

**INTERGOVERNMENTAL AGREEMENT
FOR STREET MAINTENANCE**

THIS INTERGOVERNMENTAL AGREEMENT FOR STREET MAINTENANCE (the “Agreement”), dated for reference this ___ day of _____ 2019, is made by and between **THE CITY OF COLORADO SPRINGS, a Colorado home rule city and municipal corporation** (herein the “City”) and **CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado** (herein “District”), all with respect to the following:

RECITALS

WHEREAS, the City is a home rule city as provided for in Article XX of the Colorado Constitution;

WHEREAS, the District is a business improvement district as provided for in CRS § 31-25-1201, et. seq.; and

WHEREAS, the City desires to transfer, and the District wishes to accept, control and maintenance responsibilities for the streets and rights of way identified in Exhibit A attached hereto, including all sidewalks and other amenities and improvements located within the rights of way (collectively, the “Streets”).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties hereby agree as follows:

1. Transferred Maintenance and Control Rights. Subject to the terms and conditions set forth herein, the City hereby grants to the District the rights set forth herein, as applied to the Streets. In connection therewith, the City and the District each agree that the District shall have the authority and the obligation to:

- a. repair, replace and maintain the Streets, including, but not limited to, paving, re-paving and patching, grading, striping and snow removal. Such maintenance shall be of equal or better quality than the maintenance provided by the City for public streets of the same classification as the Streets. If maintenance or street improvements create an obligation to upgrade any public facilities to comply with the Americans with Disabilities Act or similar laws, the District shall undertake the obligation to perform such upgrades. Any restriping that alters the flow of traffic, and is not simply maintenance of the existing striping, shall be subject to the prior approval of the City Traffic Engineer.
- b. maintain all existing street lights within the rights of way, and replace, install and maintain, at the District’s option, any new street lights that the District may desire to install, in coordination with and with the consent of Colorado Springs Utilities

(“CSU”), which consent may be withheld or conditioned. The City or CSU may require that all replacement, installation or maintenance of street lights be performed by CSU at the District’s expense. The District shall reimburse the City for all costs within thirty (30) days after receipt of an invoice. All street lights and related appurtenances in the rights of way shall become the property of the City or CSU.

- c. provide, at all times, reasonable access to properties that rely on the Streets for access. Closure of the Streets for events shall be subject to the prior review and approval of the City’s Office of Special Events. Unless otherwise approved in writing by the City Traffic Engineer, that portion of E. St. Elmo Ave. that lies between S. Cascade Ave. and S. Nevada Ave. shall be kept open and maintained in a safe condition for bicycle and pedestrian access; provided, however, that vehicles using St. Elmo Ave. will only have access from (i) S. Cascade Ave. to the Cheyenne Creek bridge (the “Bridge”), and (ii) from S. Nevada Ave. to the Bridge, with the Bridge being maintained and restricted solely to pedestrian and bicycle traffic. In the event that the City Traffic Engineer approves the use of E. St. Elmo Ave. for parking or other conditions that may not be safe for bicycles and pedestrians, the District shall provide safe alternate access from S. Cascade Ave. to the to the Bridge and from S. Nevada Ave. to the Bridge.
- d. designate on-street parking spaces No parking space within the rights of way for the Streets shall be metered or otherwise require payment to the District. The City’s Parking Enterprise shall have the exclusive right to own and operate any meters for the Streets. The District may issue revocable permits for parking pursuant to a District policy substantially similar to the City program authorized in City Code §§ 3.2.201, et. seq., provided that all revocable permits shall require indemnification of the City and insurance as required by City Code § 3.2.203, and revocability as required by § 3.2.215 and by City Charter § 10-100.

2. City’s Retained Rights. Notwithstanding anything in Paragraph 1 above, the City shall retain all other rights and authority related to the Streets. Without limiting the generality of the foregoing statement, the City specifically reserves the right and authority to:

- a. make use of the rights of way for the Streets for any purpose not inconsistent with this Agreement, including public improvements, stormwater facilities, public utilities, and access for emergency and other City vehicles;
- b. permit the use of the rights of way for the Streets by public utilities, wireless carriers, franchisees and other authorized users; provided, however, that City requirements for the repair of right of way shall continue to apply to the Streets;
- c. vacate or quitclaim the rights of way for the Streets in the sole discretion of the City, without any requirement for separate notice to the District beyond the notices required under applicable law for street vacations or conveyances;

d. inspect, service, repair, replace or remove the Bridge.

3. Termination. This Agreement may be terminated by either Party, at such Party's sole discretion, upon thirty (30) days advance written notice to the other Party. This Agreement shall automatically expire and terminate as to any portion of the Streets upon conveyance or vacation of that portion of the Streets by the City, without requirement for advance notice.

4. Notices. Any notice required by this Agreement shall be sent in writing by United States Mail, first class postage prepaid. Correspondence to each Party shall be addressed to the following persons:

For the District:

Creekwalk Marketplace
Business Improvement District
c/o Russell W. Dykstra, Esq.
Spencer Fane
1700 Lincoln Street, Suite 2000
Denver, CO 80203

For the City:

City Traffic Engineer
Traffic Operations Center
234 W. Colorado Ave.
Colorado Springs, CO 80903

The addresses and persons above may be changed from time to time by written notice to the other party, and any written notice of change shall be attached to this Intergovernmental Agreement.

5. Transfer Restrictions. No Party shall assign or otherwise transfer this Agreement or any right or obligation hereunder without prior written consent of the other Party. The District shall not enter into any other contract or intergovernmental agreement for fire services, including but not limited to any mutual aid agreement, with any other person or entity without the prior written consent of the City.

6. No Compensation. Except as otherwise stated in this Agreement, no Party to this Agreement shall be required to pay any compensation to the other Party or the other Party's personnel for any services rendered hereunder. Nothing in this Agreement shall be construed to place the personnel of any Party under the control or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and worker's compensation liabilities, for its own personnel. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

7. Expenditures and Fees of each Party Deemed Expenditures of that Party.

The Parties to this Agreement agree that the purpose of this Agreement is to jointly accomplish pursuant to C.R.S. § 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of the Colorado Constitution, Article X Section 20, and the Colorado Springs City Charter, that any fees contributed or paid, or otherwise provided by any Party to this Agreement to another Party to this Agreement are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.

8. Governing Law. This Agreement is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado home rule city. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado.

9. Appropriation and Availability of Funds - City. In accord with the Colorado Constitution, Article X, Section 20, and the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this Agreement, or appropriated funds may not be expended due to Constitutional or City Charter spending limitations, then the City may terminate this Agreement without compensation to the District.

10. Appropriation and Availability of Funds – District. In accord with the Colorado Constitution, Article X, Section 20, performance of the District's obligations under this Agreement are expressly subject to appropriation of funds by the District's Board of Directors. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the District's obligations under this Agreement, or appropriated funds may not be expended due to Constitutional spending limitations, then the District may terminate this Agreement without compensation to the City.

11. Local Concern. The Parties agree and acknowledge that the activities contained in this Agreement are matters of local concern only, and that the Parties have mutually joined together for the performance of the matters of local concern, and that nothing in this Agreement shall be construed as making any of the local concerns covered herein matters of mixed concern or statewide concern.

12. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein. The Parties agree that this Agreement may only be amended or altered by written agreement signed by the Parties' governing bodies. All recitals at the beginning of this Agreement and all exhibits attached hereto are incorporated herein by this reference. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same document.

13. No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity under or pursuant to this Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

14. Headings. The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

15. No Joint Venture. The Parties to this Agreement are not partners or joint venturers as a result of this Agreement.

16. Waiver. The provision of services under this Agreement is for the benefit of the District. Accordingly, the District does hereby waive, remise, and release any claim, right, or cause of action which the District may have, or which may accrue to the District in the future, against the other arising in whole or in part from this Agreement, including but not limited to any action in contract or other legal theory whatsoever.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth herein.

DISTRICT:

CREEKWALK MARKETPLACE BUSINESS IMPROVEMENT DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Name: _____
Title: _____
Date: _____

ATTEST: _____
Board Secretary

CITY:

THE CITY OF COLORADO SPRINGS, a Colorado home rule city and municipal corporation

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

Senior Attorney
City of Colorado Springs