations set forth in this Establishment Agreement, the powers and duties of the Authority Board, which shall be exercised by approval of a majority of the present and voting Board Members, unless otherwise specified in this Establishment Agreement, include, without limitation, the following:

(a) To establish such Bylaws, rules, regulations, procedures, and policies as may be reasonably necessary for the administration of the Authority and access to and use of the Public Improvements.

(b) To provide for and plan, design, acquire, construct, install, relocate and/or redevelop, and finance the Public Improvements according to the procedures set forth in this Establishment Agreement.

(c) To cooperate with other governmental entities with respect to the Public Improvements.

(d) To provide for and plan, design, construct, install, relocate and/or redevelop, and finance the Regional Improvements according to the Service Plans.

(e) To collect from the Districts and administer revenues for all such purposes in this Establishment Agreement, subject to the terms of this Establishment Agreement and limitations of law.

(f) To determine the Final Budget for the Public Improvements and the debt mill levy required to be imposed by each District.

(g) To determine the Actual Capital Costs and Final Budget for the Public Improvements and the anticipated revenues generated from the Districts pursuant to the pledge set forth below.

(h) To undertake covenant enforcement and design review services within the applicable District pursuant to a Declaration, provided, however, that any and all revenues to provide such services must be derived from within the boundaries of the applicable District in which the services are finished.

(i) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of (subject to the limitations set forth in this Establishment Agreement) any legal or equitable interest in real or personal property utilized for the authorized purposes of the Authority.

(j) To conduct the business and affairs of the Authority in the best interests of, and for the benefit of, the Districts and their inhabitants.

(k) To enter into, make, and perform contracts of every kind with the Districts, including the agreements attached to this Establishment Agreement, the United States, any state or political subdivision thereof, or any county, city, town, municipality, city and county, any special district formed pursuant to Title 32, C.R.S., or any predecessor thereof, authority, or any person or individual, firm, association, partnership, corporation, or any other organization of any kind with the capacity to contract for any of the purposes contemplated under this Establishment Agreement.

(l) To set Fees, rates, tolls, and charges.

(m) To employ agents and employees, and engage accountants, attorneys, engineers, and other consultants and to appoint officers of the Authority.

(n) To sue and be sued in the name of the Authority.

(o) To have and use a corporate seal.

(p) To report to the Districts on the progress of plans for and development of the Public Improvements.

(q) To keep minutes of the Authority Board's meetings.

(r) To ensure compliance with all Colorado statutes that apply to the Authority, including the provisions of Parts 1 (Local Government Budget Law of Colorado), 5

(Local Government Uniform Accounting Law), and 6 (Local Government Audit Law) of Article 1, Title 29, C.R.S.

3.7 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 ADMINISTRATIVE SERVICES**

4.1 Administrative Services. The Authority shall perform the following administrative services:

- (a) Serving as the “official custodian” and repository for the Authority’s records, files space, incidental office supplies and photocopying, meeting, and reception services.
- (b) Coordination of all Board meetings, to include:
  - (i) Preparation and distribution of agenda and information packets;
  - (ii) Preparation and distribution of meeting minutes;
  - (iii) Attendance at Board meetings;
  - (iv) Preparation, filing, and posting of legal notices required in conjunction with the meeting; and
  - (v) Other details incidental to meeting preparation and follow-up.
- (c) Ongoing maintenance of an accessible, secure, organized, and complete filing system for the Authority’s official records.
- (d) Monthly preparation of checks and coordination of postings.
- (e) Periodic coordination for financial report preparation and review of financial reports.
- (f) Insurance administration, including evaluating risks, comparing coverage, processing claims, completing applications, monitoring expiration dates, processing routine written and telephone correspondence, etc. Ensure that all contractors and subcontractors maintain required coverage for the applicable Authority’s benefit.
- (g) Election administration, including preparation of election materials, publications, legal notices, pleadings, conducting training sessions for election judges and generally assisting in conducting elections.

- (h) Budget preparation, including preparation of proposed budgets, preparation of required and necessary publications, legal notices, resolutions, certifications, notifications, and correspondence associated with the adoption of the annual budget and certification of the tax levies.
- (i) Response to inquiries, questions, and requests for information from the applicable Authority's property and residents and others.
- (j) Analysis of financial condition and alternative financial approaches and supervision of contractors.
- (k) Oversee investment of each Authority's funds based on investment policies established by the Authority Board in accordance with State and federal law.
- (l) Provide liaison and coordination with other governments.
- (m) Coordinate activities and provide information as requested to external auditors engaged by the Authority Board.
- (n) Coordinate legal, accounting, engineering, and other professional services to the Authority.
- (o) Perform other services with respect to the operation and management of the Authority as directed by the Authority Board.

In addition to these services, when other services are, in the professional opinion of the Authority Board, necessary, the Authority may, with the approval of a District, provide professional services to such District in lieu of retaining consultants or contractors to provide those services.

## **ARTICLE V FINANCING OF PUBLIC IMPROVEMENTS**

5.1 Electoral Approval. Each of the Districts has authorized, through the affirmative vote of their respective voting electors, the issuance of debt, fiscal year spending, Multiple-Fiscal Year Financial Obligations, revenue collections, and other constitutional matters requiring voter approval for purposes of this Establishment Agreement, as well as the construction of the Public Improvements and Regional Improvements, in accordance with law and pursuant to due notice.

5.2 Bond Issuance, Debt, or Multiple-Fiscal Year Financial Obligation Incurrence. Each District shall use its best efforts to meet its funding obligations under this Establishment Agreement through the imposition of mill levies and the imposition and collection of Fees for payment on the Authority's Bonds. With regard to the financing of the Actual Capital Costs of the Public Improvements as determined by the Authority Board and required for the phasing and build-out of the Development, the Districts agree that the Authority shall issue Bonds on behalf of the Districts. Other than the pledge agreements entered into between the Districts and the Authority to support the repayment of the Bonds issued by the Authority and the Districts' obligation to collect and remit the Regional Mill Levy, the Districts shall not issue any Bonds or contractually commit to any multiple fiscal year obligations. The Districts acknowledge that, from time to time, the Developer will advance funds to the Authority to assure the Authority has

sufficient funds to meet the Authority's Actual Administrative Costs. The Authority shall be authorized to enter into service agreements and funding and reimbursement agreements with the Developer, on behalf of all the Districts, for repayment of such obligations in reliance on the Districts' pledge of revenues to the Authority as set forth in this Establishment Agreement.

5.3 Financial Obligations. The Authority shall have the authority to issue Bonds, notes, or other financial obligations payable solely from revenue derived from one or more of the functions, services, systems, or facilities of the Authority, from money received under contracts entered into by the Authority, or from other available money of the Authority. The terms, conditions, and details of Bonds, notes, or other financial obligations including related procedures and refunding conditions, must be set forth in the resolution of the Authority Board authorizing the Bonds, notes, or other financial obligations (pursuant to which resolution the Authority may elect to apply the terms of Title 11, Article 57, Part 2, C.R.S., as amended, to such Bonds, notes, or other financial obligations) and must, to the extent practical, be substantially the same as those provided in Part 4 of Article 35, Title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued are not limited to the financing of water or sewage facilities. Bonds, notes, or other financial obligations issued under this Section are not an indebtedness of the Authority or the cooperating or contracting parties within the meaning of any provision or limitation specified in the Colorado Constitution or statutes. Each Bond, note, or other financial obligation issued under this Section must recite in substance that it is payable solely from the revenues and other available funds of the Authority pledged for the payment thereof and that it is not a debt of the Authority or the cooperating or contracting parties within the meaning of any provision or limitation specified in the Colorado Constitution or statutes. Notwithstanding anything in this Section to the contrary, Bonds, notes, and other obligations may be issued to mature at such times not beyond forty (40) years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, at a public or private sale, all as determined by the Authority Board. Interest on any Bond, note, or other financial obligation issued under this Section is exempt from State of Colorado taxation except as otherwise may be provided by law. The resolution, trust indenture, or other security agreement under which Bonds, notes, or other financial obligations are issued is a contract with the holders thereof and may contain such provisions as the Authority Board determines to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in revenue, money, rights, or property of the Authority. The provisions of this Section shall apply to any Bonds issued by the Authority.

(a) The proceeds of any Bonds, the interest on which is intended to be excludable from gross income of the bondholders thereof for federal income tax purposes, shall be used solely to finance items that will not adversely affect the exclusion of such interest from such gross income.

(b) The Districts acknowledge that the Authority may enter into pledge agreements with one or more Districts, pursuant to which such District(s) will be obligated to impose *ad valorem* property taxes for the payment of obligations issued by the Authority to fund Actual Capital Costs of Public Improvements. Notwithstanding any other provision contained in this Establishment Agreement, for so long as there remains in effect between the Authority and any District such a pledge agreement, the provisions of such pledge agreement shall supersede

every financial obligation of such District under this Establishment Agreement with respect to the funding of Actual Costs of Public Improvements and the repayment of Developer advances to fund the cost of Administrative Services, any provisions of this Establishment Agreement purporting to require such District to impose *ad valorem* property taxes, collect Fees, or otherwise pay moneys to the Authority to fund Actual Capital Costs of Public Improvements shall be of no force and effect during the terms of such pledge agreement, and the application of any moneys to be imposed, collected, or received by the District under such pledge agreement for the purpose of funding Actual Capital Costs of Public Improvements shall be governed solely by the terms of such pledge agreement.

(c) The Districts acknowledge that the Authority may enter into pledge agreements with one or more Districts, pursuant to which such District(s) will be obligated to impose *ad valorem* property taxes for the payment of the cost of Administrative Services and to fund obligations issued by the Authority to reimburse Developer advances to fund the cost of Administrative Services. Notwithstanding any other provision contained in this Establishment Agreement, for so long as there remains in effect between the Authority and any District such a pledge agreement, the provisions of such pledge agreement shall supersede every financial obligation of such District under this Establishment Agreement with respect to the funding of Administrative Services and the repayment of Developer advances to fund the cost of Administrative Services any provisions of this Establishment Agreement purporting to require such District to impose *ad valorem* property taxes, collect Fees, or otherwise pay moneys to the Authority to fund Administrative Services shall be of no force and effect during the terms of such pledge agreement, and the application of any moneys to be imposed, collected, or received by the District under such pledge agreement for the purpose of funding the cost of Administrative Services shall be governed solely by the terms of such pledge agreement.

#### 5.4 Funding Account.

(a) Prior to or upon the execution of this Establishment Agreement, the Authority Board will establish the Funding Account.

(b) All revenue received by the Districts will be transferred on a monthly basis to the Authority for deposit in the Funding Account and application in accordance with the Final Budget for the Budget Year. Notwithstanding the foregoing, if any Bond document with respect to any outstanding obligations of any District requires revenue to be deposited directly with a bond trustee or other Third-Person, the applicable District(s) shall be entitled to make such payments, and the failure to deposit such funds into the Funding Account shall not be considered a default under this Establishment Agreement. The District(s) making such deposits shall provide the remaining Districts with appropriate supporting documentation evidencing that such deposits are being made in a timely manner.

(c) The Authority shall, pursuant to the Districts' respective Final Budgets, deposit the required portion of revenues from Fees, revenue Bond proceeds, and any other revenues received from other sources, including Developer Capital Advances, into the Funding Account.



(d) Each District acknowledges that the Authority may borrow funds for deposit into the Funding Account in reliance on each District's covenants to comply with the requirements of this Establishment Agreement.

5.5 Disbursement of Funds. The Authority Board shall have the sole authority to withdraw moneys from the Funding Account for use in the payment of Actual Capital Costs and Actual Administrative Costs as specified by the Final Budget for the Authority. Such funds, together with any interest thereon, shall be used only to pay Actual Capital Costs and Actual Administrative Costs incurred by the Authority. The Authority shall provide each District with an annual audit reflecting funds withdrawn and payments made from the Funding Account.

5.6 Interest on Bonds. The Districts covenant that they will not take any action or omit to take any action if such action or omission would cause the interest on any outstanding Bonds to lose any of the following applicable exclusion(s):

(a) exclusion from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "**Tax Code**");

(b) exclusion from alternative minimum taxable income as defined in Section 55(b)(2) of the Tax Code; or

(c) exclusion from Colorado taxable income or Colorado alternative minimum taxable income under present State law.

With respect to Bonds issued as federally tax exempt obligations, the Authority shall maintain such records regarding the investment of the proceeds of such Bonds to fulfill any rebate obligations pursuant to Section 148 of the Tax Code. The foregoing covenant shall remain in full force and effect, notwithstanding the payment in full or defeasance of such Bonds, until the date on which all obligations of the Authority in fulfilling the above covenant under the Tax Code and State law have been met or a written opinion of nationally recognized municipal bond counsel is delivered to the effect that failure to comply with the above covenant will not adversely impact the Authority's compliance with the terms of any existing or anticipated financing documents.

5.7 Pledge of Payment. The Districts acknowledge that the Authority Board will determine the Actual Capital Costs and the Actual Administrative Costs and will determine the mill levy that, if imposed by all Districts and together with project Fee revenue, would be sufficient to pay such Actual Capital Costs and Actual Administrative Costs. The Districts further agree to impose such mill levies as are determined by the Authority Board to be sufficient, together with projected Fee revenue, to pay Actual Capital Costs and Actual Administrative Costs. The financial obligations of the Districts to remit District revenues to the Authority to fund the Actual Capital Costs and Actual Administrative Costs under this Establishment Agreement shall be Multiple-Fiscal Year Financial Obligations of each District, payable from *ad valorem* property taxes generated as a result of the certification by each District of a debt service and operations mill levy and any revenue derived from other Fees, rates, tolls, or other charges of the Districts. The full faith and credit of each District, as limited by this Establishment Agreement, is hereby pledged to the punctual payment of the amounts to be paid

under this Establishment Agreement. Such amounts shall, to the extent necessary, be paid out of the general revenues of each District or out of any funds available for that purpose.

For the purpose of raising such general revenues, and for the purpose of providing the necessary funds to make payments under this Establishment Agreement as the same become due, the Board of each District shall annually determine, fix, and certify a rate of levy for *ad valorem* property taxes to the City, which when levied on all of the taxable property of such District, shall raise direct *ad valorem* property tax revenues which, when added to other funds of the District legally available therefore, will be sufficient to promptly and fully pay the amounts to be paid under this Establishment Agreement, as well as all other Multiple-Fiscal Year Financial Obligations or general obligation indebtedness of such District, as the same become due. Except as limited in this Establishment Agreement, each District covenants to levy such mills which are from time to time lawful, and as necessary, together with other moneys of the District, to pay the amounts to be paid under this Establishment Agreement, along with all other general obligation indebtedness or Multiple-Fiscal Year Financial Obligations of the District.

Notwithstanding anything to the contrary set forth in this Establishment Agreement, no District shall be obligated to impose a mill levy in excess of what is allowable under its Service Plan.

5.8 Effectuation of Pledge; Appropriation; Regulatory Amendment. Except as limited by this Establishment Agreement, the amounts to be paid under this Establishment Agreement are hereby appropriated for that purpose, and such amounts shall be included in the annual budgets and the appropriation resolutions or measures to be adopted or passed by the board of directors of each District in each year this Establishment Agreement remains in effect. The Authority Board shall direct the mill levy to be imposed each year by the Districts. No provisions of any constitution, statute, resolution, or other measure enacted after the execution of this Establishment Agreement shall in any manner be construed as limiting or impairing the obligations of a District to levy, administer, enforce, and collect the *ad valorem* property taxes and other revenues required for the payment of its obligations under this Establishment Agreement.

It shall be the duty of the Board of each District annually, at the time and in the manner provided by law for the levying of such District's taxes, to ratify and carry out the provisions of this Establishment Agreement regarding the levy and collection of the *ad valorem* property taxes specified under this Establishment Agreement, and to require the officers of the District to cause the appropriate officials of the City, to levy, extend, and collect such taxes in the manner provided by law.

5.9 Authority Reliance; Funding Obligations Pending Dispute Resolution. Each District agrees that its authority to modify this Establishment Agreement is limited to prohibit a repeal of the obligations set forth in this Establishment Agreement. The Districts each agree, notwithstanding any fact, circumstance, dispute, or any other matter, that they will not take or fail to take any action which would delay a payment to the Authority or impair the Authority's ability to receive payment due under this Establishment Agreement. Each District acknowledges that the Authority may issue revenue Bonds and the Authority may obtain financial commitments and security for its Bonds from Third-Persons, all of whom shall be relying on performance of the payment obligations of the Districts under this Establishment Agreement.

The purpose of this Section is to ensure that the Authority receives all payment due under this Establishment Agreement in a timely manner so that the Authority may pay Actual Capital Costs and Actual Administrative Costs. Notwithstanding that the bondholders are not in any manner Third-Person beneficiaries of this Establishment Agreement, and do not have any rights in or rights to enforce or consent to amendment of this Establishment Agreement, each District agrees that during the pendency of any litigation which may arise under this Establishment Agreement, all payments shall be made by such District for the purpose of enabling the Authority to make payments on its Bonds. If a District believes it has valid defenses, setoffs, counterclaims, or other claims, it shall make all payments to the Authority as described in this Establishment Agreement and attempt to seek to recover such payments by actions at law or in equity for damages or specific performance.

5.10 Parameters for Bond Issuance. Unless otherwise previously approved in writing by the City, all Bonds issued by any of the Districts and/or the Authority shall be subject the applicable provisions of the Districts' Service Plans.

## **ARTICLE VI CONSTRUCTION OF PUBLIC IMPROVEMENTS**

### **6.1 Construction and Acquisition of Public Improvements.**

(a) The Authority shall have the right and power to construct and acquire all Public Improvements authorized under the Service Plans and this Establishment Agreement.

(b) The Districts acknowledge that the Authority Board may engage District No. 1 to provide services to the Authority in relation to the planning, design and construction of the Public Improvements from time to time, including but not limited to, the provision of project management services and the terms and conditions of the provision of such services shall be as set forth in the agreements as approved and executed by the Authority and District No. 1.

6.2 Diligence. If required by the Act or any agreement between the Authority or the Districts and another governmental entity having jurisdiction, a contract for construction of approved Public Improvements shall be publicly bid and fully approved at a public meeting.

6.3 Public Improvements Process. Prior to the approval of a construction contract for approved Public Improvements (whether contracted directly by the Authority or whether required pursuant to an agreement with District No. 1):

(a) The Authority Board shall determine the operations and maintenance and repair and replacement costs associated with such Public Improvements for purposes of the impact on the budget in the current and future years. The Authority Board shall schedule, phase, and configure the Public Improvements to adequately and economically provide for the needs of the Districts' residents and property owners, and as development demands require.

(b) The Authority shall obtain and/or confirm all necessary governmental approvals, and exercise reasonable efforts to comply with Colorado and other applicable rules, laws, regulations, and orders.

(c) The Authority shall cause construction of the Public Improvements to be commenced on a timely basis, subject to receipt of all necessary governmental approvals and the terms of this Establishment Agreement.

(d) The Authority shall make available, during normal business hours, to the Districts copies of any and all construction contracts and related documents concerning the Public Improvements, and shall deliver copies of such documents to any District upon receipt of a written request. The Authority shall diligently and continuously prosecute to completion the construction of the Public Improvements.

(e) The Authority Board shall have the authority to approve non-material changes or modifications to construction contracts, in accordance with any adopted Authority Board resolution, between Authority Board meetings and as necessary to diligently pursue construction activities; provided, however, that any such change order shall be ratified at the next Board Meeting.

(f) In case of emergencies, the Authority Board may approve contracts which shall be ratified at the next Authority Board meeting, so long as it facilitates construction of the Public Improvements within the Final Budget.

6.4 Governmental Requirements. The facility and service standards of the Authority shall be compatible with those of the City and such other governmental entities as may be applicable.

## **ARTICLE VII OWNERSHIP AND DEDICATION OF PUBLIC IMPROVEMENTS; OPERATIONS AND MAINTENANCE SERVICES**

7.1 Ownership of Public Improvements. It is anticipated the Management District will own, operate, and maintain all Public Improvements unless and until any of such Public Improvements are dedicated to the City or another appropriate governmental entity for perpetual ownership and maintenance.

7.2 Ownership of Regional Improvements. The Districts acknowledge that the Management District may provide for the construction of Regional Improvements in accordance with one or more agreements with the City. Regional Improvements may be owned, operated, or maintained by the Management District or the Authority during the applicable warranty period(s) and before final transfer to the appropriate governing jurisdiction. The Authority shall not accept any Regional Improvements that is not constructed in accordance with applicable laws, rules, and regulations.

## **ARTICLE VIII BUDGET PROCESS**

8.1 Adoption. The Authority Board shall establish in the Authority's Bylaws an annual budget process. At a minimum, the Authority budget process shall require the Authority to furnish to each District the following:

(a) An accounting of any estimated carryover balances from prior years; and

(b) A proposed schedule for deposits based on the expected timing for receipt of funds generated from (i) the Districts' *ad valorem* property taxes and specific ownership taxes; (ii) Developer Capital Advance(s) and Developer Administrative Advances to the Authority or Districts; and/or (iii) other rates, Fees, tolls, and other charges that may be imposed by the Authority or any of the Districts from time to time in accordance with State law.

8.2 Annual Appropriation. On or before December 10th of each year throughout the term of this Establishment Agreement, each of the Districts and the Authority agree to budget and appropriate funds for ensuing year in the amount sufficient to pay for the costs and expenses necessary to undertake the services.

8.3 Final Budget. The Final Budget may be amended from time to time in accordance with State law, to reflect changes in actual revenues and/or expenses, utilizing the same process and requirements set forth in this Section, except that the Authority Board may establish alternative reasonable time periods for preparation, review, and approval of proposed budget amendments. Any Final Budget processed and approved in accordance with this Section shall be known as an "**Amended Final Budget**".

In the event that funding provided by any District to the Authority exceeds the amount owed by that District according to the Amended Final Budget, the balance may be carried over and credited against the anticipated funding obligation of such District for the following year as identified by the Preliminary Budget Documents.

## ARTICLE IX SPECIAL PROVISIONS

9.1 Rights of the Authority. Subject to the limitations of this Establishment Agreement, the Districts grant the Authority the right to construct, own, use, connect, disconnect, modify, renew, extend, enlarge, replace, convey, abandon, or otherwise dispose of any and all real property, Public Improvements or appurtenances thereto, and any and all other interests in real or personal property or otherwise, within the control of the Districts to enable the Authority to provide the Public Improvements and Administrative Services. The Districts grant to the Authority the right to occupy any place, public or private, which the Districts might occupy for the purpose of fulfilling the obligations of the Authority in this Establishment Agreement. To implement the foregoing, the Districts agree to exercise such authority, to do such acts, and to grant such easements as may be reasonably requested by the Authority; provided that, any legal, engineering, technical, or other services required, or costs incurred, for the performance of this obligation shall be performed by a Person in the employment of or under contract with, and paid by, the Authority.

9.2 Right to Provide Public Improvements and Services. The Districts agree that they shall not, without the prior written consent of the Authority, provide Public Improvements of any kind to their residents and property owners, except for financing or construction and dedication of the Public Improvements as set forth herein.

9.3 Consolidation of Districts. The Districts may initiate consolidation proceedings in accordance with the Act and Service Plans at such time as the Development is at build-out and the Authority owns and maintains all the Public Improvements not otherwise to be dedicated to

another governmental entity. The Districts shall not file a request with any court to consolidate among themselves nor with any other Title 32 districts without the prior written consent of the City. No consolidation proceedings shall be initiated if less than all of the District Boards of the Districts wishing to consolidate adopt a joint resolution agreeing to such consolidation.

9.4 Dissolution of Authority. In accordance with Section 29-1-203.5(4), C.R.S., upon dissolution of the Authority, all the Authority's property shall be transferred to, or at the direction of, one or more of the Districts.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

10.1 General Representations. In addition to the other representations, warranties, and covenants made by the Districts in this Establishment Agreement, the Districts make the following representations, warranties, and covenants to each other:

(a) Each District has the full right, power, and authority to enter into, perform, and observe this Establishment Agreement.

(b) Neither the execution of this Establishment Agreement, the consummation of the transactions contemplated hereunder, nor the compliance with the terms and conditions of this Establishment Agreement by the Districts will conflict with or result in a breach of any terms, conditions, or provisions of, or constitute a default under any agreement, instrument, indenture, judgement, order, or decree to which a District is a party or by which a District is bound.

(c) This Establishment Agreement is a valid and binding obligation of each of the Districts and is enforceable in accordance with its terms.

(d) The Districts shall keep and perform all the covenants and agreements contained in this Establishment Agreement and shall take no action which could render this Establishment Agreement unenforceable in any manner.

## **ARTICLE XI DEFAULTS, REMEDIES, AND ENFORCEMENT**

11.1 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 be considered an Event of Default under this Establishment Agreement:

(a) The failure of any District to make any payment when the same shall become due and payable as provided in this Establishment Agreement and cure such failure within ten (10) business days of receipt of notice from one of the other Districts or the Authority of such failure;

(b) The failure to perform or observe any other covenants, agreements, or conditions in this Establishment Agreement on the part of any District and to cure such failure within thirty (30) days of receipt of notice from one of the other Districts or the Authority of such failure unless such default cannot be cured within such thirty- (30) day period, in which case the defaulting party shall have an extended period of time to complete the cure, provide that

action to cure such default is commenced within said thirty- (30) day period and the defaulting party is diligently pursuing the cure to completion.

11.2 Remedies on Occurrence of Events of Default. Upon the occurrence of an Event of Default, the Districts and the Authority shall, individually and collectively, have the following rights and remedies:

(a) The non-defaulting District(s) 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 District to perform its duties under this Establishment Agreement, and/or to issue temporary and/or permanent restraining orders or orders of specific performance to compel the defaulting District to perform in accordance with this Establishment Agreement.

(b) The non-defaulting District(s) or the Authority, or both, may protect and enforce its rights under this Establishment Agreement by such suits, actions, or special proceedings as it shall deem appropriate, including, without limitation, any proceedings for the specific performance of any covenant or agreement contained in this Establishment 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 enforcement this Establishment Agreement.

(c) The non-defaulting District(s) shall have the right to impose a mill levy, budget, and expend funds as necessary to enforce the terms of this Establishment Agreement.

(d) To foreclose any and all liens in the manner specified by law.

Notwithstanding anything to the contrary contained in this Establishment Agreement, prior to the time the Authority requires a District to impose a mill levy for their obligations under this Establishment Agreement, any District may file for inactive status and filing for such inactive status shall not constitute an Event of Default.

11.3 General.

(a) Delay or Omission No Waiver. No delay or omission of any District to exercise any right or power accruing upon any Event of Default shall exhaust or impair any such right or power or be construed as a waiver of any such Event of Default.

(b) No Waiver of One Default to Affect Another; All Remedies Cumulative. No waiver of any Event of Default by any District shall extend to or affect any subsequent or other Event of Default. All rights and remedies of the Districts and the Authority provided in this Establishment Agreement may be exercised with or without notice, shall be cumulative, may be exercised separately, concurrently, or repeatedly, and the exercise of any such right or remedy shall not affect or impair the exercise of any other right or remedy.

## ARTICLE XII INSURANCE

12.1 Authority Insurance. During the term of this Establishment Agreement, the Authority shall maintain appropriate insurance limits and overage related to the provision of the services described in this Establishment Agreement and in other agreements of the Authority.

12.2 District Insurance. The Districts shall, to the extent each is active and the same are reasonably and commercially available and funds are available therefore, maintain the following insurance coverages, with companies and in amounts acceptable to each District's respective board of directors:

(a) General liability coverage protecting the Districts and their officers, directors, and employees against any 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.

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

12.3 Workers' Compensation. To the extent they retain employees, the Districts and the Authority shall make provisions for workers' compensation insurance, social security employment insurance, and unemployment compensations for employees, if any, as required by any Colorado law or the federal government.

12.4 Certificates. Upon written request, each District and the Authority shall furnish to the others, certificates of insurance showing compliance with the foregoing requirements. Said certificates shall state that the policy or policies evidenced thereby will not be cancelled or altered without at least thirty (30) days prior written notice to each District and the Authority.

### **ARTICLE XIII EMPLOYMENT OF ILLEGAL ALIENS**

13.1 Certification and Ratification of Addendum regarding Employment of Illegal Aliens. By its execution, the Districts confirm and ratify all the certificates, statements, representations, and warranties set forth in the Addendum attached to and made a part of this Establishment Agreement by this reference.

### **ARTICLE XIV MISCELLANEOUS**

14.1 Relationship of Parties. This Establishment Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employees between the Districts.

14.2 Prevailing Wages Requirement. The Authority shall comply with the following provisions required by the City and County of Denver:

(a) Prevailing Wages Requirement. For any Establishment Agreement contract relating to the acquisition, construction, installation, repair, replacement, operation, or maintenance of any Public Improvements, the Establishment Agreement shall comply with the



wage provisions of the Denver Revised Municipal Code, as amended (the “**D.R.M.C.**”), that are applicable to City contracts relating to the payment of prevailing wages. However, where the Establishment Agreement is required to comply with Davis-Bacon or other federal wage requirements, the Establishment Agreement shall not be required to comply with the wage provisions of the D.R.M.C.

(b) Small or Disadvantaged Business Enterprises. To the extent the Establishment Agreement is not required to comply with more restrictive provisions in accordance with a project funding source, as determined by the Director of the Division of Small Business Opportunity Office, or its successor agency, the Establishment Agreement shall comply with the City’s then-current ordinances relating to: (a) minority and women business enterprise participation as currently set forth in Division 1 and Division 3 of Article III, Title 28 of the D.R.M.C., as the same may be amended or recodified from time to time; and (b) small business enterprise participation as currently set forth in Article VII, Title 28 of the D.R.M.C., as the same may be amended or recodified from time to time; and (c) any small or disadvantage business enterprise ordinances that may subsequently be adopted by the City Council for the City with respect to construction work that is not under contract at the time of adoption of such ordinance.

(c) Equal Employment and Discrimination. In connection with the performance of all acts or activities hereunder, the Establishment Agreement shall not discriminate against any person otherwise qualified with respect to its hiring, discharging, promoting or demoting or in matters of compensation solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability, and further shall insert the foregoing provision in contracts or subcontracts let by the Establishment Agreement to accomplish the purposes of this service plan.

(d) Public Art Requirement. The Establishment Agreement shall initiate and implement a public art program as currently set forth in Sections 20-85 through 20-89 of the D.R.M.C., as amended, or any similar ordinances subsequently adopted.

14.3 Third-Party Beneficiaries. The Districts agree that (i) until the processes set forth in Sections 10.3 and 10.4 of this Establishment Agreement have been completed, and (ii) all Developer Advances have been repaid, the Developer is a third-party beneficiary to this Establishment Agreement, and the Developer agrees to and acknowledges such as evidenced by signature below. Other than the Developer, it is intended that there be no third-party beneficiaries of this Establishment Agreement, including, without limitation, the owners of any Bonds, notes, contracts, or other obligations incurred or executed by either the Districts or the Authority. Nothing contained in this Establishment Agreement, expressed or implied, is intended to give any person other than the Districts, the Developer, and the Authority any claim, remedy, or right under or pursuant to this Establishment Agreement, and any agreement, condition, covenant, or term contained in this Establishment Agreement required to be observed or performed by or on behalf of any party to this Establishment Agreement shall be for the sole and exclusive benefit of the other parties.

14.4 Assignment; Delegation. Except as set forth herein or as contemplated in the Service Plans, neither this Establishment Agreement, nor any of the Districts’ rights, obligations,

duties, or authority under this Establishment Agreement may be assigned or delegated, in whole or in part, by any District without the prior written consent of the other Districts, which consent shall not be unreasonably withheld. Any attempted assignment or delegation in violation of the foregoing shall be deemed void. Consent to one assignment or delegation shall not be deemed to be consent to any subsequent assignment or delegation, nor the waiver of any right to consent to such subsequent assignment or delegation.

14.5 Modification. This Establishment Agreement may be modified or amended only by the written agreement of the Districts and only with prior delivery of a written opinion of nationally recognized municipal bond counsel to the effect that such modification or amendment will not adversely impact the Authority's compliance with the terms of any existing or anticipated financing documents.

14.6 Governing Law. This Establishment Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado. Venue for all actions shall be exclusive in the City and County of Denver, Colorado.

14.7 Heading for Convenience Only. The headings, captions, and titles contained in this Establishment Agreement are intended for convenience of reference only.

14.8 Enforceability. If any provision of this Establishment Agreement is declared void or unenforceable by a court of competent jurisdiction, the District involved in such violation of the Authority, if appropriate, shall, to the extent possible, perform such tasks as may be necessary to cure such violation, including, but not limited to, obtaining any necessary voter approvals.

14.9 Time is of the Essence. Time is of the essence in this Establishment Agreement.

14.10 Notices. Unless otherwise provided below, all notices, demands, requests or other communications to be sent by one party to the other under this Establishment Agreement or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via Federal Express or other nationally recognized overnight air courier service, by electronically-confirmed facsimile transmission, or by depositing the same in the United States Mail, postage prepaid.

All notices, demands, requests, or other communications shall be effective upon such personal delivery or upon electronic mail, read-review acknowledged; one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service; upon electronic confirmation of facsimile transmission; or three (3) business days after deposit in the United States mail. By giving the other party to this Establishment Agreement at least ten (10) days' written notice thereof in accordance with the provisions of this Establishment Agreement, each of the parties shall have the right to change its individual address from time to time, all addresses to be maintained by the Authority.

14.11 District Records. The Authority shall maintain the public records for the Authority. Access to such records by the Districts and the public shall be as set forth in the Rules and Regulations.

14.12 Further Assurances. The Districts each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and documents as may be reasonably required for the performance of their obligations under this Establishment Agreement.

14.13 Severability of Provisions. Any provision of this Establishment Agreement which is prohibited, unenforceable, or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability, or non-authorization without invalidating the remaining provisions of this Establishment Agreement or affecting the validity, enforceability, or legality of such provisions in any other jurisdiction. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as a part of this Establishment Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

14.14 Cooperation Between the Districts. Subject to the terms of the Service Plans, the Districts will cooperate with one another and any other District organized within the Development to finance the Actual Administrative Costs and Actual Capital Costs. The Districts acknowledge that the boundaries of the Districts may change in the future and that each District shall support the exclusion/inclusion of the subject property from and into the respective District.

14.15 Entire Agreement. This Establishment Agreement and all attached addenda and exhibits set forth the entire understanding and agreement of the Districts and supersede and replace all prior agreements, memoranda, arrangements, and understandings relating to the subject matter of this Establishment Agreement.

14.16 Non-liability of Authority Directors, Members, and Employees. No Board Member or director of the Districts' individual boards of directors, official, employee, agent, attorney or consultant of the Districts or the Authority shall be personally liable in the event of default or breach of this Establishment Agreement, or for any amount that may become due under the terms of this Establishment Agreement.

IN WITNESS WHEREOF, Loretto Heights Metropolitan District No. 1, Loretto Heights Metropolitan District No. 2, Loretto Heights Metropolitan District No. 3, and Loretto Heights Metropolitan District No. 4, have executed this Establishment Agreement as of the day and year first written above.

**LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado

By: Mark J Witkiewicz  
Its: President

Attest:

Ann Finn  
Secretary

**LORETTO HEIGHTS METROPOLITAN DISTRICT NO. 2**, a quasi-municipal corporation and political subdivision of the State of Colorado

By: Mark J Witkiewicz  
Its: President

Attest:

Ann Finn  
Secretary

**LORETTO HEIGHTS METROPOLITAN  
DISTRICT NO. 3**, a quasi-municipal  
corporation and political subdivision of the State  
of Colorado

By: Mark J Witkiewicz  
Its: President

Attest:

Ann Finn  
Secretary

**LORETTO HEIGHTS METROPOLITAN  
DISTRICT NO. 4**, a quasi-municipal  
corporation and political subdivision of the State  
of Colorado

By: Mark J Witkiewicz  
Its: President

Attest:

Ann Finn  
Secretary

## ADDENDUM

By execution of this addendum (“**Addendum**”) to that certain Name of Agreement dated \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ Metropolitan District (the “**District**”) and \_\_\_\_\_ (the “**Contractor**”) (the “**Agreement**”), the parties to the Agreement further agree as follows:

1. Pursuant to the requirements of Section 8-17.5–102(1), C.R.S., the Contractor hereby certifies to the District that the Contractor does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that it will participate in the E-Verify Program or Department Program (as defined in Sections 8-17.5-101(3.3) and (3.7), C.R.S.) in order to confirm the employment eligibility of all employees of the Contractor who are newly hired to perform work under the Agreement.

2. In accordance with Section 8-17.5-102(2)(a), C.R.S., the Contractor shall not:

a. Knowingly employ or contract with an illegal alien to perform work under the Agreement; or

b. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

3. The Contractor represents and warrants it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

4. The Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the Agreement is in effect.

5. If the Contractor obtains actual knowledge that a subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, the Contractor shall:

a. Notify the subcontractor and the District within three (3) days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

b. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

6. The Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment (the “**Department**”) made in the course of an investigation that the Department is undertaking, pursuant to the law.

7. If the Contractor violates any provision of this Addendum, the District may terminate the Agreement immediately and the Contractor shall be liable to the District for actual and consequential damages of the District resulting from such termination, and the District shall report such violation by the Contractor to the Colorado Secretary of State, as required by law.