

**INTERGOVERNMENTAL AGREEMENT  
FOR  
MAINTENANCE OF PUBLIC INFRASTRUCTURE  
(PERPETUAL AND INTERIM MAINTENANCE)**

THIS AGREEMENT (the “Agreement”) is made and entered into as of this \_\_ day of \_\_\_\_\_, 2009 by and between the CITY OF STEAMBOAT SPRINGS, a home rule municipality of the State of Colorado (the “City”), and STEAMBOAT 700 METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”).

**RECITALS**

WHEREAS, the City is a body corporate and politic providing municipal government services to the territory within the boundaries of the City; and

WHEREAS, Steamboat 700, LLC (the “Developer”) has caused the annexation into the City of certain property consisting of approximately 485.17 acres known as “Steamboat 700” (herein referred to as the “Project”); and

WHEREAS, the District was organized, along with the Steamboat Metropolitan District Nos. 2-5 (the “Participating Districts”), to provide certain public facilities and services to the Project, in accordance with and subject to the provisions of the “Consolidated Service Plan for Steamboat 700 Metropolitan District Nos. 1-5” approved by the City on October 13, , 2009 (the “Service Plan”); and

WHEREAS, the District is the Coordinating District under the Service Plan, and is responsible for organizing the financing and construction of public facilities and services for the Project, as well as any necessary operations and maintenance thereof; and

WHEREAS, it is anticipated that the Developer and/or the District will cause the construction of various public improvements to serve the Project; and

WHEREAS, the majority of the public improvements serving the Project will be dedicated to the City for operations and maintenance in accordance with specific development approvals and the City Code; and

WHEREAS, with certain exceptions not relevant here, the City does not presently provide winter maintenance services for sidewalks and trails within the City, and the parties desire to provide in this Agreement for the District’s obligation to provide such services; and

WHEREAS, the District has agreed to maintain City streets and parks within the Project on an interim basis until the earlier of: (1) the construction of public works and parks maintenance facilities within the Project or (2) such time as sufficient revenues are generated within the Project to pay for the construction of such facilities; and

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WHEREAS, the purpose of this Agreement is to authorize the District to undertake certain perpetual and interim operations and maintenance activities with respect to those public improvements described herein, and to establish the terms upon which such operations and maintenance activities may be terminated and/or assumed by the City;

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**COVENANTS AND AGREEMENTS**

**ARTICLE I**  
**PERPETUAL MAINTENANCE**  
(Alleys, Sidewalks, Trails)

**1.1 Improvements Covered.** The improvements to be subject to this Article I shall consist of alleys, sidewalks and trails, as built and dedicated to the City that are designated for “District No. 1 Maintenance” on any approved Plat or other instrument of conveyance for the area within the Project that is also within the Service Area (as that term is defined in the Service Plan) for the Districts. Improvements subject to this Article I shall also consist of alleys, sidewalks and trails that are designated for “District No. 1 Maintenance” in any agreement between the City and the Developer (that is acknowledged by the District in writing) concerning development of all or any portion of the Project that is dated prior to the date of the Order and Decree creating the Districts, and in any subsequent agreement concerning development of all or any portion of the Project to which the District is a party (or otherwise accepts such designation). Collectively, such alley, sidewalk and trail improvements shall be referred to herein as the “Maintenance Improvements.” Notwithstanding the foregoing, no such alley, sidewalk and trail improvements shall be considered Maintenance Improvements unless such Improvements are within an easement, right-of-way or other real property interest sufficient in the reasonable opinion of the District to support the public use of such Improvements and the District’s maintenance thereof.

**1.2 Agreement to Maintain.** The District shall maintain at its cost (from revenues derived from the Participating Districts and/or any other legally available revenues) the Maintenance Improvements. The District shall maintain the Maintenance Improvements in a manner consistent with the standard of maintenance undertaken by the City on alley, sidewalk and trail improvements which are maintained by the City elsewhere within the City. Specific responsibilities shall include, but not be limited to: conducting snow removal operations, maintaining signage, removing debris, making repairs as a result of maintenance operations, and monitoring and mitigating other conditions that represent a hazard to authorized users of the Maintenance Improvements. The District may provide such maintenance functions by any means, including through its own employees, independent contractors, or any other person or entity, or combination thereof.

**1.3 Transfer of Maintenance Responsibility.** The District may transfer responsibility for maintenance of Maintenance Improvements, or any of them, upon application to the City and acceptance thereof by the City as evidenced by a recorded resolution of the City Council. Such transfer shall be at the sole and exclusive discretion of the City, which may agree or reject such transfer for any reason or for no reason. The City agrees to accept responsibility for maintenance of Maintenance Improvements to the extent the City adopts a policy to furnish maintenance services to improvements similar to those included within the definition set forth herein, or if the City enters into any agreement by which it agrees to assume responsibility for maintenance services for such similar improvements for other property within the City or property being annexed to the City subsequent to the date of this Agreement.

**ARTICLE II**  
**INTERIM MAINTENANCE**  
(Streets, Parks)

**2.1. Interim Maintenance of Streets and Park Improvements.** Upon preliminary acceptance by the City of any public streets and improved park lands within the Project, the District will be responsible for interim operation and maintenance thereof, subject to the terms of this Article II. For the purposes of this Agreement, “preliminary acceptance” shall mean that the City has accepted title to the facility in question and has agreed that it may be opened to public use. “Preliminary acceptance” by the City of any facility under this Agreement shall not affect the warranty period applicable to such facility by the provisions of the Municipal Code. The parties agree and acknowledge that it is intended that all streets and park improvements dedicated to the City within the Project will be subject to operations and maintenance by the District at its cost until such obligation is terminated in accordance with the terms hereof. The scope of such operations and maintenance is described on **Exhibit A**, attached hereto and fully incorporated by this reference.

**2.2 Interim Maintenance Agreement.** Dedication of street and park improvements to the City shall occur in accordance with the applicable provisions of the City Code. Notwithstanding the foregoing, the City shall issue a written notice of preliminary acceptance for any street or park improvements that are to be maintained on an interim basis by the District hereunder, identifying the improvements to be maintained on an interim basis and specifying the date such interim maintenance is to commence (the “Interim Maintenance Improvements”). The District shall undertake operations and maintenance functions with respect to the Interim Maintenance Improvements in a manner consistent with the nature and extent of such functions as furnished by the City on other City owned streets and park improvements within the boundaries of the City, and otherwise in a fashion that will permit the continued use and enjoyment by the public of the Interim Maintenance Improvements over the useful life thereof, or until operations and maintenance of such Improvements is assumed by the City as hereinafter set forth.

**2.3 Transfer of Maintenance Responsibility to City.** The parties agree and acknowledge that it is intended that the District’s obligations with respect to the Interim Maintenance Improvements be temporary, and that the City is to be ultimately responsible for

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the operations and maintenance of said Improvements in accordance with the City Code. The obligation of the District to maintain parks and streets within the Project will cease and the parks and streets within the Project shall be maintained by the City upon the earlier of: (1) the date of completion of construction of a public works and parks maintenance facility within the Project meeting the requirements of the Steamboat 700 Annexation Agreement effective October 13, 2009 (“Annexation Agreement”) or (2) eighteen (18) months following the date that sufficient funds have been paid or accumulated by the City to construct the public works and parks maintenance facility as set forth in Exhibit F of the Annexation Agreement. Notwithstanding the foregoing, prior to any transfer of such operations and maintenance responsibility to the City, the District shall cause all such Improvements to be brought up to the condition necessary to obtain “final acceptance” thereof under the applicable requirements of the City for final acceptance of improvements at the end of the warranty period.

**ARTICLE III. MISCELLANEOUS**

**3.1 Default/Remedies.** Except to the extent expressly set forth otherwise herein, the sole and exclusive remedy available to the Parties under this Agreement shall be specific performance of a Party’s obligations under this Agreement, including, but not limited to, payment of any amount due and owing under this Agreement, and no Party shall have the right to terminate this Agreement, or to seek consequential, special, indirect, exemplary, punitive or any other types damages for breach of this Agreement beyond direct, actual damages resulting from the specific enforcement of the terms of this Agreement. None of the constituents of any Party hereto (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party. EACH PARTY EXPRESSLY WAIVES (i) ANY OTHER REMEDY ON ACCOUNT OF ANY BREACH OF OR DEFAULT UNDER THIS AGREEMENT AND (ii) ANY CLAIM FOR DAMAGES BEYOND THOSE SET FORTH IN THIS SECTION.

**3.2 Assignment and Delegation.** Neither this Agreement, nor any of the Parties’ rights, obligations, duties or authority hereunder may be assigned or delegated in whole or in part by either Party without the prior written consent of the other Party, which consent may be withheld in the discretion of the party whose consent is required; except that this Agreement may be assigned without said written consent by the District to any of the Participating Districts. Any improper attempt of assignment or delegation shall be deemed void and of no force or effect. 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.

**3.3 Modification.** This Agreement may be modified, amended or changed, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties.

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

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**3.5 Severability.** If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

**3.6 Survival of Obligations.** Unfulfilled obligations of both Parties arising under this Agreement shall be deemed to survive the expiration or termination by court order or otherwise of this Agreement, and shall be binding upon and inure to the benefit of Parties and their respective successors and permitted assigns.

**3.7 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

**3.8 Headings for Convenience Only.** The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to construe the provisions hereof.

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

**3.10 Notices.** Except as otherwise provided herein, all notices or payments required to be given under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, or air freight, to the following addresses:

Notices to the District:

With a copy to:

Steamboat Metropolitan District No. 1  
c/o White, Bear & Ankele Professional Corporation  
Attn: William P. Ankele, Jr.  
1805 Shea Center Drive, Suite 100  
Highlands Ranch, CO 80129

Notices to City:

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With a copy to:

All notices or documents delivered or required to be delivered under the provisions of this Agreement shall be deemed received one (1) day after hand delivery or three (3) days after mailing. Either Party by written notice so provided may change the address to which future notices shall be sent.

**3.11 Recovery of Costs.** In the event of any litigation between the Parties hereto concerning the subject matter hereof, the prevailing Party in such litigation shall be entitled to receive from the losing Party, in addition to the amount of any judgment or other award entered therein, all reasonable costs, expenses and attorneys' fees incurred by the prevailing Party in such litigation.

**3.12 Instruments of Further Assurance.** The Parties hereto each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may reasonably be required for the performance of their obligations hereunder.

**3.13 Compliance with Law.** This Agreement is intended to be performed in accordance with and only to the extent permitted by all applicable laws, ordinances, rules, and regulations of the jurisdiction in which the Agreement is performed.

**3.14 Subject to Annual Budget and Appropriation.** The District's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by the Board and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District or statutory debt limitation, including, without limitation, Article X, Section 20, or Article XI, Sections 1, 2 or 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of District funds, nor shall any provision of this Agreement restrict the future issuance of bonds or obligations payable from any class or source of District funds.

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

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

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

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**3.18 Counterpart Execution.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*[Signature page immediately follows]*

CITY of STEAMBOAT SPRINGS, COLORADO,  
a Colorado municipal corporation

By: \_\_\_\_\_  
Paul Antonucci, City Council President

ATTEST:

\_\_\_\_\_  
Julie Franklin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony B. Lettunich, City Attorney

STEAMBOAT 700 METROPOLITAN  
DISTRICT NO. 1

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

|

## **Exhibit A**

- Maintain a complaint/call center for street and Park maintenance concerns;
- Noxious weed spraying within the public right of way: every summer;
- Sweeping of streets as needed and commercial areas at least once a week;
- Roadside ditches to be inspected twice a year for cleaning if necessary;
- Culverts to be inspected and cleaned annually as needed;
- All catch basins to be inspected and cleaned once a year;
- Guardrail repair: as needed;
- Metro District to offer debris pickup in the spring;
- Shoulder mowing every summer; cutting weeds by guardrails;
- Cracks in streets to be inspected and filled when necessary as needed to maintain safe driving surface;
- Striping of streets, crosswalks and parking lots should be done by May every year;
- Street asphalt overlays: inspect and consult with City Public Works engineers: residential 12 to 16 years, collectors 10 to 12 years;
- Pothole repair: As needed through inspection annually;
- Annual inventory of all street signs and inspect for reflectivity and conformity;
- Maintain and install Banners in public areas;
- Coordinate street light inventory and inspection for outages with the City and YVEA;
- Metro District to provide Utility billing for electric: E.g., street lights, pedestrian crossing lights;
- Plowing/sanding: should occur whenever snowpack conditions exist. Continue cutting pack when necessary to get street down to the asphalt pavement. Sand all hills and stop signs as necessary. Metro District to provide 24/7 hour coverage November through April;
- Remove curb windrows of snow along commercial areas at least once a week;
- Snowplowing and sanding: Collector streets shall receive higher priority maintenance than residential streets;
- Metro District to provide snowplowing of City facilities, for example Bus stops, public safety building, etc.;
- Wingback snow banks and widen streets with snow blower as necessary;
- Metro District **to pay hourly cost associated with a seasonal part time City employee to enforce winter parking restrictions;**