

TOWN OF PARKER COUNCIL AGENDA

June 3, 2019

Notes:

Town Council meeting packets are prepared several days prior to the meeting. This information is reviewed and studied by the Councilmembers eliminating lengthy discussions to gain a basic understanding. Timely action and short discussion on agenda items does not reflect lack of thought or analysis on the part of Council.

Ordinances listed for first reading are being approved to introduce them. Public comment will be held upon second reading.

Start times for regular agenda items are tentative; some items may be held earlier than scheduled time.

1. TOWN COUNCIL MEETING SCHEDULE

A. 5:30 P.M. – Call to Order Town Council Meeting and Roll Call

B. Executive Session – Immediately following Call to Order/Roll Call – (See Attached)

C. Reconvene Town Council Meeting at 7:00 P.M. or as soon thereafter as the regular public meeting can be conducted.

2. PARKER CHAMBER OF COMMERCE UPDATES

3. DOWNTOWN BUSINESS ALLIANCE UPDATES

4. PUBLIC COMMENTS 3 Minute Limit (No action will be taken on these items)

5. REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL

6. CONSENT AGENDA

Consent Agenda Items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless Council votes to remove an item for individual discussion. Ordinances on the Consent Agenda are for introduction only and will not be removed for discussion.

A. *HESS RANCH METROPOLITAN DISTRICT NOS. 1-3*

Department: Town Attorney, Kristin Schledorn

Second Reading: June 17, 2019

1. *ORDINANCE NO. 9.287 - First Reading
A Bill for an Ordinance Approving the Intergovernmental Agreement By and Between the Town of Parker, Colorado, and Hess Ranch Metropolitan District No. 1 to be Known as Trails at Crowfoot Metropolitan District No. 1*
2. *ORDINANCE NO. 9.288 - First Reading
A Bill for an Ordinance Approving the Intergovernmental Agreement By and Between the Town of Parker, Colorado, and Hess Ranch Metropolitan District No. 2 to be Known as Trails at Crowfoot Metropolitan District No. 2*
3. *ORDINANCE NO. 9.289 - First Reading
A Bill for an Ordinance Approving the Intergovernmental Agreement By and Between the Town of Parker, Colorado, and Hess Ranch Metropolitan District No. 3 to be Known as Trails at Crowfoot Metropolitan District No. 3*

- B. *ORDINANCE NO. 3.345.1 - First Reading
A Bill for an Ordinance Affirming the Passage of Emergency Ordinance No. 3.345, Series of 2019, A Bill for an Emergency Ordinance to Impose a Temporary Suspension for One Hundred Eighty (180) Days in Duration on the Processing and Approval of any Application for a Town of Parker Permit or License Related to the Operation of a Business that Would Be Engaged in the Growing, Storage, Extraction, Processing or Manufacturing of Industrial Hemp or the Extraction, Processing or Manufacturing of Industrial Hemp in Commercial Products Containing Industrial Hemp; Directing the Prompt Investigation of the Town's Regulatory Authority Over Such Businesses Pursuant to the Authority Granted by Article XX, Section 6, of the Colorado Constitution; and Declaring the Intention of the Town Council to Consider the Adoption of Appropriate Town Regulations With Respect to Such Businesses if Permitted by Law*

*Department: Town Attorney, Kristin Schledorn
Second Reading: June 17, 2019*

- C. *RESOLUTION NO. 19-037
A Resolution Accepting the Conveyance of a Drainage Easement from DBC Parker, Limited Liability Company, for a Portion of Lot 2, Bailey Subdivision*

Department: Engineering/Public Works, Tyler Sandt

- D. *RESOLUTION NO. 19-038
A Resolution Accepting the Conveyance of a Drainage Easement from Parker Mainstreet Partners, LLC, for a Part of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th Amendment*

Department: Engineering/Public Works, Tyler Sandt

- E. **RESOLUTION NO. 19-039**
A Resolution Accepting the Conveyance of a Drainage Easement from FCAC-Parker LLC, for Lot 3, Block 10 of Stroh Crossing Filing No. 1

Department: Engineering/Public Works, Tyler Sandt

7. **PUBLIC HEARINGS**

JACKALOPE PLANNED DEVELOPMENT AMENDMENT NO. 1 - Rezoning

Applicant: Marley Hodgson, Jackalope Properties, LLC
Location: Southeast corner of Parker Road and Cockriel Drive
Department: Community Development, Stacey Nerger
TRAKiT No.: Z18-026

ORDINANCE NO. 3.113.1 -Second Reading
A Bill for an Ordinance to Amend the Jackalope Planned Development Guide and Plan, Pursuant to the Town of Parker Land Development Ordinance, and Amending the Zoning Ordinance and Map to Conform Therewith

Department: Community Development, Stacey Nerger
Trakit No.: Z18-026

8. **ORDINANCES**

- A. **ORDINANCE NO. 9.286 - Second Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement Between the Town of Parker and the Board of County Commissioners of the County of Douglas Regarding Cost Sharing for the Dransfeldt Road Extension

Department: Engineering/Public Works, Chris Hudson

- B. **ORDINANCE NO. 3.343 - Second Reading**
A Bill for an Ordinance Amend Section 13.04.150 of the Parker Land Development Ordinance Concerning the Rezoning of Areas From All Other Zoning Districts to PD-Planned Development

Department: Community Development, Bryce Matthews

- C. **ORDINANCE NO. 9.264.1 - Second Reading**
A Bill for an Ordinance Approving the First Amendment to Intergovernmental Agreement Between the Town of Parker, Colorado, and Anthology West Metropolitan District Nos. 5 and 6

Department: Town Attorney, Kristin Schledorn

- D. **ORDINANCE NO. 9.290 - Second Reading**
A Bill for an Ordinance Approving the Agreement Regarding Final Design and Construction of Fee-In-Lieu Drainage and Flood Control Improvements for Lemon Gulch Upstream of Crowfoot Valley Road (Agreement No. 18-12.24, Project No. 107087) By and Between Urban Drainage and Flood Control District and the Town of Parker

Department: Engineering/Public Works, Jacob James

- E. **ORDINANCE NO. 5.28.25 - Second Reading**
A Bill for an Ordinance to Amend Chapter 5.02 of the Parker Municipal Code Concerning 3.2 Beer and Changing the Reference from Town Council to Special Licensing Authority in the Parker Municipal Code Where Appropriate

Department: Town Attorney, Jim Maloney

9. **ADJOURNMENT**

Parker Town Council

Executive Session Agenda

June 3, 2019

“To hold a conference with the Town’s attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b).”

1. Potential amendments to the Parker Municipal Code concerning the sale of “kratom” to individuals under the age of 18
2. C.R.S. Section 31-12-104 and C.R.S. Section 31-12-107 concerning the potential annexation of real property located west of the corporate limits of the Town
3. *South Metro Fire Rescue Fire Protection District v. Parker Authority for Reinvestment, et al.*, Douglas County District Court Case No. 17CV30549



Request for Town Council Action

Date: June 3, 2019
Submitted By: Kristin Schledorn, Deputy Town Attorney
Reviewed By: Michelle Kivela, Town Administrator
Title: **HESS RANCH METROPOLITAN DISTRICT NOS. 1-3**

Department: Town Attorney, Kristin Schledorn
Second Reading: June 17, 2019

EXECUTIVE SUMMARY

These ordinances approve the Amended and Restated Intergovernmental Agreements (IGAs) between the Town of Parker, Colorado, and Hess Ranch Metropolitan District Nos. 1 - 3 (to be known as Trails at Crowfoot Metropolitan District Nos. 1 - 3), respectively.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

On June 17, 2019, Town Council will consider approval of the Amended and Restated Service Plans for the Hess Ranch Metropolitan District Nos. 1 - 3 (to be known as the Trails at Crowfoot Metropolitan District Nos. 1 - 3).

Attached is the written report, containing the comprehensive analysis of the Service Plan applications. The attached report addresses the provisions of the IGAs, which substantially comply with the form intergovernmental agreement approved by Town Council in May 2019.

FINANCIAL IMPACT

Pursuant to the terms of the proposed IGAs and Service Plans, the Districts have agreed to levy and remit to the Town, a property tax of 5 mills, which will be used for the planning, design, construction and maintenance of Town infrastructure, as identified on Exhibit B of the IGAs.

STRATEGIC GOAL(S)



ATTACHMENTS

1. Hess Ranch1-3 (Trails at Crowfoot 1-3) - Summary Memo_REV 052819

RECOMMENDED MOTION

I move to approve Ordinance No. 9.287 on first reading and schedule second reading on June 17, 2019, as part of the consent agenda.

I move to approve Ordinance No. 9.288 on first reading and schedule second reading on June 17, 2019, as part of the consent agenda.

I move to approve Ordinance No. 9.289 on first reading and schedule second reading on June 17, 2019, as part of the consent agenda.



MEMO

To: Kristin Schledorn, Town of Parker
From: Monica Rosenbluth, Butler Snow
Date: May 20, 2019
Re: Amended and Restated Service Plan for Hess Ranch Metropolitan District No. 1
(to be known as Trails at Crowfoot Metropolitan District No. 1)
Amended and Restated Service Plan for Hess Ranch Metropolitan District No. 2
(to be known as Trails at Crowfoot Metropolitan District No. 2)
Amended and Restated Service Plan for Hess Ranch Metropolitan District No. 3
(to be known as Trails at Crowfoot Metropolitan District No. 3)
(together, the "Districts")

The following is our report on the three proposed Service Plans for the above-mentioned Districts which are set for a public hearing before the Town Council on June 17, 2019. This report summarizes key information about the Districts and the Service Plans.

**Hess Ranch Metropolitan District Nos. 1-3
(to be known as Trails at Crowfoot Metropolitan District Nos. 1-3)**

Developer: E5X Management Inc. (Chris Elliott)

Attorney: White Bear Ankele Tanaka & Waldron (Kristin Bowers Tompkins and Megan Murphy)

Finance: D.A. Davidson & Co.

Accounting: CliftonLarsonAllen (Ben Houghton)

Engineer: CVL Consultants

Bond Counsel: Kutak Rock LLP (Ken Guckenberger)

Location: Approximately 400 acres located on the east side of Crowfoot Valley Road, south of Stroh Road and north of Pradera Parkway

Area/Land Use: District 1: 133 acres; District 2: 106 acres; District 3: 161 acres (these are the expected acreages of the respective Districts; currently, Districts 1 and 2 are stacked on top of each other and each comprises 239 acres. After the inclusion and exclusion process, the current Districts 1 and 2 will be split

into two pieces, and will include 133 acres and 106 acres, respectively. District 3's boundaries will not change; it will remain 161 acres in size). Each of the three Districts is anticipated to include both residential and commercial development.

Build Out Schedule: Build out anticipated to occur by 2023, per the consolidated Financial Plan.

Projected Assessed: \$494,305,370 projected total assessed valuation (AV) for all residential development at completion of project build out, anticipated for 2023 completion year (per consolidated Financial Plan, with 2-year lag for AV realization).

\$17,318,915 projected total AV for all commercial development at completion of project build out, anticipated for 2023 completion year (per consolidated Financial Plan, with 2-year lag for AV realization).

Powers: Water, streets, traffic and safety control, sanitation, storm sewers and drainage, and parks and recreation improvements. Transportation, television relay and translation, mosquito and pest control, security services, covenant enforcement, design review only if authorized in IGA (and these powers are not authorized in the current version of the IGA).

Regional Infrastructure: In accordance with the Intergovernmental Agreement between each of the three Districts and the Town (the "IGA"), the Districts will construct the following regional infrastructure using the Infrastructure Capital Mill Levy of 5 mills:

- Regional detention pond and associated improvements to Lemon Gulch;
- Regional open space and regional trails as expressly identified in Paragraph 7 of the Amended and Restated Stroh Ranch/Hess Ranch Annexation Agreement (Southern Property); and
- Bayou Gulch Road, Crowfoot Valley Road, and North Pinery Parkway, including associated landscape improvements.

Town Infrastructure: In accordance with the IGA, the Town is authorized to utilize the revenues generated from the Town Capital and Maintenance Mill Levy of 5 mills for the planning, design, financing, acquisition, construction, operation, and maintenance of the following Town Infrastructure associated with the impacts from development within the Districts:

- The Park Tract and all associated improvements (Tract DD, Filing No. 1).

- All roadways, storm sewer, and associated items constructed within Town right-of-way.
- Regional roadways serving the District.
- All storm sewer, detention ponds, stream improvements, and other stormwater conveyance infrastructure located on Town, HOA or District-owned property that is eligible for maintenance assistance through the Town's Stormwater Utility.
- Widening of Bayou Gulch Road to a full arterial roadway section through the District boundaries, including additional lanes, sidewalk, curb and gutter, medians, and all other associated items.

Operation and
Maintenance:

In accordance with the IGA, the District is required to dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan, Development Agreement and other rules and regulations of the Town and applicable provisions of the Town Code. The Districts are authorized to impose up to 10 mills for District administrative and operating expenses, as well as the maintenance of the following regional infrastructure:

Drainage Improvements (including detention and storm improvements)
Street Improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements)
Traffic and Safety Controls
Open Space and Trails
Landscaping
Parks and Recreation Improvements and Facilities, including club houses, recreation centers, and swimming pools
Retaining Walls
Irrigation Systems
Streetscape associated with the widening of Bayou Gulch Road

Improvement Costs: \$55,874,986.85, consisting of local and regional improvements for Trails at Crowfoot Filings 1-15. Improvements to be constructed are detailed above.

Debt Limit: The Districts shall not issue Debt in excess of \$90,068,750 total aggregate principal amount, provided that such limitation shall not be applicable to refunding Bonds issued by the Districts to refund outstanding Debt. The foregoing figure is the product of: (a) the bonding capacity of the Districts, which was derived using the following assumptions: (i) the interest rate is not less than 150 basis points more than the 30 Year AAA MMD Index (as

of the date of the submission of the Service Plan); (ii) inflation on completed structures does not exceed a 4% biennial growth rate; (iii) the bonds amortize over a period of 40 years; and (iv) debt service coverage is no less than 100%; and (v) the levying by each of the Districts of 57 mills for the Maximum Debt Mill Levy, 5 mills for the Infrastructure Capital Mill Levy, and 5 mills for the Town Capital and Maintenance Mill Levy; and (b) 125%. The Districts shall allocate the Debt among themselves in an intergovernmental agreement and shall provide a copy of such intergovernmental agreement and any subsequent amendments thereto to the Town.

The Debt limitation shall not apply to the District's pledge of its property tax or specific ownership tax revenues derived from its mill levies to one of the other Districts (as defined in the Service Plan).

The Districts are required to enter into an agreement among themselves allocating the \$90,068,750 in debt authorization.

Mill Levy:

The mill levy the District will each impose is 77 mills, which is subject to the Mill Levy Adjustment on a going-forward basis from January 1, 2019. The 77 mills is comprised of:

- 57 mills for the Maximum Debt Mill Levy;
- 10 mills for the Operation and Maintenance Mill Levy, to be used for the costs of ongoing administrative, accounting and legal services of the Districts, and for the maintenance of certain regional improvements (identified in the table above);
- 5 mills for the Infrastructure Capital Mill Levy, to be used for the construction of regional infrastructure; and
- 5 mills for the Town Capital and Maintenance Mill Levy, to be used for construction and maintenance of infrastructure the Town determines is necessary or desirable in connection with the impacts of development in the District.

Proposed Debt

Issuance:

The Financial Plan for the Districts indicates that the Districts will issue bonds in the amount of \$72,055,000 in 2020.

ORDINANCE NO. 9.287, Series of 2019

TITLE: A BILL FOR AN ORDINANCE APPROVING THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER, COLORADO, AND HESS RANCH METROPOLITAN DISTRICT NO. 1 TO BE KNOWN AS TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 1

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and Hess Ranch Metropolitan District No. 1 to be known as Trails at Crowfoot Metropolitan District No. 1, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO AND HESS RANCH METROPOLITAN DISTRICT NO. 1 (TO BE KNOWN AS TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 1)

THIS AGREEMENT (the “Agreement”) is made and entered into as of this 17th day of June, 2019, by and between the TOWN OF PARKER, a home rule municipal corporation of the State of Colorado (the “Town”), and the HESS RANCH METROPOLITAN DISTRICT NO. 1 (to be known as TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 1), a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The Town and the District are collectively referred to as the Parties.

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s Amended and Restated Service Plan approved by the Town on June 17, 2019 (the “Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the Town and the District, as required by Chapter 10.11 of the Town Code; and

WHEREAS, the Town entered into that certain Subdivision Agreement (Trails at Crowfoot Filing No. 1 with HR935, LLC (the “Developer”) on October 3, 2018, (the “Development Agreement”), which provides for public improvements that are necessary and desirable for the development contemplated by the Development Agreement; and

WHEREAS, specific regional improvements were identified in the Service Plan and Development Agreement, and as more particularly set forth on Exhibit A (the “Regional Infrastructure”), which Regional Infrastructure the Town has determined is necessary or desirable in connection with the impacts of the development of the Property; and

WHEREAS, pursuant to the Development Agreement, the Town is responsible for constructing and owning the Regional Infrastructure, and the Developer is responsible for providing funding for the construction of the Regional Infrastructure; and

WHEREAS, in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of 5 mills that will be used for the planning, design and construction of the Regional Infrastructure (the “Infrastructure Capital Mill Levy”), and the District has conducted, or will conduct, an election under Article X, Section 20 of the Colorado Constitution (“TABOR”) to enable it to impose the Infrastructure Capital Mill Levy and to issue debt repayable, in whole or in part, from the Infrastructure Capital Mill Levy; and

WHEREAS, the parties to this Agreement acknowledge the need for the Regional Infrastructure in order to accomplish the comprehensive development of the property located within the District's service area (the "Property"); and

WHEREAS, the parties further acknowledge that the Town will also have certain infrastructure capital and maintenance needs resulting from the development of the Property (the "Town Infrastructure"); and

WHEREAS, in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of 5 mills that will be used for the planning, design, construction and maintenance of the Town Infrastructure (the "Town Capital and Maintenance Mill Levy"), and the District has conducted, or will conduct, an election under TABOR to enable it to impose the Town Capital and Maintenance Mill Levy; and

WHEREAS, the parties further acknowledge that the District will have certain ongoing administrative and operating obligations, as well as regional maintenance obligations with regard to the Regional Infrastructure, and in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of up to 10 mills (the "Operation and Maintenance Mill Levy") for such purposes; and

WHEREAS, the Town has approved the final plat for the Property; and

WHEREAS, the Town and the District previously entered into that certain Intergovernmental Agreement with Hess Ranch Metropolitan District Nos. 1-8 dated August 15, 2016, as amended by that First Amendment to Intergovernmental Agreement among the Town and Hess Ranch Metropolitan District Nos. 1-3 dated March 6, 2017 (as amended, the "Original IGA") which Original IGA governed the relationship among the Parties; and

WHEREAS, the Parties have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement ("Agreement") to replace and supersede in its entirety the Original IGA in order to address the utilization of the various mill levies as well as certain other matters related to the organization, powers and authorities of the District; and

WHEREAS, any capitalized term not specifically defined in this Agreement shall have that meaning as set forth in the Service Plan; and

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Infrastructure Capital Mill Levy. The District agrees to impose a property tax of 5 mills that shall be used for the planning, design and construction of the Regional Infrastructure. The utilization of the Infrastructure Capital Mill Levy is set forth on Exhibit A to this Agreement.

2. Town Capital and Maintenance Mill Levy. The District agrees to impose a property tax of 5 mills that shall be used for the planning, design, construction and/or

maintenance of the Town Infrastructure. The utilization of the Infrastructure Capital Mill Levy is set forth on Exhibit B to this Agreement.

3. Operation and Maintenance Mill Levy. The District agrees to impose a property tax of up to 10 mills which shall be retained and used by the District for the ongoing administrative and operating expenses of the District and for the maintenance of certain of the Regional Infrastructure, as set forth on Exhibit C to this Agreement.

4. General Provisions Applicable to the Mill Levies. The Infrastructure Capital Mill Levy and the Town Capital and Maintenance Mill Levy shall be imposed by the District beginning the first year the District certifies a Maximum Debt Mill Levy and shall be subject to the Mill Levy Adjustment. The Operation and Maintenance Mill Levy shall be imposed by the District at the District's discretion but in a manner that will enable the District to perform its administrative and operating obligations and its maintenance obligations in connection with the Regional Infrastructure in a timely and adequate manner. The District acknowledges and agrees that requirement to levy the Infrastructure Capital Mill Levy, the Town Capital and Maintenance Mill Levy and the Operation and Maintenance Mill Levy (together, the "Mill Levies") is a material consideration in, and a condition of, the Town's approval of the District's Service Plan, and that the Town has relied thereon in approving the District's Service Plan. The District specifically agrees that the requirement that the District impose the Mill Levies and to utilize the funds as set forth in this Agreement shall be enforceable by the Town by all remedies available at law or in equity, including without limitation affirmative injunctive relief. The District represents and warrants that it has obtained, or will obtain, all voter authorizations to enable it to impose the Mill Levies, and to pledge the revenues from the Infrastructure Capital Mill Levy and the Town Capital and Maintenance Mill Levy to the repayment of debt issued by either the District or the Town, if and as applicable.

The District shall remit any revenues from the Infrastructure Capital Mill Levy or Town Capital and Maintenance Mill Levy that are due to the Town no later than 30 days after receipt of the same, and the Town shall deposit and maintain any revenues in a separate fund earmarked specifically for use only as set forth in this Agreement (the "Hess Ranch Metropolitan District No. 1 Fund"). The monies in the Hess Ranch Metropolitan District No. 1 Fund shall be applied to any design, planning, engineering, surveying, construction management, labor, materials, operations and administrative costs related to construction of the Regional Infrastructure or the Town Infrastructure, as applicable, as further detailed in this Agreement and the Exhibits attached hereto. On June 30 and December 31 of each year, the Town shall provide to the District an accounting of revenues received from the District attributable to the Infrastructure Capital Mill Levy or Town Capital and Maintenance Mill Levy, along with an itemization of expenditures made in major categories.

5. Operation and Maintenance of the Public Improvements. The District shall dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with the final approved plat, other rules and regulations of the Town, and applicable provisions of the Town Code. The District shall not be authorized to own, operate or maintain any part or all of the Public Improvements, or any other improvements, public or private, unless specifically provided for in this Agreement or separate agreement with the Town.

6. Fire Protection. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless specifically provided for in this Agreement or separate agreement with the Town. This provision shall limit the District's authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system.

7. Television Relay and Translation; Mosquito Control and Other Limitations. Unless specifically provided for in this Agreement or separate agreement with the Town, the District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate, maintain or provide: (a) any television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project; (b) any mosquito control facilities and services; (c) any solid waste disposal, collection and transportation facilities and services; and (d) any security, covenant enforcement and design review services.

8. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of federal and state governmental entities having proper jurisdiction. The District will obtain the Town's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

9. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed bonds or other obligations, the payment of which the District has promised to impose an *ad valorem* property tax mill levy ("Debt"), the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by the District for the [insert the designation of the Debt] does not exceed a market [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

10. Inclusion and Exclusion. The District shall not include within its boundaries any property outside the Service Area (as defined in the Service Plan) without the prior written consent of the Town Council. The District shall not exclude any property from the District if such exclusion will result, or is reasonably anticipated to result, in detriment to the remaining residents and taxpayers within the District, or to the District's bondholders.

11. Total Debt Issuance. The District, together with Hess Ranch Metropolitan District Nos. 2 and 3, shall not issue Debt in excess of \$90,068,750 in total aggregate principal amount, provided that such limitation shall not be applicable to refunding Bonds issued by the District to refund outstanding Debt. Such limitation shall not apply to the District's pledge of its property tax or specific ownership tax revenues derived from its mill levies to one of the other Districts (as defined in the Service Plan).

12. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except as may be specifically provided for herein. This Section shall not apply to specific ownership taxes which shall be distributed to and constitute a revenue source for the District without any limitation.

13. Consolidation; Dissolution. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with one of the other Districts, as defined in the Service Plan. The District agrees that it shall take all action necessary to dissolve the District in accordance with the provisions of the Service Plan and applicable state statutes.

14. Service Plan Amendment Requirement. Any action of the District which violates the limitations set forth in Sections V.A.1-13 or VI.B-H of the Service Plan, or which constitutes a material modification under Parker Municipal Code section 10.11.060, shall be deemed to be a material modification to the Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin any such action(s) of the District. The Town may also seek damages for breach of this Agreement arising from violations by the District of any provision of the Service Plan.

15. Applicable Laws. The District acknowledges that the property within its boundaries shall be subject to all ordinances, rules and regulations of the Town, including without limitation, ordinances, rules and regulations relating to zoning, subdividing, building and land use, and to all related Town land use policies, master plans and related plans.

16. Annual Report. The District shall submit an annual report ("Annual Report") to the Town no later than September 1st of each year following the year in which the Order and Decree creating the District has been issued by the District Court for and in Douglas County, Colorado, pursuant to Parker Municipal Code section 10.11.040 and containing the information set forth in Section VII of the Service Plan. The District shall be not be required to file an annual report if the District has declared inactive status pursuant to Section 32-1-104, C.R.S. The District may file a consolidated Annual Report with one or more of the other Districts.

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law, including the Annual Report, shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: WHITE BEAR ANKELE TANAKA & WALDRON
Attn: Kristin B. Tompkins, Esq.
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Phone: (303) 858-1800
E-mail: Ktompkins@wbapc.com

To the Town: Town of Parker
Attn: Kristin Schledorn, Deputy Town Attorney
cc: Mary Lou Brown, Finance Director
20120 E. Mainstreet
Parker, CO 80138-7334
Phone: (303) 841-0353
Fax: (303) 840-9792
E-mail: kschledorn@parkeronline.org
mlbrown@parkeronline.org

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Miscellaneous.

A. **Effective Date.** This Agreement shall be in full force and effect and be legally binding upon final approval of the governing bodies of the Parties. No Debt shall be issued by the District until after the effective date of this Agreement.

B. **Nonassignability.** No party to this Agreement may assign any interest therein to any person without the consent of the other party hereto at that time, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each party hereto. The pledge by the District of its revenues to one of the other Districts shall not be deemed an assignment hereunder.

C. **Amendments.** This Agreement may be amended from time to time by written amendment, duly authorized and signed by representatives of the parties hereto.

D. **Severability.** If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phase, or other provision shall not affect any of the remaining provisions of this Agreement.

E. Execution of Documents. This Agreement shall be executed in two (2) counterparts, either of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement.

F. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

G. Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

H. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for all actions brought hereunder shall be in the District Court in and for Douglas County.

I. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

J. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

K. No Third Party Beneficiaries. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

L. Entirety. This Agreement (including all exhibits) merges and supersedes all prior negotiations, representations, and agreements, including the Original IGA, between the parties hereto relating to the subject matter hereof and this Agreement, together with the Service Plan provisions that serve to supplement or complement this Agreement, constitutes the entire agreement between the Parties concerning the subject matter hereof.

19. Cooperation with Hess Ranch Metropolitan District Nos. 2 and 3. Pursuant to the Service Plan, the Town acknowledges and agrees that the District may cooperate with Hess Ranch Metropolitan District Nos. 2 and 3 for the planning, design, financing, construction, acquisition, operation, or maintenance of the Public Improvements serving the Property, including the Regional Infrastructure, as may be set forth in an intergovernmental agreement among the Districts.

IN WITNESS WHEREOF, this Agreement is executed by the Town and the District as of the date first above written.

TOWN OF PARKER, COLORADO

_____, Mayor

ATTEST:

_____, Town Clerk

APPROVED AS TO FORM:

_____, Town Attorney

**HESS RANCH METROPOLITAN
DISTRICT NO. 1**, (to be known as TRAILS AT
CROWFOOT METROPOLITAN DISTRICT NO.
1), a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Christian M. Janke, President
Hess Ranch Metropolitan District No. 1

ATTEST:

_____, Secretary

EXHIBIT A

Utilization of Infrastructure Capital Mill Levy

The District shall be required to impose the Infrastructure Capital Mill Levy for as long as the District is in existence. The District shall be authorized to impose the Infrastructure Capital Mill Levy and retain the revenues therefrom for the planning, design, financing, acquisition, or construction of all or a portion of the Regional Infrastructure. The District shall provide the Town notice of any obligation repayable in whole or in part from the Infrastructure Capital Mill Levy no later than 30 days following issuance of such obligation, or for any obligation that pre-dates the date of this Agreement, no later than 30 days following approval of this Agreement.

The District shall be permitted to retain revenues from the Infrastructure Capital Mill Levy received by the District to the extent needed to pay debt service on such obligation in the then-current calendar year. The Town agrees that for economic efficiency in financing the Regional Infrastructure, the District may pledge the Infrastructure Capital Mill Levy along with the District's debt service mill levy for the purposes of financing bonds, notes or other obligations, provided that the proceeds generated from the pledge of the Infrastructure Capital Mill Levy are used only to pay the costs of the Regional Infrastructure. Any revenues from the Infrastructure Capital Mill Levy that are not needed to pay debt service on such obligation in the then-current calendar year shall be remitted to the Town within 30 days of receipt by the District of such revenues.

So long as no obligation of the District is outstanding whereby the revenues derived from the Infrastructure Capital Mill Levy are pledged to the repayment of such obligations, in the event the Town determines that the costs related to the Regional Infrastructure are less than the revenues generated from the Infrastructure Capital Mill Levy, the Town may provide notice to the District no later than October 1 that the District may reduce the Infrastructure Capital Mill Levy as provided in such notice from the Town. Any reduction of either the Infrastructure Capital Mill Levy as a result of such notice from the Town shall not constitute a modification of this Agreement or a material modification of the Service Plan.

Until and unless the District has issued an obligation repayable, in whole or in part, from the Infrastructure Capital Mill Levy, any revenues from the Infrastructure Capital Mill Levy received by the District shall be remitted to the Town within 30 days of receipt by the District of such revenues. Upon maturity of any District obligation repayable in part or in whole from revenues generated by the Infrastructure Capital Mill Levy, such revenues shall be remitted to the Town within 30 days of their receipt by the District.

The Town agrees that the revenues received by the Town from the District from the Infrastructure Capital Mill Levy shall only be used for costs associated with the impacts to the Town of the development within the District pursuant to the terms of this Agreement.

The District is authorized to utilize the revenues from the Infrastructure Capital Mill Levy for the planning, design, financing, acquisition, or construction of the following Regional Infrastructure:

- Regional detention pond and associated improvements to Lemon Gulch;
- Regional open space and regional trails as expressly identified in Paragraph 7 of the Amended and Restated Stroh Ranch/Hess Ranch Annexation Agreement (Southern Property); and

Bayou Gulch Road, Crowfoot Valley Road, and North Pinery Parkway, including associated landscape improvements.

EXHIBIT B

Utilization of Town Capital and Maintenance Mill Levy

The District shall be required to impose the Town Capital and Maintenance Mill Levy for as long as the District is in existence. Any revenues from the Town Capital and Maintenance Mill Levy received by the District shall be remitted to the Town within 30 days of receipt by the District of such revenues.

The Town agrees that the revenues received from the Town Capital and Maintenance Mill Levy shall only be used for costs associated with the impacts to the Town of the development within the District pursuant to the terms of this Agreement.

In the event the Town determines that the costs related to the Town Infrastructure are less than the revenues generated from the Town Capital and Maintenance Mill Levy, the Town may provide notice to the District no later than October 1 that the District may reduce the Town Capital and Maintenance Mill Levy as provided in such notice from the Town. Any reduction of the Town Capital and Maintenance Mill Levy as a result of such notice from the Town shall not constitute a modification of this Agreement or a material modification of the Service Plan.

The Town is authorized to utilize the revenues from the Town Capital and Maintenance Mill Levy for the planning, design, financing, acquisition, construction, operation, and maintenance of the following Town Infrastructure:

- The Park Tract and all associated improvements (Tract DD, Filing No. 1).
- All roadways, storm sewer, and associated items constructed within Town right-of-way.
- Regional roadways serving the District.
- All storm sewer, detention ponds, stream improvements, and other stormwater conveyance infrastructure located on Town, HOA or District-owned property that is eligible for maintenance assistance through the Town's Stormwater Utility.
- Widening of Bayou Gulch Road to a full arterial roadway section through the District boundaries, including additional lanes, sidewalk, curb and gutter, medians, and all other associated items.

The parties agree the Town may modify the list of Town Infrastructure provided in this Exhibit B without amending this Agreement upon advance written notice to the District. The District shall have 30 days to object to such modification. In the event the District fails to object within 30 days of receipt of such notice, the Town may proceed to utilize the revenues from the Town Capital and Maintenance Mill Levy as set forth in such written notice which notice shall become a part of this Agreement by Addendum.

EXHIBIT C

Utilization of Operation and Maintenance Mill Levy

The District shall dedicate the Public Improvements (as defined in the Service Plan) to the Town or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan, Development Agreement and other rules and regulations of the Town and applicable provisions of the Town Code. The District shall be authorized to own, operate and maintain the Public Improvements not otherwise required to be dedicated to the Town or other public entity. If the Public Improvements are owned by an entity other than the District, the Town or other public entity, such entity shall be responsible for the operation and maintenance unless the District agrees to provide for the operation and maintenance of the Public Improvements pursuant to an agreement with such entity.

The District is authorized to impose up to 10 mills for District administrative and operating expenses as well as maintenance of Regional Infrastructure as set forth below. The Operation and Maintenance Mill Levy shall be imposed by the District at the District's discretion but in a manner that will enable the District to perform its administrative and operating obligations and its maintenance obligations in connection with the Regional Infrastructure in a timely and adequate manner.

Drainage Improvements (including detention and storm improvements)
Street Improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements)
Traffic and Safety Controls
Open Space and Trails
Landscaping
Parks and Recreation Improvements and Facilities, including club houses, recreation centers, and swimming pools
Retaining Walls
Irrigation Systems
Streetscape associated with the widening of Bayou Gulch Road

ORDINANCE NO. 9.288, Series of 2019

TITLE: A BILL FOR AN ORDINANCE APPROVING THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER, COLORADO, AND HESS RANCH METROPOLITAN DISTRICT NO. 2 TO BE KNOWN AS TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 2

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and Hess Ranch Metropolitan District No. 2 to be known as Trails at Crowfoot Metropolitan District No. 2, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO AND HESS RANCH METROPOLITAN DISTRICT NO. 2 (TO BE KNOWN AS TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 2)

THIS AGREEMENT (the “Agreement”) is made and entered into as of this 17th day of June, 2019, by and between the TOWN OF PARKER, a home rule municipal corporation of the State of Colorado (the “Town”), and the HESS RANCH METROPOLITAN DISTRICT NO. 2 (to be known as TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 2), a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The Town and the District are collectively referred to as the Parties.

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s Amended and Restated Service Plan approved by the Town on June 17, 2019 (the “Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the Town and the District, as required by Chapter 10.11 of the Town Code; and

WHEREAS, the Town entered into that certain Subdivision Agreement (Trails at Crowfoot Filing No. 1 with HR935, LLC (the “Developer”) on October 3, 2018, (the “Development Agreement”), which provides for public improvements that are necessary and desirable for the development contemplated by the Development Agreement; and

WHEREAS, specific regional improvements were identified in the Service Plan and Development Agreement, and as more particularly set forth on Exhibit A (the “Regional Infrastructure”), which Regional Infrastructure the Town has determined is necessary or desirable in connection with the impacts of the development of the Property; and

WHEREAS, pursuant to the Development Agreement, the Town is responsible for constructing and owning the Regional Infrastructure, and the Developer is responsible for providing funding for the construction of the Regional Infrastructure; and

WHEREAS, in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of 5 mills that will be used for the planning, design and construction of the Regional Infrastructure (the “Infrastructure Capital Mill Levy”), and the District has conducted, or will conduct, an election under Article X, Section 20 of the Colorado Constitution (“TABOR”) to enable it to impose the Infrastructure Capital Mill Levy and to issue debt repayable, in whole or in part, from the Infrastructure Capital Mill Levy; and

WHEREAS, the parties to this Agreement acknowledge the need for the Regional Infrastructure in order to accomplish the comprehensive development of the property located within the District's service area (the "Property"); and

WHEREAS, the parties further acknowledge that the Town will also have certain infrastructure capital and maintenance needs resulting from the development of the Property (the "Town Infrastructure"); and

WHEREAS, in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of 5 mills that will be used for the planning, design, construction and maintenance of the Town Infrastructure (the "Town Capital and Maintenance Mill Levy"), and the District has conducted, or will conduct, an election under TABOR to enable it to impose the Town Capital and Maintenance Mill Levy; and

WHEREAS, the parties further acknowledge that the District will have certain ongoing administrative and operating obligations, as well as regional maintenance obligations with regard to the Regional Infrastructure, and in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of up to 10 mills (the "Operation and Maintenance Mill Levy") for such purposes; and

WHEREAS, the Town has approved the final plat for the Property; and

WHEREAS, the Town and the District previously entered into that certain Intergovernmental Agreement with Hess Ranch Metropolitan District Nos. 1-8 dated August 15, 2016, as amended by that First Amendment to Intergovernmental Agreement among the Town and Hess Ranch Metropolitan District Nos. 1-3 dated March 6, 2017 (as amended, the "Original IGA") which Original IGA governed the relationship among the Parties; and

WHEREAS, the Parties have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement ("Agreement") to replace and supersede in its entirety the Original IGA in order to address the utilization of the various mill levies as well as certain other matters related to the organization, powers and authorities of the District; and

WHEREAS, any capitalized term not specifically defined in this Agreement shall have that meaning as set forth in the Service Plan; and

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Infrastructure Capital Mill Levy. The District agrees to impose a property tax of 5 mills that shall be used for the planning, design and construction of the Regional Infrastructure. The utilization of the Infrastructure Capital Mill Levy is set forth on Exhibit A to this Agreement.

2. Town Capital and Maintenance Mill Levy. The District agrees to impose a property tax of 5 mills that shall be used for the planning, design, construction and/or

maintenance of the Town Infrastructure. The utilization of the Infrastructure Capital Mill Levy is set forth on Exhibit B to this Agreement.

3. Operation and Maintenance Mill Levy. The District agrees to impose a property tax of up to 10 mills which shall be retained and used by the District for the ongoing administrative and operating expenses of the District and for the maintenance of certain of the Regional Infrastructure, as set forth on Exhibit C to this Agreement.

4. General Provisions Applicable to the Mill Levies. The Infrastructure Capital Mill Levy and the Town Capital and Maintenance Mill Levy shall be imposed by the District beginning the first year the District certifies a Maximum Debt Mill Levy and shall be subject to the Mill Levy Adjustment. The Operation and Maintenance Mill Levy shall be imposed by the District at the District's discretion but in a manner that will enable the District to perform its administrative and operating obligations and its maintenance obligations in connection with the Regional Infrastructure in a timely and adequate manner. The District acknowledges and agrees that requirement to levy the Infrastructure Capital Mill Levy, the Town Capital and Maintenance Mill Levy and the Operation and Maintenance Mill Levy (together, the "Mill Levies") is a material consideration in, and a condition of, the Town's approval of the District's Service Plan, and that the Town has relied thereon in approving the District's Service Plan. The District specifically agrees that the requirement that the District impose the Mill Levies and to utilize the funds as set forth in this Agreement shall be enforceable by the Town by all remedies available at law or in equity, including without limitation affirmative injunctive relief. The District represents and warrants that it has obtained, or will obtain, all voter authorizations to enable it to impose the Mill Levies, and to pledge the revenues from the Infrastructure Capital Mill Levy and the Town Capital and Maintenance Mill Levy to the repayment of debt issued by either the District or the Town, if and as applicable.

The District shall remit any revenues from the Infrastructure Capital Mill Levy or Town Capital and Maintenance Mill Levy that are due to the Town no later than 30 days after receipt of the same, and the Town shall deposit and maintain any revenues in a separate fund earmarked specifically for use only as set forth in this Agreement (the "Hess Ranch Metropolitan District No. 2 Fund"). The monies in the Hess Ranch Metropolitan District No. 2 Fund shall be applied to any design, planning, engineering, surveying, construction management, labor, materials, operations and administrative costs related to construction of the Regional Infrastructure or the Town Infrastructure, as applicable, as further detailed in this Agreement and the Exhibits attached hereto. On June 30 and December 31 of each year, the Town shall provide to the District an accounting of revenues received from the District attributable to the Infrastructure Capital Mill Levy or Town Capital and Maintenance Mill Levy, along with an itemization of expenditures made in major categories.

5. Operation and Maintenance of the Public Improvements. The District shall dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with the final approved plat, other rules and regulations of the Town, and applicable provisions of the Town Code. The District shall not be authorized to own, operate or maintain any part or all of the Public Improvements, or any other improvements, public or private, unless specifically provided for in this Agreement or separate agreement with the Town.

6. Fire Protection. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless specifically provided for in this Agreement or separate agreement with the Town. This provision shall limit the District's authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system.

7. Television Relay and Translation; Mosquito Control and Other Limitations. Unless specifically provided for in this Agreement or separate agreement with the Town, the District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate, maintain or provide: (a) any television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project; (b) any mosquito control facilities and services; (c) any solid waste disposal, collection and transportation facilities and services; and (d) any security, covenant enforcement and design review services.

8. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of federal and state governmental entities having proper jurisdiction. The District will obtain the Town's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

9. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed bonds or other obligations, the payment of which the District has promised to impose an *ad valorem* property tax mill levy ("Debt"), the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by the District for the [insert the designation of the Debt] does not exceed a market [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

10. Inclusion and Exclusion. The District shall not include within its boundaries any property outside the Service Area (as defined in the Service Plan) without the prior written consent of the Town Council. The District shall not exclude any property from the District if such exclusion will result, or is reasonably anticipated to result, in detriment to the remaining residents and taxpayers within the District, or to the District's bondholders.

11. Total Debt Issuance. The District, together with Hess Ranch Metropolitan District Nos. 2 and 3, shall not issue Debt in excess of \$90,068,750 in total aggregate principal amount, provided that such limitation shall not be applicable to refunding Bonds issued by the District to refund outstanding Debt. Such limitation shall not apply to the District's pledge of its property tax or specific ownership tax revenues derived from its mill levies to one of the other Districts (as defined in the Service Plan).

12. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except as may be specifically provided for herein. This Section shall not apply to specific ownership taxes which shall be distributed to and constitute a revenue source for the District without any limitation.

13. Consolidation; Dissolution. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with one of the other Districts, as defined in the Service Plan. The District agrees that it shall take all action necessary to dissolve the District in accordance with the provisions of the Service Plan and applicable state statutes.

14. Service Plan Amendment Requirement. Any action of the District which violates the limitations set forth in Sections V.A.1-13 or VI.B-H of the Service Plan, or which constitutes a material modification under Parker Municipal Code section 10.11.060, shall be deemed to be a material modification to the Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin any such action(s) of the District. The Town may also seek damages for breach of this Agreement arising from violations by the District of any provision of the Service Plan.

15. Applicable Laws. The District acknowledges that the property within its boundaries shall be subject to all ordinances, rules and regulations of the Town, including without limitation, ordinances, rules and regulations relating to zoning, subdividing, building and land use, and to all related Town land use policies, master plans and related plans.

16. Annual Report. The District shall submit an annual report ("Annual Report") to the Town no later than September 1st of each year following the year in which the Order and Decree creating the District has been issued by the District Court for and in Douglas County, Colorado, pursuant to Parker Municipal Code section 10.11.040 and containing the information set forth in Section VII of the Service Plan. The District shall be not be required to file an annual report if the District has declared inactive status pursuant to Section 32-1-104, C.R.S. The District may file a consolidated Annual Report with one or more of the other Districts.

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law, including the Annual Report, shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: WHITE BEAR ANKELE TANAKA & WALDRON
Attn: Kristin B. Tompkins, Esq.
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Phone: (303) 858-1800
E-mail: Ktompkins@wbapc.com

To the Town: Town of Parker
Attn: Kristin Schledorn, Deputy Town Attorney
cc: Mary Lou Brown, Finance Director
20120 E. Mainstreet
Parker, CO 80138-7334
Phone: (303) 841-0353
Fax: (303) 840-9792
E-mail: kschledorn@parkeronline.org
mlbrown@parkeronline.org

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Miscellaneous.

A. **Effective Date.** This Agreement shall be in full force and effect and be legally binding upon final approval of the governing bodies of the Parties. No Debt shall be issued by the District until after the effective date of this Agreement.

B. **Nonassignability.** No party to this Agreement may assign any interest therein to any person without the consent of the other party hereto at that time, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each party hereto. The pledge by the District of its revenues to one of the other Districts shall not be deemed an assignment hereunder.

C. **Amendments.** This Agreement may be amended from time to time by written amendment, duly authorized and signed by representatives of the parties hereto.

D. **Severability.** If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phase, or other provision shall not affect any of the remaining provisions of this Agreement.

E. Execution of Documents. This Agreement shall be executed in two (2) counterparts, either of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement.

F. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

G. Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

H. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for all actions brought hereunder shall be in the District Court in and for Douglas County.

I. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

J. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

K. No Third Party Beneficiaries. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

L. Entirety. This Agreement (including all exhibits) merges and supersedes all prior negotiations, representations, and agreements, including the Original IGA, between the parties hereto relating to the subject matter hereof and this Agreement, together with the Service Plan provisions that serve to supplement or complement this Agreement, constitutes the entire agreement between the Parties concerning the subject matter hereof.

19. Cooperation with Hess Ranch Metropolitan District Nos. 1 and 3. Pursuant to the Service Plan, the Town acknowledges and agrees that the District may cooperate with Hess Ranch Metropolitan District Nos. 1 and 3 for the planning, design, financing, construction, acquisition, operation, or maintenance of the Public Improvements serving the Property, including the Regional Infrastructure, as may be set forth in an intergovernmental agreement among the Districts.

IN WITNESS WHEREOF, this Agreement is executed by the Town and the District as of the date first above written.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

Kristin Schledorn, Deputy Town Attorney

**HESS RANCH METROPOLITAN
DISTRICT NO. 2**, (to be known as TRAILS AT
CROWFOOT METROPOLITAN DISTRICT NO.
2), a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Christian M. Janke, President
Hess Ranch Metropolitan District No. 2

ATTEST:

_____, Secretary

EXHIBIT A

Utilization of Infrastructure Capital Mill Levy

The District shall be required to impose the Infrastructure Capital Mill Levy for as long as the District is in existence. The District shall be authorized to impose the Infrastructure Capital Mill Levy and retain the revenues therefrom for the planning, design, financing, acquisition, or construction of all or a portion of the Regional Infrastructure. The District shall provide the Town notice of any obligation repayable in whole or in part from the Infrastructure Capital Mill Levy no later than 30 days following issuance of such obligation, or for any obligation that pre-dates the date of this Agreement, no later than 30 days following approval of this Agreement.

The District shall be permitted to retain revenues from the Infrastructure Capital Mill Levy received by the District to the extent needed to pay debt service on such obligation in the then-current calendar year. The Town agrees that for economic efficiency in financing the Regional Infrastructure, the District may pledge the Infrastructure Capital Mill Levy along with the District's debt service mill levy for the purposes of financing bonds, notes or other obligations, provided that the proceeds generated from the pledge of the Infrastructure Capital Mill Levy are used only to pay the costs of the Regional Infrastructure. Any revenues from the Infrastructure Capital Mill Levy that are not needed to pay debt service on such obligation in the then-current calendar year shall be remitted to the Town within 30 days of receipt by the District of such revenues.

So long as no obligation of the District is outstanding whereby the revenues derived from the Infrastructure Capital Mill Levy are pledged to the repayment of such obligations, in the event the Town determines that the costs related to the Regional Infrastructure are less than the revenues generated from the Infrastructure Capital Mill Levy, the Town may provide notice to the District no later than October 1 that the District may reduce the Infrastructure Capital Mill Levy as provided in such notice from the Town. Any reduction of either the Infrastructure Capital Mill Levy as a result of such notice from the Town shall not constitute a modification of this Agreement or a material modification of the Service Plan.

Until and unless the District has issued an obligation repayable, in whole or in part, from the Infrastructure Capital Mill Levy, any revenues from the Infrastructure Capital Mill Levy received by the District shall be remitted to the Town within 30 days of receipt by the District of such revenues. Upon maturity of any District obligation repayable in part or in whole from revenues generated by the Infrastructure Capital Mill Levy, such revenues shall be remitted to the Town within 30 days of their receipt by the District.

The Town agrees that the revenues received by the Town from the District from the Infrastructure Capital Mill Levy shall only be used for costs associated with the impacts to the Town of the development within the District pursuant to the terms of this Agreement.

The District is authorized to utilize the revenues from the Infrastructure Capital Mill Levy for the planning, design, financing, acquisition, or construction of the following Regional Infrastructure:

- Regional detention pond and associated improvements to Lemon Gulch;
- Regional open space and regional trails as expressly identified in Paragraph 7 of the Amended and Restated Stroh Ranch/Hess Ranch Annexation Agreement (Southern Property); and

Bayou Gulch Road, Crowfoot Valley Road, and North Pinery Parkway, including associated landscape improvements.

EXHIBIT B

Utilization of Town Capital and Maintenance Mill Levy

The District shall be required to impose the Town Capital and Maintenance Mill Levy for as long as the District is in existence. Any revenues from the Town Capital and Maintenance Mill Levy received by the District shall be remitted to the Town within 30 days of receipt by the District of such revenues.

The Town agrees that the revenues received from the Town Capital and Maintenance Mill Levy shall only be used for costs associated with the impacts to the Town of the development within the District pursuant to the terms of this Agreement.

In the event the Town determines that the costs related to the Town Infrastructure are less than the revenues generated from the Town Capital and Maintenance Mill Levy, the Town may provide notice to the District no later than October 1 that the District may reduce the Town Capital and Maintenance Mill Levy as provided in such notice from the Town. Any reduction of the Town Capital and Maintenance Mill Levy as a result of such notice from the Town shall not constitute a modification of this Agreement or a material modification of the Service Plan.

The Town is authorized to utilize the revenues from the Town Capital and Maintenance Mill Levy for the planning, design, financing, acquisition, construction, operation, and maintenance of the following Town Infrastructure:

- The Park Tract and all associated improvements (Tract DD, Filing No. 1).
- All roadways, storm sewer, and associated items constructed within Town right-of-way.
- Regional roadways serving the District.
- All storm sewer, detention ponds, stream improvements, and other stormwater conveyance infrastructure located on Town, HOA or District-owned property that is eligible for maintenance assistance through the Town's Stormwater Utility.
- Widening of Bayou Gulch Road to a full arterial roadway section through the District boundaries, including additional lanes, sidewalk, curb and gutter, medians, and all other associated items.

The parties agree the Town may modify the list of Town Infrastructure provided in this Exhibit B without amending this Agreement upon advance written notice to the District. The District shall have 30 days to object to such modification. In the event the District fails to object within 30 days of receipt of such notice, the Town may proceed to utilize the revenues from the Town Capital and Maintenance Mill Levy as set forth in such written notice which notice shall become a part of this Agreement by Addendum.

EXHIBIT C

Utilization of Operation and Maintenance Mill Levy

The District shall dedicate the Public Improvements (as defined in the Service Plan) to the Town or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan, Development Agreement and other rules and regulations of the Town and applicable provisions of the Town Code. The District shall be authorized to own, operate and maintain the Public Improvements not otherwise required to be dedicated to the Town or other public entity. If the Public Improvements are owned by an entity other than the District, the Town or other public entity, such entity shall be responsible for the operation and maintenance unless the District agrees to provide for the operation and maintenance of the Public Improvements pursuant to an agreement with such entity.

The District is authorized to impose up to 10 mills for District administrative and operating expenses as well as maintenance of Regional Infrastructure as set forth below. The Operation and Maintenance Mill Levy shall be imposed by the District at the District's discretion but in a manner that will enable the District to perform its administrative and operating obligations and its maintenance obligations in connection with the Regional Infrastructure in a timely and adequate manner.

Drainage Improvements (including detention and storm improvements)
Street Improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements)
Traffic and Safety Controls
Open Space and Trails
Landscaping
Parks and Recreation Improvements and Facilities, including club houses, recreation centers, and swimming pools
Retaining Walls
Irrigation Systems
Streetscape associated with the widening of Bayou Gulch Road

ORDINANCE NO. 9.289, Series of 2019

TITLE: A BILL FOR AN ORDINANCE APPROVING THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF PARKER, COLORADO, AND HESS RANCH METROPOLITAN DISTRICT NO. 3 TO BE KNOWN AS TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 3

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and Hess Ranch Metropolitan District No. 3 to be known as Trails at Crowfoot Metropolitan District No. 3, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO AND HESS RANCH METROPOLITAN DISTRICT NO. 3 (TO BE KNOWN AS TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 3)

THIS AGREEMENT (the “Agreement”) is made and entered into as of this 17th day of June, 2019, by and between the TOWN OF PARKER, a home rule municipal corporation of the State of Colorado (the “Town”), and the HESS RANCH METROPOLITAN DISTRICT NO. 3 (to be known as TRAILS AT CROWFOOT METROPOLITAN DISTRICT NO. 3), a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The Town and the District are collectively referred to as the Parties.

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s Amended and Restated Service Plan approved by the Town on June 17, 2019 (the “Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the Town and the District, as required by Chapter 10.11 of the Town Code; and

WHEREAS, the Town entered into that certain Subdivision Agreement (Trails at Crowfoot Filing No. 1 with HR935, LLC (the “Developer”) on October 3, 2018, (the “Development Agreement”), which provides for public improvements that are necessary and desirable for the development contemplated by the Development Agreement; and

WHEREAS, specific regional improvements were identified in the Service Plan and Development Agreement, and as more particularly set forth on Exhibit A (the “Regional Infrastructure”), which Regional Infrastructure the Town has determined is necessary or desirable in connection with the impacts of the development of the Property; and

WHEREAS, pursuant to the Development Agreement, the Town is responsible for constructing and owning the Regional Infrastructure, and the Developer is responsible for providing funding for the construction of the Regional Infrastructure; and

WHEREAS, in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of 5 mills that will be used for the planning, design and construction of the Regional Infrastructure (the “Infrastructure Capital Mill Levy”), and the District has conducted, or will conduct, an election under Article X, Section 20 of the Colorado Constitution (“TABOR”) to enable it to impose the Infrastructure Capital Mill Levy and to issue debt repayable, in whole or in part, from the Infrastructure Capital Mill Levy; and

WHEREAS, the parties to this Agreement acknowledge the need for the Regional Infrastructure in order to accomplish the comprehensive development of the property located within the District's service area (the "Property"); and

WHEREAS, the parties further acknowledge that the Town will also have certain infrastructure capital and maintenance needs resulting from the development of the Property (the "Town Infrastructure"); and

WHEREAS, in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of 5 mills that will be used for the planning, design, construction and maintenance of the Town Infrastructure (the "Town Capital and Maintenance Mill Levy"), and the District has conducted, or will conduct, an election under TABOR to enable it to impose the Town Capital and Maintenance Mill Levy; and

WHEREAS, the parties further acknowledge that the District will have certain ongoing administrative and operating obligations, as well as regional maintenance obligations with regard to the Regional Infrastructure, and in accordance with the provisions of the Service Plan, the District has agreed to levy a property tax of up to 10 mills (the "Operation and Maintenance Mill Levy") for such purposes; and

WHEREAS, the Town has approved the final plat for the Property; and

WHEREAS, the Town and the District previously entered into that certain Intergovernmental Agreement with Hess Ranch Metropolitan District Nos. 1-8 dated August 15, 2016, as amended by that First Amendment to Intergovernmental Agreement among the Town and Hess Ranch Metropolitan District Nos. 1-3 dated March 6, 2017 (as amended, the "Original IGA") which Original IGA governed the relationship among the Parties; and

WHEREAS, the Parties have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement ("Agreement") to replace and supersede in its entirety the Original IGA in order to address the utilization of the various mill levies as well as certain other matters related to the organization, powers and authorities of the District; and

WHEREAS, any capitalized term not specifically defined in this Agreement shall have that meaning as set forth in the Service Plan; and

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Infrastructure Capital Mill Levy. The District agrees to impose a property tax of 5 mills that shall be used for the planning, design and construction of the Regional Infrastructure. The utilization of the Infrastructure Capital Mill Levy is set forth on Exhibit A to this Agreement.

2. Town Capital and Maintenance Mill Levy. The District agrees to impose a property tax of 5 mills that shall be used for the planning, design, construction and/or

maintenance of the Town Infrastructure. The utilization of the Infrastructure Capital Mill Levy is set forth on Exhibit B to this Agreement.

3. Operation and Maintenance Mill Levy. The District agrees to impose a property tax of up to 10 mills which shall be retained and used by the District for the ongoing administrative and operating expenses of the District and for the maintenance of certain of the Regional Infrastructure, as set forth on Exhibit C to this Agreement.

4. General Provisions Applicable to the Mill Levies. The Infrastructure Capital Mill Levy and the Town Capital and Maintenance Mill Levy shall be imposed by the District beginning the first year the District certifies a Maximum Debt Mill Levy and shall be subject to the Mill Levy Adjustment. The Operation and Maintenance Mill Levy shall be imposed by the District at the District's discretion but in a manner that will enable the District to perform its administrative and operating obligations and its maintenance obligations in connection with the Regional Infrastructure in a timely and adequate manner. The District acknowledges and agrees that requirement to levy the Infrastructure Capital Mill Levy, the Town Capital and Maintenance Mill Levy and the Operation and Maintenance Mill Levy (together, the "Mill Levies") is a material consideration in, and a condition of, the Town's approval of the District's Service Plan, and that the Town has relied thereon in approving the District's Service Plan. The District specifically agrees that the requirement that the District impose the Mill Levies and to utilize the funds as set forth in this Agreement shall be enforceable by the Town by all remedies available at law or in equity, including without limitation affirmative injunctive relief. The District represents and warrants that it has obtained, or will obtain, all voter authorizations to enable it to impose the Mill Levies, and to pledge the revenues from the Infrastructure Capital Mill Levy and the Town Capital and Maintenance Mill Levy to the repayment of debt issued by either the District or the Town, if and as applicable.

The District shall remit any revenues from the Infrastructure Capital Mill Levy or Town Capital and Maintenance Mill Levy that are due to the Town no later than 30 days after receipt of the same, and the Town shall deposit and maintain any revenues in a separate fund earmarked specifically for use only as set forth in this Agreement (the "Hess Ranch Metropolitan District No. 3 Fund"). The monies in the Hess Ranch Metropolitan District No. 3 Fund shall be applied to any design, planning, engineering, surveying, construction management, labor, materials, operations and administrative costs related to construction of the Regional Infrastructure or the Town Infrastructure, as applicable, as further detailed in this Agreement and the Exhibits attached hereto. On June 30 and December 31 of each year, the Town shall provide to the District an accounting of revenues received from the District attributable to the Infrastructure Capital Mill Levy or Town Capital and Maintenance Mill Levy, along with an itemization of expenditures made in major categories.

5. Operation and Maintenance of the Public Improvements. The District shall dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with the final approved plat, other rules and regulations of the Town, and applicable provisions of the Town Code. The District shall not be authorized to own, operate or maintain any part or all of the Public Improvements, or any other improvements, public or private, unless specifically provided for in this Agreement or separate agreement with the Town.

6. Fire Protection. The District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless specifically provided for in this Agreement or separate agreement with the Town. This provision shall limit the District's authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system.

7. Television Relay and Translation; Mosquito Control and Other Limitations. Unless specifically provided for in this Agreement or separate agreement with the Town, the District shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate, maintain or provide: (a) any television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project; (b) any mosquito control facilities and services; (c) any solid waste disposal, collection and transportation facilities and services; and (d) any security, covenant enforcement and design review services.

8. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of federal and state governmental entities having proper jurisdiction. The District will obtain the Town's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

9. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed bonds or other obligations, the payment of which the District has promised to impose an *ad valorem* property tax mill levy ("Debt"), the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by the District for the [insert the designation of the Debt] does not exceed a market [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

10. Inclusion and Exclusion. The District shall not include within its boundaries any property outside the Service Area (as defined in the Service Plan) without the prior written consent of the Town Council. The District shall not exclude any property from the District if such exclusion will result, or is reasonably anticipated to result, in detriment to the remaining residents and taxpayers within the District, or to the District's bondholders.

11. Total Debt Issuance. The District, together with Hess Ranch Metropolitan District Nos. 2 and 3, shall not issue Debt in excess of \$90,068,750 in total aggregate principal amount, provided that such limitation shall not be applicable to refunding Bonds issued by the District to refund outstanding Debt. Such limitation shall not apply to the District's pledge of its property tax or specific ownership tax revenues derived from its mill levies to one of the other Districts (as defined in the Service Plan).

12. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except as may be specifically provided for herein. This Section shall not apply to specific ownership taxes which shall be distributed to and constitute a revenue source for the District without any limitation.

13. Consolidation; Dissolution. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with one of the other Districts, as defined in the Service Plan. The District agrees that it shall take all action necessary to dissolve the District in accordance with the provisions of the Service Plan and applicable state statutes.

14. Service Plan Amendment Requirement. Any action of the District which violates the limitations set forth in Sections V.A.1-13 or VI.B-H of the Service Plan, or which constitutes a material modification under Parker Municipal Code section 10.11.060, shall be deemed to be a material modification to the Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin any such action(s) of the District. The Town may also seek damages for breach of this Agreement arising from violations by the District of any provision of the Service Plan.

15. Applicable Laws. The District acknowledges that the property within its boundaries shall be subject to all ordinances, rules and regulations of the Town, including without limitation, ordinances, rules and regulations relating to zoning, subdividing, building and land use, and to all related Town land use policies, master plans and related plans.

16. Annual Report. The District shall submit an annual report ("Annual Report") to the Town no later than September 1st of each year following the year in which the Order and Decree creating the District has been issued by the District Court for and in Douglas County, Colorado, pursuant to Parker Municipal Code section 10.11.040 and containing the information set forth in Section VII of the Service Plan. The District shall be not be required to file an annual report if the District has declared inactive status pursuant to Section 32-1-104, C.R.S. The District may file a consolidated Annual Report with one or more of the other Districts.

17. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law, including the Annual Report, shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: WHITE BEAR ANKELE TANAKA & WALDRON
Attn: Kristin B. Tompkins, Esq.
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Phone: (303) 858-1800
E-mail: Ktompkins@wbapc.com

To the Town: Town of Parker
Attn: Kristin Schledorn, Deputy Town Attorney
cc: Mary Lou Brown, Finance Director
20120 E. Mainstreet
Parker, CO 80138-7334
Phone: (303) 841-0353
Fax: (303) 840-9792
E-mail: kschledorn@parkeronline.org
mlbrown@parkeronline.org

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

18. Miscellaneous.

A. **Effective Date.** This Agreement shall be in full force and effect and be legally binding upon final approval of the governing bodies of the Parties. No Debt shall be issued by the District until after the effective date of this Agreement.

B. **Nonassignability.** No party to this Agreement may assign any interest therein to any person without the consent of the other party hereto at that time, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each party hereto. The pledge by the District of its revenues to one of the other Districts shall not be deemed an assignment hereunder.

C. **Amendments.** This Agreement may be amended from time to time by written amendment, duly authorized and signed by representatives of the parties hereto.

D. **Severability.** If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phase, or other provision shall not affect any of the remaining provisions of this Agreement.

E. Execution of Documents. This Agreement shall be executed in two (2) counterparts, either of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement.

F. Waiver. No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

G. Default/Remedies. In the event of a breach or default of this Agreement by any party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

H. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado. Venue for all actions brought hereunder shall be in the District Court in and for Douglas County.

I. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

J. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

K. No Third Party Beneficiaries. No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

L. Entirety. This Agreement (including all exhibits) merges and supersedes all prior negotiations, representations, and agreements, including the Original IGA, between the parties hereto relating to the subject matter hereof and this Agreement, together with the Service Plan provisions that serve to supplement or complement this Agreement, constitutes the entire agreement between the Parties concerning the subject matter hereof.

19. Cooperation with Hess Ranch Metropolitan District Nos. 1 and 2. Pursuant to the Service Plan, the Town acknowledges and agrees that the District may cooperate with Hess Ranch Metropolitan District Nos. 1 and 2 for the planning, design, financing, construction, acquisition, operation, or maintenance of the Public Improvements serving the Property, including the Regional Infrastructure, as may be set forth in an intergovernmental agreement among the Districts.

IN WITNESS WHEREOF, this Agreement is executed by the Town and the District as of the date first above written.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

Kristin Schledorn, Deputy Town Attorney

**HESS RANCH METROPOLITAN
DISTRICT NO. 3**, (to be known as TRAILS AT
CROWFOOT METROPOLITAN DISTRICT NO.
3), a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Christian M. Janke, President
Hess Ranch Metropolitan District No. 3

ATTEST:

_____, Secretary

EXHIBIT A

Utilization of Infrastructure Capital Mill Levy

The District shall be required to impose the Infrastructure Capital Mill Levy for as long as the District is in existence. The District shall be authorized to impose the Infrastructure Capital Mill Levy and retain the revenues therefrom for the planning, design, financing, acquisition, or construction of all or a portion of the Regional Infrastructure. The District shall provide the Town notice of any obligation repayable in whole or in part from the Infrastructure Capital Mill Levy no later than 30 days following issuance of such obligation, or for any obligation that pre-dates the date of this Agreement, no later than 30 days following approval of this Agreement.

The District shall be permitted to retain revenues from the Infrastructure Capital Mill Levy received by the District to the extent needed to pay debt service on such obligation in the then-current calendar year. The Town agrees that for economic efficiency in financing the Regional Infrastructure, the District may pledge the Infrastructure Capital Mill Levy along with the District's debt service mill levy for the purposes of financing bonds, notes or other obligations, provided that the proceeds generated from the pledge of the Infrastructure Capital Mill Levy are used only to pay the costs of the Regional Infrastructure. Any revenues from the Infrastructure Capital Mill Levy that are not needed to pay debt service on such obligation in the then-current calendar year shall be remitted to the Town within 30 days of receipt by the District of such revenues.

So long as no obligation of the District is outstanding whereby the revenues derived from the Infrastructure Capital Mill Levy are pledged to the repayment of such obligations, in the event the Town determines that the costs related to the Regional Infrastructure are less than the revenues generated from the Infrastructure Capital Mill Levy, the Town may provide notice to the District no later than October 1 that the District may reduce the Infrastructure Capital Mill Levy as provided in such notice from the Town. Any reduction of either the Infrastructure Capital Mill Levy as a result of such notice from the Town shall not constitute a modification of this Agreement or a material modification of the Service Plan.

Until and unless the District has issued an obligation repayable, in whole or in part, from the Infrastructure Capital Mill Levy, any revenues from the Infrastructure Capital Mill Levy received by the District shall be remitted to the Town within 30 days of receipt by the District of such revenues. Upon maturity of any District obligation repayable in part or in whole from revenues generated by the Infrastructure Capital Mill Levy, such revenues shall be remitted to the Town within 30 days of their receipt by the District.

The Town agrees that the revenues received by the Town from the District from the Infrastructure Capital Mill Levy shall only be used for costs associated with the impacts to the Town of the development within the District pursuant to the terms of this Agreement.

The District is authorized to utilize the revenues from the Infrastructure Capital Mill Levy for the planning, design, financing, acquisition, or construction of the following Regional Infrastructure:

- Regional detention pond and associated improvements to Lemon Gulch;
- Regional open space and regional trails as expressly identified in Paragraph 7 of the Amended and Restated Stroh Ranch/Hess Ranch Annexation Agreement (Southern Property); and

Bayou Gulch Road, Crowfoot Valley Road, and North Pinery Parkway, including associated landscape improvements.

EXHIBIT B

Utilization of Town Capital and Maintenance Mill Levy

The District shall be required to impose the Town Capital and Maintenance Mill Levy for as long as the District is in existence. Any revenues from the Town Capital and Maintenance Mill Levy received by the District shall be remitted to the Town within 30 days of receipt by the District of such revenues.

The Town agrees that the revenues received from the Town Capital and Maintenance Mill Levy shall only be used for costs associated with the impacts to the Town of the development within the District pursuant to the terms of this Agreement.

In the event the Town determines that the costs related to the Town Infrastructure are less than the revenues generated from the Town Capital and Maintenance Mill Levy, the Town may provide notice to the District no later than October 1 that the District may reduce the Town Capital and Maintenance Mill Levy as provided in such notice from the Town. Any reduction of the Town Capital and Maintenance Mill Levy as a result of such notice from the Town shall not constitute a modification of this Agreement or a material modification of the Service Plan.

The Town is authorized to utilize the revenues from the Town Capital and Maintenance Mill Levy for the planning, design, financing, acquisition, construction, operation, and maintenance of the following Town Infrastructure:

- The Park Tract and all associated improvements (Tract DD, Filing No. 1).
- All roadways, storm sewer, and associated items constructed within Town right-of-way.
- Regional roadways serving the District.
- All storm sewer, detention ponds, stream improvements, and other stormwater conveyance infrastructure located on Town, HOA or District-owned property that is eligible for maintenance assistance through the Town's Stormwater Utility.
- Widening of Bayou Gulch Road to a full arterial roadway section through the District boundaries, including additional lanes, sidewalk, curb and gutter, medians, and all other associated items.

The parties agree the Town may modify the list of Town Infrastructure provided in this Exhibit B without amending this Agreement upon advance written notice to the District. The District shall have 30 days to object to such modification. In the event the District fails to object within 30 days of receipt of such notice, the Town may proceed to utilize the revenues from the Town Capital and Maintenance Mill Levy as set forth in such written notice which notice shall become a part of this Agreement by Addendum.

EXHIBIT C

Utilization of Operation and Maintenance Mill Levy

The District shall dedicate the Public Improvements (as defined in the Service Plan) to the Town or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan, Development Agreement and other rules and regulations of the Town and applicable provisions of the Town Code. The District shall be authorized to own, operate and maintain the Public Improvements not otherwise required to be dedicated to the Town or other public entity. If the Public Improvements are owned by an entity other than the District, the Town or other public entity, such entity shall be responsible for the operation and maintenance unless the District agrees to provide for the operation and maintenance of the Public Improvements pursuant to an agreement with such entity.

The District is authorized to impose up to 10 mills for District administrative and operating expenses as well as maintenance of Regional Infrastructure as set forth below. The Operation and Maintenance Mill Levy shall be imposed by the District at the District's discretion but in a manner that will enable the District to perform its administrative and operating obligations and its maintenance obligations in connection with the Regional Infrastructure in a timely and adequate manner.

Drainage Improvements (including detention and storm improvements)
Street Improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements)
Traffic and Safety Controls
Open Space and Trails
Landscaping
Parks and Recreation Improvements and Facilities, including club houses, recreation centers, and swimming pools
Retaining Walls
Irrigation Systems
Streetscape associated with the widening of Bayou Gulch Road



Request for Town Council Action

Date: June 3, 2019

Submitted By: Kristin Schledorn, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.345.1 - First Reading**
A Bill for an Ordinance Affirming the Passage of Emergency Ordinance No. 3.345, Series of 2019, A Bill for an Emergency Ordinance to Impose a Temporary Suspension for One Hundred Eighty (180) Days in Duration on the Processing and Approval of any Application for a Town of Parker Permit or License Related to the Operation of a Business that Would Be Engaged in the Growing, Storage, Extraction, Processing or Manufacturing of Industrial Hemp or the Extraction, Processing or Manufacturing of Industrial Hemp in Commercial Products Containing Industrial Hemp; Directing the Prompt Investigation of the Town's Regulatory Authority Over Such Businesses Pursuant to the Authority Granted by Article XX, Section 6, of the Colorado Constitution; and Declaring the Intention of the Town Council to Consider the Adoption of Appropriate Town Regulations With Respect to Such Businesses if Permitted by Law

Department: Town Attorney, Kristin Schledorn
Second Reading: June 17, 2019

EXECUTIVE SUMMARY

On May 20, 2019, Town Council approved Emergency Ordinance No. 3.345, Series of 2019. Pursuant to Parker Home Rule Charter Section 7.6, an emergency ordinance must be affirmed by Town Council within 90 days after passage to remain in effect.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Amendment 64 (Colo. Const. Article XVIII §16) legalized the recreational use of marijuana.

Amendment 64 also provided the following related to industrial hemp:

“In the interest of enacting national policies for the treatment of all variations of the cannabis plant, the people of Colorado further find and declare that industrial hemp shall be regulated separately from strains of cannabis with higher delta-9 tetrahydrocannabinol (THC) concentration.”

Colo.Const.Art. XVIII, §16(1)(c). Amendment 64 also directed the General Assembly to enact “legislation governing the cultivation, processing and sale of industrial hemp.” Id. at §16(5)(j). While the General Assembly enacted the “Industrial Hemp Regulating Program Act (the “Act”) (C.R.S. §§ 35-61-101, et seq.), the Act generally regulates the cultivation of hemp, but not the storage, extraction, processing or manufacture of industrial hemp or commercial products containing industrial hemp.

During the 2019 legislative session, SB19-240 was introduced to address this shortfall in complying with the constitutional mandate of enacting legislation to govern the “processing and sale” of industrial hemp. SB19-240, which was passed on 3rd reading by both the Senate and the House, is currently awaiting the signature of the Governor. Under Section 3 of SB19-240, the “governing bodies of municipalities” would have the power to regulate hemp businesses “to charge a fee for a local license and establish licensing requirements for businesses engaged in the storage, extraction, processing or manufacture of industrial hemp . . . or industrial hemp products . . .” The Town Council desires to investigate the authority of the Town, as a Colorado home rule municipality under Article XX, Section 6, of the Colorado Constitution and SB19-240 if it goes into effect, to establish licensing requirements for businesses engaged in the storage, extraction, processing or manufacture of industrial hemp or commercial products containing industrial hemp (the “Hemp Operations”).

Town staff has determined that there are significant land-use and public safety impacts associated with Hemp Operations. The Town currently has general land-use regulations to address the location of Hemp Operations. The Town Council desires to investigate the appropriate manner of accommodating Hemp Operations within the Town, including location, bulk standards, potential nuisance impacts, and proximity to sensitive receptors/uses.

While the Town has building code regulations that may mitigate some of the public safety impacts associated with Hemp Operations, Town staff wishes to evaluate the need for additional standards because Hemp Operations would constitute a new type of business activity in Town. For example, the process for extracting the cannabidiol (“CBD”) from hemp may involve the use of flammable solvents and result in the release of hazardous vapors, which may necessitate fire suppression, scrubbers and filters and which may require further evaluation. Additionally, there may be a need for regulations to address potential nuisance impacts, which may include, but are not be limited to, the proper storage of hemp (and mitigation of the odor), the storage and handling of chemicals and the proper disposal of hemp byproducts associated with Hemp Operations. The Town Council desires to investigate the appropriate regulations needed to

properly accommodate business activity and associated with Hemp Operations within the Town.

The Town's Building Division has received several inquiries about opening businesses that would engage in Hemp Operations. The Town's current regulations may not be adequate to address the impacts associated with this type of use and activity. Town staff will need a minimum of 180 days to develop adequate regulations to address Hemp Operations in the Town.

There is currently one pending application with the Town for a business that would engage in Hemp Operations and would be located within a limited-industrial area of the Town, which business would not be subject to the attached ordinance.

On May 20, 2019, Town Council approved Emergency Ordinance No. 3.345, Series of 2019. Pursuant to Parker Home Rule Charter Section 7.6, an emergency ordinance must be affirmed by Town Council within 90 days after passage to remain in effect.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Ordinance No. 3.345.1

RECOMMENDED MOTION

I move to approve Ordinance No. 3.345.1 on first reading and schedule second reading for June 17, 2019, as part of the consent agenda.

ORDINANCE NO. 3.345.1, Series of 2019

TITLE: A BILL FOR AN ORDINANCE AFFIRMING THE PASSAGE OF EMERGENCY ORDINANCE NO. 3.345, SERIES OF 2019, A BILL FOR AN EMERGENCY ORDINANCE TO IMPOSE A TEMPORARY SUSPENSION FOR ONE HUNDRED EIGHTY (180) DAYS IN DURATION ON THE PROCESSING AND APPROVAL OF ANY APPLICATION FOR A TOWN OF PARKER PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT WOULD BE ENGAGED IN THE GROWING, STORAGE, EXTRACTION, PROCESSING OR MANUFACTURING OF INDUSTRIAL HEMP OR THE EXTRACTION, PROCESSING OR MANUFACTURING OF INDUSTRIAL HEMP IN COMMERCIAL PRODUCTS CONTAINING INDUSTRIAL HEMP; DIRECTING THE PROMPT INVESTIGATION OF THE TOWN'S REGULATORY AUTHORITY OVER SUCH BUSINESSES PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE XX, SECTION 6, OF THE COLORADO CONSTITUTION; AND DECLARING THE INTENTION OF THE TOWN COUNCIL TO CONSIDER THE ADOPTION OF APPROPRIATE TOWN REGULATIONS WITH RESPECT TO SUCH BUSINESSES IF PERMITTED BY LAW

WHEREAS, the Town Council of the Town of Parker passed Ordinance No. 3.345, Series of 2019, as an emergency ordinance on May 20, 2019, A Bill for an Emergency Ordinance to Impose a Temporary Suspension for One Hundred Eighty (180) Days in Duration on the Processing and Approval of any Application for a Town of Parker Permit or License Related to the Operation of a Business that Would Be Engaged in the Growing, Storage, Extraction, Processing or Manufacturing of Industrial Hemp or the Extraction, Processing or Manufacturing of Industrial Hemp in Commercial Products Containing Industrial Hemp; Directing the Prompt Investigation of the Town's Regulatory Authority Over Such Businesses Pursuant to the Authority Granted by Article XX, Section 6, of the Colorado Constitution; and Declaring the Intention of the Town Council to Consider the Adoption of Appropriate Town Regulations With Respect to Such Businesses if Permitted by Law;

WHEREAS, Section 7.6 of the Town of Parker Home Rule Charter requires that emergency ordinances "shall not be in effect longer than ninety (90) days after passage, unless the Council by subsequent ordinance shall affirm the same;" and

WHEREAS, the Town Council of the Town of Parker desires to affirm the passage of Ordinance No. 3.345, Series of 2019.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby affirms the passage of Ordinance No. 3.345, Series of 2019, attached hereto as **Exhibit A**, and incorporated by this reference.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT A

ORDINANCE NO. 3.345, Series of 2019

TITLE: A BILL FOR AN EMERGENCY ORDINANCE TO IMPOSE A TEMPORARY SUSPENSION FOR ONE HUNDRED EIGHTY (180) DAYS IN DURATION ON THE PROCESSING AND APPROVAL OF ANY APPLICATION FOR A TOWN OF PARKER PERMIT OR LICENSE RELATED TO THE OPERATION OF A BUSINESS THAT WOULD BE ENGAGED IN THE GROWING, STORAGE, EXTRACTION, PROCESSING OR MANUFACTURING OF INDUSTRIAL HEMP OR THE EXTRACTION, PROCESSING OR MANUFACTURING OF INDUSTRIAL HEMP IN COMMERCIAL PRODUCTS CONTAINING INDUSTRIAL HEMP; DIRECTING THE PROMPT INVESTIGATION OF THE TOWN'S REGULATORY AUTHORITY OVER SUCH BUSINESSES PURSUANT TO THE AUTHORITY GRANTED BY ARTICLE XX, SECTION 6, OF THE COLORADO CONSTITUTION; AND DECLARING THE INTENTION OF THE TOWN COUNCIL TO CONSIDER THE ADOPTION OF APPROPRIATE TOWN REGULATIONS WITH RESPECT TO SUCH BUSINESSES IF PERMITTED BY LAW

WHEREAS, Amendment 64 (which legalized the recreational use of marijuana) directed the General Assembly to enact legislation to govern the cultivation, processing and sale of industrial hemp;

WHEREAS, the General Assembly previously adopted Article 61 of Title 35 of the Colorado Revised Statutes enacting the Industrial Hemp Regulatory Program, but such provisions generally regulate only the cultivation of hemp, but not the storage, extraction, processing or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp;

WHEREAS, the provisions generally regulating the cultivation of industrial hemp do not adequately address the impacts of growing, storage, extraction, processing or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp in the Town of Parker;

WHEREAS, the General Assembly passed Senate Bill 19-240, which is currently awaiting the signature of the Governor, which if finally enacted, would authorize local governments to establish licensing requirements on businesses engaged in the growing, storage, extraction, processing, or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp ("Industrial Hemp Operations");

WHEREAS, the Town Council has been made aware that staff has received inquiries from persons who are interested in opening and operating businesses engaged in Industrial Hemp Operations, including one now-pending application;

WHEREAS, there are likely significant land use and public safety impacts associated with Industrial Hemp Operations;

WHEREAS, the Town Council desires to investigate the appropriate land use provisions that provide a manner of accommodating Industrial Hemp Operations within the Town, including location, bulk standards, potential nuisance impacts, and proximity to sensitive receptors/uses;

WHEREAS, the Town has general building code regulations applicable to Industrial Hemp Operations, and such regulations likely do not adequately address the impacts of such Industrial Hemp Operations within the Town, including the use of extremely flammable and combustible solvents and materials used in the extraction of industrial hemp, which could result in the release of hazardous vapors, and which may necessitate fire suppression, scrubbers and filters, which may require further evaluation;

WHEREAS, the Town Council further finds that there may be a need for regulations to address potential nuisance impacts of such Industrial Hemp Operations, which may include, but are not limited to, the proper storage of hemp (and mitigation of the odor), the storage and handling of chemicals, and the proper disposal of hemp byproducts associated with Industrial Hemp Operations;

WHEREAS, the imposition of a 180-day suspension on the processing and approval of any new application for a Town of Parker permit or license related to the operation of a business that would be engaged in the growing, storage, extraction, processing or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp will allow the Town staff and the Town Council to investigate the Town's ability to regulate such businesses and to develop and implement any appropriate land use, licensing and building code regulations, while allowing any application deemed complete as of May 10, 2019, for an Industrial Hemp Operation (the "Pending Application") to be processed in accordance with existing Town regulations; and

WHEREAS, a 180-day temporary suspension is a reasonable length of time for the Town to properly investigate, develop and, if appropriate, adopt and implement any regulations with respect to such new Industrial Hemp Operations and related uses, or any amendments to the now-pending application.

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Findings and Intent. The above and foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the Town Council of the Town of Parker.

Section 2. Imposition of Temporary Suspension on Applications for Permits and Licenses Related to the Operation of a Business that would be Engaged in the Growing, Storage, Extraction, Processing or Manufacturing of Industrial Hemp or the Extraction, Processing or Manufacturing of Industrial Hemp in Commercial Products Containing Industrial Hemp. Upon the adoption of this Ordinance, a temporary suspension is imposed upon the processing and approval of all new applications for permits and licenses by the Town related to the operation of a

business that would be engaged in the growing, storage, extraction, processing or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp, referred to as Industrial Hemp Operations. The Town staff is directed to refuse to process, review or approve any such new applications for such businesses during the temporary suspension period. Provided, however, the Pending Application shall not be included within the temporary suspension, provided that the Pending Application is not amended.

Section 3. **Staff to Investigate and Prepare Proposed Regulations.** Before the expiration of the temporary suspension imposed by this Ordinance, the Town staff, working with the Town Attorney, shall prepare appropriate regulations, if any, concerning Industrial Hemp Operations.

Section 4. **Police Power Finding.** The Town Council hereby finds, determines and declares that this Ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town and the inhabitants thereof.

Section 5. **Authority.** The Town Council hereby finds, determines and declares that it has the power to adopt this Ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29 C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S. (concerning municipal police powers); (v) Section 31-15-501 C.R.S. (concerning municipal power to regulate businesses); (vi) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vii) the powers contained in the Town of Parker Home Rule Charter (the "Charter").

Section 6. **Emergency Declared; Effective Date; Expiration.** Pursuant to Section 7.6 of the Charter, the Town Council finds, determines and declares that passage of this Ordinance is necessary for the immediate preservation of the public peace, health and safety in order to prevent the processing and approval of any application for a Town permit or license relating to the processing and approval of any application for a Town of Parker permit or license related to the operation of a business that would be engaged in the growing, storage, extraction, processing or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp, until the Town has had a reasonable opportunity to determine: (i) the extent of the Town's regulatory authority over such businesses, including, but not limited to, the authority to license, zone and otherwise regulate such businesses; and (ii) what regulations, if any, should be imposed by the Town upon such businesses. Failure to immediately impose the temporary suspension provided for in this Ordinance will potentially allow acquisition of certain rights with respect to businesses that would be engaged in the growing, storage, extraction, processing or manufacturing of industrial hemp or the extraction, processing or manufacturing of industrial hemp in commercial products containing industrial hemp before the Town has had a reasonable opportunity to consider appropriate regulations thereof. The Town Council further determines that the adoption of this Ordinance as an emergency ordinance is in the best interest of the citizens of the Town of Parker. The temporary suspension imposed by the Ordinance shall commence as of the date of the adoption of this Ordinance and shall expire one hundred eighty (180) days thereafter, unless repealed prior to that date or extended, if necessary, as determined by Town ordinance.

Section 7. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the publication of an agenda that contains the title to this Ordinance in a newspaper of local circulation prior to first and final reading of this Ordinance creates a financial burden on the Town and that the title to this Ordinance was posted in two (2) public places two (2) days before the Town Council meeting to the extent required by Section 7.5e. of the Town of Parker Home Rule Charter.

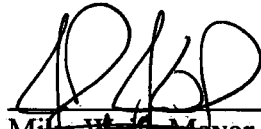
Section 8. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 9. This Ordinance shall become effective immediately upon adoption.

INTRODUCED, ADOPTED AND PASSED ON FIRST READING this 20th day of May, 2019.

ATTEST:


Carol Baumgartner, Town Clerk


~~Mike Walt, Mayor~~
John Diak, Mayor Pro Tem

APPROVED AS TO FORM:


James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 3, 2019

Submitted By: Tyler Sandt, Development Review Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 19-037**
A Resolution Accepting the Conveyance of a Drainage Easement from DBC Parker, Limited Liability Company, for a Portion of Lot 2, Bailey Subdivision

Department: Engineering/Public Works, Tyler Sandt

EXECUTIVE SUMMARY

This item accompanies a resolution accepting the conveyance of a drainage easement covering drainage improvements proposed with the site plan for a portion of Lot 2, Bailey Subdivision.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town's Stormwater criterion requires that drainage easements be dedicated over all public storm drainage facilities located on private property. The drainage easements are necessary to ensure the long-term operation and maintenance of drainage infrastructure to minimize flooding and protect the quality of stormwater runoff.

The Engineering Department has reviewed and approved the construction drawings for the drainage facilities associated with an approved site plan for a portion of Lot 2, Bailey Subdivision. Since the drainage facilities are being constructed as part of a site plan process, and not a plat, the easements need to be dedicated by a separate instrument.

FINANCIAL IMPACT

The drainage improvements proposed with the easement will be the maintenance responsibility of the property owner. There is no financial impact to the Town.

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Vicinity Map
2. Resolution No. 19-037

RECOMMENDED MOTION

I move to approve Resolution No. 19-037, as part of the consent agenda.

Vicinity Map



RESOLUTION NO. 19-037, Series of 2019

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF A DRAINAGE EASEMENT FROM DBC PARKER, LIMITED LIABILITY COMPANY, FOR A PORTION OF LOT 2, BAILEY SUBDIVISION

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities;

WHEREAS, Section 1.06.010 of the Town of Parker Municipal Code requires the acceptance of a conveyance of real property to the Town be effectuated by resolution; and

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement specified hereinbelow to the Town by this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, AS FOLLOWS:

Section 1. The Town Council of the Town of Parker hereby accepts the conveyance of certain property interests for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities from DBC Parker, Limited Liability Company, for a portion of Lot 2, Bailey Subdivision, as provided in the Drainage Easement Agreement attached as **Exhibit 1** and incorporated by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

RESOLVED AND PASSED this _____ day of _____, 2019.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (the "Easement Agreement") is dated this _____ day of April, 2019, by DBC Parker, Limited Liability Co. having an address at 193 South Roslyn Street, Denver, CO 80230 ("Grantor"), and the Town of Parker, a Colorado home rule municipality, having an address of 20120 East Mainstreet, Parker, Colorado 80138 ("Grantee").

WHEREAS, Grantee desires to acquire an easement for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities on and through the property more particularly described and depicted in **Exhibit A** ("Easement Property"), attached hereto and incorporated herein by this reference; and

WHEREAS, Grantor is willing to grant an easement to Grantee for the aforesaid purposes on the terms and conditions set forth hereinbelow.

NOW, THEREFORE, for good and valuable consideration by Grantee to Grantor, the covenants of Grantee herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, and for and in consideration of the easement rights herein granted and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantee does hereby covenant and agree as follows:

1. Grant of Easement. Grantor does hereby grant and convey unto Grantee, its successors, assigns, lessees, licensees and agents, an easement under and through the Easement Property, for the purpose of providing the maintenance of a drainage pipe and appurtenant drainage facilities. Grantee shall also have the specific rights of ingress and egress, consistent with this Easement Agreement, for the construction, reconstruction, operation and maintenance of a drainage pipe and appurtenant drainage facilities, consistent with the easement provided herein. Subject to the other terms and conditions of this Easement Agreement, Grantee shall also have the right to remove impediments to operation and maintenance of the Easement Property such as trees, asphalt and sidewalks. Grantee further agrees all construction, reconstruction, operation, maintenance, removal and any other activities which disturb the Easement Property will be coordinated with Grantor so as to minimize any disruption to Grantor's property.

2. Unencumbered Title. Grantor warrants that the Easement Property granted herein is granted free and clear of all liens and encumbrances.

3. Operation and Maintenance.

a. The operation and maintenance of the drainage facilities described herein and located within the Easement Property shall be the responsibility of the Grantor; provided, however, that Grantee shall have the right to maintain the Easement Property in the event Grantee, in its sole discretion, determines to enter the Easement Property for the operation and/or maintenance of the Easement Property as set forth in subsection b. hereinbelow. The Grantor acknowledges and agrees that the Grantee has the right to enter the Easement Property to maintain and operate the drainage

facilities covered by Chapter 4.08 of the Parker Municipal Code or to maintain and operate the drainage facilities in the manner described herein.

b. If Grantor fails to adequately maintain the drainage facilities located within the Easement Property, and within fourteen (14) days after the date of written notice from Grantee, fails to correct the maintenance problem, or fails to begin to clean, cure or correct such problem within fourteen (14) days if such problem cannot be reasonably cleaned, cured or corrected within fourteen (14) days, and fails to diligently prosecute such cleaning, cure or correction to completion, then Grantee may do so as provided herein. Notwithstanding the foregoing, Grantee may, in the event of an emergency, as determined by Grantee in its sole discretion, clean, cure or correct any damage caused by Grantor's failure to adequately maintain the drainage facilities located within the Easement Property. The Grantor shall reimburse the Grantee for the cost of such maintenance to the extent that (i) the drainage facilities and/or the type of maintenance performed by Grantee are not covered by Chapter 4.08 of the Parker Municipal Code, as amended, or (ii) if the drainage facilities and/or the type of maintenance performed by the Grantee is covered by Chapter 4.08 of the Parker Municipal Code, as amended, and the Grantee determines in its sole discretion that there are not sufficient funds available for such maintenance. If Grantor fails to reimburse Grantee for the cost of such maintenance, within thirty (30) days after receipt of an invoice from Grantee describing the corrective or maintenance action taken, the unpaid amount shall constitute a lien on the Easement Property until paid in full, with priority over all other liens, except general tax liens, which liens shall be certified to the County Treasurer and collected in the same manner as other taxes are collected. Grantor further agrees that Grantee may also pursue any and all other remedies available at law or in equity.

4. Grantor Defined. The word "Grantor" as used herein, whenever the context requires or permits, shall include the heirs, personal representatives, beneficiaries, successors, grantees and assigns of the owners of the land through which the easement runs, or the respective owners from time to time of portions thereof. The burdens and benefits of this Easement Agreement shall be deemed covenants running with said easements and said land. Notwithstanding any contrary provision in this Easement Agreement, however, any obligation under this Easement Agreement which is to be performed by the owner of any land which is burdened by this Easement Agreement shall be enforceable only against the then owner of such land, and not against any such owner's predecessors in interest.

5. Covenants of Grantee. Grantee hereby represents, covenants and warrants in favor of Grantor, and its successors and assigns, as follows:

a. Grantee shall protect the Easement Property, and the adjacent lands of Grantor over which Grantee has rights of ingress and egress, from damage caused, in whole or in part, by acts or omissions of Grantee, its employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents.

b. Grantee shall not cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), pollutants or contaminants, as defined by CERCLA, or hazardous waste, as defined by the Resource, Conservation and Recovery Act ("RCRA"), including, but not limited to, asbestos

and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by the Clean Water Act, and any amendments thereto, to be dumped, spilled, released, permanently stored or deposited on, over or beneath the Easement Property or any other lands owned by Grantor.

6. Retained Rights. Grantor shall have all rights to the Easement Property not granted hereby.

7. Miscellaneous.

a. Except as otherwise expressly provided herein, all provisions herein contained, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

b. This easement constitutes all of the agreements, understandings and promises between the parties hereto, with respect to the subject matter hereof.

c. This easement shall be of no force and effect until this easement is duly and validly executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date and year first above written.

GRANTOR: DBC PARKER, LLC

Gregory Moran, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, as _____ of _____.

My commission expires: _____

(S E A L)

Notary Public

GRANTEE: TOWN OF PARKER

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT

W 1/2 SEC. 15,
T6S, R66W, 6TH P.M.

COLORADO STATE
HIGHWAY NO. 85

PARKER HICKORY HOUSE
MINOR DEVELOPMENT

EASEMENT AGREEMENT
BOOK 473 PAGE 312

EXCLUSIVE ROADWAY, SIDEWALK
AND UTILITY EASEMENT
BOOK 2352 PAGE 2018 &
BOOK 2352 PAGE 2039
& REC. NO. 2003040870

EASEMENT AGREEMENT
BOOK 473 PAGE 312

EASEMENT AGREEMENT
BOOK 511 PAGE 356

MOUNTAIN MAN DR.

N83°22'14"E
23.00'

10' TELECOMMUNICATIONS
EASEMENT
BOOK 1475 PAGE 2151

23.00'

N06°51'00"W 121.51'

S06°51'00"E 121.51'

LOT 2
BAILEY SUBDIVISION
REC. NO. 8721150

10' PSCO EASEMENT
BOOK 1392 PAGE 1895

23.00'

S83°22'14"W 178.50'
BASIS OF BEARING
SOUTHERLY LINE OF LOT
2, BAILEY SUBDIVISION

RECOVERED 1-1/2"
ALUMINUM CAP
STAMPED: ILLEGIBLE

POINT OF BEGINNING
SW'ERLY CORNER LOT 2
NO. 5 REBAR
WITH NO CAP



30 15 0 30
ORIGINAL SCALE: 1" = 30'

NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT
IS INTENDED ONLY TO DEPICT THE ATTACHED PROPERTY DESCRIPTION.

DRAINAGE EASEMENT
PARKER WATER AND SANITATION DISTRICT
PROJECT NO.: 15852.04
DATE: 03/07/19

SHEET: 2 OF 2

J-R ENGINEERING
A Westrian Company
Centennial 303-740-9393 • Colorado Springs 719-593-2593
Fort Collins 970-491-9888 • www.jrengineering.com



DRAINAGE EASEMENT

PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF LOT 2, BAILEY SUBDIVISION RECORDED UNDER RECEPTION NO. 8721150 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER, LOCATED IN THE WEST HALF OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE SOUTHERLY LINE OF LOT 2, BAILEY SUBDIVISION, BEING MONUMENTED AT THE WESTERLY END BY A NO. 5 REBAR WITH NO CAP AND AT THE EASTERLY END BY A 1-1/2" ALUMINUM CAP "ILLEGIBLE", BEARING S83°22'14"W.

BEGINNING AT THE SOUTHWESTERLY CORNER OF LOT 2, BAILEY SUBDIVISION RECORDED UNDER RECEPTION NO. 8721150 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE ON THE WESTERLY LINE OF SAID LOT 2, N06°51'00"W A DISTANCE OF 121.51 FEET, TO A POINT ON THE NORTHERLY LINE OF SAID LOT 2;

THENCE ON SAID NORTHERLY LINE, N83°22'14"E A DISTANCE OF 23.00 FEET;

THENCE DEPARTING SAID NORTHERLY LINE, S06°51'00"E A DISTANCE OF 121.51 FEET, TO A POINT ON THE SOUTHERLY LINE OF SAID LOT 2;

THENCE ON SAID SOUTHERLY LINE, S83°22'14"W A DISTANCE OF 23.00 FEET, TO THE POINT OF BEGINNING.

CONTAINING A CALCULATED AREA OF 2,795 SQUARE FEET OR 0.0642 ACRES.

PROPERTY DESCRIPTION STATEMENT

I, DEREK LEE VAGIAS, A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO, DO HEREBY STATE THAT THE ABOVE PROPERTY DESCRIPTION AND ATTACHED EXHIBIT WERE PREPARED UNDER MY RESPONSIBLE CHARGE, AND ON THE BASIS OF MY KNOWLEDGE, INFORMATION AND BELIEF, ARE CORRECT.

DEREK LEE VAGIAS, PROFESSIONAL LAND SURVEYOR
COLORADO NO. 38578
FOR AND ON BEHALF OF JR ENGINEERING, LLC





Request for Town Council Action

Date: June 3, 2019

Submitted By: Tyler Sandt, Development Review Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 19-038**
A Resolution Accepting the Conveyance of a Drainage Easement from Parker Mainstreet Partners, LLC, for a Part of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th Amendment

Department: Engineering/Public Works, Tyler Sandt

EXECUTIVE SUMMARY

This item accompanies a resolution accepting the conveyance of a drainage easement covering drainage improvements proposed with the site plan for a portion of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th amendment.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town's Stormwater criterion requires that drainage easements be dedicated over all public storm drainage facilities located on private property. The drainage easements are necessary to ensure the long-term operation and maintenance of drainage infrastructure to minimize flooding and protect the quality of stormwater runoff.

The Engineering Department has reviewed and approved the construction drawings for the drainage facilities associated with an approved site plan for a portion of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th Amendment. There was a minor change to the storm sewer alignment and since the revised drainage facilities are being constructed as part of a construction change, and not a plat, the easements need to be dedicated by a separate instrument. The applicant will vacate the original drainage easement by a replat at a later date.

FINANCIAL IMPACT

The drainage improvements proposed with the easement will be the maintenance responsibility of the property owner. There is no financial impact to the Town.

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Vicinity Map
2. Resolution No. 19-038

RECOMMENDED MOTION

I move to approve Resolution No. 19-038, as part of the consent agenda.

Vicinity Map



RESOLUTION NO. 19-038, Series of 2019

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF A DRAINAGE EASEMENT FROM PARKER MAINSTREET PARTNERS, LLC, FOR A PART OF LOT 31A-1, BLOCK 1, TWENTY MILE VILLAGE FILING NO. 2, 12TH AMENDMENT

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities;

WHEREAS, Section 1.06.010 of the Town of Parker Municipal Code requires the acceptance of a conveyance of real property to the Town be effectuated by resolution; and

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement specified hereinbelow to the Town by this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, AS FOLLOWS:

Section 1. The Town Council of the Town of Parker hereby accepts the conveyance of certain property interests for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities from Parker Mainstreet Partners, LLC, for a part of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th Amendment, as provided in the Drainage Easement Agreement attached as **Exhibit 1** and incorporated by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

RESOLVED AND PASSED this ____ day of _____, 2019.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (the "Easement Agreement") is dated this _____ day of _____, 2019, by Parker Mainstreet Partners, LLC, a Colorado limited liability company having an address at 875 W. Poplar Ave., Suite 23-339, Collierville, Tennessee 38017 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, having an address of 20120 East Mainstreet, Parker, Colorado 80138 (the "Grantee").

WHEREAS, the Grantee desires to acquire an easement for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities on and through the property more particularly described and depicted in **Exhibit A** (the "Easement Property"), attached hereto and incorporated herein by this reference; and

WHEREAS, the Grantor is willing to grant an easement to the Grantee for the aforesaid purposes on the terms and conditions set forth hereinbelow.

NOW, THEREFORE, for good and valuable consideration by the Grantee to the Grantor, the covenants of the Grantee herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby grant, and for and in consideration of the easement rights herein granted and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantee does hereby covenant and agree as follows:

1. Grant of Easement. The Grantor does hereby grant and convey unto the Grantee, its successors, assigns, lessees, licensees and agents, an easement under and through the Easement Property, for the purpose of providing the maintenance of a drainage pipe and appurtenant drainage facilities. The Grantee shall also have the specific rights of ingress and egress, consistent with this Easement Agreement, for the construction, reconstruction, operation and maintenance of a drainage pipe and appurtenant drainage facilities, consistent with the easement provided herein. Subject to the other terms and conditions of this Easement Agreement, the Grantee shall also have the right to remove impediments to operation and maintenance of the Easement Property such as trees, asphalt and sidewalks. The Grantee further agrees all construction, reconstruction, operation, maintenance, removal and any other activities which disturb the Easement Property will be coordinated with the Grantor so as to minimize any disruption to the Grantor's property.

2. Unencumbered Title. The Grantor warrants that the Easement Property granted herein is granted free and clear of all liens and encumbrances.

3. Operation and Maintenance.

a. The operation and maintenance of the drainage facilities described herein and located within the Easement Property shall be the responsibility of the Grantor; provided, however, that the Grantee shall have the right to maintain the Easement Property in the event the Grantee, in its sole discretion, determines to enter the Easement Property for the operation and/or maintenance of the Easement Property as set forth in subsection b. hereinbelow. The Grantor acknowledges and agrees that the Grantee has the right to enter the Easement Property to maintain

and operate the drainage facilities covered by Chapter 4.08 of the Parker Municipal Code or to maintain and operate the drainage facilities in the manner described herein.

b. If the Grantor fails to adequately maintain the drainage facilities located within the Easement Property, and within fourteen (14) days after the date of written notice from the Grantee, fails to correct the maintenance problem, or fails to begin to clean, cure or correct such problem within fourteen (14) days if such problem cannot be reasonably cleaned, cured or corrected within fourteen (14) days, and fails to diligently prosecute such cleaning, cure or correction to completion, then the Grantee may do so as provided herein. Notwithstanding the foregoing, the Grantee may, in the event of an emergency, as determined by the Grantee in its sole discretion, clean, cure or correct any damage caused by the Grantor's failure to adequately maintain the drainage facilities located within the Easement Property. The Grantor shall reimburse the Grantee for the cost of such maintenance to the extent that (i) the drainage facilities and/or the type of maintenance performed by the Grantee are not covered by Chapter 4.08 of the Parker Municipal Code, as amended, or (ii) if the drainage facilities and/or the type of maintenance performed by the Grantee is covered by Chapter 4.08 of the Parker Municipal Code, as amended, and the Grantee determines in its sole discretion that there are not sufficient funds available for such maintenance. If the Grantor fails to reimburse the Grantee for the cost of such maintenance, within thirty (30) days after receipt of an invoice from the Grantee describing the corrective or maintenance action taken, the unpaid amount shall constitute a lien on the Easement Property until paid in full, with priority over all other liens, except general tax liens, which liens shall be certified to the County Treasurer and collected in the same manner as other taxes are collected. The Grantor further agrees that the Grantee may also pursue any and all other remedies available at law or in equity.

4. Grantor Defined. The word "Grantor" as used herein, whenever the context requires or permits, shall include the heirs, personal representatives, beneficiaries, successors, grantees and assigns of the owners of the land through which the easement runs, or the respective owners from time to time of portions thereof. The burdens and benefits of this Easement Agreement shall be deemed covenants running with said easements and said land. Notwithstanding any contrary provision in this Easement Agreement, however, any obligation under this Easement Agreement which is to be performed by the owner of any land which is burdened by this Easement Agreement shall be enforceable only against the then owner of such land, and not against any such owner's predecessors in interest.

5. Covenants of Grantee. The Grantee hereby represents, covenants and warrants in favor of the Grantor, and its successors and assigns, as follows:

a. The Grantee shall protect the Easement Property, and the adjacent lands of the Grantor over which the Grantee has rights of ingress and egress, from damage caused, in whole or in part, by acts or omissions of the Grantee, its employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents.

b. The Grantee shall not cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), pollutants or contaminants, as defined by CERCLA, or hazardous waste, as defined by the Resource, Conservation and Recovery Act ("RCRA"), including, but not limited to, asbestos and/or urea formaldehyde, or any pollutants or toxic pollutants as defined by the Clean Water Act,

and any amendments thereto, to be dumped, spilled, released, permanently stored or deposited on, over or beneath the Easement Property or any other lands owned by the Grantor.

6. Retained Rights. The Grantor shall have all rights to the Easement Property not granted hereby.

7. Miscellaneous.

a. Except as otherwise expressly provided herein, all provisions herein contained, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

b. This easement constitutes all of the agreements, understandings and promises between the parties hereto, with respect to the subject matter hereof.

c. This easement shall be of no force and effect until this easement is duly and validly executed by all parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date and year first above written.

**GRANTOR: PARKER MAINSTREET
PARTNERS, LLC**, a Colorado limited liability
company

Mitch Trevey, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2019, by Mitch Trevey, as Managing Member of Parker Mainstreet Partners, LLC.

My commission expires: _____

(S E A L)

Notary Public

[Remainder of page intentionally left blank. Signatures continue on following page.]

GRANTEE: TOWN OF PARKER

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

Legal Description (Drainage Easement)

A part of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th Amendment (Reception Number 2018041084), situated in the NW 1/4 of Section 22, T.6S., R.66W., of the 6th P.M., Town of Parker, County of Douglas, State of Colorado, and being more particularly described as follows:

Commencing at the Northwest Corner of Lot 31A-1, Block 1, Twenty Mile Village Filing No. 2, 12th Amendment;

Thence S01°43'30"E along the West Line of said Lot 31A-1, a distance of 25.01 feet;

Thence N88°16'30"E a distance of 52.96 feet to the **Point of Beginning**;

Thence N88°52'54"E a distance of 25.01 feet;

Thence S00°18'44"W a distance of 10.00 feet;

Thence N88°52'54"E a distance of 18.31 feet;

Thence S02°41'49"E a distance of 25.01 feet;

Thence S88°52'54"E a distance of 19.62 feet;

Thence S00°18'44"W a distance of 37.70 feet;

Thence S52°41'49"E a distance of 114.77 feet;

Thence N87°18'11"E a distance of 92.15 feet;

Thence S02°41'49"E a distance of 25.00 feet;

Thence S87°18'11"W a distance of 101.25 feet;

Thence N52°41'49"W a distance of 109.85 feet;

Thence S15°24'34"W a distance of 88.48 feet;

Thence N74°35'26"W a distance of 25.00 feet;

Thence N15°24'34"E a distance of 99.93 feet;

Thence N00°18'44"E a distance of 82.92 feet to the **Point of Beginning**

Parcel Contains (10,334 Square Feet) 0.2372 Acres

Date prepared: December 26, 2018

Date of last revision:

Prepared by: Charles N. Beckstrom, PLS No. 33202

for and on behalf of

Engineering Service Company

14190 East Evans Ave.

Aurora, Colorado 80014

Phone: 303-337-1393

cbeckstrom@engineeringserviceco.com

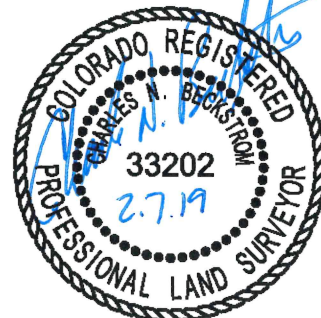


EXHIBIT "A"

POINT OF COMMENCEMENT

NW CORNER OF LOT 31A, BLOCK 1,
TWENTY MILE VILLAGE FILING NO. 2
12TH AMENDMENT

S01°43'30"E
25.01'

N88°16'30"E
52.96'

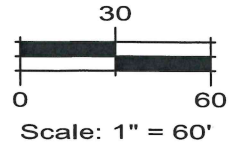
POINT OF BEGINNING

STAGE RUN
(50' PRIVATE R.O.W.)

LOT 31A-1, BLOCK 1,
TWENTY MILE VILLAGE FILING
NO. 2, 12TH AMENDMENT

LINE DATA TABLE

COURSE	BEARING	LENGTH
L1	N88°52'54"E	25.01'
L2	S00°18'44"W	10.00'
L3	N88°52'54"E	18.31'
L4	S02°41'49"E	25.01'
L5	S88°52'54"W	19.62'
L6	S00°18'44"W	37.70'
L7	S52°41'49"E	114.77'
L8	N87°18'11"E	92.15'
L9	S02°41'49"E	25.00'
L10	S87°18'11"W	101.25'
L11	N52°41'49"W	109.85'
L12	S15°24'34"W	88.48'
L13	N74°35'26"W	25.00'
L14	N15°24'34"E	99.93'
L15	N00°18'44"E	82.92'



ESC

**ENGINEERING
SERVICE
COMPANY**

14190 East Evans Avenue
Aurora, Colorado 80014
P 303.337.1393 | F 303.337.7481

PARCEL CONTAINS
10,334 SQUARE FEET
0.2372 ACRES

TOWN OF PARKER

Drawn By: SLH Checked By: CNB Project No.: 1103.2 Date: 12/26/2018
Scale: 1"=60' File Name: PARKER MAINSTREET PARTNERS DRAINAGE EASEMENT

Note: This exhibit does not represent a monumented survey. It is intended only to depict the attached description.

DRAINAGE EASEMENT

A PART OF LOT 31A-1 TWENTY MILE VILLAGE FILING NO. 2 12TH AMENDMENT
SITUATED IN THE NW 1/4 OF SECTION 22, T.6S., OF THE 6TH P.M.
TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO

MAR St Pier - Drainage Easement

Wed Dec 26 15:21:12 2018

PntNo	Bearing	Distance	Northing	Easting	Description
PP			1615046.35	3204900.08	
	N 88°52'54" E	25.01			
PP			1615046.84	3204925.09	
	S 00°18'44" W	10.00			
PP			1615036.84	3204925.03	
	N 88°52'54" E	18.31			
PP			1615037.19	3204943.34	
	S 02°41'49" E	25.01			
PP			1615012.21	3204944.51	
	S 88°52'54" W	19.62			
PP			1615011.83	3204924.90	
	S 00°18'44" W	37.70			
PP			1614974.13	3204924.69	
	S 52°41'49" E	114.77			
PP			1614904.57	3205015.99	
	N 87°18'11" E	92.15			
PP			1614908.91	3205108.04	
	S 02°41'49" E	25.00			
PP			1614883.94	3205109.21	
	S 87°18'11" W	101.25			
PP			1614879.17	3205008.07	
	N 52°41'49" W	109.85			
PP			1614945.75	3204920.69	
	S 15°24'34" W	88.48			
PP			1614860.45	3204897.18	
	N 74°35'26" W	25.00			
PP			1614867.09	3204873.08	
	N 15°24'34" E	99.93			
PP			1614963.43	3204899.63	
	N 00°18'44" E	82.92			
PP			1615046.35	3204900.08	

Closure Error Distance> 0.0000
Total Distance Inversed> 875.02

Area: 10334 Sq. Feet, 0.2372 Acres



Request for Town Council Action

Date: June 3, 2019

Submitted By: Tyler Sandt, Development Review Engineer

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 19-039**
A Resolution Accepting the Conveyance of a Drainage Easement from FCAC-Parker LLC, for Lot 3, Block 10 of Stroh Crossing Filing No. 1

Department: Engineering/Public Works, Tyler Sandt

EXECUTIVE SUMMARY

This item accompanies a resolution accepting the conveyance of a drainage easement covering drainage improvements proposed with the site plan for a portion of Lot 3, Block 10, Stroh Crossing Filing No. 1.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town's Stormwater criterion requires that drainage easements be dedicated over all public storm drainage facilities located on private property. The drainage easements are necessary to ensure the long-term operation and maintenance of drainage infrastructure to minimize flooding and protect the quality of stormwater runoff.

The Engineering Department has reviewed and approved the construction drawings for the drainage facilities associated with an approved Site Plan for a portion of Lot 3, Block 10, Stroh Crossing Filing No. 1. Since the drainage facilities are being constructed as part of a site plan process, and not a plat, the easements need to be dedicated by a separate instrument.

FINANCIAL IMPACT

The drainage improvements proposed with the easement will be the maintenance responsibility of the property owner. There is no financial impact to the Town.

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

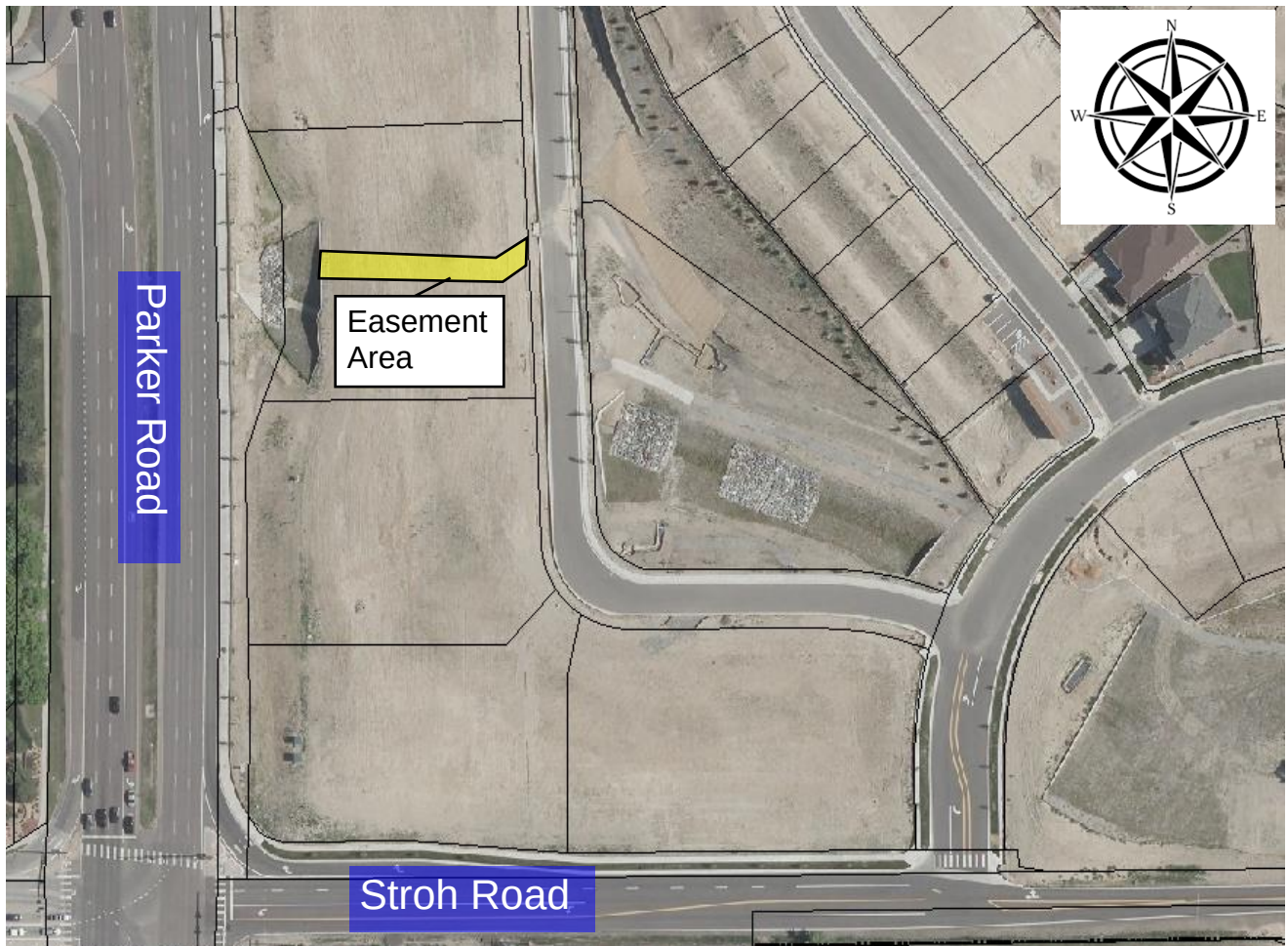
ATTACHMENTS

1. Vicinity Map
2. Resolution No. 19-039

RECOMMENDED MOTION

I move to approve Resolution No. 19-039, as part of the consent agenda.

Vicinity Map



RESOLUTION NO. 19-039, Series of 2019

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF A DRAINAGE EASEMENT FROM FCAC-PARKER LLC, FOR LOT 3, BLOCK 10 OF STROH CROSSING FILING NO. 1

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities;

WHEREAS, Section 1.06.010 of the Town of Parker Municipal Code requires the acceptance of a conveyance of real property to the Town be effectuated by resolution; and

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement specified hereinbelow to the Town by this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, AS FOLLOWS:

Section 1. The Town Council of the Town of Parker hereby accepts the conveyance of certain property interests for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities from FCAC-Parker LLC for Lot 3, Block 10 of Stroh Crossing Filing No. 1, as provided in the Drainage Easement Agreement attached as **Exhibit 1** and incorporated by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

RESOLVED AND PASSED this _____ day of _____, 2019.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

DRAINAGE EASEMENT AGREEMENT

THIS DRAINAGE EASEMENT AGREEMENT (the "Easement Agreement") is dated this ____ day of _____, 2019, by FCAC-Parker LLC, a Texas limited liability company, whose legal address is 3953 Maple Avenue, Suite 290, Dallas, Texas 75219 (the "Grantor"), and the Town of Parker, a Colorado home rule municipality, having an address of 20120 East Mainstreet, Parker, Colorado 80138 (the "Grantee").

WHEREAS, the Grantee desires to acquire an easement for the purpose of the maintenance of a drainage pipe and appurtenant drainage facilities on and through the property more particularly described and depicted in **Exhibit A** (the "Easement Property"), attached hereto and incorporated herein by this reference; and

WHEREAS, the Grantor is willing to grant an easement to the Grantee for the aforesaid purposes on the terms and conditions set forth hereinbelow.

NOW, THEREFORE, for good and valuable consideration by the Grantee to the Grantor, the covenants of the Grantee herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor does hereby grant, and for and in consideration of the easement rights herein granted and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantee does hereby covenant and agree as follows:

1. Grant of Easement. The Grantor does hereby grant and convey unto the Grantee, its successors, assigns, lessees, licensees and agents, an easement under and through the Easement Property, for the purpose of providing the maintenance of a drainage pipe and appurtenant drainage facilities. The Grantee shall also have the specific rights of ingress and egress, consistent with this Easement Agreement, for the construction, reconstruction, operation and maintenance of a drainage pipe and appurtenant drainage facilities, consistent with the easement provided herein. Subject to the other terms and conditions of this Easement Agreement, the Grantee shall also have the right to remove impediments to operation and maintenance of the Easement Property such as trees, asphalt and sidewalks. The Grantee further agrees all construction, reconstruction, operation, maintenance, removal and any other activities which disturb the Easement Property will be coordinated with Grantor so as to minimize any disruption to the Grantor's property, and Grantee will restore any damage or disturbance to the Easement Property resulting from such activities at the cost of the Grantor.

2. Title. The Grantor warrants that the Easement Property is free and clear of all liens and encumbrances, subject to matters of public record as of the date hereof.

3. Operation and Maintenance.

a. The operation and maintenance of the drainage facilities described herein and located within the Easement Property shall be the responsibility of the Grantor provided, however, that Grantee shall have the right to maintain the drainage facilities in the event Grantee, in its sole discretion, determines to enter the Easement Property for the operation and/or maintenance of the drainage facilities as set forth in subsection b. hereinbelow. The Grantor

acknowledges and agrees that the Grantee has the right to enter the Easement Property to maintain and operate the drainage facilities covered by Chapter 4.08 of the Parker Municipal Code or to maintain and operate the drainage facilities in the manner described herein, in accordance with subsection b. below.

b. If the Grantor fails to adequately maintain the drainage facilities located within the Easement Property, and within fourteen (14) days after the date of written notice from the Grantee, fails to correct the maintenance problem, or fails to begin to clean, cure or correct such problem within fourteen (14) days if such problem cannot be reasonably cleaned, cured or corrected within fourteen (14) days, and fails to diligently prosecute such cleaning, cure or correction to completion, then the Grantee may do so as provided herein. Notwithstanding the foregoing, the Grantee may, in the event of an emergency, as determined by the Grantee in its sole discretion, clean, cure or correct any damage caused by Grantor's failure to adequately maintain the drainage facilities located within the Easement Property. The Grantor shall reimburse the Grantee for the cost of such maintenance to the extent that (i) the drainage facilities and/or the type of maintenance performed by the Grantee are not covered by Chapter 4.08 of the Parker Municipal Code, as amended, or (ii) if the drainage facilities and/or the type of maintenance performed by the Grantee is covered by Chapter 4.08 of the Parker Municipal Code, as amended, and the Grantee determines in its sole discretion that there are not sufficient funds available for such maintenance. If the Grantor fails to reimburse the Grantee for the cost of such maintenance, within thirty (30) days after receipt of an invoice from the Grantee describing the corrective or maintenance action taken, the unpaid amount shall constitute a lien on the Easement Property until paid in full, with priority over all other liens, except general tax liens, which liens shall be certified to the County Treasurer and collected in the same manner as other taxes are collected. The Grantor further agrees that the Grantee may also pursue any and all other remedies available at law or in equity.

4. Grantor Defined. The word "Grantor" as used herein, whenever the context requires or permits, shall include the heirs, personal representatives, beneficiaries, successors, grantees and assigns of the owners of the land through which the easement runs, or the respective owners from time to time of portions thereof. The burdens and benefits of this Easement Agreement shall be deemed covenants running with said easements and said land. Notwithstanding any contrary provision in this Easement Agreement, however, any obligation under this Easement Agreement which is to be performed by the owner of any land which is burdened by this Easement Agreement shall be enforceable only against the then owner of such land, and not against any such owner's predecessors in interest.

5. Covenants of Grantee. The Grantee hereby represents, covenants and warrants in favor of the Grantor, and its successors and assigns, as follows:

a. The Grantee shall protect the Easement Property, and the adjacent lands of the Grantor over which the Grantee has rights of ingress and egress, from damage caused, in whole or in part, by acts or omissions of the Grantee, its employees, agents, contractors, subcontractors, assigns, lessees, licensees and agents.

b. The Grantee shall not cause or permit to be caused by any of its employees, agents, contractors, subcontractors, successors, assigns, lessees or licensees, any hazardous substances, as defined by the Comprehensive Environmental Response, Compensation and

GRANTEE: TOWN OF PARKER

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

A DRAINAGE EASEMENT LOCATED IN LOT 3, BLOCK 10 OF STROH CROSSING FILING NO. 1 RECORDED JUNE 3, 2016 AT RECEPTION NO. 2016035224 AND SITUATED IN THE SOUTHEAST ONE-QUARTER OF SECTION 34, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID LOT 3 AND CONSIDERING THE NORTH LINE OF SAID LOT TO BEAR N88°10'31"E WITH ALL BEARINGS HEREIN RELATIVE THERETO;

THENCE ALONG THE EAST LINE OF SAID LOT, S02°38'48"E, A DISTANCE OF 81.16 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EAST LINE, S02°38'48"E, A DISTANCE OF 44.25 FEET;

THENCE S31°45'25"W, A DISTANCE OF 38.85 FEET;

THENCE N84°23'16"W, A DISTANCE OF 165.33 FEET;

THENCE N00°47'59"W, A DISTANCE OF 25.16 FEET;

THENCE S84°23'16"E, A DISTANCE OF 152.57 FEET;

THENCE N31°45'25"E, A DISTANCE OF 59.78 FEET TO THE POINT OF BEGINNING.

CONTAINING 5,207 SQUARE FEET OR 0.120 ACRES, MORE OR LESS.

CAMERON M. WATSON, PLS
COLORADO LICENSE NO. 38311
FOR AND ON BEHALF OF POINT CONSULTING, LLC
8460 W KEN CARYL AVE #101
LITTLETON, CO 80128
(720) 258-6836
cwatson@pnt-llc.com

DATE
01.30.19
-
DESCRIPTION
ORIGINAL PREPARATION
-

DRAINAGE EASEMENT

FIRESTONE PARKER

PARKER, COLORADO

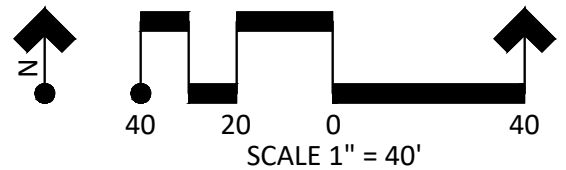
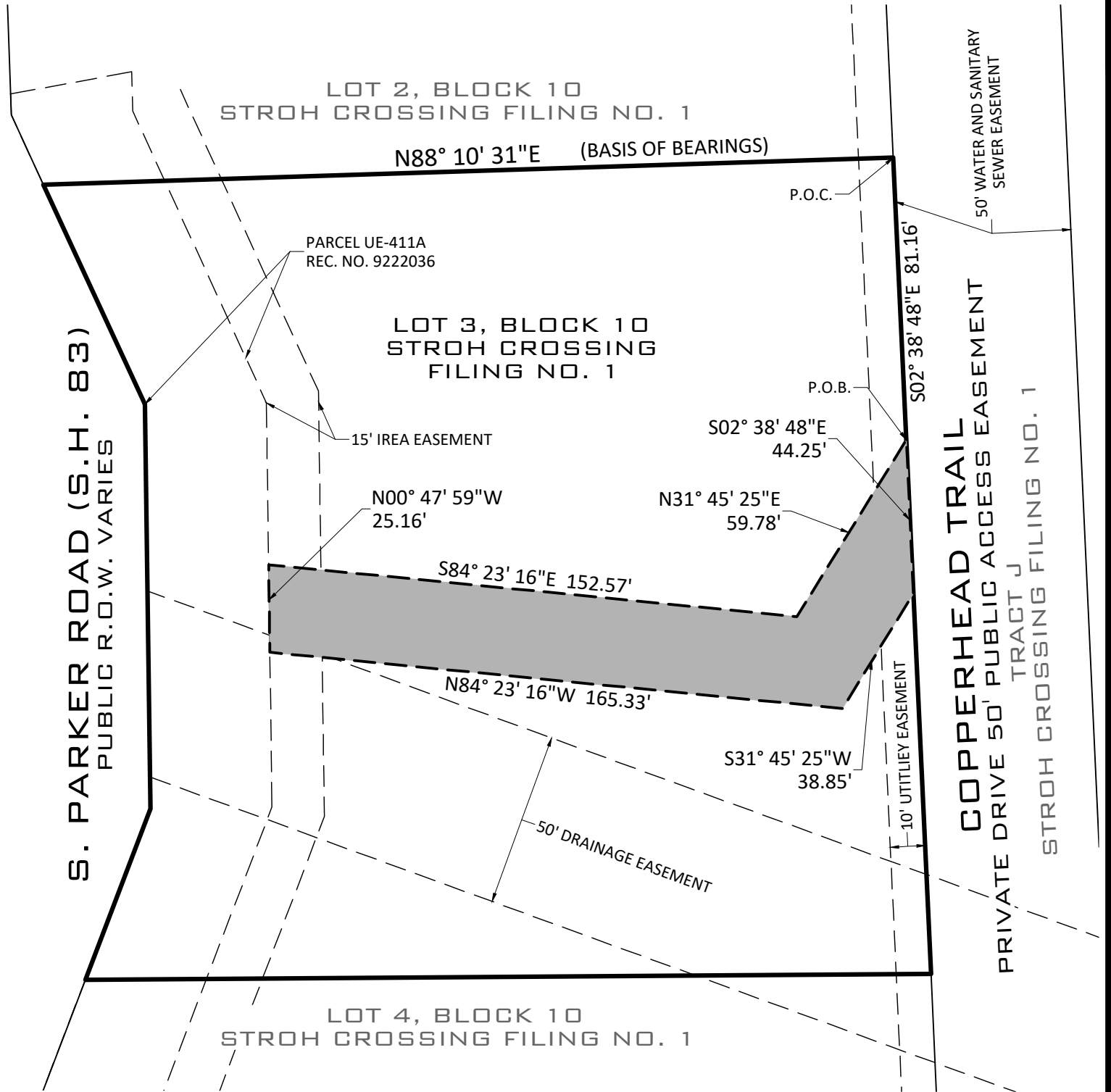
SHEET 1/2

JOB NO. 18.079



POINT CONSULTING, LLC 8460 W KEN CARYL AVE #101
LITTLETON, CO 80128 720-258-6836 www.pnt-llc.com

EXHIBIT A



DATE
01.30.19

-
DESCRIPTION
ORIGINAL PREPARATION

-

SHEET 2/2

DRAINAGE EASEMENT

FIRESTONE PARKER

PARKER, COLORADO

JOB NO. 18.079

POINT

POINT CONSULTING, LLC 8460 W KEN CARYL AVE #101
LITTLETON, CO 80128 720-258-6836 www.pnt-llc.com



Request for Town Council Action

Date: June 3, 2019

Submitted By: Stacey Nerger, Associate Planner
Bryce Matthews, Planning Manager
John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **JACKALOPE PLANNED DEVELOPMENT AMENDMENT
NO. 1 - Rezoning**

Applicant: Marley Hodgson, Jackalope Properties, LLC

Location: Southeast corner of Parker Road and Cockriel Drive

Department: Community Development, Stacey Nerger

TRAKiT No.: Z18-026

EXECUTIVE SUMMARY

The applicant is planning a commercial development on the subject property containing a hardware store and garden center. To support this type of development, the applicant proposes an amendment to the Jackalope Planned Development (PD) Guide and Plan ("PD Amendment"). The purpose of the proposed PD Amendment is to permit a greater range of commercial uses, especially retail, including the hardware store and garden center. The proposed PD Amendment will expand the uses allowed on the property to incorporate those uses permitted by-right in the C-Commercial Zone including accessory uses, definitions and development standards.

The applicant has also submitted Replat and Site Plan Amendment applications in connection with their proposal for commercial development. These applications are currently under review and will be approved administratively subject to Town Council action on the proposed PD Amendment at public hearing.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The subject property was originally annexed into the Town and zoned as part of the Jackalope Planned Development (PD) in 1997. The property was also platted and a development application approved in 1997 for conversion of the existing Cockriel Stables into a market with indoor and outdoor retail sales. In 2003, a Site Plan Amendment was approved to revise the site landscaping including a water feature and hardscape.

The applicant is proposing the PD Amendment as part of their planned commercial development called the Big Tool Box consisting of a hardware store, garden center and related accessory uses. The proposed PD Amendment is consistent with the Parker 2035 Master Plan because the property is located in a designated Neighborhood Center which is intended to "...serve residential neighborhoods..." and "...include convenient retail and personal/business services..." In addition to being consistent with the Master Plan, staff has reviewed the proposed PD Amendment against the nine (9) criteria for rezoning set forth in the Land Development Ordinance and determined that they are satisfied.

The Planning Commission held a public hearing on May 9, 2019 and recommended that Town Council approve the proposed PD Amendment.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



ATTACHMENTS

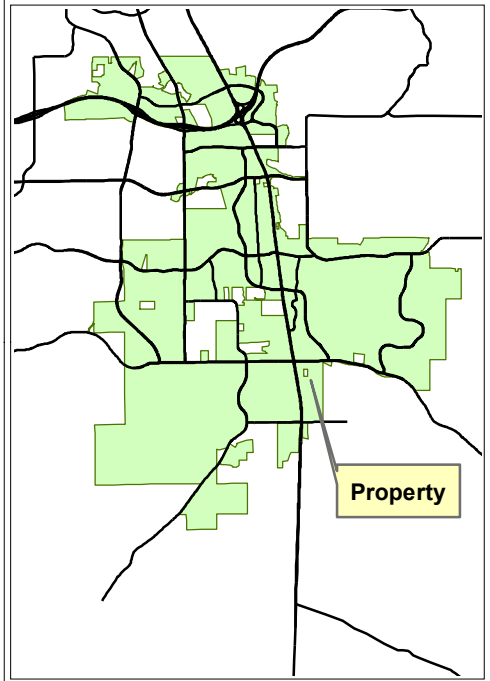
1. Vicinity Map
2. Planning Commission Staff Report
3. Site Plan Exhibit

RECOMMENDED MOTION

I move to approve Ordinance No. 3.113.1 on second reading.

**Jackalope Planned Development Amendment No. 1
Rezoning**

Rezoning
Case No. Z18-026



Legend

-  Site
-  Roads

Narrative:
Proposed Planned Development Amendment to expand the uses on the property to allow a hardware store and garden center on the property.

Planner: Stacey Nerger
Hearing Schedules:

Planning Commission:
May 9, 2019

Town Council:
May 20, 2019 (1st Reading)
June 3, 2019 (2nd Reading)





Planning Commission Staff Report

Planning Commission Date: 5/9/2019

Town Council Date: 6/3/2019

Hearing Type: Public Hearing
**JACKALOPE PLANNED DEVELOPMENT
AMENDMENT NO. 1 - Rezoning
TRAKiT No.: Z18-026**

Location: South of Cockriel Drive and east of Parker Road

Project Planner: Stacey Nerger, Planner

Applicant: Marley Hodgson, Jackalope Properties, LLC

Executive Summary: The applicant is proposing a Planned Development (PD) Amendment on Lot 1 and Tract A of the Jackalope Subdivision. The proposed Jackalope PD Amendment would amend the uses permitted on the site to allow for a broader range of commercial uses including a hardware store and garden center. The property is located on the east side of Parker Road south of the intersection with Hess Road.

Staff Recommendation: Approval

RECOMMENDED MOTION

"I move the Planning Commission recommend Town Council approve the Jackalope Planned Development Amendment No. 1."

ALTERNATIVE MOTIONS

"I move that the Planning Commission recommend that Town Council approve the Jackalope Planned Development Amendment No. 1, subject to the conditions contained in this staff report."

"I move that the Planning Commission recommend that Town Council deny the Jackalope Planned Development Amendment No. 1 as the request does not meet the following approval criteria:"

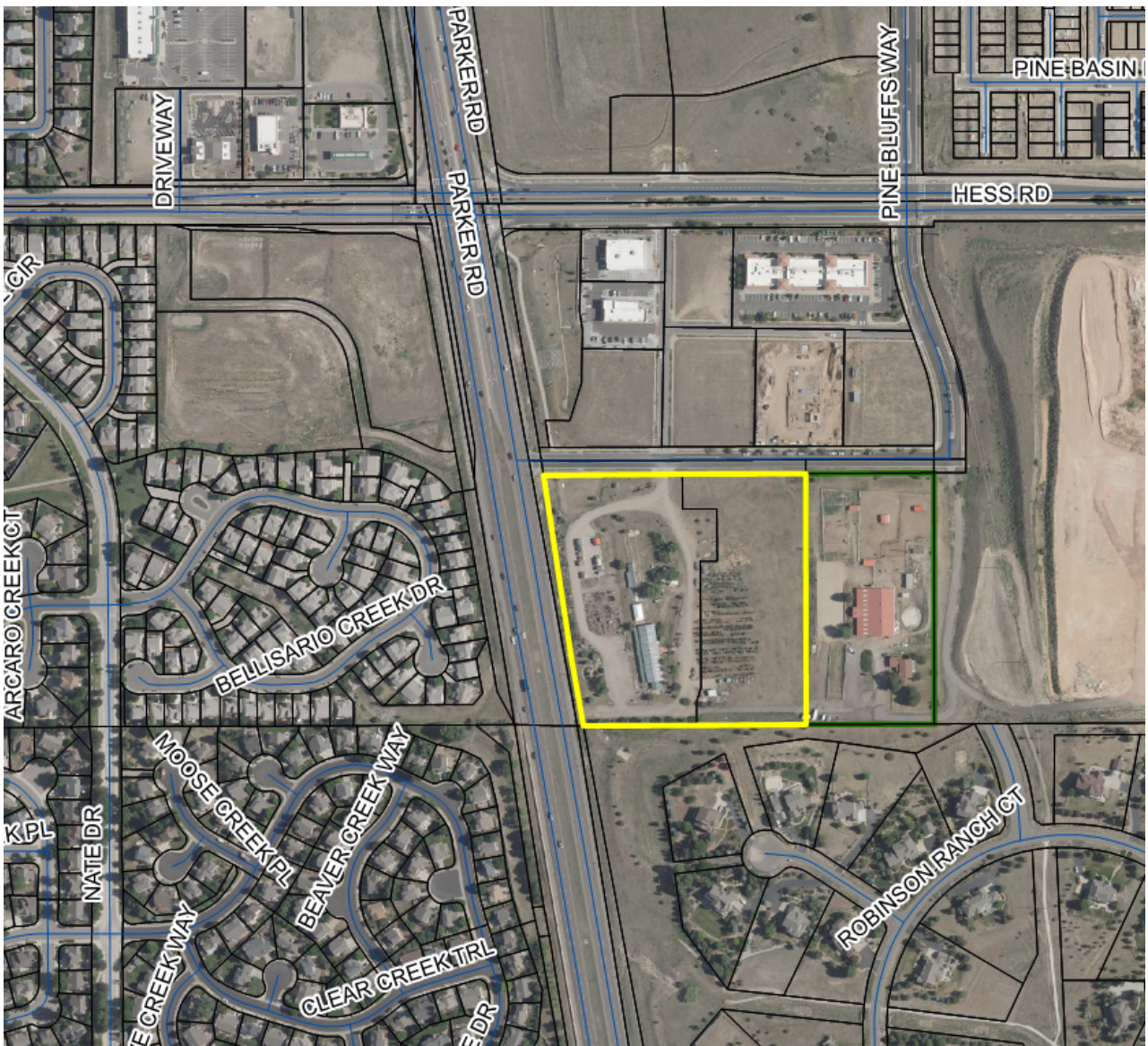
-List criteria not met (either by staff or Planning Commission)

"I move that the Planning Commission vote to continue the Jackalope Planned Development Amendment No. 1 to a future date."

I. BACKGROUND/DISCUSSION

The intent of this rezoning is to allow for a larger range of retail and commercial uses including allowing for a hardware store and garden center. The intent of the original Jackalope PD was to provide a commercial retail facility with permitted uses from retail, office and restaurant. The proposed PD Amendment will expand the uses allowed on the property to include those listed as uses permitted by right within the C-Commercial Zone District within the Town, as well as add accessory uses, definitions and development standards which pertain to a proposed neighborhood hardware store and garden center. The applicant has also submitted a replat and site plan amendment for a proposed hardware store and garden center. The replat and site plan amendment are currently under review and cannot be approved until such time the rezoning has been acted upon by Town Council.

Vicinity Map



II. PRIOR ACTIONS

Date	Action
July 7, 1997	The property was originally annexed as part of the Jackalope Planned Development.
July 7, 1997	Town Council approved the Jackalope Minor Development Plat.
May 22, 1997	The Planning Commission approved the Jackalope Site Plan to convert the existing Cockriel Stables into an outdoor market and to use the existing building for retail sales.
April 23, 2003	An administrative Site Plan Amendment was approved to revise the landscaping to include a water feature and hardscape.

III. CURRENT SITE DATA

Existing Zoning	PD - Planned Development		
Overlay District	N/A		
PD & Plan Area	Jackalope Planned Development		
Master Plan Area	Neighborhood Center		
Site Acreage	9.038 acres		
Subdivision	Jackalope		
Existing Use	Commercial		
Surrounding Uses			
	Master Plan Land Use	Zoning	Existing Use
North	Neighborhood Center	PD - Planned Development	Robinson Ranch Planned Development, Commercial/Vacant and Gas Station Under Construction
South	Low Density Residential	PD - Planned Development	Robinson Ranch Planned Development, Single-Family Detached
East	Neighborhood Center	Douglas County Zoning	Agriculture, Cockriel Farms
West	Medium Density Residential	PD - Planned Development	Stroh Ranch Planned Development, Single-Family Detached Across Parker Road

IV. PARKER 2035 MASTER PLAN

[Parker 2035 Master Plan | Town of Parker - Official Website](#)

MASTER PLAN CONSISTENCY	
Master Plan Designation	Neighborhood Center ☒ Consistent ☐ Inconsistent
Master Plan Character Discussion	Serve the basic needs of the surrounding residents. Typical uses include convenient retail and personal/business services usually anchored by a grocery store. Other compatible uses such as small offices, recreational uses and restaurants are also permitted. The total Gross Leasable Area for the commercial/office components within an entire Neighborhood Center should range from a combined 50,000 to 250,000 square feet. Higher density residential is appropriate as a transition between less intense residential areas and non-residential areas when developed as part of a mixed-use development and when the design encourages residents to walk or bicycle. Typical garden style apartment designs are not appropriate.
Consistent Goals/Strategies	<u>Land Use 1.C</u> <u>Community Appearance and Design 2.B</u>
Staff Analysis	Staff has reviewed the proposed expansion of allowed uses against the Town's master plan and determined that the proposal is consistent with the master plan. The expansion of the allowed uses on the property allows for greater conformance with the commercial land use under the neighborhood center designation.

V. LAND DEVELOPMENT ORDINANCE

DEVELOPMENT POTENTIAL (Rezoning)			
Provisions	As recommended by the Master Plan	Proposed	Analysis
Units Per Acre	Higher density residential is appropriate within Neighborhood Centers.	None	☒ Consistent ☐ Inconsistent ☐ No Change ☐ N/A
Allowed Uses	Convenient retail and personal/business services, grocery, small	Convenient retail and personal/business services, offices, recreational uses	☒ Consistent ☐ Inconsistent

	offices, recreational uses and restaurants.	and restaurants.	☐ No Change
Height/Stories	None	35 feet	☒ Consistent ☐ Inconsistent ☐ No Change
Staff Analysis	The proposed Planned Development Amendment meets the Town's Master Plan Goals and Strategies for Commercial Development at Neighborhood Centers within the Town. The proposed expansion of uses will align with the Town's Commercial Property Vision while allowing for the applicant's desire to construct a hardware store and garden center.		

VI. ACCESS, CIRCULATION & TRAFFIC ANALYSIS

The property has been developed with one full movement access point off Cockriel Drive which aligns with access to the Robinson Ranch commercial area located to the north. Internal drive aisles within the development will be constructed as approved through an administrative site plan amendment.

VII. APPROVAL CRITERIA

Title 13.04.240.f. Approval Considerations for Rezoning Requests:

1. A need exists for the proposal.

Applicant's Response

The current site is within the Jackalope PD, which was written in 1997 and requires Rezoning for any increase in the retail square footage. Although this PD allows for commercial retail and recreational use, it does not include the all uses this project is proposing and restricts the permissible retail area to a building footprint that is not conducive for uses other than the current market. The Big Tool Box will provide a hardware store, tool, equipment and U-Haul rental facility, indoor & outdoor greenhouse and garden center, outdoor retail area for plants garden center related products, a small engine repair shop, a pad for Food Trucks and small accessory building sales area (Tuff Shed). The proposed use increases the existing 5,800 sq ft to approximately 29,000 sq ft inclusive of the greenhouse. The PD Amendment zoning will allow for these proposed changes to the site.

Staff Analysis

The Jackalope PD was created in 1997 and was written to allow for a variety of commercial uses. The proposed rezoning will not change the commercial nature of the property, but will expand the commercial uses to be consistent with the Town's Commercial Property Vision while allowing for the applicant's desire to construct a hardware store and garden center.

Based on this analysis, staff has determined that the request meets this criterion.

2. The particular parcel of ground is indeed the correct site for the proposed development.

Applicant's Response

This parcel is very well suited for the proposed development. Topographically, it is slightly oriented uphill and will not require excessive grading. The proposed uses are in high demand by the existing surrounding communities and for future developments. The roads, streets and intersections surrounding the property are all recently improved and provide for great access to the site and ease of use by the public. The existing PD already allows for most commercial uses including many of our proposed uses and some of which that are already operating at the site.

Staff Analysis

The property is located adjacent to Parker Road and within the Neighborhood Center Designation of the Master Plan. The property has been used for commercial purposes for the last 22 years. The proposed rezoning will not change the commercial use of the property but expand the commercial uses allowed on the property to be consistent with the Town's Commercial Vision.

Based on this analysis, staff has determined that the request meets this criterion.

3. There has been an error in the original zoning; or

Applicant's Response

The existing PD won't allow for more than the existing 5,800 square feet of retail. In order to achieve any financial feasibility this needs to be increased as proposed.

Staff Analysis

An error has not occurred within the original zoning.

Based on this analysis, staff has determined that the request meets this criterion.

4. There have been significant changes in the area to warrant a zone change.

Applicant's Response

The surrounding area is zoned as PD Commercial and Residential which hasn't changed. However, with the increased development and growth of Parker and its surrounding communities, this particular site can be better used to provide needed retail and services to the community. The existing zoning will not allow for that due to some limits on use and due to the requirement to rezone to increase the retail square footage as proposed.

Staff Analysis

The property has been zoned for commercial uses for several years, however, until recently the commercial areas have sat mostly vacant. As development and growth have occurred over the past several years, commercial development in this area has increased. The proposed rezoning will update the list of permitted uses to current commercial demands.

Based on this analysis, staff has determined that the request meets this criterion.

5. Adequate circulation exists and traffic movement would not be impeded by development; and

Applicant's Response

The entrance/exit to the proposed site will be off Cockriel Drive, which is a fully established road that intersects with S Parker Road. There are both deceleration and acceleration lanes currently in place at the intersection of Parker Road Northbound and Cockriel Drive. Access to and from Parker Road Southbound and Hess Road will be via Pine Bluffs Parkway which intersects with Hess Road at a full movement, lighted intersection that was recently improved to allow for the additional retail and commercial uses planned for and already in existence in the immediate area. These access points are good, sufficient for the proposed project and will not impede traffic.

Staff Analysis

The property was developed to include one full movement access point off of Cockriel Drive. This access point allows customers to access a right-in/right-out at Parker Road or a full movement signalized access point at Hess Road through the Robinson Ranch commercial area. The applicant has provided a traffic study which has been reviewed and determined to be sufficient for the proposed commercial uses on the property.

Based on this analysis, staff has determined that the request meets this criterion.

6. Additional municipal service costs will not be incurred which the Town is not prepared to meet.

Applicant's Response

The site already has the municipal services that are needed to support the proposed project. The surrounding roadways are fully improved and provide adequate access to the proposed site.

Staff Analysis

The property was annexed into the Town in 1997. The proposed rezoning would not require any additional municipal services which are not currently provided by the Town to the property.

Based on this analysis, staff has determined that the request meets this criterion.

7. There are minimal environmental impacts or impacts can be mitigated.

Applicant's Response

The existing site already contains native grass, healthy landscaping, and does not appear to show any signs of negative environmental impacts. The proposed project will replace the older buildings with facilities and site improvements that are modern and adhere to current building, environmental and design codes/standards. Due to the existing topography and good soil conditions, grading and over excavation will be minimized allowing for less environmental impact.

Any mature trees that need to be removed (does not appear to be very many) to allow for the proposed development will be replaced in other areas of the site in accordance with applicable landscape mitigation requirements.

Staff Analysis

The original commercial use on the property commenced in 1997 which utilized existing buildings from the Cockriel Farm. The developer is proposing to remove all existing building and improvements on the site through a Site Plan Amendment. The applicant will work with the Town of Parker Engineering Department to ensure any environmental impacts are mitigated. The proposed rezoning will not change the size or overall character of the commercial area and will not create additional environmental impacts.

Based on this analysis, staff has determined that the request meets this criterion.

8. The proposal is consistent with the Town Master Plan, maps, goals, and policies.

Applicant's Response

The proposed project follows the Town's Master Plan maps, goals and policies. The proposed use will serve to revitalize and improve this important site that sits along Parker Road providing amenities for Parker and the surrounding communities. The proposed use will create a significant amount of jobs of several types. Retail sales associates, master gardeners, certified horticulturalists, retail managers and mechanics are among the types of jobs that will be created in both full and part-time varieties. At maturity, it is expected that the project will create 100-130 full and part-time jobs. In addition to full-time and skilled positions, the Big Tool Box also provides significant opportunities for the community in the form of first time job opportunities for high school, college aged kids and others mainly during the weekends, summers and holidays.

Staff Analysis

The Town of Parker master plan identifies this property as a Neighborhood Center which is recommended to serve the basic needs of the surrounding residents with convenient retail and personal/business services. The proposed rezoning of the property to expand the allowed commercial uses is consistent with the Town's master plan.

Based on this analysis, staff has determined that the request meets this criterion.

9. There is adequate waste and sewage disposal water, schools, parks and recreation, and other services to the proportional degree necessary due to the impacts created by the proposed land uses.

Applicant's Response

The existing site already contains waste and sewage disposal as well as water service. These utilities will be used and updated for the proposed project. A storm water detention pond is already in existence and will be improved and updated as necessary.

The proposed plan also allows for a gathering place for shoppers and their families as well as staff to eat and take breaks. This is in the form of a food truck pad and adjacent picnic area and gazebo type structure.

Staff Analysis

The property is included within the Parker Water and Sanitation District. The proposed hardware store and garden center will require review and approval from Parker Water and Sanitation District to ensure compliance with their standards and requirements at the time of Site Plan Amendment. In addition, the proposed rezoning will not change the properties designation as commercial, which will result in no additional impact to schools, parks and open space or any other services.

Based on this analysis, staff has determined that the request meets this criterion.

VIII. SUMMARY REFERRAL AGENCY COMMENTS AND CONDITIONS

Agency	Comments
Parker Engineering	No Comment
Fire Life Safety	No issue with the proposed rezoning, comments specific to the site will be addressed at the time of Site Plan Amendment.
Aztec Consultants	No Comment
Parker Water and Sanitation District	Approved
Parker Building	No Comment
Douglas County Assessors	No Comment
Xcel	PSCO has no objection to this proposed rezone, contingent upon PSCO's ability to maintain all existing rights.
IREA	The Association has existing underground/overhead electric facilities on the property. The overhead power lines will need to be converted to underground electric as required by the Town's Land development Ordinance and additional easements will be required. - These easements and undergrounding will be reviewed and required at the time of Replat.
CenturyLink	No Comment
Comcast	No Comment
Parker Economic Development	Approved
Parker Comprehensive Planning	The proposed rezoning is compliant with the 2035 Master Plan.

Colorado Department of Transportation	A right-in/right-out access permit exists for the access at Cockriel Drive. Any construction or work within the CDOT right-of-way will require a Special Use Permit issued by the Department.
Town of Parker Police	No Comment
Robinson Ranch HOA	No Comment
Stroh Ranch HOA	No Comment
Magellan Pipeline	No Comment

IX. CONCLUSION

The applicant submitted this rezoning request in order to expand the uses on the property to be consistent with the C- Commercial zone district within the Town as well as allow a future hardware store and garden center. The proposed rezoning is consistent with the Parker 2035 Master Plan Amendment as it meets the goals and strategies for commercial development at Neighborhood Centers within the Town. Based on this information staff is recommending approval of the rezoning to Jackalope PD Amendment No. 1.

X. RECOMMENDED CONDITIONS

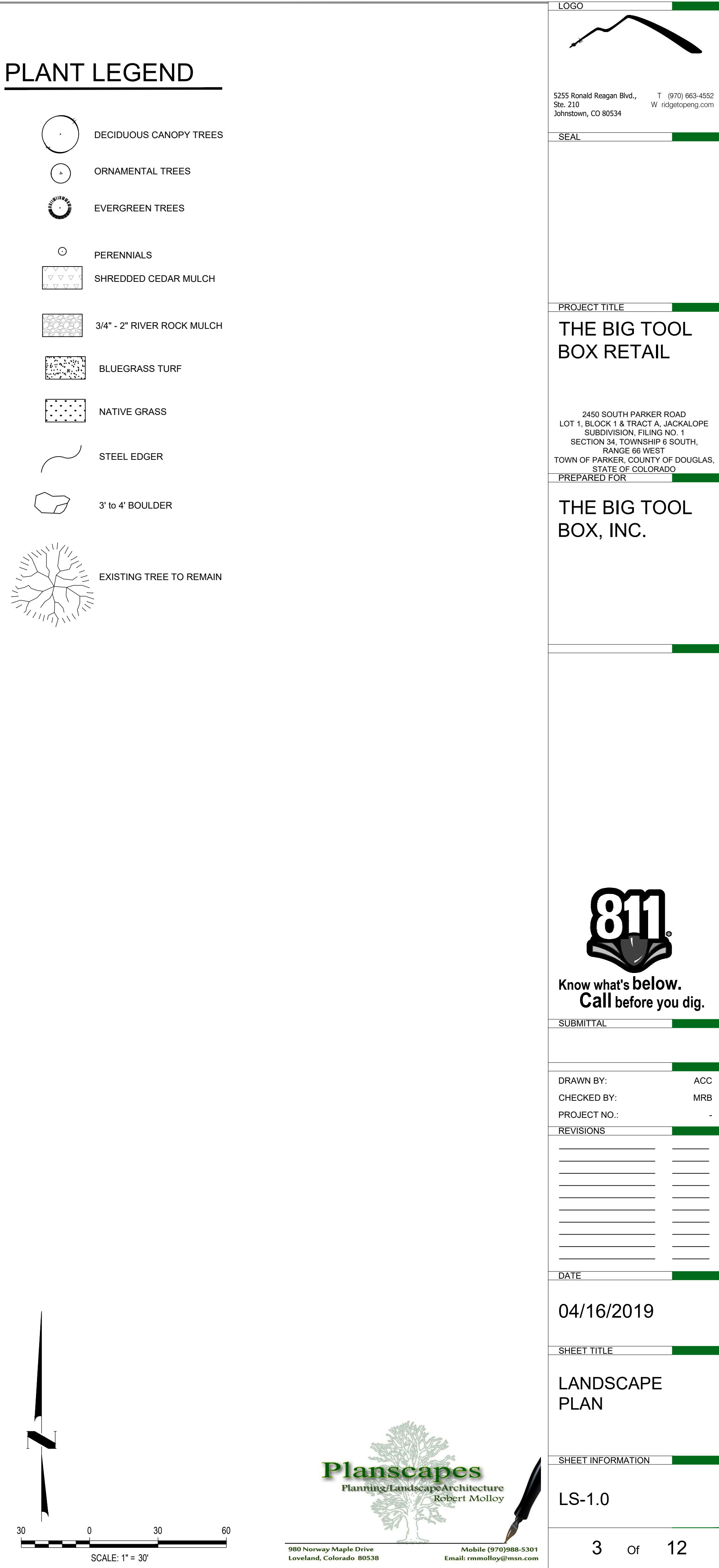
None

XI. ATTACHMENTS

1. DRAFT Ordinance
2. Referral Agency Comments

Report Approved By: Bryce Matthews, Planning Manager

Through: Jason Rogers, Deputy Community Development Director



ORDINANCE NO. 3.113.1, Series of 2019

TITLE: A BILL FOR AN ORDINANCE TO AMEND THE JACKALOPE PLANNED DEVELOPMENT GUIDE AND PLAN, PURSUANT TO THE TOWN OF PARKER LAND DEVELOPMENT ORDINANCE, AND AMENDING THE ZONING ORDINANCE AND MAP TO CONFORM THEREWITH

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Finding of Fact.

a. Application has been made for amending the PD-Planned Development zoning for the Jackalope Planned Development Guide and Plan, approved by the Town Council on July 7, 1997, and recorded in the Office of the Douglas County Clerk and Recorder's Office on November 20, 1997, at Book 1486, Page 0232, pursuant to the Town of Parker Land Development Ordinance.

b. Public notice has been given of such zoning by publication on the Town's website at least fifteen (15) days prior to the public hearing of such zoning.

c. Written notice was sent by first class mail to all owners of property that abut the Property, at least fifteen (15) days prior to the public hearing.

d. Notice of such proposed hearing was posted on the Property for fifteen (15) consecutive days prior to said hearing.

e. The requirements contained in Section 13.04.240(b) of the Parker Land Development Ordinance for amending the PD-Planned Development zoning the property described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "Property"), have been satisfied.

Section 2. The Jackalope Planned Development Guide and Plan for the Property is hereby amended as provided in the "Jackalope Planned Development Guide and Plan 1st Amendment," which is attached hereto as **Exhibit B** and incorporated by this reference (the "First Amendment").

Section 3. The Zoning Ordinance and Zoning Map are hereby amended to conform with the zoning change to the property.

Section 4. Approval of this Ordinance does not create a vested property right. Vested property rights may arise and accrue pursuant to the provisions of Ordinance No. 3.65.1, as amended, of the Town of Parker.

Section 5. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it

is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 6. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 7. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT A

Legal Description

Legal Description for 12450 South Parker Road, Parker, CO 80134:

A parcel of land being a part of the northeast quarter of the northeast quarter (NE1/4, NE1/4) of Section 34, Township 6 South, Range 66 West, of the Sixth Principal Meridian, County of Douglas, State of Colorado, being more particularly described as follows:

Commencing at the southeast corner of said NE1/4, NE1/4 of Section 34;

Thence along the southerly line of said NE1/4, NE1/4, South 89°41'32" West, 325.00 feet, to the true point of beginning;

Thence parallel with the easterly line of said NE1/4, NE1/4, North 00°10'59" West, 670.16 feet;

Thence parallel with the southerly line of said NE1/4, NE1/4, South 89°41'32" West, 673.81 feet, to the easterly right-of-way (ROW) line of State Highway 83 as described in Book 1047 at page 908;

Thence along said easterly ROW line, South 08°45'20" East, 507.17 feet;

Thence continuing along said easterly ROW line, South 10°34'05" East, 171.23 feet, to the southerly line of said NE1/4, NE1/4;

Thence along said southerly line, North 89°41'32" East, 567.35 feet, to the true point of beginning. Containing 393,624 SF (9.041 AC), more or less.

EXHIBIT B

Jackalope

Planned Development Guide 1st Amendment

March 6, 1997

1st Amendment June 3, 2019

Jackalope

Planned Development Guide

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GENERAL PROVISIONS:

I. PURPOSE:

This development guide sets forth land uses and development standards for the Jackalope Subdivision, a planned development in the Town of Parker, Colorado. It shall regulate the use of the land, define certain terms and clarify the zoning procedures.

The Jackalope Subdivision is comprised of approximately 9.6 acres. The comprehensive development of this parcel in response to certain opportunities and constraints will contribute to an orderly, balanced and quality addition to the Town of Parker.

II. INTENT:

It is the intent of this Development Guide to provide areas for businesses providing convenience retail and personal service uses and/or for wholesale and service commercial uses with minimal assembly or manufacturing activities.

III. APPLICATION:

The standards and regulations contained in this Development Guide shall apply to the Property. The standards and regulations contained in this Development Guide may be divergent from the standards and regulations contained in Chapter 13.04 of the Parker Land Development Ordinance, but not any other Chapter of the Parker Land Development Ordinance. In the event that there is a conflict between the standards and regulations contained in this Development Guide (excluding Chapter 13.04) then the Parker Land Development Ordinance shall control.

IV. CONTROL:

After the adoption of this Development Guide by the Town Council of the Town of Parker, subject to the provisions of Section 13.04.230 of the Parker Land Development Ordinance (Non-Conforming Situations), the standards and regulations contained in this Development Guide, in conjunction with the Town of Parker Land Development Ordinance, as provided herein, shall control development, land use, the location and bulk of all buildings and other structures, existing and future, and shall also apply to the following:

- A. Any new building or other structure, and any parcel of land, or land use;
- B. The use of any existing building, other structure or parcel of land may be changed or extended;
- C. Any existing building or other structure, if such building or other structure is to be enlarged, reconstructed, structurally altered, converted or relocated.
- D. All standards and regulations set forth or referred to in the standards and regulations for the planning area in which such buildings and other structures are located.

V. INCORPORATION OF DEVELOPMENT PLAN:

The Jackalope development, including the type, location and boundaries of land use areas are shown upon the “Jackalope Development Plan” (hereinafter referred to as “Development Plan”), which Development Plan is hereby incorporated by reference into this Development Guide together with everything shown thereon and all amendments thereto.

VI. CONFLICTS:

Where there is more than one provision within the Development Guide that covers the same subject matter, the provision which is most restrictive or imposes higher standards or requirements shall govern unless determined otherwise by the Community Development Director.

AUTHORITY

I. AUTHORITY

The authority for this PD Development Guide is Section 13.04.150 (PD-Planned Development) of the Town of Parker Land Development Ordinance.

II. ADOPTION:

The adoption of this Development Guide and Development Plan by ordinance shall evidence the findings and decisions of the Town of Parker Town Council that this Development Guide and Development Plan for the Jackalope Planned Development is authorized by the provisions of Section 13.04.150 of the Town of Parker Land Development Ordinance.

III. ENFORCEMENT:

The provisions of the Development Guide relating to the use of land shall run in favor of the Town of Parker and shall be enforceable, at law or in equity, by the Town of Parker without any limitation on any power or authority otherwise granted by law. All provisions of this Development Guide shall run in favor of the owners of the Property to the extent expressly provided in this Development Guide and in accordance with its terms and conditions.

COMMERCIAL DEVELOPMENT STANDARDS

I. PURPOSE:

Provide areas for businesses providing convenience retail and personal service uses and/or for wholesale and service commercial uses with minimal assembly or manufacturing activities.

II. DEFINITIONS:

Commercial Retail is an establishment engaged in selling goods and/or merchandise to the general public at retail for personal or household consumption and rendering services incidental to the sale of such goods and/or merchandise.

Small engine motorized equipment: A small-displacement, single cylinder or twin cylinder four stroke/cycle, low-powered internal combustion engine (or electric motor equivalent) used to power lawn mowers, generators, concrete mixers, snow blowers, chain saws, string trimmers, utility vehicles (UTV's), and many other machines that require independent power sources.

Medium engine motorized equipment: medium and light duty farm, landscaping and recreational equipment generally under 100 horsepower including small tractors, skid loaders, ATVs, golf carts, and similar motorized equipment

Rental Vehicles: Pick-up trucks, trailers, cargo vans, box/moving trucks (up to 26' long), small engine motorized equipment, medium engine motorized equipment.

III. USES PERMITTED BY RIGHT:

A. The following uses shall be permitted as a matter of right:

1. Offices: general, medical, dental, professional and governmental
2. Public and quasi-public facilities
3. Greenhouses, nurseries (plants) and garden centers, wholesale and retail
4. Banks
5. Commercial Retail
6. Personal Services
7. Bars and Lounges
8. Dry Cleaning
9. Indoor amusement and recreational facilities up to 3,500 square feet
10. Instructional Services/studios up to 3,500 square feet
11. Health club, gym or fitness center up to 3,500 square feet
12. Child care facility up to 3,500 square feet
13. Restaurants including drive-thru or carry-out
14. Retail display and sale of storage sheds and similar structures
15. Outdoor commercial display, including storage of inventory, subject to the design standards listed within Section VII of this document
16. Auto parts stores

- 17. Brewery/distillery
- 18. Public parks, playgrounds, open space and outdoor recreation areas

IV. ACCESSORY USES:

The following uses shall be allowed which are incidental and subordinate to the principal use of the land or building on the property:

- A. Food trucks, vendor stands and commercial kiosks, subject to Section 13.04.215, as amended of the Parker Land Development Ordinance.
- B. Motor vehicles: sales, leasing, rental servicing and repair of Rental Vehicles as an accessory activity
- C. Indoor small and medium engine motorized equipment sales and repair – Not to exceed 35% of the total building area on the property
- D. Uses that are similar in nature and impact to those listed within the uses permitted by right shall be allowed as determined by the Community Development Director

V. USES PERMITTED BY SPECIAL REVIEW:

The following uses shall be allowed with a Use by Special Review:

- A. Automobile service, including repairs
- B. Convenience Store with or without gas station or car wash
- C. Tire repair shops
- D. Veterinary clinics and hospitals
- E. Observation kennels and pet day care

VI. DEVELOPMENT STANDARDS:

- A. Maximum Building Height: 35 feet
- B. Minimum Front Yard Setback:
 - 1. Parker Road - 25 feet for permanent enclosed structures
 - 2. Cockriel Drive -25 feet for permanent enclosed structures
- C. Minimum Side Yard Setback: 10 feet, except when adjoining a residential zone district, 25 feet for permanent enclosed structures (excluding perimeter fencing, walls or other enclosures for any garden center or nursery)
- D. Minimum Rear Yard Setback: 10 feet, except when adjoining a residential zone district, 25 feet for permanent enclosed structures (excluding perimeter fencing, walls or other enclosures for any garden center or nursery)
- E. Outdoor Commercial Display: 10 feet from Parker Road and Cockriel Drive, 25 feet when adjoining a residential zone district. Proper screening and buffer requirements shall apply as approved on a Site Plan.
- F. Storage areas: 50 feet from Parker Road and Cockriel Drive, 75 feet when adjoining a residential zone district. Proper screening and buffer requirements shall apply as approved on a Site Plan.

VII. OUTDOOR COMMERCIAL DISPLAY AREAS:

Allowed as outlined within Section 13.04.120 (d) (11), supplemented as follows:

- A. Outdoor commercial display shall occur only within the designated areas approved as part of the approved site plan and shall not comprise more than thirty-five percent (35%) of the total land area of the property.
- B. Any outdoor commercial display areas that are not enclosed with a fence, wall or other perimeter enclosure shall be identified by a permanent marking material, identifying the entire outdoor display area, as shown on the approved site plan for the property.
- C. The use of semi-trailers or temporary buildings (other than as provided in Section III.A.14 above) shall not be permitted on a permanent basis. All temporary uses shall comply with Chapter 13.04.210 of the Town of Parker Land Development Ordinance, as amended; provided, however that promotional events shall not exceed five thousand (5,000) square feet and shall not exceed a duration of ninety (90) days.

JACKALOPE DEVELOPMENT PLAN 1ST AMENDMENT

12450 SOUTH PARKER ROAD
LOT 1, BLOCK 1 & TRACT A, JACKALOPE SUBDIVISION, FILING NO. 1
SECTION 34, TOWNSHIP 6 SOUTH, RANGE 66 WEST
TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO

LEGAL DESCRIPTION

A PORTION OF LOT 1, BLOCK 1 AND A PORTION OF TRACT A, JACKALOPE SUBDIVISION, FILING NO. 1, PUBLIC RECORDS OF DOUGLAS COUNTY, COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

CONSIDERING THE EAST LINE OF TRACT A, JACKALOPE SUBDIVISION, FILING NO. 1, PUBLIC RECORDS OF DOUGLAS COUNTY, COLORADO AS BEARING N 00°16'57"E WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

BEGIN AT THE SOUTHEAST CORNER OF TRACT A, JACKALOPE SUBDIVISION, FILING NO. 1, PUBLIC RECORDS OF DOUGLAS COUNTY, COLORADO;
THENCE N 00°16'57" E FOR A DISTANCE OF 634.74 FEET ALONG THE EAST LINE OF SAID TRACT A TO THE SOUTH LINE OF RECEPTION NO. 2013070277;
THENCE N 89°46'42" W FOR A DISTANCE OF 668.62 FEET ALONG SAID SOUTH LINE TO THE EASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 83 AS DESCRIBED IN BOOK 1047, PAGE 908, ALSO BEING THE WEST LINE OF LOT 1, BLOCK 1, SAID JACKALOPE SUBDIVISION, FILING NO. 1;
THENCE S 08°17'32" E FOR A DISTANCE OF 472.13 FEET ALONG SAID WEST LINE;
THENCE S 10°05'42" E FOR A DISTANCE OF 171.06 FEET ALONG SAID WEST LOT LINE TO THE SOUTH LINE OF SAID LOT 1;
THENCE S 89°49'38" E FOR A DISTANCE OF 567.42 FEET TO THE POINT OF BEGINNING.

CONTAINING 393,711 SF (9.038 AC), MORE OR LESS.

BASIS OF BEARING

BEARINGS BASED ON THE EAST LINE OF TRACT A, JACKALOPE SUBDIVISION, FILING NO. 1, AS BEARINGS N 00°16'57"E, AN ASSUMED MERIDIAN.

GENERAL NOTES

THIS SITE IS NOT WITHIN A FLOOD AREA. REFER TO FEMA MAP NO. 08035C0182G.

NO LAND WILL BE DEDICATED TO THE TOWN OF PARKER.

NO UNIQUE FEATURES ON SITE.

PROJECT CONTACTS:

PROPERTY OWNER
MB VENTURES-PARKER, LLC.
12450 SOUTH PARKER ROAD
PARKER, CO 80134
(303) 947-0911
CONTACT: EVERT MELLEMA

APPLICANT
JACKALOPE PROPERTIES, LLC.
8080 S HOLLY STREET
CENTENNIAL, CO 80122
(303) 912-8079
CONTACT: MARLEY HODGSON

CIVIL ENGINEER
RIDGETOP ENGINEERING AND CONSULTING, LLC
5255 RONALD REAGAN BLVD, SUITE 210
JOHNSTOWN, CO 80534
(970) 663-4552
CONTACT: MIKE BEACH, P.E.

SURVEYOR CERTIFICATE

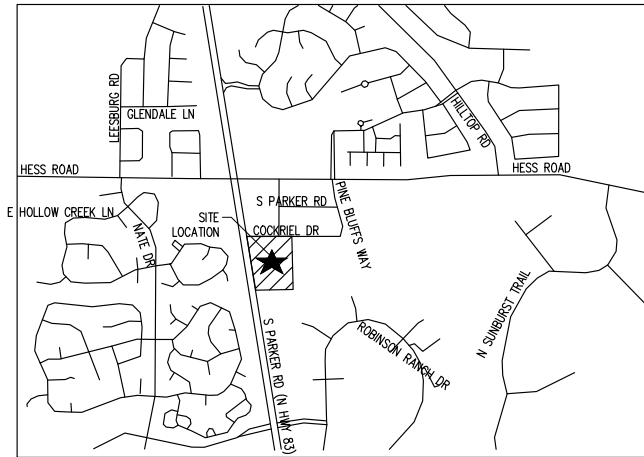
I, BRYAN SHORT, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS DEVELOPMENT PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION; THAT, TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THIS MAP ACCURATELY DELINEATES THE PARCEL OF LAND TO BE ZONED IN THE TOWN OF PARKER, COLORADO; AND THAT AT LEAST ONE SIXTH (1/6) OF THE BOUNDARY OF SAID PARCEL IS CONTIGUOUS TO THE PRESENT TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO.

BRYAN SHORT
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR NO. 32444
FOR AND ON BEHALF OF PLS GROUP

NOTICE:
ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE (3) YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

NOTICE:
PER THE STATE OF COLORADO BOARD OF LICENSURE FOR ARCHITECTS, PROFESSIONAL ENGINEERS, AND PROFESSIONAL LAND SURVEYORS RULE 6.2.2 THE WORD "CERTIFY" AS USED HEREON MEANS AN EXPRESSION OF PROFESSIONAL OPINION AND DOES NOT CONSTITUTE A WARRANTY OR GUARANTEE, EXPRESSED OR IMPLIED. THE SURVEY REPRESENTED HEREON HAS BEEN PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION IN ACCORDANCE WITH APPLICABLE STANDARDS OF PRACTICE AND IS BASED UPON MY KNOWLEDGE, INFORMATION, AND BELIEF.

VICINITY MAP



SHEET LIST

COVER SHEET	0.0
ZONING MAP	1.0

OWNER'S CERTIFICATE, LOT 1

I, MB VENTURES-PARKER, LLC., HEREBY AFFIRM THAT I AM AN OWNER OR AUTHORIZED AGENT HAVING AN OWNERSHIP INTEREST IN THE PROPERTY DESCRIBED HEREIN.

MB VENTURES-PARKER, LLC.

STATE OF _____ }
COUNTY OF _____ } SS

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, A.D., 20____

BY _____ WITNESS MY HAND AND SEAL
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

OWNER'S CERTIFICATE, TRACT A

I, MB VENTURES-PARKER, LLC., HEREBY AFFIRM THAT I AM AN OWNER OR AUTHORIZED AGENT HAVING AN OWNERSHIP INTEREST IN THE PROPERTY DESCRIBED HEREIN.

MB VENTURES-PARKER, LLC.

STATE OF _____ }
COUNTY OF _____ } SS

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, A.D., 20____

BY _____ WITNESS MY HAND AND SEAL
NOTARY PUBLIC

MY COMMISSION EXPIRES _____

ADDRESS _____

CITY _____ STATE _____ ZIP CODE _____

PLANNING COMMISSION CERTIFICATE

THIS DEVELOPMENT PLAN WAS REVIEWED AND RECOMMENDED FOR APPROVAL BY THE TOWN OF PARKER PLANNING COMMISSION FOLLOWING A PUBLIC HEARING ON _____

COMMUNITY DEVELOPMENT DIRECTOR ON BEHALF
OF THE PLANNING COMMISSION

TOWN COUNCIL ACCEPTANCE

THIS DEVELOPMENT PLAN WAS APPROVED BY THE TOWN OF PARKER ON THIS _____ DAY OF _____, 2019, FOR THE PROPERTY DESCRIBED HEREIN.

MAYOR, TOWN OF PARKER

ATTEST:TOWN CLERK

DOUGLAS COUNTY CLERK AND RECORDER'S CERTIFICATION

THIS DEVELOPMENT PLAN WAS FILED FOR RECORD IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF DOUGLAS COUNTY AT _____M. ON THE _____ DAY OF _____, 2019,

RECEPTION NO. _____

DOUGLAS COUNTY CLERK AND RECORDER

BY: _____
DEPUTY

LOGO

RidgeTop
ENGINEERING & CONSULTING
5255 Ronald Reagan Blvd., Ste. 210
Johnstown, CO 80534
T (970) 663-4552
W ridgetopeng.com

SEAL

PROJECT TITLE

THE BIG TOOL BOX RETAIL

12450 SOUTH PARKER ROAD
LOT 1, BLOCK 1 & TRACT A, JACKALOPE
SUBDIVISION, FILING NO. 1
SECTION 34, TOWNSHIP 6 SOUTH,
RANGE 66 WEST
TOWN OF PARKER, COUNTY OF DOUGLAS,
STATE OF COLORADO
PREPARED FOR:

THE BIG TOOL BOX, INC.

811

Know what's below.
Call before you dig.

SUBMITTAL

ZONING

DRAWN BY: ACC
CHECKED BY: MRB
PROJECT NO.: -

REVISIONS

TOWN COMMENTS	03/05/18

DATE

01/31/2019

SHEET TITLE

COVER SHEET

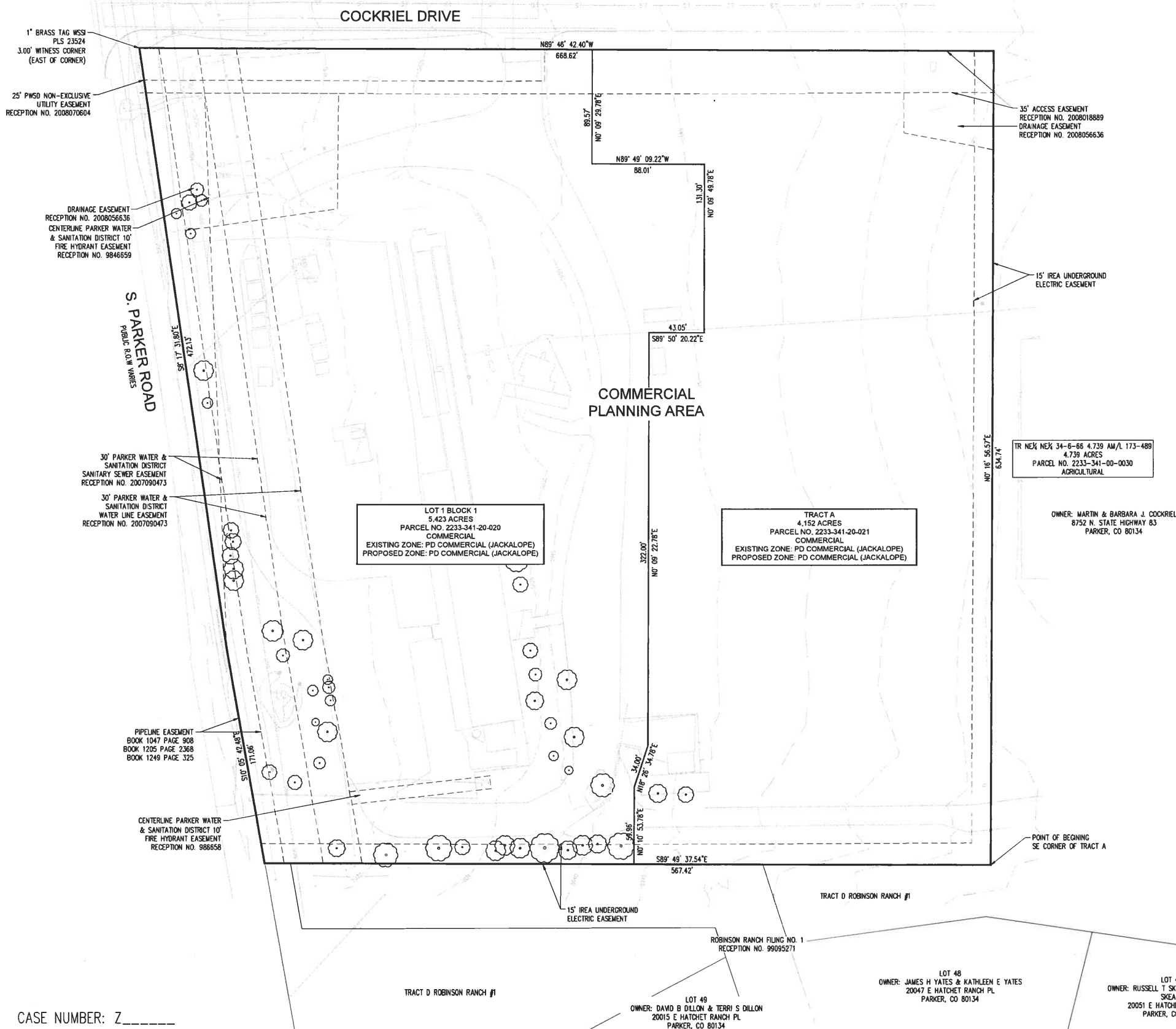
SHEET INFORMATION

C-0.0

1 of 2

JACKALOPE DEVELOPMENT PLAN 1ST AMENDMENT

12450 SOUTH PARKER ROAD
LOT 1, BLOCK 1 & TRACT A, JACKALOPE SUBDIVISION, FILING NO. 1
SECTION 34, TOWNSHIP 6 SOUTH, RANGE 66 WEST
TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO



LEGEND	
	PROPERTY LINE
	EX. CONCRETE CURB & CUTTER
	EASEMENT
	EX. CONTOUR

LOGO

ENGINEERING & CONSULTING
5155 Ronald Reagan Blvd., Ste. 210
Johnstown, CO 80534
1 (970) 861-4552
W ridgepeng.com

PROJECT TITLE

THE BIG TOOL BOX RETAIL

12450 SOUTH PARKER ROAD
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SECTION 34, TOWNSHIP 6 SOUTH,
RANGE 66 WEST
TOWN OF PARKER, COUNTY OF DOUGLAS,
STATE OF COLORADO
PREPARED FOR

THE BIG TOOL BOX, INC.

Know what's below.
Call before you dig.

SUBMITTAL

ZONING

DRAWN BY: ACC
CHECKED BY: MRB
PROJECT NO: -

REVISIONS	
TOWN COMMENTS	DATE
	03/05/18

DATE

01/31/2019

SHEET TITLE

DEVELOPMENT PLAN

SHEET INFORMATION

C-1.0



Request for Town Council Action

Date: June 3, 2019

Submitted By: Chris Hudson, Public Works Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.286 - Second Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement Between the Town of Parker and the Board of County Commissioners of the County of Douglas Regarding Cost Sharing for the Dransfeldt Road Extension

Department: Engineering/Public Works, Chris Hudson

EXECUTIVE SUMMARY

There purpose of the attached ordinance is to approve an intergovernmental agreement (IGA) with Douglas County for the conceptual/preliminary design of the proposed Dransfeldt Road extension project. This IGA is needed to formalize negotiations and jointly fund the conceptual/preliminary design effort.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town has been contemplating the extension of Dransfeldt Road south of Twenty Mile Road, over Cherry Creek, connecting to Motsenbocker Road for over a decade. This proposed roadway is an important component to the Parker area's long-term roadway transportation plan. Due to a portion of the proposed roadway extension being located in unincorporated Douglas County, the project will need to be coordinated with Douglas County. After several years of discussions with Douglas County staff, the Town and County are ready to move forward with the conceptual/preliminary design of this roadway extension.

The Town and Douglas County have both appropriated \$125,000 as part of their 2019 budgets (\$250,000 total) to fund this conceptual/preliminary design effort. Douglas County and Parker staff have agreed to utilize each entity's on-call engineering listing to select up to six (6) professional engineering firms to prepare proposals for the conceptual/preliminary design

services. The selection of a professional engineering firm will be completed using a qualification based interview selection process of the short-listed firms. The Town and Douglas County have agreed to a 50/50 split on this conceptual/preliminary engineering cost to be completed by July 31, 2020. An IGA is needed for formalize this arrangement.

FINANCIAL IMPACT

Funding has been appropriated for this preliminary design effort in the Streets Capital Projects fund (301-4310).

STRATEGIC GOAL(S)



**INNOVATE WITH
COLLABORATIVE
GOVERNANCE**



**ENHANCE ECONOMIC
VITALITY**



**DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH**

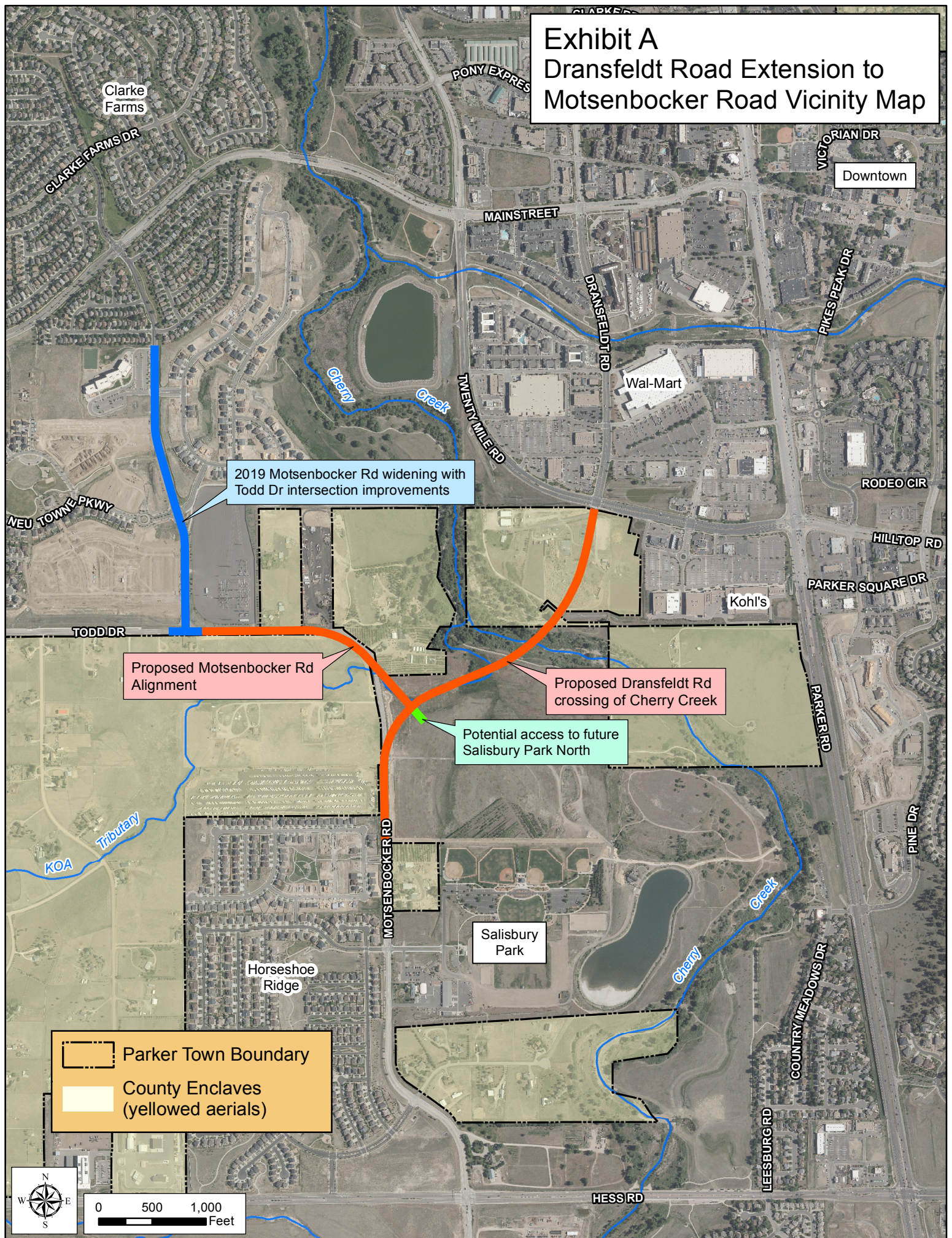
ATTACHMENTS

1. Vicinity Map
2. Ordinance No. 9.286

RECOMMENDED MOTION

I move to approve Ordinance No. 9.286 on second reading.

Exhibit A Dransfeldt Road Extension to Motsenbocker Road Vicinity Map



ORDINANCE NO. 9.286, Series of 2019

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS REGARDING COST SHARING FOR THE DRANSFELDT ROAD EXTENSION

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Intergovernmental Agreement by and between the Town of Parker and the Board of County Commissioners of the County of Douglas Regarding Cost Sharing for the Dransfeldt Road Extension, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER AND THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS REGARDING COST SHARING FOR THE DRANSFELDT ROAD EXTENSION

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, **2019**, by and between the Town of Parker, Colorado, a Colorado home rule municipality (the "Town"), and the Board of County Commissioners of Douglas County, Colorado (the "County"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County and the Town desire to cooperate in the conceptual / preliminary design of the Dransfeldt Road extension improvements between Twenty-Mile Road and Motsenbocker Road, (the "Project"). The Dransfeldt Road extension is a critical component of the region's long-term transportation infrastructure plan and the Project will help to reduce congestion, improve mobility, incident management and emergency response for residents of the Town and County. The Project limits are shown in **Exhibit A**, which is attached hereto and incorporated by this reference; and

WHEREAS, the County and the Town agree the Project shall be completed in exchange for mutual commitments of the Parties hereto; and

WHEREAS, the Town and the County desire to share in the cost of the Project, as described herein; and

WHEREAS, the Town and County desire to cooperate to further the design and ultimate construction of the Project, subject to future agreements; and

WHEREAS, the Town desires to be responsible for the completion of the Project, as described in this Agreement; and

WHEREAS, the County's only responsibilities are in assisting with the selection of the Qualified Engineer and its voluntary financial contribution for a portion of the Project costs; and

WHEREAS, the Parties further desire to memorialize their agreements concerning the participation in the funding of the Project.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the Parties hereto agree as follows:

1. Consultant Selection Process and Contracting for the Project. The Parties agree that the Town will enter into a professional services agreement with a qualified engineer to complete the Project (the "Qualified Engineer"). The Qualified Engineer shall be selected based on the responses to a Request for Proposals (RFP) advertised by the Town. A list of consultants will be shortlisted to submit a proposal, consisting of three (3) engineering firms selected by the Town and three (3) engineering firms selected by the County. The consultant selection process

used for the Project shall be agreed to by the Parties, utilizing representatives from their respective Public Works / Engineering Departments. Once the Parties agree on the overall ranking of consultants submitting proposals, then the Town and County representatives will seek to finalize the scope and fee for the Project with highest-ranked consultant, and if they are unable to negotiate a mutually acceptable fee with the highest-ranked consultant then the Parties will work with the second highest-ranked consultant. Upon the selection of the Qualified Engineer, the Town shall prepare necessary Professional Service Contract(s).

2. Project Cost Estimate. The Parties have budgeted and estimated the Project costs to be Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00); and the Parties contributions shown below in this Agreement are based on actual Project expenditures by the Qualified Engineer not exceeding this amount.

3. County Contribution and Responsibilities. The County agrees to pay to the Town an amount not to exceed One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00), hereinafter referred to as the "County Contribution" for the sole purpose of contributing to the Project and paying for a portion of the professional services performed by the Qualified Engineer. In no event will the County be liable for paying the Town any amount more than the County Contribution, including for any additional work authorized by the Town or for any unforeseen project costs or claims.

The County Contribution is payable to the Town within thirty (30) days after the County has received a written invoice from the Town containing a statement that the Town has awarded a professional service contract with the Qualified Engineer.

If any portion of the County Contribution is not used, then the County is entitled to a refund as described below in Town Contribution and Responsibilities.

The County agrees to provide representatives from its Public Works / Engineering Department to participate in the Town design review meetings for the Project, but all Project decisions and directions to the consultants is ultimately the Town's responsibility.

If the Town elects to unilaterally increase the Project Cost and its project budget, it may do so; provided it does not include an increase in the County Contribution. The County Contribution may not be increased without both Parties executing an amendment to this Agreement prior to any additional expenditures in which the Town wants the County to participate.

4. Town Contribution and Responsibilities. The Town shall be responsible for managing all phases of the Project, including managing the Qualified Engineer and all other aspects of the Project. Except as expressly provided in Section 3, (County Contribution and Responsibilities), the Town shall be responsible for all other Project costs, including any excess of the Project Cost Estimate. The Town is responsible for completing the Project.

The Town of Parker will track Project monthly costs for the conceptual / preliminary design effort performed by the Qualified Engineer and will use this information to provide a summary of the Project costs within thirty (30) days after completion or termination of the Project or upon written request by Douglas County.

At the completion of the conceptual / preliminary design effort performed by the Qualified Engineer or termination of the Qualified Engineer, the Town will provide written notification to the County regarding any unused project funding; and the County shall be refunded fifty percent (50%) of any amount of the difference between the actual Project expenditures and the Project Cost Estimate of \$250,000. The Town shall refund the County within forty-five (45) days for any of the reasons stipulated above.

5. Time of Performance. The Parties acknowledge and agree that the Project shall be substantially completed on or before **July 31, 2020**.

6. Remedies. The Parties hereto acknowledge and agree that each party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available.

7. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other party. Such notice shall be deemed to have been given when deposited in the United States mail.

Town of Parker: Town of Parker
 Attn: Director of Engineering / Public Works
 20120 E. Mainstreet
 Parker, Colorado 80138

Douglas County: Douglas County
 Attn: Director of Engineering Services
 100 Third Street
 Castle Rock, Colorado 80104

With electronic copy sent to: attorney@douglas.co.us

8. Appropriation. Pursuant to C.R.S. § 29-1-110, the financial obligations of the Town and the County contained herein which are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available.

9. No Waiver of Governmental Immunity Act. The Parties hereto understand and agree that the Parties, their Commissioners, Councilmembers, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County.

10. Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

11. Colorado Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado, and the Parties waive any right to remove any action to any other court, whether state or federal.

12. Separate Entities. The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

13. No Third-Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

14. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

15. Recitals. The Recitals to this Agreement are incorporated herein by this reference.

16. Entirety. This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

[Remainder of page intentionally left blank. Signatures on the following page.]

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY

Roger A. Partridge, Chair

ATTEST:

APPROVED AS TO CONTENT:

Emily Wrenn,
Clerk to the Board

Douglas J. DeBord,
County Manager

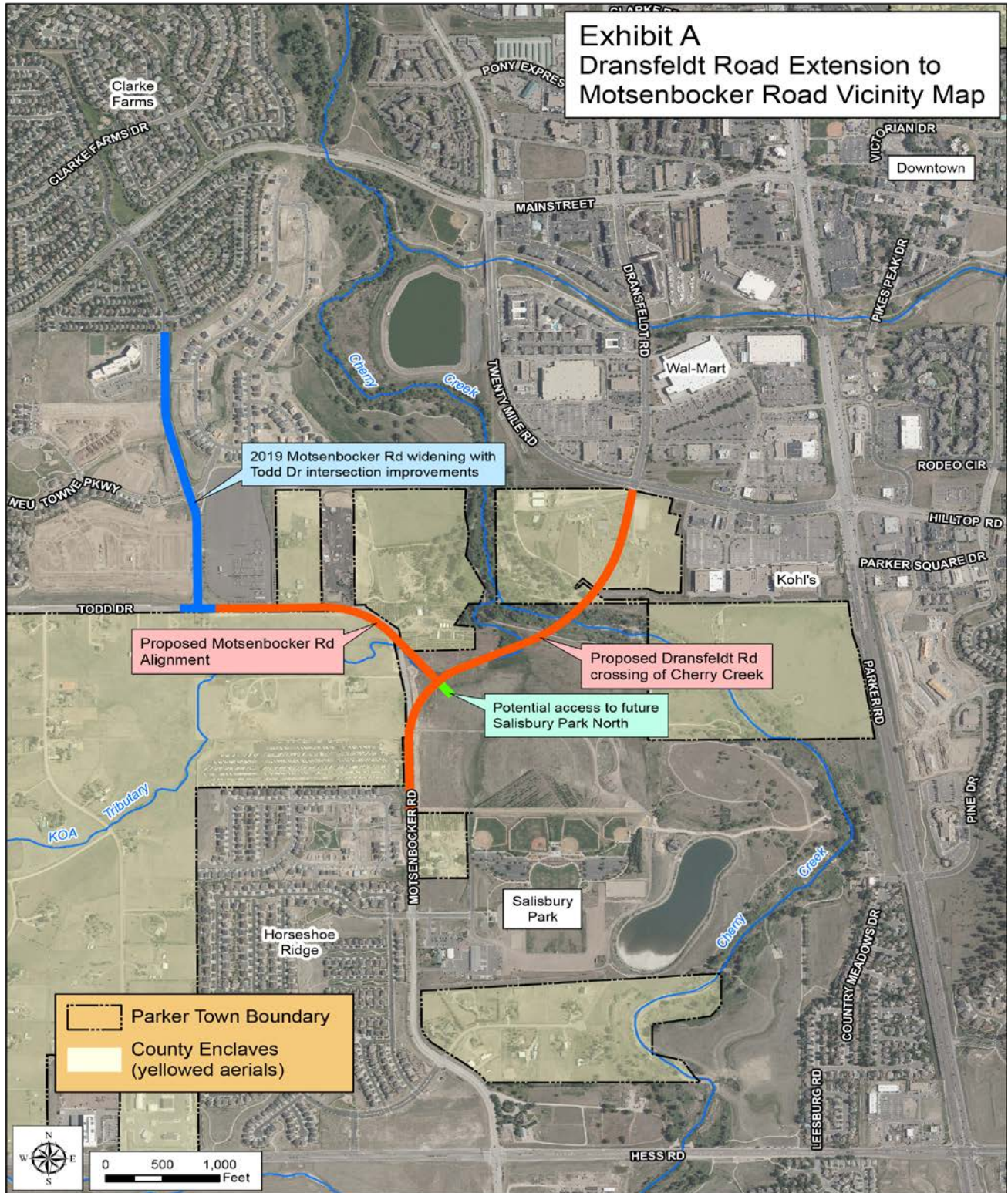
APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

EXHIBIT A





Request for Town Council Action

Date: June 3, 2019

Submitted By: Bryce Matthews, Planning Manager
John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 3.343 - Second Reading**
A Bill for an Ordinance Amend Section 13.04.150 of the
Parker Land Development Ordinance Concerning the
Rezoning of Areas From All Other Zoning Districts to PD-
Planned Development

Department: **Community Development, Bryce**
Matthews

EXECUTIVE SUMMARY

The proposed amendment to the Land Development Ordinance (LDO) will create minimum area criteria for the rezoning of properties in standard zone districts that are established in the LDO, such as the C-Commercial or LI-Light Industrial Districts, to a PD - Planned Development District as follows:

1. The area of the proposed PD zone is a minimum of ten (10) acres, or
2. The proposed PD zone is being used to clean-up the zoning of an area comprised of multiple lots burdened by split lot zoning (more than one zone district) and the area of the proposed PD zone is a minimum of four (4) acres.

The Planning Commission held a public hearing on May 9, 2019 and recommended that Town Council approve the proposed amendment to the LDO.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Land Development Ordinance (LDO) is relatively permissive with regard to the use of PD - Planned Development zoning and currently allows applicants to rezone properties to PD with limited requirements and without a minimum land area standard for a new PD zone district. The

proposed LDO amendment will address this issue and limit the rezoning of properties with standard zone districts such as, but not limited to, the C - Commercial and LI - Light Industrial Districts, from being rezoned to PD-Planned Development subject to the following standards:

1. The area of the proposed PD zone is a minimum of ten (10) acres, or
2. The proposed PD zone is being used to clean-up the zoning of an area comprised of multiple lots burdened by split lot zoning (more than one zone district), and the area of the proposed PD zone is a minimum of four (4) acres.

The Town is currently in the process of modernizing the LDO, one of the goals of the project is to reduce the use of PD - Planned Development zone districts. The proposed LDO amendment will support this goal by limiting the creation of new PD zones during the modernization process. It will also support a more consistent and standardized approach to zoning since each PD zone district incorporates unique standards tailored to a development proposal and property. The Town now has more than 80 PD zone districts so the proposed LDO amendment along with the LDO modernization project will begin to address this issue.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



INNOVATE WITH
COLLABORATIVE
GOVERNANCE



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH

ATTACHMENTS

1. Ordinance 3.343

RECOMMENDED MOTION

I move to approve Ordinance No. 3.343 on second reading.

ORDINANCE NO. 3.343, Series of 2019

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTION 13.04.150 OF THE PARKER LAND DEVELOPMENT ORDINANCE CONCERNING THE REZONING OF AREAS FROM ALL OTHER ZONING DISTRICTS TO PD-PLANNED DEVELOPMENT

WHEREAS, the Town of Parker is currently evaluating major revisions to the Parker Land Development Ordinance as part of the “Land Development Modernization Project”;

WHEREAS, one of the goals of the Land Development Modernization Project is to reduce the Town’s reliance on planned development zoning; and

WHEREAS, the Town Council has determined that establishing a minimum area requirement for rezoning areas from all other zoning districts to the PD-planned development zoning district is in the best interest of the Town while it is evaluating amendments to modernize the Parker Land Development Ordinance;

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Subsubsection (1) of subsection (c) of section 13.04.150 of the Parker Municipal Code is amended to read as follows:

(c) General requirement.

(1) There shall be no minimum area required for any planned development; **provided, however, no area zoned A-Agricultural District, ER-Estate Residential District, SR-Suburban Residential District, MF-Multiple Family District, MH-Mobile Home District, B-Business District, GD-Greater Downtown District, C-Commercial District, LI-Light Industrial District, PF-Public Facilities, or any modified version of those zoning districts, shall be rezoned to PD-Planned Development unless:**

a. such area is a minimum of ten (10) acres, or

b. if such area that is to be developed as a single development is comprised of multiple lots with more than one zoning district, such lots cumulatively are a minimum of four (4) acres.

Section 2. **Safety Clause.** The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this

Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: June 3, 2019

Submitted By: Kristin Schledorn, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.264.1 - Second Reading**
A Bill for an Ordinance Approving the First Amendment to Intergovernmental Agreement Between the Town of Parker, Colorado, and Anthology West Metropolitan District Nos. 5 and 6

Department: Town Attorney, Kristin Schledorn

EXECUTIVE SUMMARY

The Town, Anthology West Metropolitan District Nos. 5 and 6 (the "Districts"), Cherry Creek South Metropolitan District Nos. 2 and 3 (now known as Anthology West Metropolitan District Nos. 2 and 3), and Anthology West Metropolitan District No. 4 entered into an Intergovernmental Agreement dated July 12, 2016 (the "IGA"). This ordinance approves the First Amendment to Intergovernmental Agreement between the Town and Anthology West Metropolitan District Nos. 5 and 6.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

On May 20, 2019, the Town Council approved a First Amendment to the Consolidated Service Plan for Anthology West Metropolitan District Nos. 5 and 6, which increased the debt limitation in the Service Plan. Therefore, it is also necessary to amend the IGA as it relates to the debt limitation for the Districts.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



ATTACHMENTS

1. Ordinance No. 9.264.1

RECOMMENDED MOTION

I move to approve Ordinance No.9.264.1 on second reading.

ORDINANCE NO. 9.264.1, Series of 2019

TITLE: A BILL FOR AN ORDINANCE APPROVING THE FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO AND ANTHOLOGY WEST METROPOLITAN DISTRICT NOS. 5 AND 6

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the First Amendment to Intergovernmental Agreement by and between the Town of Parker and Anthology West Metropolitan District Nos. 5 and 6, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

First Amendment to Intergovernmental Agreement

TOWN OF PARKER
FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF PARKER, COLORADO AND
ANTHOLOGY WEST METROPOLITAN DISTRICT NOS. 5 AND 6

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (the “Amendment”) is made and entered into as of this ____ day of _____, 2019, by and between the TOWN OF PARKER, a home rule municipal corporation of the State of Colorado (the “Town”), and ANTHOLOGY WEST METROPOLITAN DISTRICT NOS. 5 and 6, each a quasi-municipal corporation and political subdivision of the State of Colorado (each a “District” and collectively the “Districts”). The Town and the Districts are collectively referred to as the Parties.

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, the Districts were organized to provide those services and to exercise powers as are more specifically set forth in the Amended and Restated Service Plan for Cherry Creek South Metropolitan District No. 2 and Cherry Creek South Metropolitan District No. 3 and Consolidated Service Plan for Cherry Creek South Metropolitan District No. 2, Cherry Creek South Metropolitan District No. 3, Anthology West Metropolitan District No. 4, Anthology West Metropolitan District No. 5 and Anthology West Metropolitan District No. 6, approved by the Town on April 4, 2016 (the “Service Plan”); and

WHEREAS, pursuant to the Service Plan, the Town, the Districts, Cherry Creek South Metropolitan District No. 2 (now known as Anthology West Metropolitan District No. 2), Cherry Creek South Metropolitan District No. 3 (now known as Anthology West Metropolitan District No. 3) and Anthology West Metropolitan District No. 4 entered into that certain Intergovernmental Agreement between the Town of Parker, Colorado and Cherry Creek South Metropolitan District Nos. 2 and 3 and Anthology West Metropolitan District Nos. 4-6, dated July 12, 2016 (the “IGA”); and

WHEREAS, on May 20, 2019, the Town Council of the Town of Parker approved the First Amendment to the Consolidated Service Plan for Anthology West Metropolitan District Nos. 5-6 (the “Service Plan Amendment”), which increases the debt limitation contained in the Service Plan as the same relates to the Districts; and

WHEREAS, as a result of the Service Plan Amendment, it is necessary to amend the IGA as the same relates to the debt limitation for the Districts.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Repeal and Restatement. Section 10 of the IGA is hereby amended but only as to the Districts. Nothing contained herein shall be interpreted or otherwise amend Section 10 of the IGA as the same relates to Anthology West Metropolitan District Nos. 2-4.

10. Total Debt Issuance. In addition to the aggregate debt authorization set forth in the Service Plan as the same relates to Anthology West Metropolitan District Nos. 2-6, District Nos. 5 and 6 are hereby authorized to issue additional debt not in excess of \$7,500,000 in a total aggregate principal amount, which limit is a combined, total aggregate amount for both Districts, specifically exclusive of any intergovernmental agreements by, among or between the Districts which create a multi-fiscal year obligation on the part of any of the Districts.

2. Prior Provisions Effective. Except as specifically amended hereby, all terms and provisions of the IGA shall remain in full force and effect.

3. Counterpart Execution. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank. Signatures on following page.]

IN WITNESS WHEREOF, this Agreement is executed by the Town and the Districts as of the date first above written.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

[Signature page 1 of 2 to First Amendment to Intergovernmental Agreement]

ANTHOLOGY WEST METROPOLITAN NO. 5, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
President

ATTEST:

Secretary

ANTHOLOGY WEST METROPOLITAN NO. 6, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
President

ATTEST:

Secretary

[Signature page 2 of 2 to First Amendment to Intergovernmental Agreement]



Request for Town Council Action

Date: June 3, 2019

Submitted By: Jacob James, Stormwater Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.290 - Second Reading**
A Bill for an Ordinance Approving the Agreement Regarding Final Design and Construction of Fee-In-Lieu Drainage and Flood Control Improvements for Lemon Gulch Upstream of Crowfoot Valley Road (Agreement No. 18-12.24, Project No. 107087) By and Between Urban Drainage and Flood Control District and the Town of Parker

Department: **Engineering/Public Works, Jacob James**

EXECUTIVE SUMMARY

This intergovernmental agreement between the Town and Urban Drainage is to fund the design of major drainage improvements to Lemon Gulch and Lemon Gulch Tributary within the Hess Ranch property. The property owner of the Hess Ranch property has provided the funds for this engineering effort to satisfy the development obligation to design the improvements. The property owner will provide funds for construction of the improvements at a later date as determined by the partial waiver resolution signed by the Town and consented to by the property owner.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Hess Ranch property owner is required to design and construct regional major drainage improvements on Lemon Gulch and Lemon Gulch Tributary in accordance with Town Code and criteria as a part of the development. The Town and Urban Drainage have determined that it is in the best interest of both entities to have the property owner provide funds in lieu of designing and constructing the improvements with the development. The property owner has provided the design funds for engineering to the Town and this intergovernmental agreement will transfer the funds to Urban Drainage, which is the entity that will lead the design effort.

FINANCIAL IMPACT

No financial impacts as these funds were provided by the property owner.

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Ordinance No. 9.290

RECOMMENDED MOTION

I move to approve Ordinance No. 9.290 on second reading.

ORDINANCE NO. 9.290, Series of 2019

TITLE: A BILL FOR AN ORDINANCE APPROVING THE AGREEMENT REGARDING FINAL DESIGN AND CONSTRUCTION OF FEE-IN-LIEU DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR LEMON GULCH UPSTREAM OF CROWFOOT VALLEY ROAD (AGREEMENT NO. 18-12.24, PROJECT NO. 107087) BY AND BETWEEN URBAN DRAINAGE AND FLOOD CONTROL DISTRICT AND THE TOWN OF PARKER

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. The Town Council of the Town of Parker hereby approves the Agreement Regarding Final Design and Construction of Drainage and Flood Control Improvements for Lemon Gulch Upstream of Crowfoot Valley Road (Agreement No. 18-12.24, Project No. 107087) by and between Urban Drainage and Flood Control District and the Town of Parker, which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and authorizes the Mayor of the Town to enter into the Agreement on behalf of the Town.

Section 2. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 3. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 4. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AGREEMENT REGARDING FINAL DESIGN AND CONSTRUCTION OF FEE-IN-LIEU DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR LEMON GULCH UPSTREAM OF CROWFOOT VALLEY ROAD TOWN OF PARKER

Agreement No. 18-12.24
Project No. 107087

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT (hereinafter called "DISTRICT") and TOWN OF PARKER (hereinafter called "TOWN") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES participated in a joint planning study titled "Scott and Lemon Gulch Watersheds Outfall Systems Planning – Preliminary Design Report" by CH2M Hill, dated July 2006, (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with the design and construction of drainage and flood control improvements for Lemon Gulch upstream of Crowfoot Valley Road (hereinafter called "PROJECT"); and

WHEREAS, TOWN now desires to utilize developer funding to design and construct PLAN improvements; and

WHEREAS, DISTRICT, on behalf of TOWN, shall manage the design and construction of PROJECT for an administrative fee to cover the additional project management costs for PROJECT; and

WHEREAS, the Town Council of TOWN by appropriation or resolution, all of PROJECT costs of the respective PARTIES.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. **SCOPE OF THIS AGREEMENT**

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. **SCOPE OF PROJECT**

- A. **Final Design.** PROJECT shall include the final design of improvements in accordance with the engineer's scope, fee, and schedule as shown on Exhibit B1.
- B. **Construction.** PROJECT shall include construction, establishment of vegetation, and permit monitoring by DISTRICT of the drainage and flood control improvements as set forth in the design and through final acceptance of permitting and vegetation establishment obligations. Establishment and permit monitoring includes stream management and revegetation for establishment and weed management to comply with all federal, state, and local stormwater

management permits and mitigation requirements under Section 404 of the Federal Clean Water Act and project goals.

DISTRICT shall monitor the stream and determine how it is performing relative to hydrologic, hydraulic, and geomorphic parameters during the establishment period. If the stream is departing from stable ranges of hydrologic, hydraulic, and geomorphic parameters that result in PROJECT not achieving goals. DISTRICT shall implement stream management improvements, provided project funding is available. PROJECT shall be considered complete when there are no longer project funds available or when the stream remains within stable ranges during the establishment period.

3. PUBLIC NECESSITY

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following Project Costs:

1. Final design services
2. Delineation, description and acquisition of required rights-of-way/easements
3. Construction of improvements
4. Contingencies mutually agreeable to PARTIES
5. Administrative Fee

B. It is understood that PROJECT costs as defined above are not to exceed \$383,939 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>PROJECT ITEM</u>	<u>AMOUNT</u>
1. Final design	\$ 365,379.00
2. Right of way;	\$ -0-
3. Construction	\$ -0-
4. Contingencies	\$ -0-
Sub Total	\$ 365,379.00
<u>ADMINISTRATIVE ITEM</u>	
5. Final Design Administrative Fee	\$ 18,560.00
6. Construction Administrative Fee	\$ -0-
Sub Total	\$
Grand Total	\$ 383,939.00

This breakdown of conceptual design, final design, construction, and contingency costs is for estimating purposes only. Costs may vary between the various elements of the effort

without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

5. MANAGEMENT OF FINANCES

- A. Project Costs. As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval.

Project Payment by TOWN of \$408,935 shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The project payment shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to TOWN of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

Within one year of completion of PROJECT if there are monies including interest earned remaining which are not committed, obligated, or disbursed, each party shall receive a share of such monies, which shares shall be computed as were the original shares; or, at TOWN request, TOWN share of remaining monies shall be transferred to another special fund held by DISTRICT.

- B. Administrative Costs. As set forth in DISTRICT policy (Resolution No. 38, Series of 2017), DISTRICT shall collect administrative fees for Fee-In-Lieu projects to offset DISTRICT staff time required to manage the Final Design and Construction of PROJECT. The administrative fee is nonrefundable and to be held in the Development Service Enterprise Fund.

1. Final Design. The administrative fee is based on a standard one-time charge for final design start-up and close-out cost, plus a monthly final design management cost. The monthly final design management cost will be the rate below per months the PROJECT is in design.

Final Design Start-up Cost	\$2,400
Monthly Final Design Management	\$1,645 per month
Final Design Close-out Cost	\$3,000

2. Construction. The administrative fee is based percentage of the estimated construction costs. The percentage charged is as shown in the following table.

Estimated Construction Cost Range	Percentage Charged
Under \$500,000	8%
\$500,000 - \$1,000,000	6%
\$1,000,000 - \$1,500,000	4%
\$1,500,000 - \$2,000,000	3%
\$2,000,000 - \$3,500,000	2.0%
\$3,500,000 - \$5,000,000	1.5%
\$5,000,000 - \$10,000,000	1.0%
\$10,000,000 - \$15,500,000	0.7%
\$15,500,000 - \$20,000,000	0.6%

6. FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for TOWN. Payment for final design services shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.
- E. If the engineer that prepared the field-ready construction documents is selected to perform construction observation, and the contractor to construct the improvements is selected using DISTRICT's Best Value Selection process, the engineer shall seal the construction documents, otherwise the construction documents shall be provided to the developer and TOWN unsealed.

DISTRICT shall provide any written work product by the engineer to TOWN.

7. RIGHT OF WAY OR NON-REVOCABLE EASEMENT

Right of Way or a non-revocable easement shall be acquired through a subdivision plat at no cost to TOWN and DISTRICT, subject to approval of DISTRICT, for land or interests in land needed to implement construction of the drainage and flood control improvements, as defined herein. The right-of-way or non-revocable easement acquired shall be in the name of TOWN and the conveyancing document shall be promptly recorded in the records of the Clerk and Recorder of TOWN.

- A. Coordination of Right-of-Way or Non-revocable Easement Acquisition. TOWN shall acquire the right-of-way or non-revocable easement only after receiving prior approval of DISTRICT.
 - B. Ownership of Property and Limitation of Use. TOWN shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, TOWN disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at TOWN's sole expense.
8. MANAGEMENT OF CONSTRUCTION
- A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
 - B. Construction Management and Payment
 - 1. DISTRICT, with the concurrence of TOWN, shall administer and coordinate the construction-related work as provided herein.
 - 2. DISTRICT, with concurrence of TOWN, shall select and award construction contract(s).
 - 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes TOWN. The contractor shall be required to indemnify TOWN. Copies of the insurance coverage shall be provided to TOWN.
 - 4. DISTRICT, with assistance of TOWN, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of TOWN, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to TOWN on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.

5. DISTRICT, with concurrence of TOWN, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 7. DISTRICT shall review and approve contractor billings... DISTRICT shall remit payment to contractor based on billings.
 8. DISTRICT, with concurrence of TOWN, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide TOWN a set of reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in the PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.

9. MAINTENANCE

PARTIES agree that TOWN shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at TOWN's request, shall assist TOWN with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to TOWN, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

10. FLOODPLAIN REGULATION

TOWN agrees to regulate and control the floodplain of Lemon Gulch within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that TOWN cannot obligate itself by contract to exercise its police powers. If TOWN fails to regulate the floodplain of Lemon Gulch within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and TOWN shall cooperate fully.

11. TERM OF AGREEMENT

Despite the date that this Agreement is signed by PARTIES, the term of this Agreement shall commence upon the earlier of the date of final execution by all PARTIES or December 31 of the year that it is tendered to TOWN for execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7.B. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be the Public Works and Engineering Director, 20120 Mainstreet, Parker, Colorado 80138.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or TOWN. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with TOWN the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from TOWN needed to complete PROJECT in a timely manner. TOWN agrees to review all concept plans, preliminary

design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to TOWN.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained 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.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the TOWN where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at TOWN's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of TOWN and/or DISTRICT.

25. 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 PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services:

- A. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- B. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- C. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- D. CONTRACTOR shall not enter into a contract with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- E. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
- F. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal

requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

- G. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- H. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.
- I. CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C. Section 1324a, and not altered or falsified the identification documents for such employees. CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

27. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of the TOWN, the DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
- B. The image of the signature of an authorized signer inserted onto PDF format documents.

Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

By_____

Name Ken A. MacKenzie

Title Executive Director

Date_____

Checked By

TOWN OF PARKER

By_____

Mike Waid

Title Mayor

Date_____

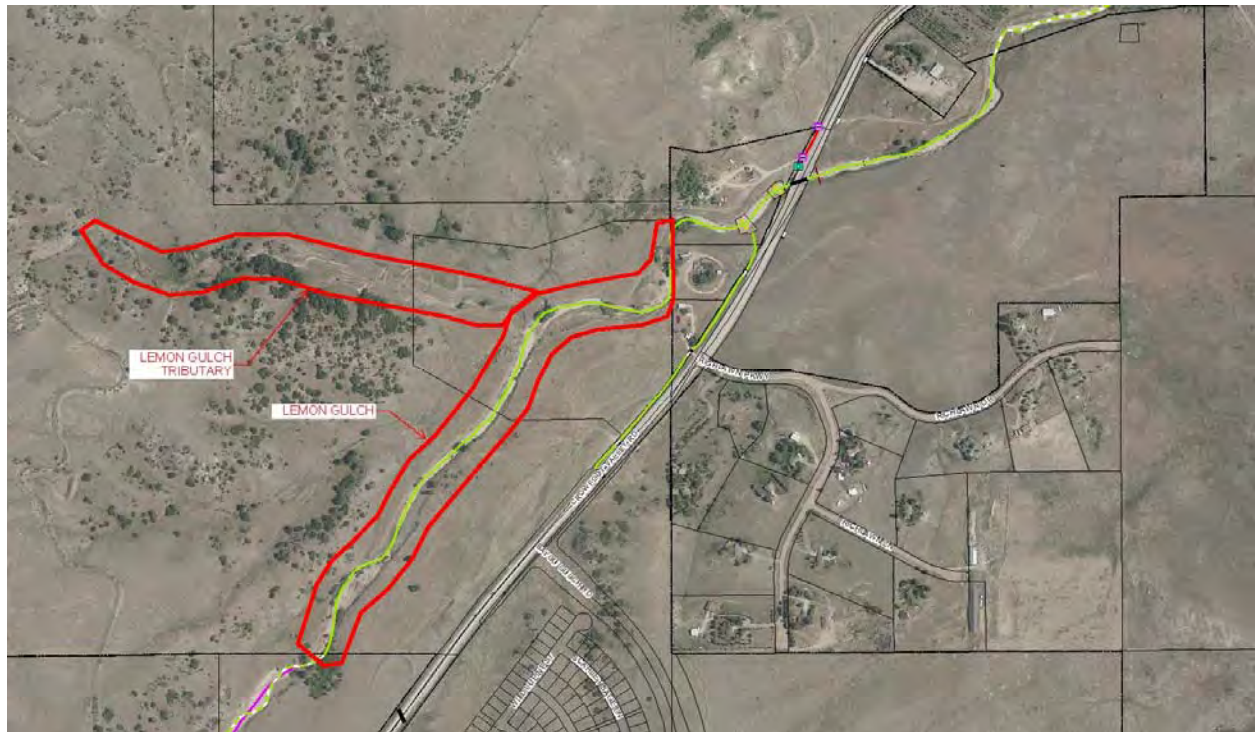
(SEAL)

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



MULLER ENGINEERING COMPANY
PROJECT FEE ESTIMATE

CLIENT:

Urban Drainage and Flood Control District - Town of Parker

PROJECT:

Hess Ranch (Looking Glass) Fee-in-lieu Scope for Lemon Gulch

PROPOSAL NO.: 918.25

PROJECT NO.: 18028.XX

PREPARED BY: JTW/SRJ

DATE: 2/8/2019

CHECKED BY: JPJ

PROPOSED TOTAL FEE: \$ 255,279

TASK	SHEET	TASK DESCRIPTION						EXPENSES			TOTALS			
			PRINCIPAL ENGINEER 2	SR PROJECT ENGINEER 6 / PROJECT MANAGER 6	PROJECT ENGINEER 4	DESIGN ENGINEER 2	CAD TECHNICIAN 3	OUTSIDE SERVICES	TRAVEL / LIVING	MISCELLANEOUS	TIME (HOURS)	LABOR COST	EXPENSES	SUBTOTAL
		Billing Rate >>>	\$183	\$153	\$128	\$98	\$96							
III		Final design of Lemon Gulch												
A		Hydraulic design and analysis												
1		Lemon Gulch initial grading (outside ordinary high water mark) and ultimate, including 1D and 2D hydraulic modeling, sediment transport modeling	24	32	32	48					136	\$ 18,088		\$ 18,088
2		Geomorphic assessment and recommendations, including review of sediment modeling, stream design concepts, and construction drawings and specifications (ERC)	4	8	4	8		\$ 10,000			24	\$ 3,252	\$ 10,000	\$ 13,252
3		Restoration ecology, including seeding and planting plans (redlined plans by ERC, drafting by Muller), seeding and planting specifications, weed management recommendations, and review of associated construction drawings after drafting by Muller (ERC)	2	4	4	16	4	\$ 15,000			30	\$ 3,442	\$ 15,000	\$ 18,442
4		Topsoil assessment and recommendations (ESCO)	4	6		10		\$ 2,400			20	\$ 2,630	\$ 2,400	\$ 5,030
5		Field visits (2 assumed)	12	12	12	12					48	\$ 6,744		\$ 6,744
B		Hess Ranch Road Bridge Hydraulics												
1		Perform scour calculations to inform abutment design.	2	4		8					14	\$ 1,762		\$ 1,762
2		Perform final rock sizing for abutment protection.	2	4		8					14	\$ 1,762		\$ 1,762
3		Finalize bridge hydraulics and layout (roadway and bridge layout in plan, profile, and sections drawn by others).	1	4		8	4				17	\$ 1,963		\$ 1,963
4		Finalize hydraulic design report text for bridge and furnish to EMK.	1	4		4					9	\$ 1,187		\$ 1,187
C		Construction drawings												
1	1	Title sheet, list of sheets		1		2	2				5	\$ 541		\$ 541
2	2	Legend, notes	1	1		2	2				6	\$ 724		\$ 724
3	3	Index sheet		1		2	2				5	\$ 541		\$ 541
4	4-6	Interim Grading Plan (3 sheets)	8	8		32	24				72	\$ 8,128		\$ 8,128
5	7-9	Open space grading and layout plans 1"=100'@11x17 (3 sheets)	8	8	16	28	36				96	\$ 10,936		\$ 10,936
6	10-11	Stream channel profiles 1"=100'@11x17 (2 sheets)	4	6	12	12	12				46	\$ 5,514		\$ 5,514
7	12-14	Stream channel sections (3 sheets)	4	6	12	12	16				50	\$ 5,898		\$ 5,898
8	15-16	Drop structure 1 plan, sections, details (2 sheets)	4	6	8	12	16				46	\$ 5,386		\$ 5,386
9	17-18	Drop structure 2 plan, sections, details (2 sheets)	4	6	8	12	16				46	\$ 5,386		\$ 5,386
10	19-20	Drop structure 3 plan, sections, details (2 sheets)	4	6	8	12	16				46	\$ 5,386		\$ 5,386
11	21-22	Bank protection details (2 sheets)	2	4		6	4				16	\$ 1,950		\$ 1,950
12	23-24	Misc. details (2 sheets)	2	4		8	16				30	\$ 3,298		\$ 3,298
13	25-27	Erosion control plan 1"=100'@11x17 (Initial and interim phases shown on one sheet, final phase in seeding and planting plans) (3 sheets)	2	6	8	12	16				44	\$ 5,020		\$ 5,020
14	28-36	Erosion control details (Town standard details, 9 sheets)	1	2	2	2	4				11	\$ 1,325		\$ 1,325
15	37-42	Open space planting and seeding plans (3 sheets)	2	8	8	16	16				50	\$ 5,718		\$ 5,718
16	43-46	Open space planting and seeding details (4 sheets)	2	4	4	8	8				26	\$ 3,042		\$ 3,042

TASK	SHEET	TASK DESCRIPTION						EXPENSES			TOTALS				
			PRINCIPAL ENGINEER 2	SR PROJECT ENGINEER 6 / PROJECT MANAGER 6	PROJECT ENGINEER 4	DESIGN ENGINEER 2	CAD TECHNICIAN 3	OUTSIDE SERVICES	TRAVEL / LIVING	MISCELLANEOUS	TIME (HOURS)	LABOR COST	EXPENSES	SUBTOTAL	
Billing Rate >>>			\$183	\$153	\$128	\$98	\$96								
D		Specs, quantities, cost opinion, memo													
1		Prepare SWMP	2	4	6	16					28	\$ 3,314		\$ 3,314	
2		Prepare specifications (assume UDFCD standard specs)	4	6	24	32					66	\$ 7,858		\$ 7,858	
3		Estimate bid quantities and prepare opinion of probable cost	4	6	16	24					50	\$ 6,050		\$ 6,050	
4		Prepare design memo	4	8	12	24					48	\$ 5,844		\$ 5,844	
E		Review and revisions													
1		Senior review	16								16	\$ 2,928		\$ 2,928	
2		Revisions to address senior review comments	8	8	8	12	12				48	\$ 6,040		\$ 6,040	
3		60% submittal to team, Town, UDFCD to review		2	4	4	4				14	\$ 1,594		\$ 1,594	
4		Response to 60% review comments (revisions incorporated into 90% design)	2	4	8	8	8				30	\$ 3,554		\$ 3,554	
5		90% submittal to team, Town, UDFCD to review		2	2	4	4				12	\$ 1,338		\$ 1,338	
6		Revisions to address 90% review comments	8	8	8	12	24				60	\$ 7,192		\$ 7,192	
7		100% submittal to team, Town, UDFCD to review		2		4	4				10	\$ 1,082		\$ 1,082	
8		Revisions to address 100% review comments	2	4	8	12	16				42	\$ 4,714		\$ 4,714	
F		CLOMR													
1		Preparation of CLOMR submittal documents, including work map, forms, and narrative	8	32	24	72	16				152	\$ 18,024		\$ 18,024	
2		CLOMR review fee (FEMA online submittal)								\$ 6,500			\$ 6,500	\$ 6,500	
3		Revisions to address review comments (Only FEMA review included with this scope)	4	12	20	40	8				84	\$ 9,816		\$ 9,816	
G		Environmental Permitting													
1		USACE 404 Permit (Individual) - utilize OHWM, wetland delineation, cultural survey by Apex Environmental (CORVUS)	4	8		20	12	\$ 15,000			44	\$ 5,068	\$ 15,000	\$ 20,068	
H		Meetings													
1		Meetings included within this scope are for project updates and coordination and will occur monthly at a minimum (half in-person, half call-in) until December 2019 (10 meetings). Five additional meetings are included and are anticipated to occur in between the regularly scheduled monthly meetings.	30	30	10	10					80	\$ 12,340		\$ 12,340	
		TOTAL HOURS	196	291	288	594	322				1691				
		TOTAL LABOR	\$ 35,868	\$ 44,523	\$ 36,864	\$ 58,212	\$ 30,912				\$ 206,379				
		TOTAL EXPENSES						\$ 42,400	\$ -	\$ 6,500	\$ 48,900				
		TOTAL FEE									\$ 255,279				

MULLER ENGINEERING COMPANY
PROJECT FEE ESTIMATE

CLIENT:
Urban Drainage and Flood Control District - Town of Parker
PROJECT:
Hess Ranch (Looking Glass) Fee-in-lieu Scope Lemon Tributary

PROPOSAL NO.: 918.25 PROJECT NO.: 18028.XX
PREPARED BY: JTW/SRJ DATE: 2/8/2019
CHECKED BY: JPJ PROPOSED TOTAL FEE: \$ 135,096

TASK	SHEET	TASK DESCRIPTION						EXPENSES			TOTALS			
			PRINCIPAL ENGINEER 1	PROJECT MANAGER 6	PROJECT ENGINEER 4	DESIGN ENGINEER 2	CAD TECHNICIAN 3	OUTSIDE SERVICES	TRAVEL / LIVING	MISCELLANEOUS	TIME (HOURS)	LABOR COST	EXPENSES	SUBTOTAL
			Billing Rate >>>	\$183	\$153	\$128	\$98	\$96						
II		Final design of Lemon Tributary												
A		Hydraulic modeling												
1		Lemon Trib initial and ultimate, including 2D hydraulic modeling.	8	16	24	40					88	\$ 10,904		\$ 10,904
2		Geomorphic assessment and recommendations, including review of stream design concepts and construction drawings and specifications (ERC).	4	8		8		\$ 6,000			20	\$ 2,740	\$ 6,000	\$ 8,740
3		Restoration ecology, including seeding and planting plans (redlined plans by ERC, drafting by Muller), seeding and planting specifications, weed management recommendations, and review of associated construction drawings after drafting by Muller (ERC)	4	8		8	4	\$ 6,000			24	\$ 3,124	\$ 6,000	\$ 9,124
4		Field visits (1 assumed)	6	6	6	6					24	\$ 3,372		\$ 3,372
B		Hess Ranch Road Bridge Hydraulics												
1		Perform scour calculations to inform abutment design.	1	2		4					7	\$ 881		\$ 881
2		Perform final rock sizing for abutment protection.	1	2		4					7	\$ 881		\$ 881
3		Finalize bridge hydraulics and layout (roadway and bridge layout in plan, profile, and sections drawn by others).	1	2		4	4				11	\$ 1,265		\$ 1,265
4		Finalize hydraulic design report text for bridge and furnish to EMK.	1	2		4					7	\$ 881		\$ 881
C		Construction drawings												
1	1	Title sheet, list of sheets (in Lemon Gulch plans)												
2	2	Legend, notes (in Lemon Gulch plans)												
3	3	Index sheet (in Lemon Gulch plans)												
4	4-5	Interim grading and layout plans 1"=100'@11x17 (2 sheets)	8	12	8	16	12				56	\$ 7,044		\$ 7,044
5	6-7	Final grading and layout plans 1"=100'@11x17 (2 sheets)	10	16	12	24	16				78	\$ 9,702		\$ 9,702
6	8-9	Stream channel profiles (interim and final) 1"=100'@11x17 (2 sheets)	4	8	8	16	12				48	\$ 5,700		\$ 5,700
7	10-11	Stream channel sections (interim and final)(2 sheet)	4	8	8	16	18				54	\$ 6,276		\$ 6,276
8	12-13	Riffle drop plan, sections, details (2 sheets)	6	12		12	16				46	\$ 5,646		\$ 5,646
9	14	Bank protection details	2	6		10	8				26	\$ 3,032		\$ 3,032
10	15	Misc. details	2	4		8	8				22	\$ 2,530		\$ 2,530
11	16-17	Planting and seeding plans, including topsoil information (2 sheets)	4	8		12	12				36	\$ 4,284		\$ 4,284
12	18-19	Open space planting and seeding details (2 sheets)	4	6		12	16				38	\$ 4,362		\$ 4,362
13	20-21	Erosion control plan 1"=100'@11x17 (Initial and interim phases shown on one sheet, final phase in seeding and planting plans) (2 sheets)	2	6	8	12	16				44	\$ 5,020		\$ 5,020
14	22-30	Erosion control details (Town standard details) (included with Lemon Gulch design)												
D		Technical specs, quantities, cost opinion, memo												
1		Prepare supplemental technical specifications (assume UDFCD standard front end and tech specs)(covered in Lemon Gulch)												
2		Estimate bid quantities and prepare opinion of probable cost	4	8	8	12	6				38	\$ 4,732		\$ 4,732
3		Prepare design memo	6	10		16	4				36	\$ 4,580		\$ 4,580

TASK	SHEET	TASK DESCRIPTION						EXPENSES			TOTALS				
			PRINCIPAL ENGINEER 1	PROJECT MANAGER 6	PROJECT ENGINEER 4	DESIGN ENGINEER 2	CAD TECHNICIAN 3	OUTSIDE SERVICES	TRAVEL / LIVING	MISCELLANEOUS	TIME (HOURS)	LABOR COST	EXPENSES	SUBTOTAL	
															Billing Rate >>>
			\$183	\$153	\$128	\$98	\$96								
E		Review and revisions													
1		Senior review	12									12	\$ 2,196		\$ 2,196
2		Revisions to address senior review comments.	6	8	10	10	16					50	\$ 6,118		\$ 6,118
3		60% submittal to team, Town, UDFCD to review		2	4	4	4					14	\$ 1,594		\$ 1,594
4		Response to 60% review comments (revisions incorporated into 90% design)	2	4	4	4						14	\$ 1,882		\$ 1,882
5		90% submittal to team, Town, UDFCD to review		2	4	4	4					14	\$ 1,594		\$ 1,594
6		Revisions to address 90% review comments	6	8	8	10	16					48	\$ 5,862		\$ 5,862
7		100% submittal to team, Town, UDFCD to review		2	4	4	4					14	\$ 1,594		\$ 1,594
8		Revisions to address 100% review comments	4	4	8	8	12					36	\$ 4,304		\$ 4,304
F		Meetings													
1		Meetings included within this scope are for project updates and coordination and will occur monthly at a minimum (half in-person, half call-in) until December 2019 (10 meetings). Three additional meetings are included and are anticipated to occur in between the regularly scheduled monthly meetings.	26	26	10	10						72	\$ 10,996		\$ 10,996
		TOTAL HOURS	321	359	262	396	304				#VALUE!				
		TOTAL LABOR	\$ 58,743	\$ 54,927	\$ 33,536	\$ 38,808	\$ 29,184				#VALUE!				
		TOTAL EXPENSES						\$ 12,000	\$ -	\$ -	\$ 12,000				
		TOTAL FEE									\$ 135,096				

Additional assumptions:

1. Scope pertains to final design and preparation of construction drawings for Lemon Tributary from Hess Ranch Road to the confluence with Lemon Gulch. Supplementary technical specifications and erosion control details are assumed to be included with the Lemon Gulch construction package.
2. Design drawings will be prepared for the ultimate improvements in Lemon Tributary plus interim grading necessary to receive detention basin releases.
3. Scope includes coordination time with Town of Parker, UDFCD, developer, and others on design team.
4. Scope does not include roadways or roadway drainage, inlets, storm sewers, lot grading, utilities, mass grading of site, erosion control for the mass grading, trails, park improvements, geotechnical investigation/recommendations, survey, subsurface utilities investigation, or public meetings; these tasks are to be undertaken by EMK and others on design team.
5. Scope does not include services during bidding and construction phase; Muller’s stormwater-related services during bidding and construction will be scoped later in the development process as determined by the Town of Parker.

MULLER ENGINEERING COMPANY
PROJECT FEE ESTIMATE

CLIENT:

Town of Parker

PROJECT:

Hess Ranch (Looking Glass) Hydraulic Modelling and Drainage Design Assistance

PROPOSAL NO.: 918.25

PREPARED BY: SRJ

CHECKED BY: JTW

PROJECT NO.: 19016.01

DATE: 3/18/2019

PROPOSED TOTAL FEE: \$ 24,996

TASK	SHEET	TASK DESCRIPTION						EXPENSES				TOTALS			
			PRINCIPAL ENGINEER 1	PROJECT MANAGER 6	PROJECT ENGINEER 4	DESIGN ENGINEER 2	CAD TECHNICIAN 3	OUTSIDE SERVICES	TRAVEL / LIVING	MISCELLANEOUS	VENDOR (MISC.)	TIME (HOURS)	LABOR COST	EXPENSES	SUBTOTAL
		Billing Rate >>>	\$183	\$153	\$128	\$98	\$96								
		Looking Glass Drainage Design Assistance													
A		Hydraulic modeling													
1		Lemon Gulch initial grading (outside ordinary high water mark) and ultimate, including 1D and 2D hydraulic modeling, sediment transport modeling. [Approximately 1/2 of the FILI scope]	12	16	16	25						68.9	\$ 9,132		\$ 9,132
2		Lemon Trib initial and ultimate, including 2D hydraulic modeling. [Approximately 1/2 of the FILI scope]	2	8	12	22						44	\$ 5,282		\$ 5,282
B		Chambers Road Bridge Hydraulics													
1		Perform scour calculations to inform abutment design.	2	4		8						14	\$ 1,762		\$ 1,762
2		Perform final rock sizing for abutment protection.	2	4		8						14	\$ 1,762		\$ 1,762
3		Finalize bridge hydraulics and layout (roadway and bridge layout in plan, profile, and sections drawn by others).	1	4		8	4					17	\$ 1,963		\$ 1,963
4		Finalize hydraulic design report text for bridge and furnish to EMK.	1	4		4						9	\$ 1,187		\$ 1,187
C		Hess Ranch Road Bridge Hydraulics													
1		Perform scour calculations to inform abutment design.	1	2		4						7	\$ 881		\$ 881
2		Perform final rock sizing for abutment protection.	1	2		4						7	\$ 881		\$ 881
3		Finalize bridge hydraulics and layout (roadway and bridge layout in plan, profile, and sections drawn by others).	1	2		4	4					11	\$ 1,265		\$ 1,265
4		Finalize hydraulic design report text for bridge and furnish to EMK.	1	2		4						7	\$ 881		\$ 881
		TOTAL HOURS	24	48	28	91	8					199			
		TOTAL LABOR	\$ 4,392	\$ 7,344	\$ 3,584	\$ 8,908	\$ 768						\$ 24,996		
		TOTAL EXPENSES						\$ -	\$ -	\$ -	\$ -			\$ -	
		TOTAL FEE													\$ 24,996

Deduct this amount as already paid.



Request for Town Council Action

Date: June 3, 2019

Submitted By: Jim Maloney, Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 5.28.25 - Second Reading**
A Bill for an Ordinance to Amend Chapter 5.02 of the Parker Municipal Code Concerning 3.2 Beer and Changing the Reference from Town Council to Special Licensing Authority in the Parker Municipal Code Where Appropriate

Department: Town Attorney, Jim Maloney

EXECUTIVE SUMMARY

In 2018, the Colorado General Assembly passed SB18-243, which made numerous substantive changes to the Colorado Beer Code, one of which was to remove “3.2% Beer” from the Colorado Beer Code, effective January 1, 2019. The purpose of this ordinance is to amend the Town’s “3.2% Beer” regulations to conform with SB18-243, and to address some "cleanup" items changing the reference from Town Council to Special Licensing Authority where appropriate.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

On June 4, 2018, Governor Hickenlooper signed SB18-243, which relates to the retail sale of alcohol. This Senate Bill modified the law governing the retail sale of fermented malt beverages as of January 1, 2019. After January 1, 2019, the Colorado Beer Code no longer includes “3.2% Beer” in the definition of “fermented malt beverage.” Rather, “fermented malt beverage” is now defined to mean “beer and any other beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent alcohol by volume.” As a result of this change, retailers, such as grocery stores and convenience stores, which were previously limited to the sale of “3.2% Beer,” can now sell full-strength beer. In addition, the ordinance clarifies certain functions of the Special Licensing Authority that were delegated to it by the Town Council when the Town Council created the Special Licensing Authority to assume liquor licensing

responsibilities within the Town.

On April 18, 2018, the Special Licensing Authority passed a motion recommending that the Town Council approve Ordinance No. 5.28.25.

FINANCIAL IMPACT

None.

STRATEGIC GOAL(S)

ATTACHMENTS

1. Ordinance No. 5.28.25

RECOMMENDED MOTION

I move to approve Ordinance No. 5.28.25 on second reading.

ORDINANCE NO. 5.28.25, Series of 2019

TITLE: A BILL FOR AN ORDINANCE TO AMEND CHAPTER 5.02 OF THE PARKER MUNICIPAL CODE CONCERNING 3.2 BEER AND CHANGING THE REFERENCE FROM TOWN COUNCIL TO SPECIAL LICENSING AUTHORITY IN THE PARKER MUNICIPAL CODE WHERE APPROPRIATE

NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, ORDAINS:

Section 1. Sections 5.02.160(b) and (c)(1) of the Parker Municipal Code are amended to read as follows:

5.02.160 Persons prohibited as licensees.

* * *

(b) In making a determination as to character or when considering the conviction of a crime, the ~~Local~~ **Special** Licensing Authority shall be governed by the provisions of Section 24-5-101, C.R.S.

(c) Investigation.

(1) In investigating the qualifications of the applicant or a licensee, the ~~Local~~ **Special** Licensing Authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency. In the event the ~~Local~~ **Special** Licensing Authority takes into consideration information concerning the applicant's criminal history record, the ~~Local~~ **Special** Licensing Authority shall also consider any information provided by the applicant regarding such criminal history record, including, but not limited to, evidence of rehabilitation, character references and educational achievements, especially those items pertaining to the period of time between the applicant's last criminal conviction and the consideration of the application for a license.

* * *

Section 2. Section 5.02.170(c) of the Parker Municipal Code is amended to read as follows:

5.02.170 Separate license for each business.

* * *

(c) The Town Clerk shall cause the new application for a license reflecting the change of location to be placed on the agenda of a ~~Council~~ **Special Licensing Authority** meeting to be held not less than four (4) days nor more than thirty (30)

days after the TOWN Clerk has received the application. The applicant, or his or her attorney, shall be in attendance at the Authority meeting at which his or her application is presented. The date of presentation of the application to the Authority shall be deemed the date of filing of the application. Upon receipt of the application, the ~~Town Council~~ **Authority** shall follow procedures set forth in this Chapter for the investigation of the applicant, and the conduct of a public hearing and the notice requirement for such public hearing.

Section 3. Section 5.02.200 of the Parker Municipal Code is amended to read as follows:

5.02.200 Additional licenses; rules and regulations; fees.

The Town Clerk shall establish rules and regulations concerning temporary beer or liquor licenses, special events licenses and renewal of ~~3.2 beer~~ **Fermented Malt Beverage** licenses. The Town Clerk is authorized to establish rules and regulations not inconsistent with other provisions of this Chapter for the filing, processing, investigation and review of applications for these licenses. The application and renewal fees for these licenses shall not be greater than the maximum fee allowed by law.

Section 4. Sections 5.02.210(b), (c) and (e) of the Parker Municipal Code are amended to read as follows:

5.02.210 Renewal.

* * *

(b) Upon receiving the completed renewal application, the Town Clerk shall assemble the file of the applicant and review the file to determine whether "good cause" is present for nonrenewal. Whether "good cause" is present is a fact specific inquiry depending on the circumstances of the case, and may be based on evidence that continuation of the license would be contrary to the public interest, as well as the conduct of the licensee. If the Town Clerk's review indicates no facts or circumstances supporting "good cause" for nonrenewal, the Town Clerk shall issue a renewal license. Provided, however, that in the event that the renewal application is made by a financial institution which came into possession of the license by virtue of a deed in lieu of foreclosure, a hearing must be held before ~~Council~~ **the Special Licensing Authority**.

(c) If there is information before the Town Clerk tending to constitute good cause for not renewing a particular license for an additional year, the Town Clerk, at the direction of the ~~Town Council~~ **Special Licensing Authority**, shall cause to be issued a notice of hearing on the license renewal. In the event the Town Clerk issues a notice requiring a hearing to renew a license, the notice shall be served at least thirty (30) days prior to the expiration date on the license and a notice of the hearing shall be conspicuously posted on the premises at least ten (10) days prior to the hearing.

* * *

(e) In the event that a license is renewed by the ~~licensing authority~~ **Special Licensing Authority**, such renewal will not affect a pending show cause order which relates to an incident that occurred prior to the date of the renewal. The ~~licensing~~ Authority shall be authorized to take whatever action is necessary against a licensee either in the form of suspension or revocation of the liquor license regardless of when such license has been renewed.

Section 5. The title of Division 2 of Article II of Chapter 5.02 of the Parker Municipal Code is amended to read as follows:

Division 2.

3.2-Beer Fermented Malt Beverages.

Section 6. Section 5.02.360 of the Parker Municipal Code is amended to read as follows:

5.02.360 Application required; filing.

(a) An application for a ~~3.2-beer~~ **fermented malt beverage** license shall be required for the following:

- (1) Sales for consumption off the premises of the licensee; and
- (2) Sales for consumption on the premises of the licensee.

~~(3) Sales for consumption both on and off the premises of the licensee.~~

~~A person licensed pursuant to this Subsection may deliver at retail fermented malt beverages in factory sealed containers in conjunction with the delivery of food products if such person has obtained a permit for the delivery of fermented malt beverages from the state licensing authority.~~

(b) All new applications for ~~3.2-beer~~ **fermented malt beverage** licenses shall be filed, in duplicate, on forms made available by the office of the Secretary of the State, with the Town Clerk and shall be accompanied by the following:

* * *

Section 7. Section 5.02.370 of the Parker Municipal Code is amended to read as follows:

5.02.370 Fee.

An application fee in the amount of five hundred dollars (\$500.00) and a license fee of three dollars and seventy-five cents (\$3.75) shall be paid to the Town at the time of making an application for a ~~3.2-beer~~ **fermented malt beverage** license,

and a renewal fee of twenty-five dollars (\$25.00) shall also be imposed by the Town for renewals. This fee shall be used by the Town to defray the expenses incurred by the Town in investigating the applicant and conducting the hearing. In addition, the Town shall impose a fee of seventy-five dollars (\$75.00) for the reporting of a manager if the manager is different from the licensed person and shall also impose a fee of seventy-five dollars (\$75.00) for a change of manager in accordance with Section 5.02.365 of this Chapter. ~~No part of this fee shall be refundable to the applicant for any reason.~~ All fees are nonrefundable.

Section 8. Section 5.02.380 of the Parker Municipal Code is amended to read as follows:

5.02.380 Establishing neighborhood and public hearing dates.

(a) The Town Clerk shall cause the application for a ~~3.2 beer~~ fermented malt beverage license to be placed on the agenda of a ~~Council~~ Special Licensing Authority meeting to be held not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. The date of presentation of the application to the Special Licensing Authority shall be deemed the date of filing of the application.

(b) The ~~Town Council~~ Special Licensing Authority shall designate the neighborhood upon the presentation of the application.

(c) The ~~Town Council~~ Special Licensing Authority shall also set a date for public hearing which date shall be held not less than thirty (30) days from the date of the ~~Council~~ Authority meeting at which the date is set.

Section 9. Sections 5.02.390(a) and (c) of the Parker Municipal Code are amended to read as follows:

5.02.390 Public notice.

(a) The applicant for a ~~3.2 beer~~ fermented malt beverage license shall cause to be posted and published, a public notice of hearing thereon. The sign used for posting such notice shall be of cardboard material, not less than twenty-two (22) inches wide and twenty-six (26) inches high, composed of letters not less than one (1) inch in height and stating the type of license applied for, the date of the application, the date of hearing, the name and address of the applicant, and such other information as may be required to fully apprise the public of the nature of the application. If the applicant is a partnership, the sign shall contain the names and addresses of all partners. If the applicant is a corporation, association or other organization, the sign shall contain the names and addresses of the president, vice-president, secretary and manager or other managing officers.

* * *

(c) Where the building in which the ~~3.2-beer~~ **fermented malt beverage** is to be sold is in existence at the time of the application for the license therefor, the sign shall be placed on the premises so as to be conspicuous and plainly visible to the general public from the exterior of the building. If the building is not in existence at the time of such application, the sign shall be posted upon the premises upon which the building is to be constructed in such manner that it shall be conspicuous and plainly visible to the general public.

Section 10. Section 5.02.400(a) of the Parker Municipal Code is amended to read as follows:

5.02.400 Investigation of applicant.

(a) The Police Department shall make an investigation of the applicant for a ~~3.2-beer~~ **fermented malt beverage** license, and, in the case of a corporation, the board of directors of the applicant, and in the case of a partnership, the partners of the applicant. Such investigation shall include the fingerprinting and photographing of the applicant and the obtaining from the Colorado Bureau of Investigation a report on the applicant. A written report of the finding of such investigation shall be delivered by the Chief of Police to the Town Clerk at least ten (10) days prior to the hearing on the application.

* * *

Section 11. Section 5.02.410 of the Parker Municipal Code is amended to read as follows:

5.02.410 Procedure at hearing.

The rules of procedure to be followed in the conducting of the public hearing upon an application for a ~~3.2-beer~~ **fermented malt beverage** license shall be established by the ~~Mayor~~ **Special Licensing Authority**.

Section 12. Section 5.02.420 of the Parker Municipal Code is amended to read as follows:

5.02.420 Considerations for approving or denying application.

Before entering any decision to approve or deny the application for a ~~3.2-beer~~ **fermented malt beverage**, the ~~Town Council~~ **Special Licensing Authority** shall consider the following:

* * *

Section 13. Section 5.02.430 of the Parker Municipal Code is amended to read as follows:

5.02.430 Approval or disapproval.

The decision of the ~~Town Council~~ Special Licensing Authority approving or disapproving the application for a ~~3.2 beer~~ fermented malt beverage license shall be in writing stating the reasons therefor and shall be issued within thirty (30) days after the date of the public hearing on the application. A copy of such decision shall be sent by mail to the applicant to the address shown in the application.

Section 14. Section 5.02.440 of the Parker Municipal Code is amended to read as follows:

5.02.440 ~~Issuance of license in cases of building to be constructed.~~ Business premises prerequisite.

In the case of buildings not yet in existence, where the ~~Town Council~~ Special Licensing Authority votes in favor of the issuance of a ~~3.2 beer~~ fermented malt beverage license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine that the applicant has complied substantially with the architect's drawings and plans and specifications submitted with the application for such license.

Section 15. Section 5.02.450 of the Parker Municipal Code is amended to read as follows:

5.02.450 Change of location.

All the procedures outlined in this Division shall be applicable to a change of location of an existing ~~3.2 beer~~ fermented malt beverage license.

Section 16. Section 5.02.460 of the Parker Municipal Code is amended to read as follows:

5.02.460 Rehearing limitation.

No application for the issuance of a ~~3.2 beer~~ fermented malt beverage license shall be considered by the ~~Town Council~~ Special Licensing Authority if an application for a similar license type has been denied for the same location within the two (2) years immediately preceding the date of such new application.

Section 17. Section 5.02.630(b)(2) of the Parker Municipal Code is amended to read as follows:

5.02.630 Optional premises license.

* * *

(b) The requirements for an optional premises license shall be:

* * *

(2) The decisions of the ~~Town Council~~ **Special Licensing Authority** shall be made by resolution within thirty (30) days of the date of providing all information pertinent to the application. No public hearing shall be required, but the ~~Town Council~~ **Authority** may order a public hearing should, in its discretion, a public hearing be necessary.

Section 18. Section 5.02.650 of the Parker Municipal Code is amended to read as follows:

5.02.650 Initial appearance before ~~Council~~ The Authority.

(a) The Town Clerk shall cause the application for a liquor license to be placed on the agenda of a ~~Council~~ **Special Licensing Authority** meeting to be held not less than four (4) days nor more than thirty (30) days after the Town Clerk has received the application. The date of presentation of the application to the Authority shall be deemed the date of filing of the application.

(b) The ~~Town Council~~ **Authority** shall designate the neighborhood upon the presentation of the application.

(c) The applicant shall comply with the policies and procedures established by the Town Clerk and adopted by the ~~Town Council~~ **Authority** for applications, including, but not limited to, the form of petitions and the means and methods for surveying and canvassing the neighborhood.

(d) The ~~Town Council~~ **Authority** shall also set a date for public hearing, which shall be not less than thirty (30) days from the date of the ~~Council~~ **Authority** meeting at which the date is set.

Section 19. Section 5.02.690 of the Parker Municipal Code is amended to read as follows:

5.02.690 Consideration of ~~factors~~ for approving or denying application.

Before entering any decision ~~approving or dis-approving~~ **to approve or deny** the application for a liquor license, the ~~Town Council~~ **Special Licensing Authority** shall consider the following:

* * *

Section 20. Section 5.02.700 of the Parker Municipal Code is amended to read as follows:

5.02.700 Decision of the ~~Council~~ Authority.

The decision of the ~~Town Council~~ **Special Licensing Authority in** approving or denying the application for a liquor license shall be in writing stating the reasons therefor and shall be issued within thirty (30) days after the date of the public

hearing thereon. A copy of such decision shall be sent by mail to the applicant at the address shown in the application.

Section 21. Section 5.02.720 of the Parker Municipal Code is amended to read as follows:

5.02.720 Business premises prerequisite.

In the case of buildings not yet in existence, where the ~~Town Council~~ **Special Licensing Authority** votes in favor of the issuance of a liquor license, the license shall not be issued until the building in which the business is to be conducted is ready for occupancy, and then only after inspection of the premises has been made to determine the applicant has complied substantially with the architect's drawings and plans and specifications submitted for such license.

Section 22. Section 5.02.760 of the Parker Municipal Code is amended to read as follows:

5.02.760 Rehearing limitation.

No application for the issuance of an alcoholic liquor license shall be considered by the ~~Town Council~~ **Special Licensing Authority** if an application for a similar type license has been denied for the same location within the two (2) years immediately preceding the date of such new application.

Section 23. Section 5.02.860 of the Parker Municipal Code is amended to read as follows:

5.02.860 Definitions.

The following words, terms and phrases, when used in this Article, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

* * *

Fermented Malt Beverage ~~or 3.2 beer~~ means ~~any beverage obtained~~ beer and any other beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any similar product or any combination thereof in water containing not less than one-half of one percent (.5%) alcohol by volume ~~and not more than three and two tenths percent (3.2%) alcohol by weight or four percent (4%) alcohol by volume; except that fermented malt beverage shall not include confectionery containing alcohol within the limits prescribed by Section 25-5-410(1)(i)(II), C.R.S.~~

* * *

Malt Liquors includes beer and ~~shall be construed to mean~~ means any beverage obtained by the alcoholic fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof, in water containing ~~more than three and two tenths percent (3.2%) of alcohol by weight or four percent (4%) alcohol by volume~~ not less than one-half of one percent (0.50%) alcohol by volume.

* * *

Section 24. Section 5.02.900 of the Parker Municipal Code is amended to read as follows:

5.02.900 When consumption is prohibited.

No licensee shall permit the consumption of malt, vinous or spirituous beverages ~~of 3.2 percent beer, or fermented malt beverages~~ on the licensed premises at any time when the sale of such beverages is prohibited by law.

Section 25. Section 5.02.930 of the Parker Municipal Code is amended to read as follows:

9.02.930 Nudity on premises.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages ~~of 3.2 percent beer, or fermented malt beverages~~ shall permit any person to appear in a state of nudity within or upon the premises.

Section 26. Section 5.02.940 of the Parker Municipal Code is amended to read as follows:

5.02.940. Indecent displays.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages ~~of 3.2 percent beer, or fermented malt beverages~~ shall permit any lewd or indecent display by any person within or upon the premises.

Section 27. Section 5.02.950 of the Parker Municipal Code is amended to read as follows:

5.02.950 Showing of films, etc.; depicting acts prohibited.

No licensee for retail sale by the drink of spirituous, vinous or malt beverages ~~of 3.2 percent beer, or fermented malt beverages~~ shall permit the showing of films, still pictures, electronic reproduction or other visual reproductions depicting any act or live performance prohibited by this Article.

Section 28. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is

promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the title to this Ordinance was posted in two public places two days before the Town Council meeting, as provided by Section 7.5e. of the Town of Parker Home Rule Charter.

Section 29. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 30. This Ordinance shall become effective ten (10) days after final publication.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____,
2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____,
2019.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney