
**WINDLER
PUBLIC IMPROVEMENT AUTHORITY
ESTABLISHMENT AGREEMENT**

by and among

**WINDLER HOMESTEAD METROPOLITAN DISTRICT
AND WH METROPOLITAN DISTRICT NO. 1**

Dated as of April 29, 2021

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**WINDLER PUBLIC IMPROVEMENT AUTHORITY
ESTABLISHMENT AGREEMENT**

THIS WINDLER PUBLIC IMPROVEMENT AUTHORITY ESTABLISHMENT AGREEMENT (this “**Agreement**”), is entered into as of the 29th day of April, 2021, by and between WINDLER HOMESTEAD METROPOLITAN DISTRICT (formerly known as WH Metropolitan District No. 2), a quasi-municipal corporation and political subdivision of the State of Colorado (“**Windler Homestead**”) and WH METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (“**WH**”) (each a “**District**” and, collectively, the “**Districts**”).

W I T N E S S E T H:

WHEREAS, the Districts are quasi-municipal corporations and political subdivisions of the State of Colorado, organized for the purpose, among others, of assisting in the financing and construction of public improvements within certain areas located within the City of Aurora, Colorado (the “**City**”); and

WHEREAS, in accordance with the Service Plan for Windler Homestead, as approved by the City on August 30, 2004, and the Service Plan for WH, as approved by the City on August 30, 2004, as either may be amended from time to time (collectively, the “**Service Plan**”) and pursuant to Sections 32-1-101, et seq., C.R.S., (the “**Special District Act**”), the Districts are each authorized to provide public improvements and services; and

WHEREAS, as permitted by the Service Plan and applicable Colorado law, the Districts desire to coordinate with one another for the ongoing financing, planning, designing, acquiring, constructing, installing, relocating and redeveloping of public improvements and facilities, including, but not limited to certain street, traffic and safety controls, water, sanitation, stormwater, and parks and recreation, as further set forth in the Service Plan and in this Agreement (collectively, and as may be further supplemented or provided in accordance with this Agreement and applicable law, the “**Services**”); and

WHEREAS, the Districts, being located in the same general area, desire to develop a collaborative working relationship to more efficiently and effectively carry out their individual responsibilities under the Special District Act as it relates to the Services; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(a), provides that the Constitution shall not be construed to prohibit the state or any of its political subdivisions in cooperating and contracting with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs or the incurring of debt; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(b), provides that the Constitution shall not be construed to prohibit the authorization by statute of a separate governmental entity as an instrument to be used through voluntary participation by cooperating or contracting political subdivision; and

WHEREAS, Sections 29-1-201, *et seq.*, C.R.S., permit and encourage governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governments and provides that such statute shall be liberally construed; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs or the incurring of debt, through the authorized establishment of a separate entity; and

WHEREAS, the Districts have a compelling mutual interest in jointly providing the Services, in the present and future, to promote the public welfare; and

WHEREAS, the design, construction, scheduling and total costs of the Services may be substantially different if provided without considering the overall development needs and coordinated construction; the financing, completion and availability of the Services in a coordinated manner will recognize the administrative efficiencies and the financial and time saving benefits of a collaborative approach and better promote the health, safety, prosperity, security and general welfare of the property owners and residents within the Districts as well as the public in general; and

WHEREAS, the Districts desire to enter into this Agreement to authorize and establish an authority as a separate legal entity, political subdivision and public corporation of the State in conformity with and subject to Section 29-1-203.5, C.R.S., to provide the Services and to incur financial obligations on behalf of the Districts and for any related functions, services, or facilities permitted by the Constitution and laws of the State of Colorado and in accordance with the provisions of this Agreement; and

WHEREAS, Section 29-1-203.5, C.R.S., provides that any separate legal entity established thereunder shall be a political subdivision and public corporation of the State of Colorado with the duties and immunities set forth in Part 1 of Article 10, Title 24, C.R.S., as amended; and

WHEREAS, at elections of the qualified electors of the Districts, duly called and held, in accordance with law and pursuant to due notice, a majority of those qualified to vote and voting at such election, authorized the Districts to enter into this Agreement. To the extent this Agreement is deemed to constitute debt or a multi-fiscal year financial obligation of one or more of the Districts, the same has received voter approval in such election; and

WHEREAS, at a mutually agreed-upon date in the future, the Districts may seek to consolidate into one special district in accordance with the provisions of Sections 32-1-601, *et seq.*, C.R.S., as amended, and the Service Plan (as may be finalized, a “**Consolidation**”), and, unless and until such Consolidation occurs, the authority established hereby will be authorized to provide the Services on the Districts’ behalf as set forth herein; and

WHEREAS, unless and until such time as a public improvement is conveyed to the City, a metropolitan district or other appropriate entity, the authority established hereby shall have the power to own, operate and maintain such public improvement; and

WHEREAS, it is in the best interest of the Districts and for the public health, safety, convenience, and welfare of the residents of the Districts and of the general public that the Districts enter into this Agreement for the purpose of establishing an authority to provide the Services and incur financial obligation on behalf of the Districts as may be identified and agreed upon by the Districts, or Members (as defined below), from time to time; and

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed in this Agreement, it is agreed by and between the Districts, as follows:

ARTICLE I CREATION OF THE AUTHORITY

Section 1.01. Creation. Pursuant to Section 29-1-203, C.R.S., and in conformity with Section 29-1-203.5, C.R.S., and the Service Plan, as the same may be amended from time to time, upon the mutual execution of this Agreement by the Districts, there is hereby established by this Agreement a separate political subdivision of the State of Colorado to be known as the Windler Public Improvement Authority (the “**Authority**”). The Authority shall be separate and distinct from the Districts and Members (as defined below).

Section 1.02. Purpose. The Authority is organized for the purposes of incurring financial obligations on behalf of the Districts and providing any Services permitted by the Service Plan, Constitution and laws of the State of Colorado and in accordance with the provisions of this Agreement.

Section 1.03. Boundaries. The initial area comprising the boundaries of the Authority shall consist of, and be conterminous with, the combined territory of the Members, as of the date hereof, and in the future the boundaries of the Authority shall continue to be coterminous with the boundaries of the Members, as such Members process inclusions and exclusions, pursuant to the Special District Act.

Section 1.04. Immunity. The Authority shall be a political subdivision of the State of Colorado and therefore a “public entity” as defined by the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended (the “**CGIA**”).

ARTICLE II
MEMBERSHIP/ORGANIZATIONAL STRUCTURE

Section 2.01. Members Defined. A “**Member**” shall be any special district, business improvement district or other political subdivision of the State of Colorado that is (a) lawfully authorized to provide the Services, and (b) approved for membership in the Authority under the terms of this Agreement as it may be amended from time to time.

Section 2.02. Initial Members. The initial Members of the Authority shall be the Districts.

Section 2.03. Board of Directors. The Authority shall be governed by a Board of Directors (the “**Board**”), in which all of the legislative power of the Authority is vested and which shall exercise and perform all the powers, rights and duties vested in and imposed on the Authority by this Agreement and applicable law. Each Board member (each a “**Director**”) may receive compensation for their services in the maximum amount allowed for the directors of special districts by Section 32-1-902(3), C.R.S., as amended, and reasonable expenses related to the exercise of Board functions may be reimbursed by the Authority from funds that may be available for such purpose.

Section 2.04. Composition of Board. Each Member shall be entitled to appoint one (1) Director to serve on the Board. For so long as Windler Homestead and WH are the sole Members, Windler Homestead shall be entitled to appoint one (1) additional Director to serve on the Board. Such additional Director shall cease to serve on the Board at such time as an additional Member is included into the Authority and appoints a Director to serve on the Board on its behalf. Directors do not have to be an elected/appointed director of any Member. A quorum of the Board shall consist of a majority of the Directors then appointed (a “**Quorum**”). The Members shall appoint their respective Directors and establish their terms of office by motion or resolution, which term may not exceed four (4) years, documented in writing, a copy of which shall be provided to the Authority. There shall be no limit on the number of terms a Director may serve. Each Director shall take an oath or affirmation in accordance with Section 24-12-101(1), C.R.S., as amended. The oath or affirmation of each Director shall be administered consistent with the provisions of Section 24-12-103, C.R.S., as amended, and a copy shall be provided to the

respective Member and the Authority. Each Director shall serve at the will and pleasure of the Member that appoints such Director. A Director may be removed by the appointing Member, with or without cause, upon written notification of the removal to the respective Director and the Authority.

Section 2.05. Vacancies. A vacancy may arise on the Board through resignation, death, removal by the Member for which such Director is appointed to represent, disability of any such Director, or loss of eligibility to serve on the Board pursuant to applicable law or this Agreement. Vacancies on the Board shall be filled by the Member as to which the vacancy occurs, as set forth above.

Section 2.06. Addition of New Members. Additional Members may be included into the Authority upon a majority vote of the Directors at a meeting at which a Quorum is present and upon the execution of a written amendment to this Agreement approved in writing by all the Members. The Board may establish criteria for the addition of a new Member, including fees for joining the Authority and Board composition. Prior to and as a condition to inclusion into the Authority, each additional Member must enter into one (1) or more pledge agreements related to the Debt Pledged Revenue (as defined below) with the Authority, in a form that is acceptable to the Authority and then existing Members, as set forth in Section 4.02 of this Agreement. Upon admission to the Authority, new Members will be entitled to appoint Directors to the Board as set forth in Section 2.04 of this Agreement.

Section 2.07. Voting and Quorum. The Board shall act only upon a majority vote of the Directors at a meeting at which a Quorum is present. Each Director appointed by a Member shall have one vote on behalf of that Member. No official action may be taken by the Board on any matter unless it occurs at a meeting of the Board, held in accordance with Section 2.08 herein, where a Quorum is in attendance either in person, telephonically or electronically. Voting by proxy is prohibited.

Section 2.08. Meetings. The Board may hold regular and special meetings at any location that each of the Members are legally entitled to hold regular and special meetings in conformance with Section 32-1-903, C.R.S., as amended. The Board may hold regular meetings at a time and place fixed by the Board and may conduct special meetings at such times and places

as the Board may determine to be necessary. Notices of all meetings shall be the same as meetings for special districts under the Special District Act.

Section 2.09. Officers. The officers of the Authority shall consist of, at a minimum, a President, Secretary and Treasurer, and may include a Vice President and as many assistant Treasurers and assistant Secretaries as the Board sees fit. All officers shall be appointed from time to time by a vote of the Board. Appointed officers must be Directors, provided the Board may appoint an individual who does not serve as a Director to serve as the Secretary or as an assistant Secretary. The duties of all officers shall include such duties as are required by law and as may be directed by the Board from time to time.

Section 2.10. Bylaws and Regulations. The Board shall have the power to adopt such bylaws and regulations as are necessary or convenient for the conduct of the Authority so long as such bylaws and regulations are not in conflict with the provisions of this Agreement or applicable law.

Section 2.11. Withdrawal. Prior to the issuance of debt by the Authority, a Member may be released from this Agreement upon prior written notice to the other Members. So long as the Authority has debt outstanding, no Member that has pledged its Debt Pledged Revenue to the Authority may be released from this Agreement. So long as the Authority has any debt outstanding, a Member that has not pledged its Debt Pledged Revenue to the Authority may be released from this Agreement upon prior written notice to the other Members. At such time as all debt of the Authority has been repaid, any Member may be released from this Agreement upon prior written notice to the other Members. Any withdrawal by a Member under this Section 2.11 shall be effective thirty (30) days from notice being properly given pursuant to Section 8.01 herein.

Section 2.12. Conflict Disclosures. All Directors shall disclose conflicts of interest as required of directors of special districts under applicable law, including Section 24-18-110, C.R.S., Section 18-8-308, C.R.S., and Rule 1.1 of the Colorado Secretary of State's Rules Concerning Conflicts of Interest, as the same may be amended from time to time.

Section 2.13. No Restriction on Powers of Members. Except as expressly provided herein, nothing in this Agreement shall be deemed or construed to restrict, prohibit or otherwise limit the power of any Member, and no action of the Authority shall be attributable to the Members.

Section 2.14. Dissolution of Member; Consolidation of Members. If a Member desires to dissolve or otherwise cease to exist then either: (a) the plan for dissolution for such Member shall contain adequate provisions acceptable to the Authority, in the Authority's sole reasonable discretion, for the performance of all such Member's obligations to the Authority; or (b) all such obligations to the Authority shall be fully paid and performed prior to the effective date of dissolution. If all Members determine to consolidate with one another pursuant to Sections 32-1-601, *et seq.*, C.R.S., as amended, then the Members shall jointly agree to terminate this Agreement in accordance with the provisions of Article VI of this Agreement. If certain Members determine to consolidate with one another pursuant to Sections 32-1-601, *et seq.*, C.R.S., as amended, then the Members shall amend this Agreement in accordance with Section 8.03, herein.

Section 2.15. Advisory Committees. The Board may establish one (1) or more advisory committees, and the advisory committee members may be any person or persons so designated by vote of the Board. Any committee established by the Board shall serve solely in an advisory capacity to the Board. The members of any advisory committee shall serve at the pleasure of the Board and may be removed by the Board, with or without cause, upon written notification of the removal to the respective member.

ARTICLE III

POWERS OF THE AUTHORITY

Section 3.01. Delegation of Powers, Duties and Responsibilities. Each of the Members delegates to the Authority the limited power, duty and responsibility to provide the Services, to employ the necessary personnel and to do any and all other things necessary, incidental, implied or desirable to provide the Services and it to incur financial obligations on behalf of the Members. Notwithstanding the aforementioned delegations herein, each of the Members reserves and

maintains for itself the power to provide the Services and to incur financial obligations consistent with the Service Plan, so long as such provision of Services by a Member does not duplicate or interfere with the Authority's provision of Services and incurrence of financial obligations pursuant to this Agreement. Members shall not provide Services of any kind without the prior written consent of the Board.

Section 3.02. Plenary Powers. Except as otherwise limited by this Agreement, the Authority, in its own name and as provided in this Agreement, shall exercise all powers lawfully authorized in Sections 29-1-203 and 29-1-203.5, C.R.S., as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Authority shall act through its Board, its officers, agents, consultants and employees as authorized by the Board pursuant to any action, motion, resolution, bylaws, and regulations of the Authority. The Authority shall not have the power to represent itself as, or act as agent for, or on behalf of, an individual Member without such Member's express written consent.

Section 3.03. Enumerated Powers. In general, the Authority shall have the power to exercise all powers conferred by law upon a separate legal entity organized pursuant to Sections 29-1-203 and 29-1-203.5, C.R.S., as amended, or essential to the provision of its functions, services, and facilities, and subject to such limitations as are or may be prescribed by law, the Service Plan or in this Agreement. In accordance with Section 29-1-203.5(2)(a), C.R.S., the Authority is expressly authorized to exercise any general power of a special district specified in Part 10 of Article 1 of Title 32, C.R.S., so long as each of the Members may lawfully exercise the power; provided, however, that pursuant to Section 29-1-203.5(2)(b), C.R.S., the Authority may not levy a tax or exercise the power of eminent domain. To the extent permitted by law and subject to the limitations set forth in the Service Plan and this Agreement, the Authority's powers shall include, without limitation, the following:

- (a) to acquire, operate, manage, own, lease (as lessee or lessor), sell, construct, reconstruct, maintain, or repair, or dispose of all or any portion of real and personal property, buildings, works, improvements, or other facilities necessary to carry out the purposes of this Agreement in the name of the Authority;

(b) to make and enter into contracts, including, without limitation, contracts with local governmental entities including, but not limited to, the Members, and other special districts, business improvement districts, authorities, corporations, cities, counties and state or federal agencies;

(c) to accept gifts, grants, and revenue from any lawful source;

(d) to sue and be sued in the Authority's own name;

(e) to hire and terminate agents, employees, consultants and professionals;

(f) to approve and modify master plans to provide for the Services; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and related purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the Authority provisions to fulfill such conditions as it may deem reasonable and appropriate;

(g) to prepare and approve an annual budget and any necessary amended or supplemental budgets, as set forth in Article 4, herein;

(h) to approve, set, impose, collect, pledge, spend, reserve, and use rates, fees, tolls, charges and penalties for facilities, services, and programs furnished or to be furnished by the Authority;

(i) to adopt, modify, and amend bylaws and regulations pursuant to Section 2.10, above;

(j) to enter into agreements for the purpose of securing any necessary professional, administrative, or support services;

(k) to keep and maintain financial books and records to account for all expenditures of funds, and to obtain an annual independent audit (or annual application for audit exemption) by certified public accountants selected by the Board of such records,

with all of the same to be made available to the Members at any time upon request pursuant to Section 4.04, below;

(l) to accept contributions, grants, or loans from any public or private agency, individual, or the United States or the State of Colorado or any department, instrumentality, or agency thereof, for the purpose of financing its activities;

(m) to adopt financial and investment policies and invest monies remaining in any fund which are available for investment in accordance with the laws of the State of Colorado including Articles 10.5 and 47 of Title 11, C.R.S., as amended, for the investment of public funds or by public entities;

(n) to enter into agreements for real estate, financing, goods or services;

(o) to issue on behalf of the Districts bonds, notes or other financial obligations payable solely from revenue derived from one or more of the functions, services, systems, or facilities of the Authority, from money received under contracts entered into by the Authority, or from other available money of the Authority subject to the provisions of Section 29-1-203.5(3)(a), C.R.S., as amended, and to finance the Services in accordance with Article 4, herein;

(p) to enter into lease-purchase agreements which may be offered either as whole leases or with certificates of participation in accordance with Sections 29-1-101, *et seq.*, C.R.S., as amended;

(q) to take all actions necessary, incidental or appropriate to carry out and implement the provisions of this Agreement;

(r) to have and use a corporate seal;

(s) to control and accept public rights-of-way;

(t) to furnish covenant enforcement and design control services in accordance with Section 32-1-1004(8), C.R.S., as amended; and

(u) to exercise any general power of a special district specified in part 10 of Article 1 of Title 32, C.R.S., as amended, so long as each of the Members may lawfully exercise such power.

Section 3.04. Limitation on Express and Implied Powers. In determining the express and implied powers that the Authority has under this Agreement, the Authority shall not have the following powers:

- (a) taxation;
- (b) imposition of special assessments pursuant to Article 25 of Title 31, and Article 1 of Title 32, C.R.S., as amended;
- (c) zoning or other governmental powers over land use;
- (d) imposition of building, fire code, public health and safety regulations; and
- (e) eminent domain.

Section 3.05. Spending Authority. The Authority is limited in its spending powers to the annual total budget approved by a vote of the Board, as said budget may be amended from time to time.

Section 3.06. No Private Inurement. No part of the assets or net earnings of the Authority shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the Authority shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement in reasonable amounts for expenses actually incurred in exercising the powers or carrying out the purposes of the Authority.

ARTICLE IV

BUDGETS/FUNDING/DEBT

Section 4.01. Annual Budget. On or before August 31st annually, each Member shall provide the Authority with its respective Preliminary Assessed Valuation for the coming year. No

later than September 15th of each year, the Board shall cause a proposed annual budget for the next fiscal year to be prepared and submitted to the Members. On or before November 15th annually, the Authority shall approve its budget for the coming year, and shall provide the Members a copy of the adopted annual budget. Annual budgets adopted by the Board shall conform to the requirements of Sections 29-1-101, *et seq.*, C.R.S., as amended, and the additional requirements set forth in this Agreement. The Board may amend its annual budgets in accordance with Sections 29-1-101, *et seq.*, C.R.S., as amended, and shall provide the Members a copy of any amended annual budget. The Authority shall make available to each of the Members a detailed statement of the final costs and expenses for the prior fiscal year as soon as possible after the close of each fiscal year.

Section 4.02. Funding. The Authority may fund the Services from any lawful source allowed by this Agreement and applicable law. The Authority shall be authorized to provide for the Services from the proceeds of revenue bonds, notes or other financial obligations as provided in Section 29-1-203.5(3), C.R.S., as amended, to be issued by the Authority (the “**Authority Bonds**”), or subject to approval of a Member and a vote of the Board, may delegate and assign those rights and responsibilities to such Member. It is anticipated that the Authority Bonds will be secured by pledged revenues from each of the Members, which will be evidenced through one (1) or more pledge agreements entered into between the Authority and the Members and will include a pledge of each Member to impose a debt service mill levy, subject to the limitations of the Service Plan, and a pledge from each Member to convey revenues from such debt service mill levy and any other legally available revenues agreed upon by the Member as set forth in such pledge agreement(s), to credit to the Authority (the “**Debt Pledged Revenue**”) to secure repayment of the Authority Bonds. Members may make loans or grants to the Authority provided such loans or grants do not result in the loss of any applicable enterprise status of the Authority that may exist under Colo. Const. Art. X. Sec. 20 unless approved by a vote of the Board and loss of enterprise status does not adversely affect any outstanding debt of the Authority as determined by the Authority’s bond counsel.

Section 4.03. Operations Costs. The Members acknowledge that the Authority does not have financial resources to pay for its ongoing operations and administrative costs, such as legal, engineering, architectural, surveying, management, accounting, auditing, insurance, and other

costs necessary for continued good standing under applicable law (the “**Operations Costs**”). Therefore, each Member agrees to pay its Pro Rata Share (as defined below) of the Operations Costs each year, as set forth in the Authority’s annual budget adopted in accordance with Section 4.01 above, not to exceed \$40,000 per year per Member (the “**Operations Funding Cap**”). The **Pro Rata Share** of each Member shall be calculated by dividing the total Operations Costs by the then current number of Members. The Operations Funding Cap may be exceeded in any given year upon unanimous consent of the Members.

In addition, the Authority may fund Operation Costs from rates, fees, tolls, charges or penalties and with any revenues transferred to the Authority by the Members or others; provided the Debt Pledged Revenue shall not be used to fund Operations Costs.

The Members intend that the Authority shall not be considered a “district” subject to Article X, Section 20 of the Colorado Constitution (“**TABOR**”) and therefore will not maintain a three percent (3%) emergency reserve as required by paragraph (5) of TABOR (the “**TABOR Reserves**”). The reserves of each Member, including the Members’ TABOR Reserves, shall not be transferred to the Authority but shall remain with the respective individual Members. However, should it be determined that the Authority is a “district” for purposes of TABOR, the TABOR Reserves of the individual Members shall be available to the Authority should it become necessary to draw on a TABOR Reserve fund and thus the Authority’s TABOR Reserve requirement under TABOR would be satisfied.

Section 4.04. Books and Records. The Authority shall provide for the keeping of accurate and correct books of account on an accrual basis in accordance with the Local Government Uniform Accounting Law, Part 5 of Article 1, Title 29, C.R.S., as amended. The Authority shall keep a record of and account for all deposits made by the Members in accordance with generally acceptable accounting principles. Said books and records shall be open to inspection at all times during normal business hours by any representative of any of the Members or by the accountant or other person authorized by any of the Members to inspect said books or records. The Board shall provide for the auditing of all books and accounts and other financial records of the Authority annually, and in accordance with the Colorado Local Government Audit Law, Part 6 of Article 1, Title 29, C.R.S., as amended. Audits shall be completed and filed

annually in a timely manner, as described in Section 29-1-606, C.R.S. All funds received by the Authority shall be invested in accordance with state statutory requirements.

Section 4.05. Authority Bonds. The Authority may, from time to time, issue the Authority Bonds on behalf of the Members to fund Services; provided, such Authority Bonds may only be issued pursuant to a written resolution of the Board and resolutions of the Members and shall be payable out of all or a specified portion of the Debt Pledged Revenue and other available revenues of the Authority as designated by the Board.

Section 4.06. Remittance of Funds to Authority. The Authority shall submit requests for funding of the Operations Costs to each Member as needed. Each Member shall have thirty (30) days from the receipt of the request for funding of the Operation Costs to submit its proportionate share of the Operations Costs to the Authority. At any time that any Authority Bonds are outstanding, all Debt Pledged Revenue shall be remitted as set forth in the applicable indenture, loan agreement, pledge agreement, or other similar financial instrument executed by the applicable Member in connection with the issuance of such Authority Bonds.

ARTICLE V INSURANCE

The Authority shall maintain, at a minimum, the following insurance coverages:

Section 5.01. General liability. General liability coverage protecting the Authority and its officers, directors, and employees against loss, liability, or expense whatsoever from personal injury, death, property damage, or otherwise, arising from or in any way connected with management, administration, or operations in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general aggregate, or the maximum amount that may be recovered under the CGIA), whichever is higher.

Section 5.02. Directors and officers liability. Directors and officers liability coverage (errors and omissions) protecting the Authority and its Directors and officers against any loss, liability, or expense whatsoever arising from the actions and/or inactions of the Authority and its Directors and officers in the performance of their duties.

The Authority may obtain, at its own expense, any further or additional insurance coverage that the Board desires to carry.

ARTICLE VI TERMINATION

Section 6.01. Termination By Notice. This Agreement will terminate after notice has been provided to each Member and provision has been made for the discharge of any Authority Bonds or any other debt issued by, and financial obligation of, the Authority, by a vote of the Board.

Section 6.02. Wind-Up and Liquidation. In the event of termination of this Agreement, the Board, or a person or persons appointed by the Board, shall wind-up and liquidate the assets of the Authority, if any. Upon dissolution of the Authority, and in consultation with the Authority's bond counsel, all of its property, if any, will be transferred to: (a) one (1) or more of the Members; (b) an entity that exists as a result of a Consolidation of the Members; or (c) other governmental entities approved by the Members of the Authority immediately prior to dissolution. If the Members cannot agree on the disposition of certain assets or property of the Authority, said assets or property shall be subject to an independent appraisal and shall be sold at public auction with the proceeds allocated, to the greatest equitable extent possible, to the Members in the same proportion as the respective contribution of funds by the Members for acquisition of the assets or property. Upon termination of this Agreement, the Members will work in good-faith to determine how best to allocate Authority assets and liabilities between the Members, such that a fair and equitable arrangement can be achieved while continuing to maintain the best possible services for each Member. The Members may memorialize the terms of their accord in a written agreement.

ARTICLE VII
DEFAULT

Section 7.01. Events of Default. The occurrence of any one or more of the following events and/or the existence of any one or more of the following conditions shall constitute an “**Event of Default**” under this Agreement:

(a) The failure of any Member to remit its Pro Rata Share of Operation Costs when the same shall become due and payable provided in this Agreement and cure such failure within ten (10) business days of receipt of notice from the Authority or one of the Members of such failure; or

(b) The failure to perform or observe any material covenant, agreement, or condition in this Agreement on the part of any Member and to cure such failure within thirty (30) days of receipt of notice from one of the other Members or the Authority of such failure unless such default cannot be cured within such thirty (30) day period, in which event, the defaulting Member shall have an extended period of time to complete the cure, provided that action to cure such default is commenced within said thirty (30) day period and the defaulting Member is diligently pursuing the cure to completion.

Section 7.02. Remedies on Occurrence of Events of Default. Upon the occurrence of an Event of Default, each of the Members and the Authority (together) shall have the following rights and remedies:

(a) Any non-defaulting Member(s) and/or the Authority may ask a court of competent jurisdiction to enter a writ of mandamus or order any similar or equivalent relief, to compel the board of directors of the defaulting Member to perform its duties under this Agreement, and/or to issue temporary and/or permanent restraining orders, or orders of specific performance, to compel the board of directors of the defaulting Member to perform in accordance with this Agreement.

(b) Any non-defaulting Member(s) and/or the Authority may protect and enforce their rights under this Agreement by such suits, actions, or special proceedings as they shall deem appropriate, including, without limitation, any proceedings for the specific

cwaldron@wbapc.com

to the Authority:

Windler Homestead Public Improvement Authority
c/o Collins Cockrel & Cole, P.C.
390 Union Boulevard, Suite 400
Denver, Colorado 80228
Attn: Matt Ruhland
mruhland@cccfirm.com

Section 8.02. Consent. Whenever any provision of this Agreement requires consent or approval of the Members hereto, the same shall not be unreasonably withheld.

Section 8.03. Amendments. No alterations, amendments or modifications to this Agreement shall be valid unless approved by a majority vote of the Board and no less than 2/3 of the Members and executed by an instrument with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by the instrument in writing, and no prior, contemporary, or subsequent oral agreement shall have any validity whatsoever.

Section 8.04. Severability. If any clause or provision in this Agreement shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

Section 8.05. Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Members and to their respective successors and permitted assigns.

Section 8.06. Assignment and Delegation. No Member shall assign any of the rights nor delegate any of the duties of this Agreement without a majority vote of the whole membership of the Board. Any attempted assignment or delegation not in conformance with this provision shall be void.

Section 8.07. Applicable Laws. This Agreement shall be governed by and construed in accordance with the Constitution and laws of the State of Colorado. The Members agree not to institute any legal action or proceeding against the Authority or any of its directors, officers, employees, agents or property concerning any matter arising out of or related to this Agreement in any court other than the Adams County District Court.

Section 8.08. Paragraph Headings. The paragraph headings are inserted in this Agreement only as a matter of convenience and reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

Section 8.09. Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

Section 8.10. Negotiated Provisions. This Agreement shall not be construed more strictly against one Member than against another Member merely by virtue of the fact that it may have been prepared by counsel for one of the Members, it being acknowledged that each Member has contributed substantially and materially to the preparation of this Agreement.

Section 8.11. No Third-Party Beneficiaries. 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 Members and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intention of the Members that any person, other than the Members, receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Section 8.12. Counterparts. 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, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

Section 8.13. Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of the Members or the Authority pursuant to the CGIA.

Section 8.14. No Personal Liability. No elected official, director, officer, agent or employee of the Members shall be charged personally or held contractually liable by or under any term or provision of this Agreement or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the Districts have caused this Agreement to be executed as of the day and year first hereinabove written.

WINDLER HOMESTEAD METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By 
President

ATTEST:



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

By 
President

ATTEST:

