

CONSTRUCTION, OPERATIONS AND MAINTENANCE AGREEMENT

(Mary Carter Greenway at Riverside Downs)

This Construction, Operations and Maintenance Agreement (this "Agreement"), is made and entered into as of the ____ day of February, 2015, by and between the SOUTH SUBURBAN PARK & RECREATION DISTRICT ("SSPRD"), the CITY OF LITTLETON, ("Littleton"), and HILLSIDE FARMS, a California limited partnership ("Hillside Farms"), collectively to be known as the "Parties."

WHEREAS, the Parties are cooperating in the development and operation of a pedestrian/bicycle trail and nature area on the Mary Carter Greenway and adjacent to the Riverside Downs Shopping Center ("Riverside Downs"), located within the city limits of Littleton, between the South Platte River and the Riverside Downs Shopping Center;

WHEREAS, Littleton has contracted with DHM Design Corporation ("DHM") to design the improvements necessary at Riverside Downs (the "Improvements");

WHEREAS, Hillside Farms has agreed to contribute towards the costs of the Improvements; and

WHEREAS, there is a need to coordinate the construction of the Improvements and the operations and maintenance of Riverside Downs among the Parties.

NOW, THEREFORE, the Parties agree as follows:

A. Design and Construction of the Improvements:

1. The Improvements and design of Riverside Downs are described on the plans (the "Plans"), attached hereto as Exhibit A.
2. Hillside Farms agrees to contribute \$60,000 towards the costs of the Improvements, which contribution shall be paid directly to Littleton.
3. Littleton shall be responsible for the costs of the design of Riverside Downs and the construction of the Improvements. Grant funding is anticipated to cover a portion of these costs. Should such grant funding not be awarded, the design of Riverside Downs or the construction of the Improvements may be modified by Littleton to accommodate the reduction in funds.
4. In accordance with the Intergovernmental Agreement Regarding Contribution of Arapahoe County Open Space Program Funds between Arapahoe County and Littleton, Littleton shall be responsible for the direct supervision and administration of the design, permitting, and bid documents, for which Arapahoe County has contributed Arapahoe County Open Space funds. SSPRD shall manage the bidding process and construction of the Improvements, under the supervision of Littleton. Littleton and SSPRD will use best

efforts to phase construction to begin on that portion of the Riverside Downs owned by Hillside Farms and to complete such Improvements by June 26, 2015.

5. Hillside Farms agrees to provide a temporary construction easement for the construction of the Improvements, the form of which shall be agreed to by the Parties prior to commencement of construction of the Improvements. Hillside Farms agrees to provide a permanent use and right of access easement for the Improvements and that portion of Riverside Downs owned by Hillside Farms, the form of which shall be agreed to by the Parties prior to completion of construction of the Improvements. The easements contemplated herein are referred to together as the "Hillside Farms Easements."

6. The Conceptual Plan attached hereto as Exhibit B depicts general signage throughout Riverside Downs that is contemplated, including signage on the wall located on that portion of Riverside Downs owned by Hillside Farms. Hillside Farms will have the right to place tenant signage on the wall subject to compliance with applicable City codes and regulations.

B. Operation and Maintenance Responsibilities

1. SSPRD will be responsible for maintenance of that portion of Riverside Downs as depicted on the Conceptual Plan, attached hereto as Exhibit B (the "SSPRD Area"), in accordance with the standards and practices of SSPRD and consistent with other SSPRD facilities. Such maintenance activities shall include, but not be limited to:

- a. Removal of litter and debris from the SSPRD Area;
- b. Managing vegetation and landscaping within the SSPRD Area, including watering, mowing, fertilizing, planting/removal of plant material, maintenance of trees and shrubs, maintenance of irrigation systems and treatment/removal of noxious weeds;
- c. Maintaining signage, rest areas, furnishings, trails (including, but not limited to, the Mary Carter Greenway), retaining walls, and trash receptacles within the SSPRD Area;
- d. Removal of snow from concrete portions of the SSPRD Area (snow shall not be removed from the portions of the SSPRD Area that are gravel or other non-concrete material) according to SSPRD priorities as determined by SSPRD staff, provided however, Hillside Farms may provide such snow removal in coordination with SSPRD staff; and
- e. Removing or painting over graffiti.

2. Hillside Farms shall be responsible for maintenance of that portion of the Riverside Downs as depicted on the Conceptual Plan, attached hereto as Exhibit B (the "HF Area") in a good and safe condition and in compliance with all applicable laws. Such maintenance activities shall include:

- a. Removal of litter and debris from the HF Area;

- b. Managing vegetation and landscaping within the HF Area, including watering, mowing, fertilizing, planting/removal of plant material, maintenance of trees and shrubs, , maintenance of irrigation systems and treatment/removal of noxious weeds;
 - c. Maintaining the signage, rest areas, lights, furnishings (including, but not limited, benches, shade structures, picnic tables and bicycle racks), trails, amenities (including, but not limited to, the bocce ball court, fire pit, and plaza), retaining walls, and trash receptacles within the HF Area;
 - d. Removal of snow from concrete portions of the HF Area (snow shall not be removed from the portions of the HF Area that are gravel or other non-concrete material) provided however Hillside Farms shall not place snow from the parking lot or other areas of the shopping center in the SSPRD Area, nor where the melting water will cross hardscape trails or sidewalks in the SSPRD Area; and
 - e. Removing or painting over graffiti.
- 3. Because the HF Area includes property that is not owned by Hillside Farms, SSPRD and Littleton, as applicable, agree to provide a permanent access easement for its maintenance obligations hereunder over that portion of the HF Area not owned by Hillside Farms, the form of which shall be agreed to by the Parties prior to completion of construction of the Improvements.
- 4. The Parties hereby acknowledge that neither Hillside Farms, nor its property manager, agents or employees, shall have any liability for any personal injury or property damage suffered or claimed by any party (i) making use of the Hillside Farms Easements, or (ii) exercise of Hillside Farms' maintenance obligations hereunder, except to the extent any such injury or damage is caused by Hillside Farms' willful misconduct or gross negligence or by Hillside Farms' breach of this Agreement.
- 5. Hillside Farms shall maintain at all times during this Agreement such insurance against claims for injuries to persons or damage to property, which may arise from or in connection with Hillside Farms' performance under this Agreement. Coverage shall include worker's compensation insurance required by law for all employees and comprehensive general liability insurance with minimum limits of \$1,000,000 each occurrence and \$1,000,000 general aggregate. The commercial general liability insurance policy shall name Littleton and SSPRD and their officials, employees and agents as additional insured parties. Hillside Farms shall also require any contractor hired by Hillside Farms to perform work in accordance with this Agreement to carry the same insurance coverage. Hillside Farms shall also maintain property insurance on the Improvements located on the property owned by Hillside Farms, against losses in an amount at least equal to the replacement cost of such Improvements. Coverage shall be primary over any insurance or self-insurance carried by Littleton or SSPRD and shall waive all rights of recovery under subrogation or otherwise against Littleton and SSPRD, and their officials, employees or agents. SSPRD and Littleton shall maintain at

all times during this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meets its liability under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended. The Parties shall, upon request, supply evidence satisfactory to the other of compliance with the provisions of this Section 5.

C. Miscellaneous Provisions

1. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a provision that will achieve the original intent of the Parties hereunder.
2. This Agreement may be amended, modified, or changed, in whole or in part, only by written agreement duly authorized and executed by the Parties and the authorized signatories for the Parties.
3. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, and regardless whether actually received or not, three days after deposit in the United States Mail, first class, postage prepaid, registered or certified addressed as follows:

SSPRD

South Suburban Parks & Recreation District
Attn: Executive Director
6631 S. University Boulevard
Centennial, Colorado 80121

with a copy to:
Collins, Cockrel & Cole, P.C.
390 Union Blvd., Suite 4
Lakewood, CO 80228

Littleton

City of Littleton
Attn: City Manager
2255 W. Berry Avenue
Littleton, Colorado 80120

with a copy to:
City Attorney
2255 W. Berry Avenue
Littleton, Colorado 80120

Hillside Farms

Littleton Hillside Farms, LLC
Attn: _____

4. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Colorado. Venue for the trial of any action arising out of any dispute hereunder shall be in Arapahoe County District Court.

5. This Agreement constitutes the entire agreement of the Parties hereto. The Parties agree that there have been no representations made regarding the subject matter hereof other than those, if any, contained herein, that this Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and further agree that the various promises and covenants contained herein are mutually agreed upon and are in consideration of one another.
6. This Agreement may be executed in counterparts, and upon full execution thereof, such copies taken together shall be deemed to be a full and complete agreement between the Parties.
7. If litigation is commenced by any of the Parties concerning this Agreement, the prevailing Party or Parties shall be entitled to recover its reasonable attorney's fees and costs from the non-prevailing Party or Parties.
8. This Agreement shall be binding on the Parties' heirs, successors and assigns.
9. This Agreement shall be recorded in the Arapahoe County Clerk and Recorder's Office.
10. Nothing herein shall be construed as a waiver of any protections or immunities SSPRD or Littleton may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.
11. Notwithstanding anything to the contrary above, Littleton's and SSPRD's obligations hereunder shall be limited to currently appropriated monies. Financial obligations of Littleton or SSPRD payable after the current fiscal year shall be contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

ATTEST:

SOUTH SUBURBAN PARK &
RECREATION DISTRICT

By: _____

By: _____

ATTEST:

CITY OF LITTLETON

By: _____

By: _____

APPROVED AS TO FORM:

LITTLETON HILLSIDE FARMS, LLC

By: _____

EXHIBIT A
Final Master Plan

EXHIBIT B
Conceptual Plan
(Maintenance Jurisdiction)