

Mylar Recordation Return Form

TO: Kara Mueller

FROM: Sharon Blackstock

DATE: 12/31/2013

SUBJECT: Recordation of Plat

Case Number: FA-12-003

Case Name: Solterra Amended Maintenance Agreement

Case Address: 15551 W. Wesley Ave.

Type of Case: Amended Maintenance Agreement

Recordation Date: 12/13/2013

Recordation No.: 2013143598



R \$86.00
D \$0.00

08-07002

2013143598

12/13/2013 11:42:44 AM 16 Page(s)

JEFFERSON COUNTY, Colorado

FIRST AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT

BETWEEN

THE CITY OF LAKEWOOD AND FOSSIL RIDGE METROPOLITAN DISTRICT No. 1

RELATING TO MAINTENANCE

*MS
8/6/12*

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THIS FIRST AMENDED INTERGOVERNMENTAL AGREEMENT ("**First Amended Agreement**") is made and entered into this 13th day of December, 2013, by and between Fossil Ridge Metropolitan District No. 1 ("**District**"), a Metropolitan District organized under Title 32 of the Colorado Revised Statutes, whose address is 2154 E. Commons Avenue, Suite 2000, Centennial CO 80122, and the City of Lakewood, a municipal corporation of the State of Colorado, whose address is 480 South Allison Parkway, Civic Center South, Lakewood, Colorado 80226, ("**City**") sometimes referred to herein as "**Parties**".

RECITALS:

WHEREAS, the formation of the District was approved by the City Council of the City and on August 28, 2006, an Amended and Restated Service Plan for the District (along with Fossil Ridge Metropolitan District Nos. 2 and 3) was approved by the City Council of the City; and,

WHEREAS, the City also approved a Second Amended and Restated Service Plan for the District (along with Fossil Ridge Metropolitan District Nos. 2 and 3) on August 27, 2007; and,

WHEREAS, the District has been organized to serve the needs of a development located within the City, known as the Solterra Project, which will generally be residential; and,

WHEREAS, the primary purpose of the District is to provide improvements to be operated by the District or to be conveyed to the City or other public entities, and said improvements will generally consist of streets, traffic and safety controls, drainage improvements, open space, park, recreation facilities, water and sewer as needed for the Solterra Project; and,

WHEREAS, the scope and quality of certain improvements for the Solterra Project will be different than those improvements required by the City including, for example, specialized concrete colors and finishes, and enhanced landscaping; and,

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WHEREAS, because of the uniqueness of some of the improvements the Parties desire that the District perform some of the maintenance functions normally performed by the City and the District has agreed to undertake the same; and,

WHEREAS, both the City and the District are governmental entities and are authorized to enter into Agreements as set forth in C.R.S. 29-1-201, *et. seq.*; and,

WHEREAS, the City and the District entered into the Intergovernmental Agreement between the City of Lakewood and Fossil Ridge Metropolitan District No. 1 relating to Maintenance, dated April 22, 2008 (the "**Original Agreement**"); an agreement for performing and funding certain maintenance and service functions at the Solterra Project; and

WHEREAS, the Parties desire to amend the Original Agreement by deleting those provisions which are no longer applicable, modifying existing provisions and adding new provisions; and

WHEREAS, the Parties intend that this First Amendment to the Original Agreement shall supersede and replace the Original Agreement in its entirety.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties hereto agree as follows:

AGREEMENT:

1. Geographic Area. This First Amended Agreement pertains to the areas and improvements described in section 6 as amended from time to time by mutual consent of the parties (the "**Solterra Project**" Exhibit A).

2. Purpose. The purpose of this First Amended Agreement is to set forth the obligations of and benefits to the Parties in relation to maintenance activities at the Solterra Project. The parties recognize that the public rights-of-way and private property within the District's service area are also within the City. It is not the intent of this First Amended Agreement to eliminate City services within the District's service area. This First Amended Agreement provides that the District will provide maintenance in addition to routine City maintenance or, in some instances, all maintenance of certain improvements.

3. Term. The term of this First Amended Agreement shall be one calendar year, from the date of execution. This Agreement shall renew automatically after the initial term for successive one-year periods unless (a) one Party notifies the other Party in writing prior

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to November 1 of any year that it does not wish to renew the Agreement for the following year; (b) if funds are not appropriated as set forth in Section 7.p.; or (c) if the Agreement is terminated as set forth in Section 7.g.

4. Funding. Each party shall be responsible for the costs of the maintenance performed by that Party except as otherwise provided in this First Amended Agreement.

5. City Services. The City agrees to perform services set forth herein in a manner and frequency consistent with similar services provided by the City throughout the City. The City's practices throughout the City may be changed at the discretion of the City from time to time. Such changes may affect City services in the District's service area provided such changes affect other areas in the City. In the event that the District fails, in the sole opinion of the City, to adequately perform the services described herein, the City may perform maintenance and take any other actions the City deems appropriate to protect the health, safety and welfare of the public. The City may perform such actions at its discretion without triggering the default provision in Section 7.g. This First Amended Agreement shall not obligate the City for initial installation of any facilities or materials addressed herein.

6. Maintenance Responsibilities This First Amended Agreement will record the Parties' decisions regarding maintenance responsibilities for certain improvements built in conjunction with the Solterra project. The City's maintenance efforts will be comparable to the City's maintenance of other similar public improvements throughout Lakewood.

The following improvements will be maintained, repaired and replaced by the entity identified in each section.

A. Landscaping including mowing, weed control, irrigation including scheduling, water and electric costs, and plant material replacement :

1. In rights-of-way and easements along public streets including all median islands:
 - a. Indiana Street north of Evans Avenue as the landscaping is illustrated on the City approved plan titled "Solterra-Indiana Street Corridor Site Plan" - District
 - b. Indiana Street south of Evans Avenue, Iliff Avenue, Wesley Avenue, Evans Avenue west of Indiana Street to the point at which single family lots front on Evans, McIntyre Street other than property west of the curb of the southbound lanes, and Yale Avenue north of the northern curb – District
 - c. Yale Avenue median – 50% District and 50% by the property owners south of Yale
 - d. Alameda Parkway – City
 - e. All other streets – Responsibility is determined by City ordinance as amended

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from time to time. At the time of the execution of this First Amended Agreement, the City ordinance obligates the adjacent private property owner.

2. Along private streets (i.e., streets not in City rights-of-way) –District.
3. West Corridor, Central Corridor, and East Buffer – District until the later of (a) fee ownership of the land is accepted by the City or (b) for three years following issuance by the City of a Certificate of Acceptance as described in the Development Agreement for Springfield Green Official Development Plan Modification No. 1 (Alternative) dated September 11, 2006. At the time both (a) and (b), above, have occurred, the responsibility will be the City's.
4. Central Corridor permanent landscaping and irrigation including sod, trees, and shrubs per the approved Solterra West PA 6 Middle Bear Creek Outfall and Pond B2 plans. - District
5. Forsberg Iron Spring Park (including the dog park areas) (except street landscaping as noted in 6.A.1.a. above) – City
6. Open space connections from the West Corridor, Central Corridor, East Buffer and Forsberg Iron Spring Park to a nearby street or other open space - District
7. Open space corridors not listed above – District
8. Stormwater detention and water quality areas – District

B. Street paving, curbs, gutters and concrete island edging:

1. Private streets (i.e., streets not in City rights-of-way) – District.
2. Public streets except for concrete cross walks – City
3. Concrete cross walks on public streets - District

C. Sidewalk and trail pavement:

1. Sidewalks along public streets – City with one exception. The exception is the District will maintain the sidewalk in and within ten feet of all portal structures such as the portal structures located at the east side of Indiana Street near Evans Avenue and the east side of Indiana Street north of Yale Avenue.

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2. Sidewalks along private streets (i.e., streets not in City rights-of-way) – District.
3. Central Corridor trail that is 8 feet in width or greater – City
4. West Corridor trail that is 8 feet in width or greater – City
5. East buffer trail and Forsberg Iron Spring Park trails – City
6. Open space connections from the West Corridor, Central Corridor, East Buffer and Forsberg Iron Spring Park to a nearby street or other open space - District
7. Trail or sidewalk connections not listed above – District

D. Central Corridor, West Corridor, and East Buffer amenities:

1. Bridges – District
2. Benches and concrete pads – District
3. Retaining walls – District

E. Stormwater Detention Structures:

1. Facility located east of Indiana between Iliff and Yale - City
2. Facility located north of Wesley in the Central Corridor – City
3. Facility(ies) located south of Wesley and north of Yale in the Central Corridor, including the pond feature and pump facility – District
4. Facility(ies) located west of the West Corridor –District, unless City ordinances, as amended from time to time, requires another party to maintain. At the time of execution of the First Amended Agreement, the City ordinance obligates the owner of property from which the drainage discharges if that property is exclusively multi-family residential uses.
5. Water quality ponds in the Central Corridor – District
6. Access paths for water quality ponds – District

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F. Snow Removal:

1. Public street pavement – City
2. Private street pavement and adjacent sidewalks (i.e., streets not in City rights-of-way) – District.
3. Snow removal from sidewalks located along public streets will be performed pursuant to City ordinance and policy as amended from time to time. At the time of the execution of this Agreement, the adjacent property owner is responsible by ordinance to remove snow and ice from sidewalks. By policy and dependent on funding, the City currently removes snow from public sidewalks along arterial streets (Alameda, McIntyre, and Yale.) The District will perform snow removal from sidewalks along collector streets (Indiana, Wesley, and Iliff.)
4. West Corridor, Central Corridor and East Buffer – District until the later of (a) fee ownership of the land is accepted by the City or (b) for three years following issuance by the City of a Certificate of Acceptance as described in the Development Agreement for Springfield Green Official Development Plan Modification No. 1 (Alternative) dated September 11, 2006. At the time both (a) and (b), above, have occurred, the responsibility will be the City's. This provision is for sidewalks 8 feet in width or greater. If sidewalks are less than 8 feet in width then the snow removal will be performed by the District.
5. Forsberg Iron Spring Park trails – City
6. Open space connections from the West Corridor, Central Corridor, East Buffer and Forsberg Iron Spring Park to a nearby street or other open space - District
7. All other open space trails - District

G. Sign Posts and Frames

1. Posts and signs for regulatory and informational signage associated with public streets that are standard posts and signs used throughout the City - City
2. All other posts and signs and all sign frames – District
 - a. The City shall immediately replace signs that include red information and are reported to the City as damaged. Said replacement sign shall be a City standard post and/or sign. Said City standard replacement sign and post

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shall be replaced with non-City standard sign and post by the District within 72 hours of receiving notification from the City. The District shall return to the City the City standard sign and post.

- b. The District shall replace all non-City standard signs and posts that do not include red information. Such replacement shall occur within 72 hours of the District receiving a report of the sign or post requiring replacement.
- c. All signs shall conform to the Manual on Uniform Traffic Control Devices.

H. Street Lights

1. Arterial, collector and non-residential local streets – City with confirmation from Public Service Company of Colorado that it will maintain the lights pursuant to the City's franchise. District for all lights not maintained pursuant to the franchise. If the District maintains street lighting, the City shall annually pay to the District the amount the City would have spent to maintain street lights in the area the District is maintaining street lighting, but only for the street lights the City would have provided to meet the City's street lighting standards.
 2. Residential local streets – lighting will be provided and maintained by adjacent property owners using curb, yard or driveway lights pursuant to the Development Agreement for Springfield Green Official Development Plan Modification No. 1 (Alternative) dated September 11, 2006.
- i. Rock Culvert Facing – A concrete box culvert provides a grade separated crossing under Indiana Street for the trail from Forsberg Iron Spring Park to the Central Corridor. The culvert has rock facing on the headwalls and wing walls. The District shall maintain the rock facing. The City shall maintain the concrete box culvert. Any future grade separated crossing pursuant the Development Agreement for Springfield Green Official Development Plan Modification No. 1 (Alternative) dated September 11, 2006 shall be subject to the same maintenance.

7. **Miscellaneous.**

a. Notices. Any notice, request, assignment, payment, consent, approval, demand or other communication required or permitted hereby shall be in writing and shall be deemed to have been given when personally delivered or when deposited in the United States Postal Service, certified or registered, return receipt requested, postage prepaid, properly addressed to the persons to whom such notice is intended to be given at their respective addresses as follows:

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If to the City:

Attention: City Manager
City of Lakewood
480 South Allison Parkway
Lakewood, CO 80226-3126

If to the District:

Attn: President
Fossil Ridge Metropolitan District No. 1
c/o White, Bear & Ankele Professional Corporation
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129

With a Copy to:

Attn: Kristen D. Bear, Esq.
White, Bear & Ankele Professional Corporation
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129

The address of any person entitled to notice hereunder, including any assignee of this First Amended Agreement, may be changed by notice to the parties entitled to notice hereunder of the name and address of the person thereafter entitled to give or receive such notice or direction.

b. Assignment. The City and the District are relying on each other to perform the obligations of this Agreement. Therefore, this First Amended Agreement may only be assigned by one Party with the consent of the other Party.

c. Independent Contractor. Nothing in this First Amended Agreement shall be construed to constitute or designate the District or the City or any of either Party's officers, directors, employees, agents or subcontractors as agents or employees of the other Party.

d. Governing Law. This First Amended Agreement shall be governed by the laws of the State of Colorado.

e. Severability. Should any provision of this First Amended Agreement be held invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this First Amended Agreement. Furthermore, if a material provision of this Agreement is held invalid, illegal or unenforceable, the Parties

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hereto agree to renegotiate that provision to be a valid, legal and enforceable provision which reflects as closely as possible the original intent of the Parties hereto as expressed herein with respect to the subject matter of that provision.

f. Entire Agreement and Amendments. This First Amended Agreement embodies the whole agreement of the Parties relating to the subject matter of this First Amended Agreement. No modification of this First Amended Agreement shall be effective unless agreed to in writing by both parties in an amendment to this First Amended Agreement that is properly executed by both parties and approved in accordance with applicable law. The Parties recognize that portions of the Solterra Project have not been finally designed or subdivided. The City's City Manager is hereby authorized to amend this First Amended Agreement on behalf of the City and without further action of the City's City Council to:

1. Reflect final design decisions as the Solterra Project progresses, and
2. To reflect changes in the geographic boundaries of the Solterra Project.

g. Termination.

1. The District or the City may terminate this First Amended Agreement if the other Party is in default of the terms of the First Amended Agreement beyond applicable notice and cure periods. The non-defaulting Party shall provide notice to the defaulting Party of the default and the defaulting Party shall have thirty (30) days to correct the default except as set forth in Subsection 7.g.2. If the default is not corrected within said time, the First Amended Agreement may be terminated only after the Parties submit to Alternative Dispute Resolution as set forth herein and then only to the extent that such default is not resolved through such mechanism. The Parties may agree to extend the time period within which the default may be corrected.

2. If in the reasonable discretion of the City, a District default results in a hazard to the public health, safety or welfare, the City shall provide notice to the District of the default and the District shall have seven (7) days to correct the default. Such notice must specify that the cure period for such default is only seven (7) days and must describe the specific circumstance or condition that is causing the hazard to the public health, welfare or safety.

h. Alternative Dispute Resolution. To the extent permitted by law, should any dispute arise regarding the interpretation or implementation of this Agreement, or in connection with any covenant, obligation or act to be performed under this Agreement, or

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should any continuing event of default exist, the Parties agree that except for those matters set forth in subsection h.4. below, such disputes and/or continuing events of default shall be resolved in the following manner:

1. The City and the District shall continue in good faith to attempt to resolve such dispute or cure such continuing event of default for a period of not less than fifteen (15) days following the identification by either Party and written notice to the other Party of the existence of a dispute or a continuing event of default.

2. In the event such dispute is not resolved or such continuing event of default is not cured within the fifteen (15) day period set forth above, the City and the District shall employ a mutually acceptable professional mediator to assist them in resolving the dispute, and shall bear the fees and costs of such mediator equally between them. Such mediation efforts shall be pursued for not less than fifteen (15) days.

3. In the event the dispute or the continuing event of default is not resolved by mediation within the fifteen (15) day period set forth above, the Parties shall submit the dispute to a mutually acceptable professional arbitrator, in accordance with the rules of the American Arbitration Association then in effect, to finally resolve the dispute. The arbitrator shall have authority to impose all available remedies at law or in equity, including but not limited to, specific performance and damages. The arbitrator may, in his or her discretion, allocate the fees and costs of the arbitration, including attorneys' fees, equitably between the Parties. The award or decision made or rendered by the arbitrator shall be final and binding upon the Parties. Either Party shall have the right to have such arbitration award or determination enforced by any Court of competent jurisdiction.

4. Alternative Dispute Resolution shall not be employed in such a manner as to constitute a delegation of the City Council's legislative authority nor shall it be employed if either Party, in its discretion, determines it must seek the equitable relief of an injunction (seeking either affirmative relief, *i.e.*, specific performance, or relief restraining the other Party's actions) or temporary restraining order.

i. Waiver. A waiver by any party to this First Amended Agreement of the breach of any term or provision of this First Amended Agreement shall not operate or be construed as a waiver of any subsequent breach by either party. Any waiver shall be in writing.

j. No Third Party Beneficiaries. Nothing in this First Amended Agreement is intended to create, or confer upon any third party any rights or benefits. It is expressly understood and agreed that enforcement of the terms and conditions of this First

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Amended Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the District.

k. Compliance with Ordinances and Regulations. This First Amended Agreement shall be administered consistent with both the City's current and future laws, rules, charters, ordinances, and regulations.

l. Colorado Governmental Immunity Act. Both parties to this First Amended Agreement are governmental entities subject to and protected by the limitations on liability set forth in the Colorado Governmental Immunity Act, C.R.S. Title 24, and Article 10. Nothing contained herein shall be deemed to waive any rights or immunities established pursuant to the Colorado Governmental Immunity Act.

m. Nonperformance. In the event the District is unable or unwilling to continue to perform its obligations under this First Amended Agreement, the City shall provide services to the Project similar to those provided by the City throughout the City. At its sole discretion, the City may choose to provide services herein assigned to be performed by the District that exceeds those provided throughout the City.

n. No Joint Venture. The Parties agree and acknowledge that there shall not be, and this First Amended Agreement does not create, any joint venture, partnership, agency or employee relationship between the City and the District.

o. Insurance. The District shall procure and continuously maintain, during the term of the First Amended Agreement, the minimum insurance coverage's listed below. The District's insurer must be rated "A" or better, according to Best's Key Rating Guide and must be admitted to do business in the State of Colorado.

Commercial General Liability (CGL) coverage with a limit of not less than \$1,000,000 each occurrence, plus an additional amount sufficient to pay related defense costs and attorneys' fees. This coverage shall include contractual liability, products/completed operations liability and shall include the City, its officers, officials, and employees as additional named insured's with respect to this Agreement.

Workers' Compensation coverage in accordance with the Workers' Compensation Act of the State of Colorado.

Business Automobile Liability coverage with a limit of not less than \$1,000,000 each accident, plus an additional amount sufficient to pay related defense costs and attorney's fees with respect to each of the District's owned, hired or non-owned vehicles assigned to or used in performance of this First Amended Agreement.

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This coverage shall include the City, its officers, officials and employees as additional named insured's with respect to this First Amended Agreement.

Every policy required above shall be primary insurance and any insurance carried by or provided by the City of Lakewood, its officers or its employees, or carried by or provided through any self-insurance pool of the City of Lakewood, shall be excess and not contributory insurance to that provided by the District.

The District shall be responsible for any deductible losses under its policies.

For Commercial General Liability and Business Automobile Liability coverage, the District shall provide a waiver of subrogation in favor of the City of Lakewood, its officers, officials, and employees with respect to this First Amended Agreement.

The insurance policies required above shall include a thirty-day (30) notice of cancellation provision. All cancellation notices shall be sent to the City of Lakewood pursuant to the notice provision of this First Amended Agreement.

A certificate of insurance must be provided at the time the First Amended Agreement is executed by the District unless the Parties arrange otherwise.

p. TABOR and Appropriations. It is understood and agreed that this First Amended Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this First Amended Agreement to the contrary, all obligations of the City and the District are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the City's and District's current fiscal period ending upon the next succeeding December 31. Financial obligations of the City and the District payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Failure of the City or the District to appropriate, budget or otherwise make funds available for payment from one entity to the other shall not constitute nonperformance or breach of any part or all of this First Amended Agreement. Any payment provision of this First Amended Agreement shall be suspended and not terminated in the event the City or the District fails to appropriate, budget or otherwise make funds available. Said suspension shall expire upon the City or the District appropriating, budgeting, and otherwise making funds available for payment.

q. Binding Effect. This First Amended Agreement shall inure to the benefit of, and be binding upon, the Parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be

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construed to permit the assignment of this First Amended Agreement except as otherwise expressly authorized herein.

r. Compliance with Regulations. The District shall comply with all City, State and Federal laws and regulations that relate to the activities described in this First Amended Agreement.

s. Indemnification. Both Parties shall be responsible for their own negligence.

t. Effective Date. The terms of this First Amended Agreement shall become binding on all parties hereto on the recordation of this First Amended Agreement in the records of the Clerk and Recorder of Jefferson County, Colorado.

u. Titles. Titles of paragraphs or sections of this First Amended Agreement have been included solely for convenience of the parties and are not to be considered or deemed a part of this First Amended Agreement, nor are they intended to be a full or accurate description of the contents thereof.

v. Counterparts. This First Amended Agreement may be executed in counterparts, each of which shall be deemed an original.

w. Authority. The Parties represent that they possess the requisite authority to perform the respective functions and obligations set forth in this First Amended Agreement. The Parties represent that they possess the requisite authority to sign this First Amended Agreement.

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CITY OF LAKEWOOD

Kathleen E. Hodgson
Kathleen E. Hodgson, City Manager

ATTEST:

Margy Greef
Margy Greef, City Clerk

RECOMMENDED AND APPROVED:

APPROVED AS TO FORM:

Jay Hutchison
Jay Hutchison, Director 12/11/13
Department of Public Works

Paul Kenneth
Office of the City Attorney

Kit Botkins
Kit Botkins, Director
Department of Community Resources

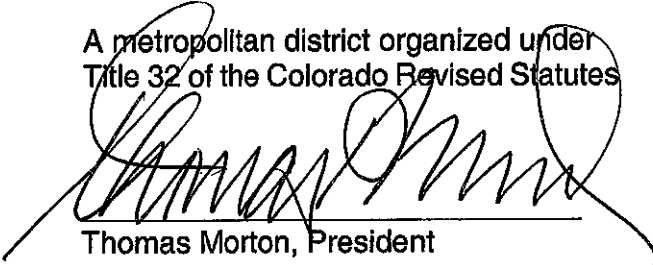
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DISTRICT

Fossil Ridge Metropolitan District No. 1,

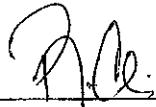
A metropolitan district organized under
Title 32 of the Colorado Revised Statutes


Thomas Morton, President

STATE OF COLORADO)
) ss:
COUNTY OF ~~DENVER~~ *Arapahoe* *RAC*

The foregoing instrument was acknowledged before me this 11th day of December,
2013, by Thomas Morton, as President of the Fossil Ridge Metropolitan District No. 1, a
metropolitan district organized under Title 32 of the Colorado Revised Statutes.

Witness my hand and official seal.
My commission expires: 7/10/17



Notary Public

[SEAL]

RACHEL ADRIAN SPELLMAN
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20134043208
MY COMMISSION EXPIRES 07/10/2017

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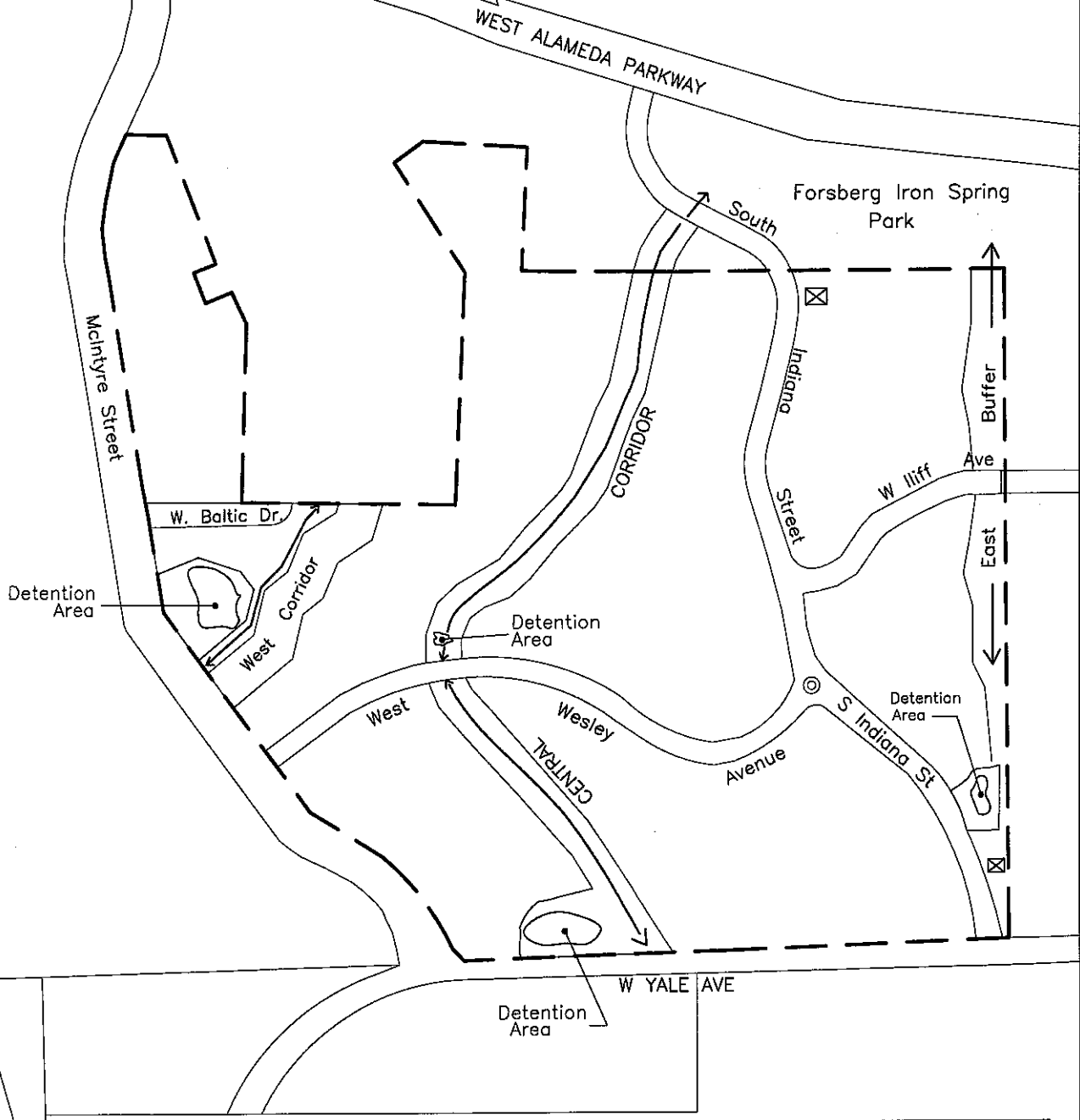
EXHIBIT A

FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF LAKEWOOD AND FOSSIL RIDGE METROPOLITAN DISTRICT NO. 1
RELATING TO MAINTENANCE



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C - 470



LEGEND

- ↔ 8' Concrete Trail
- ⊠ Portal Structure