

**INTERGOVERNMENTAL AGREEMENT
REGARDING MAINTENANCE, OWNERSHIP,
AND DEDICATION OF CLEAR CREEK TRANSIT PUBLIC IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING MAINTENANCE, OWNERSHIP, AND DEDICATION OF CLEAR CREEK TRANSIT PUBLIC IMPROVEMENTS (the “Agreement”) is made and entered into the ___ day of _____, 2021, by and among CLEAR CREEK TRANSIT METROPOLITAN DISTRICT NO. 1 (“District No. 1”), CLEAR CREEK TRANSIT METROPOLITAN DISTRICT NO. 2 (“District No. 2”), both quasi-municipal corporations and political subdivisions of the State of Colorado (referred to herein collectively as the “Districts”), and ADAMS COUNTY, STATE OF COLORADO, a political subdivision of the State of Colorado (the “County”). District No. 1, District No. 2, and the County may individually be referred to herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Districts were created for the purpose of providing certain public improvements and services to and for the benefit of the properties within and without the Districts in accordance with Title 32, Article 1, C.R.S., and pursuant to the Service Plan (defined below); and

WHEREAS, the Board of County Commissioners of Adams County, Colorado approved the Service Plan for Clear Creek Transit Metropolitan District No. 1 and Clear Creek Transit Metropolitan District No. 2, Adams County, Colorado (the “Service Plan”) via Resolution on September 13, 2010 (the “Resolution”); and

WHEREAS, pursuant to the Resolution, the Districts and the County shall execute an intergovernmental agreement regarding maintenance and ownership of roads and other public improvements prior to the submittal of a final plat application; and

WHEREAS, the owner and developer of property within the Districts is in the process of seeking land use approvals from the County for its Clear Creek Transit Village development in the form of a preliminary plat and ultimately a final development plan and final plat (the “Final Development Approvals”); and

WHEREAS, in satisfaction of the conditions of the Resolution, the Parties desire to establish certain terms and conditions related to the Districts’ construction, operation, and maintenance of Public Improvements (as defined below).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The foregoing recitals are hereby incorporated into this Agreement.

2. Ownership, Maintenance, and Dedication of Public Improvements.

a. For public improvements designed, financed, and/or constructed by the Districts (the “Public Improvements”), the Districts shall either own, operate, and/or maintain such Public Improvements themselves or shall dedicate such Public Improvements to the County or other appropriate jurisdiction or governmental entity in accordance with the Service Plan.

b. Unless the County-approved Final Development Approvals reflect County ownership and/or maintenance of a Public Improvement, the County shall not be responsible to accept any Public Improvements for ownership, operation, or maintenance. If, notwithstanding the foregoing, the County agrees to accept Public Improvements for operation and maintenance, the terms of any such dedication shall be agreed to by the parties via amendment to this Agreement or separate subdivision improvements agreement.
~~public improvement dedication agreement.~~

c. For Public Improvements for which the Districts will retain ownership and maintenance, the Districts shall operate and maintain such Public Improvements in accordance with the terms of its Service Plan and may establish ownership and maintenance standards thereunder, including pursuant to the terms of that certain Intergovernmental District Facilities Construction and Service Agreement between District No. 1 and District No. 2, dated June 9, 2020, as may be amended from time to time, or as otherwise agreed upon by the Districts.

~~e.d. The Districts acknowledge that, as part of the Final Development Approvals, the County may require the Districts to construction of off-site Public Improvements. If any such off-site improvements will be constructed by the Districts, The extent to which and the terms of such dedication of such Public Improvements shall be agreed to in accordance with the County’s Development Standards and Regulations in a subdivision improvements agreement.~~

~~d.e.~~ For Public Improvements the Districts will dedicate to governmental entities or appropriate jurisdictions other than the County, the Districts will dedicate such Public Improvement pursuant to and in accordance with any applicable acceptance standards of such entities.

3. Public Improvement Completion. In accordance with the Districts’ Service Plan, the Public Improvements will be designed and constructed in accordance with all applicable County standards and regulations, and the Districts agree to cooperate with the County with respect to entering into agreements guaranteeing the completion of the Public Improvements, if necessary, following the County’s approval of the Final Development Approvals.

4. Notice. All notices must be in writing and (a) delivered personally, (b) sent by electronic mail, delivery receipt requested, (c) sent by United States certified mail, postage prepaid, return receipt requested (“US Mail”), or (d) placed in the custody of a nationally recognized

overnight carrier for next day delivery (“Carrier”), and will be deemed given (i) when received, if delivered personally, (ii) on the day sent if sent during regular business hours (9 a.m. to 5 p.m.), otherwise on the next day at 9 a.m., if sent by electronic mail, (iii) 4 days after deposit, if sent by US Mail, or (iv) the next business day after deposited with a Carrier during business hours on a business day. All notices shall be delivered to the following addresses, or such other address as is provided by one Party to the others in accordance with this section:

Notices to District No. 1:

Clear Creek Transit Metropolitan District No. 1
4725 S. Monaco Street
Denver, CO 80237
Attn: Tamara K. Seaver
TSeaver@isp-law.com

Notices to District No. 2:

Clear Creek Transit Metropolitan District No. 2
4725 S. Monaco Street
Denver, CO 80237
Attn: Tamara K. Seaver
TSeaver@isp-law.com

Notices to the County:

Director of Community and Economic Development_____

4430 S. Adams County Parkway
1st Floor, Suite W2000
Brighton, CO 80601

Adams County Attorney
Attn: Christine Fitch
4430 S. Adams County Parkway
5th Floor, Suite C5000B
Brighton, CO 80601

5. Assignment. Neither the Districts nor the County may assign this Agreement or parts hereof or its rights or obligations hereunder without the express written consent of the other Parties.

6. Colorado Law. The laws of the State of Colorado shall govern this Agreement.

Venue for any action hereunder shall be in the District Court, County of Adams, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

7. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the County nor the Districts shall be deemed or constitute a partner, joint venturer, or agent of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.

8. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

9. No Waiver of Governmental Immunity. The Parties hereto understand and agree that the Districts, their respective Boards of Directors, officials, officers, directors, agents and employees, and the County, its county commissioners, officials, officers, directors, agents and employees are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, Sections 24-10-101 to 120, C.R.S., or otherwise available to the Districts and the County.

10. Annual Appropriations. By entering into this Agreement, neither the Districts nor the County intend to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. All payment obligations hereunder (if any) are subject to annual appropriation.

11. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be give no effect in the construction or interpretation of this Agreement.

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

13. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

14. Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

15. Severability. The invalidity or unenforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and,

in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

16. Entirety. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

CLEAR CREEK TRANSIT
METROPOLITAN DISTRICT NO. 1

By: _____
Its: _____

CLEAR CREEK TRANSIT
METROPOLITAN DISTRICT NO. 2

By: _____
Its: _____

BOARD OF COUNTY COMMISSIONERS,
ADAMS COUNTY, COLORADO

By: _____
Its: _____

Approved as to Form:

Adams County Attorney's Office