# FOURTH AMENDMENT TO OPERATION FUNDING AGREEMENT

This **FOURTH AMENDMENT TO OPERATION FUNDING AGREEMENT** ("**Fourth Amendment**") is made and entered into this 28th day of November, 2018, by and between **STONE CREEK METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**"), and **CHOKE CHERRY INVESTORS, LLC**, a Colorado limited liability company (the "**Developer**") (each a "**Party**" and collectively the "**Parties**").

## RECITALS

A. The Parties previously entered into that certain 2014 - 2015 Operation Funding Agreement dated February 3, 2015, with an effective date of December 15, 2014 (the "**Original OFA**"), as amended by that certain First Amendment to 2014 – 2015 Operation Funding Agreement dated November 13, 2015, with an effective date of January 1, 2016 (the "**First Amendment**"), by that certain Second Amendment to Operation Funding Agreement dated November 30, 2016 (the "**Second Amendment**"), and by that certain Third Amendment to Operation Funding Agreement dated November 30, 2017 (the "**Third Amendment**", and together with the Original OFA, the First Amendment and the Second Amendment, the "**Agreement**").

B. The Parties desire to amend the Agreement to (i) extend the term, (ii) increase the Shortfall Amount; and (iii) clarify the priority of payments under the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective agreements of the Parties contained herein, the Parties agree as follows:

## COVENANTS AND AGREEMENTS

1. Defined Terms. All terms not expressly defined herein shall have the same meaning as set forth in the Agreement.

2. Amendment to Section 1. Section 1 of the Agreement is hereby deleted in its entirety, and substituted in lieu thereof shall be the following:

> 1. Acknowledgement of Anticipated Shortfalls. The District anticipates a shortfall in revenues available for operations and maintenance expenses to be incurred for fiscal years 2014 through 2019 in an aggregate amount of **Six Hundred Fifteen Thousand Dollars ($615,000)** (the "**Shortfall Amount**").

3. Amendment to Section 2. Section 2 of the Agreement is hereby deleted in its entirety, and substituted in lieu thereof shall be the following:

> 2. Payment of Shortfall. The Developer shall advance funds necessary to fund, or directly pay, the District's operations and maintenance expenses on a periodic basis as needed for the fiscal years 2015 - 2019 up to the Shortfall Amount. The District shall, from time to time, provide written notice to the Developer that an advance of all or part of the Shortfall Amount is required. The

Developer shall make an advance of funds to the District within fifteen (15) days of receipt from the District of any such written notice that an advance of funds is required ("**Developer Advance**").

4. Amendment to Section 6. Section 6 of the Agreement is hereby deleted in its entirety, and substituted in lieu thereof shall be the following:

> 6. Subject to the provisions of Section 5 above, payments to reimburse the Developer shall be made on December 2 of each year and shall be applied as follows: (a) first to the accrued and unpaid interest and then to the principal amount due pursuant to this Agreement.

5. Amendment to Section 8. Section 8 of the Agreement is hereby deleted in its entirety, and substituted in lieu thereof shall be the following:

> 8. Term/Repose. The term of this Fourth Amendment shall commence on the date hereof and shall expire on December 31, 2019, unless terminated earlier by the mutual agreement of the Parties. Any obligation of Developer to advance funds will expire upon advance to the District of amounts sufficient to pay expenses incurred in 2014 **through 2019**, not to exceed the Shortfall Amount. Any obligation of the District to reimburse Developer shall expire on December 31, 2049. In the event the District has not reimbursed the Developer for any Developer Advance(s) made pursuant to this Fourth Amendment on or before December 31, 2049, any amount of principal and accrued interest outstanding on such date shall be deemed to be forever discharged and satisfied in full.

6. Term. All references in the Agreement to the phrase "fiscal years 2014 – 2018" shall be deleted in their entirety and substituted in lieu thereof shall be the phrase: "fiscal years 2014 – 2019".

7. Effect of Amendment. Except as expressly set forth in this Fourth Amendment, all provisions of the Agreement remain unchanged and in full force and effect, valid and binding on the Parties thereto.

8. Conflict. In the event of any express conflict or inconsistency between the terms of the Agreement and this Fourth Amendment, this Fourth Amendment shall control and govern.

9. Counterparts. This Fourth Amendment may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have executed this Fourth Amendment to Operation Funding Agreement as of the day and year first set forth above.

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

By: _____
President

Attest:

_____
Secretary

**CHOKE CHERRY INVESTORS, LLC,** a Colorado limited liability company

By: _____
Title_____