

INTERGOVERNMENTAL AGREEMENT

(Water Recreation Amenities Use)

This **INTERGOVERNMENTAL AGREEMENT** (this "**Agreement**") is made and entered into as of the 25 day of April, 2019, by and between the **RAINDANCE METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**RDMD**") and the **POUDRE TECH METROPOLITAN DISTRICT** a quasi-municipal corporation and political subdivision of the State of Colorado (the "**PTMD**"). RDMD and PTMD are referred to collectively herein as the "Parties" or "Districts".

RECITALS

WHEREAS, the Districts have been duly and validly organized as quasi-municipal corporations and political subdivisions of the State of Colorado, in accordance with the provisions of Article 1, Title 32, Colorado Revised Statutes (the "**Special District Act**"), with the power to provide certain public infrastructure, improvements and services, as described in the Special District Act, and as authorized in the Service Plans for the Districts (the "**Service Plans**"); and

WHEREAS, in accordance with the Special District Act and the Service Plans, the Districts has the power to acquire real and personal property, manage, control, and supervise the affairs of the Districts, including the financing, construction, installation, operation and maintenance of the public infrastructure, and to perform all other necessary and appropriate functions in furtherance of the Service Plans; and

WHEREAS, pursuant to Section 32-1-1001(1)(d)(I), C.R.S., the Districts are permitted to enter into contracts and agreements affecting the affairs of the Districts; and

WHEREAS, pursuant to Section 32-1-1001(1)(k), C.R.S., the Districts are permitted to furnish services and facilities within and without their respective boundaries, and to establish fees, rates, tolls, penalties, or charges for such services and facilities; and

WHEREAS, PTMD presently operates and maintains certain lakes and beaches located within the community commonly known as "Water Valley" (the "Water Valley Amenities"), and such amenities are open for use by non-Water Valley residents for an annual fee (the "Water Valley Non-Resident Use Fee"); and

WHEREAS, RDMD is presently planning and developing an aquatic center in the community commonly known as "Raindance" (the "Raindance Amenities"), and such amenities are anticipated to be open for use by Raindance residents at a daily rate to be established for Raindance residents ("Raindance Resident Fee") and non-Raindance residents (Raindance Non-Resident Use Fee"), respectively; and

WHEREAS, the Districts desire to allow Water Valley residents to use the Raindance Amenities at a rate less than the Raindance Non-Resident Use Fee; and

WHEREAS, the Districts desire to establish the terms and conditions by which the Raindance Amenities may be used by Water Valley residents; and

WHEREAS, the Districts desire to allow Raindance residents to use the Water Valley Amenities at a rate less than the Water Valley Non-Resident Use Fee; and

WHEREAS, the Districts desire to establish the terms and conditions by which the Water Valley Amenities may be used by Raindance residents; and

WHEREAS, the Boards of Directors of the Districts have determined that the best interests of the Districts and their respective property owners would be served by entering into this Agreement; and

WHEREAS, the Boards of Directors of the Districts have authorized their respective officers to execute this Agreement and to take all other actions necessary and desirable to effectuate the purposes of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the parties hereby agree as follows:

COVENANTS AND AGREEMENTS

1. Purpose. The purpose of Agreement is to establish the terms and conditions upon which Water Valley Residents will have access to Raindance Amenities, and Raindance residents will have access to Water Valley Amenities.

2. Term. This Agreement shall be effective as of the date of execution by the Districts and shall continue until termination by either of the Districts.

3. Use of Water Valley Amenities. Raindance residents desiring to use the Water Valley Amenities shall be subject to payment of an annual fee equal to 50% of the then current Water Valley Non-Resident Use Fee. Any use of the Water Valley Amenities by Raindance residents shall be subject to the terms and conditions of any rules and regulations of PTMD as may be adopted and amended from time to time, including the Recreation Amenities Use Policy adopted by the Board of Directors of PTMD, as may be amended from time to time.

4. Use of Raindance Amenities. Water Valley residents desiring to use the Raindance Amenities shall be subject to payment of a daily fee equal to 50% of the then current Raindance Non-Resident Use Fee. Any use of the Water Valley Amenities by Water Valley residents shall be subject to the terms and conditions of any rules and regulations adopted by RDMD, as may be adopted and amended from time to time.

5. Notices and Place for Payments. All notices, demands and communications (collectively, “**Notices**”) under this Agreement shall be delivered or sent by: (a) first class, registered or certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight carrier, addressed to the address of the intended recipient set forth below or such other address as a party may designate by notice pursuant to this Paragraph, or (c) sent by confirmed facsimile transmission, PDF or email. Notices shall be deemed given either one business day after delivery to the overnight carrier, three days after being mailed as provided in clause (a) above, or upon confirmed delivery as provided in clause (c) above.

If to the RDMD No. 1: RainDance Metropolitan District No. 1
Attn: Gary Kerr
1625 Pelican Lakes Point, Suite 201
Windsor, CO 80550
(970) 686-5828 (phone)
gkerr@watervalley.com

With copy to: WHITE BEAR ANKELE TANAKA & WALDRON
Attention: William P. Ankele, Jr.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
303.858.1800 (phone)
303.858.1801 (fax)
wpankele@wbapc.com

If to the PTMD: Poudre Tech Metropolitan District
Attn: Gary Kerr
1625 Pelican Lakes Point, Suite 201
Windsor, CO 80550
(970) 686-5828 (phone)
gkerr@watervalley.com

With copy to: WHITE BEAR ANKELE TANAKA & WALDRON
Attention: William P. Ankele, Jr.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
303.858.1800 (phone)
303.858.1801 (fax)
wpankele@wbapc.com

6. Amendments. This Agreement may only be amended or modified by a writing executed by each party.

7. 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.

8. Applicable Laws. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for the county in which the District is located.

9. Assignment. This Agreement may not be assigned by either party and any attempt to do so shall be null and void.

10. Authority. By execution hereof, the Districts represent and warrant that their representative signing hereunder has full power and lawful authority to execute this Agreement and to bind the respective party to the terms hereof.

11. Entire Agreement. This Agreement constitutes and represents the entire, integrated agreement between the Districts with respect to the matters set forth herein, and hereby supersedes any and all prior negotiations, representations, agreements or arrangements of any kind with respect to those matters, whether written or oral. This Agreement shall become effective upon the date set forth above.

12. Inurement. The terms of this Agreement shall be binding upon, and inure to the benefit of the parties as well as their respective successors and permitted assigns.

13. 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.

14. Subject to Annual Appropriation and Budget. The Districts do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Districts pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations.

15. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being acknowledged that each party has contributed substantially and materially to the preparation of this Agreement.

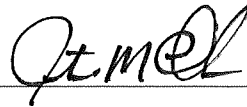
16. Counterpart Execution. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the

same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto.

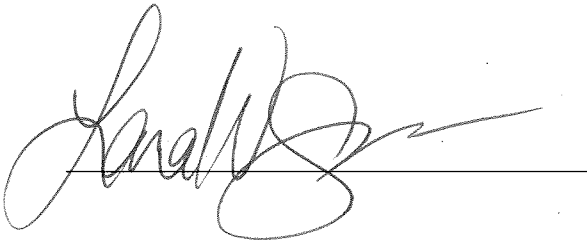
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date and year first written above. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

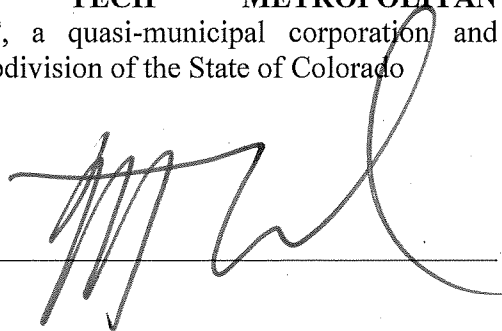
**RAINDANCE METROPOLITAN DISTRICT
NO. 1**, a quasi-municipal corporation and political
subdivision of the State of Colorado



ATTEST:



**POUDRE TECH METROPOLITAN
DISTRICT**, a quasi-municipal corporation and
political subdivision of the State of Colorado



ATTEST:

