

TOWN OF PARKER COUNCIL AGENDA
September 21, 2020
AMENDED

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.

Town Administrator Emergency Order No. 2-2020: All municipal facilities, including Town Hall where Town Council meetings are physically held, are closed to all members of the general public in response to the COVID-19 pandemic.

Town Administrator Emergency Order No. 4-2020: Town Council meetings are closed to members of the general public in response to the COVID-19 pandemic. The Town will provide for electronic participation by the general public, including applicants, residents and other interested parties during regular and special Town Council meetings. Information regarding such electronic participation will be included on the Town Council's website www.ParkerOnline.org/VirtualTownCouncilMeetings.

Town Administrator Emergency Order No. 8-2020: Public comment for items that are not on the agenda may be made electronically at <http://parkeronline.org/CouncilPublicComment>. For those unable to provide comments electronically through the website, please contact the Clerk's Office to make alternative arrangements. The Town Clerk can be reached at 303-805-3198. Public comments that are provided by 5:00 p.m. on the day of the regular or special Town Council meeting will be provided to the Town Council and will be included with the approved minutes of the Town Council meeting.

Virtual Public Participation by Zoom Webinar: Instructions on how to participate in the public hearing are available by viewing the individual Town Council meeting listings on the Town's online calendar at www.parkeronline.org/calendar.

Public Viewing Only - Facebook Live: Town Council meetings may be viewed through Facebook Live from the Town of Parker website: www.facebook.com/townofparkerco.

PLEASE NOTE: Public Participation is NOT available through Facebook Live.

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. SPECIAL PRESENTATION

- **Rotary Club of Parker, Colorado Presentation to Parker Police Department**

3. PUBLIC COMMENTS (No action will be taken on these items.) *Public Comment for items that are not on the agenda will be addressed in the manner provided by Town Administrator Emergency Order No. 8-2020.*

4. **REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL**

- **Accept the resignation of Councilmember Renee Williams and determine that a vacancy exists effective September 21, 2020**

5. **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. *APPROVAL OF MINUTES - September 8, 2020*

B. *BOWEY PROPERTY - Annexation and Zoning*

Department: Community Development, BrieAnna Simon

Second Reading: October 5, 2020

1. *RESOLUTION NO. 20-042.1*

A Resolution Amending Resolution No. 20-042, Series of 2020, Setting the Date for Consideration of the Annexation Ordinance for the Bowey Property for Second Reading on November 2, 2020

Department: Community Development, BrieAnna Simon

2. *ORDINANCE NO. 2.274 - First Reading*

A Bill for an Ordinance Approving and Accomplishing the Annexation of Contiguous Unincorporated Territory Known as the Bowey Property

3. *ORDINANCE NO. 3.356 - First Reading*

A Bill for an Ordinance Zoning Certain Property Within the Town of Parker, Colorado, Known as the Bowey Property to A-Agricultural District Pursuant to the Town of Parker Land Development Ordinance and Amending the Zoning Ordinance and Map to Conform Therewith

C. *ORDINANCE NO. 5.75.3 - First Reading*

A Bill for an Ordinance to Amend Section 6.02.040 of the Parker Municipal Code Concerning Exceptions to Tobacco Smoking Restrictions

Department: Town Attorney, Kristin Hoffmann

Second Reading: October 5, 2020

- D. *ORDINANCE NO. 1.539.3 - First Reading*
A Bill for an Ordinance to Adopt the 2020 Revised Budget for the Town of Parker and to Make Appropriations for the Same
Department: Finance, Rhonda Willey
Second Reading: October 5, 2020
- E. *ORDINANCE NO. 9.323 - First Reading*
A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Colorado Department of Transportation and the Town of Parker Concerning Project: MTF 083A-144 (23970), Parker Road Trail: 20 Mile to Hess Road Funding for the Construction of the Parker Road Sidewalks Project (Twenty Mile Road to Hess Road)
Department: Engineering and Public Works, Tom Gill
Engineering and Public Works, Chris Hudson
Second Reading: October 5, 2020
- F. *ORDINANCE NO. 9.291.1 - First Reading*
A Bill for an Ordinance Approving the Amendment to Agreement Regarding Final Design and Construction of Fee-In-Lieu Drainage and Flood Control Improvements for Green Acres Tributary at Compark Village South (Agreement No. 19-06.01A, Project No. 107382) By and Between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker
Department: Engineering and Public Works, Michael Grabczyk
Engineering and Public Works, Alex Mestdagh
Second Reading: October 5, 2020
- G. *ORDINANCE NO. 9.303.1 - First Reading*
A Bill for an Ordinance Approving a First Amended and Restated Intergovernmental Agreement Between the Town of Parker, Colorado, and the Belford North Metropolitan District
Department: Town Attorney, Kristin Hoffmann
Second Reading: October 5, 2020
- H. *ORDINANCE NO. 9.304.1 - First Reading*
A Bill for an Ordinance Approving a Second Amended and Restated Intergovernmental Agreement Between the Town of Parker, Colorado, and the Belford South Metropolitan District
Department: Town Attorney, Kristin Hoffmann
Second Reading: October 5, 2020

- I. **RESOLUTION NO. 20-045**
A Resolution Accepting the Conveyance of an Underground Power Line Easement from Parker Water and Sanitation District for the Bar CCC Property
Department: Parks and Recreation, Dennis Trapp
Engineering and Public Works, Chris Hudson
- J. **RESOLUTION NO. 20-046**
A Resolution Accepting the Conveyance of a Utility Easement Agreement from Parker Water and Sanitation District for the Bar CCC Property
Department: Parks and Recreation, Dennis Trapp
Engineering and Public Works, Chris Hudson
- K. **RESOLUTION NO. 20-048**
A Resolution Accepting the Conveyance of Real Property from the Board of County Commissioners of the County of Douglas for the East Side of Parker Road (State Highway 83) South of Lincoln Avenue
Department: Engineering and Public Works, Chris Hudson

6. PUBLIC HEARINGS

A. CAROUSEL FARMS FILING NO. 1, LOTS 11 and 12, BLOCK 1 - Fence Variance

1. **Applicant:** Julie Trail
 Location: 16022 Hayloft Lane
 Department: Community Development, BrieAnna Simon
 TRAKiT No.: Z20007
2. **Applicant:** Julie Trail
 Location: 11092 Hayloft Street
 Department: Community Development, BrieAnna Simon
 TRAKiT No.: Z20008

B. Tax and Fee Assistance Program Agreement for The Wild Goose Saloon
Department: Town Attorney, Jim Maloney

C. Tax and Fee Assistance Program Agreement for Big Tool Box
Department: Town Attorney, Jim Maloney

7. **ORDINANCES**

8. **ADJOURNMENT**

Parker Town Council

Executive Session Agenda

September 21, 2020

“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. Section 13.01.100 of the Parker Municipal Code – Waiver - Stroh Ranch Filing No. 16 – Hunters Chase

“To determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).”

2. My Mainstreet proposed purchase and sale of the Schoolhouse property

R E S O L U T I O N

WHEREAS, the men and women of the Parker Police Department have protected the citizens of the Town of Parker for more than 37 years, and

WHEREAS, the Parker Police Department has achieved the highest standards of accreditation through the Commission on Accreditation of Law Enforcement Agencies (CALEA), and

WHEREAS, the Parker Police Department has long been at the forefront of community oriented policing and has practiced transparency when dealing with the public and in the implementation of policies that ensure fair and respectful interaction with the citizens it serves, and

WHEREAS, the Parker Police Department has been a leader in 21st century policing whose advice and counsel are sought after by other law enforcement agencies, both regionally and nationally, and

WHEREAS, the brave and dedicated men and women of the Parker Police Department serve professionally, compassionately, selflessly and with distinction 24/7, 365 days a year,

NOW, THEREFORE, BE IT RESOLVED THAT the members of the Rotary Club of Parker hereby extend their profound gratitude and sincere appreciation to Chief Jim Tsurapas and each of the members of the Parker Police Department, both officers and staff, for helping to make the Town of Parker a safe place to live, work and recreate for all its citizens and visitors.

ADOPTED this sixth day of August, 2020

J. Patrick Kendrick

J. Patrick Kendrick, Club President 2020-2021
Rotary Club of Parker, Colorado

**TOWN OF PARKER COUNCIL
MINUTES
SEPTEMBER 8, 2020**

Mayor Mike Waid called the meeting to order at 5:34 P.M. All Councilmembers were present, with Cheryl Poage and Renee Williams present remotely. Renee Williams was late entering the meeting at 5:38 P.M.

Town Attorney Jim Maloney announced that the topics for discussion in Executive Session were six (6) items; under C.R.S. 24-6-402(4)(b) there were two (2) items, the first was to receive legal advice on specific legal questions concerning receiving legal advice concerning the receiving legal advice concerning the Town Retirement Plans, on Colorado law and tax law issues and to receive legal advice on specific legal questions concerning Section 13.904.240(b)(7)f.2 concerning the Olde Town at Parker Development Plan and Guide; under C.R.S. § 24-6-402(4)(e) there were four (4) items, the first item was proposed amendment to the Intergovernmental Agreement Regarding the Community Development Block Grant program for Fiscal year 2021-2023 Administered By the U.S. Department of Housing and Urban Development By and Between the Board of County Commissioners of the County of Douglas, State of Colorado, and the Town of Parker, the second was Omnibus Certificate of the Town related to the Loan Agreement for the Parker Central and Cottonwood Commercial Plan Areas; the third was Section 10.11.080 of the Parker Municipal Code (amended and restated service plan for Belford North Metropolitan District and related intergovernmental agreement), the fourth item was Section 10.11.080 of the Parker Municipal Code (amended and restated service plan for Belford South Metropolitan District and related intergovernmental agreement).

EXECUTIVE SESSION

Joshua Rivero moved and Debbie Lewis seconded to go into Executive Session 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) and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e).

The motion was approved unanimously.

Councilmember Poage left the Executive Session meeting when the Belford South (residential) was discussed.

Renee Williams moved and Debbie Lewis seconded to come out of Executive Session at 6:49 P.M.

The motion was approved unanimously.

Debbie Lewis moved and Joshua Rivero seconded to recess the regular meeting at 6:50 P.M. to be reconvened at 7:00 P.M.

The motion was approved unanimously.

REGULAR MEETING

Mayor Waid reconvened the meeting at 7:04 PM. All Councilmembers were present. Cheryl Poage and Renee Williams participated remotely.

Mayor Waid led the Pledge of Allegiance.

SPECIAL PRESENTATIONS**Recognition of Cherokee Trail Elementary Teachers**

Aubrie Duncan
Jessica Ranieri
Denise Hollowell
Jane Steiner
Kyla Phelps
Kristin Marsh
Brock Marsh

The Mayor recognized the individuals as a former student from Cherokee Trail went missing and teachers and staff from the school, along with the student's friend and mother, jumped into action. They searched tirelessly and were finally able to locate him more than six hours later. The Mayor recognized the group for their dedication, heroism and sacrifice .

PARKER CHAMBER OF COMMERCE UPDATES

Kara Massa provided the Chamber update. The Candidate Forum will be held on September 22, 2020.

DOWNTOWN BUSINESS ALLIANCE UPDATES

Dennis Huspeni provided an update on behalf of the Downtown Business Alliance. The Annual Candidate Forum is being planned to be held in October; more details will be provided.

PUBLIC COMMENTS

None.

REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL

Each Councilmember provided an update on meetings they each attended since the last Town Council meeting.

CONSENT AGENDA

A. *APPROVAL OF MINUTES - August 17, 2020*

B. *RESOLUTION NO. 20-044*

A Resolution to Elect that the Town Retirement Plans Not Be Covered Under Article 54 of Title 24 of the Colorado Revised Statutes But Were Established Pursuant to the Home Rule Powers of the Town; Designate Mandatory Contributions of Employees and Commissioned Police Personnel Are Pick-Up Contributions; Ratify Actions Previously

Taken; Authorize the Town Administrator and Finance Director or Designees to Do Any and All Acts to Maintain the Town Retirement Plans in Accordance with Applicable Law or for the Efficient Operation of the Retirement Plans, Including Serving as Trustee; and Authorize the Town Administrator and the Finance Director, Individually or Jointly to (1) Take Action, Including to Enter into Agreements, Adopt Plan Amendments and Make Plan Design Changes, Merge or Terminate the Town Retirement Plans and Submit the Town Retirement Plans to the Internal Revenue Service for Review/Guidance/ Compliance and (2) Take Action with Respect to FPPA for Commissioned Police Personnel, as Provided in the Resolution.

*Department: Town Administrator, Michelle Kivela
Finance, Mary Lou Brown
Town Attorney, Jim Maloney*

C. CONTRACTS ABOVE \$100,000

1. Cottonwood Drive Widening (CIP 20-004) Professional Services Agreement

*Amount: \$617,660.00
Contractor: Felsburg Holt & Ullevig (FHU)
Department: Engineering/Public Works, Tom Gill*

2. Cottonwood Drive Widening (CIP 20-004)

*Amount: \$10,400,000
Contractor: Hamon Infrastructure, Inc.
Department: Engineering/Public Works, Tom Gill*

Joshua Rivero moved to approve Consent Agenda Items 7A through 7C.

Debbie Lewis seconded the motion.

The motion was approved unanimously.

PUBLIC HEARINGS

Tax and Fee Assistance Program Agreement for Havana Bakery

Department: Town Attorney, Jim Maloney

Joshua Rivero recuses himself. He disclosed that in an effort to protect the Town from any conflict of interest, perceived or otherwise, he recused himself from any discussion on this item. This item concerns a TAP agreement with a potential direct competitor in close proximity to one of his business locations. Joshua Rivero left the meeting at 7:22 P.M.

Havana Bakery & Cafe submitted an application to participate in the Tax and Fee Assistance Program.

The capital investment for the project is estimated at \$2.5 million. Annual sales are estimated to be \$875,000/year initially growing to \$1.5 million/year over 5 years.

The operation will employ approximately 15 individuals when fully operational with an estimated annual payroll of \$370,000.

Based on these estimates, Town staff recommends entering into an incentive agreement pursuant to the Town of Parker Tax and Fee Assistance program (Chapter 4.02, TOP Municipal Code).

The recommended incentive agreement would share both enhanced sales taxes derived from the project as well as a portion of development fees. Specifically the agreement provides for the following:

- The owner shall receive fifty percent (50%) of the enhanced sales taxes generated by the project, excluding the Parks and Recreation Sales Tax, for a maximum of three (3) one-year terms.
- "Enhanced sales taxes," for this project are defined as those amounts in excess of Four Thousand Two Hundred Dollars (\$4,200) per year.
- The owner shall also receive fifty percent (50%) of development fees, which include permit, plan check fees, and construction use taxes collected by the Town during the construction permitting process for the initial construction of the project.
- The maximum period of time that this agreement shall be in effect is three (3) years or until a maximum sum of Sixty-Two Thousand Dollars (\$62,000.00) derived from (i) enhanced sales taxes and (ii) the rebate of development fees, is rebated, whichever occurs first, at which time this agreement shall terminate.

Havana's Bakery & Cafe meets the following goals of the Town's Tax and Fee Assistance Program (TAP) by providing the following public or quasi-public related improvements:

- Produces increased sales taxes
- Provides new jobs (employment)
- The creation or enhancement of a unique downtown
- Contributes to the diversity of jobs and employment opportunities

Applicant:

Gene Gregory thanked Town Council for any assistance provided.

Public Comments: None

The Public Hearing was closed at 7:25 P.M.

Debbie Lewis moved to approve the Tax and Fee Assistance Agreement for Havana Bakery.

Jeff Toborg seconded the motion.

The motion was approved 5-0 -1 abstention. (Joshua Rivero abstained.)

Joshua Rivero returned to the meeting at 7:27 P.M.

ORDINANCES

A. ORDINANCE NO. 1.289.6 - Second Reading

A Bill for an Ordinance to Approve the Second Amendment to the Amended and Restated Cooperation Agreement Between the Town of Parker, Colorado, and the Parker Authority for Reinvestment for Administrative Services

Department: Town Attorney, Jim Maloney

The Authority plans to borrow the funds necessary to construct the Capital Projects. Under the Agreement, the Authority will provide the Funds to the Town and the Town will use the Funds to construct the Capital Projects. The Town will follow the Town's procurement process and use Town employees in order to contract for the completion of the Capital Projects. The construction contracts associated with the Capital Projects will be subject to Town Council approval.

Public Comment: None.

Debbie Lewis moved to approve Ordinance No. 1.289.6 on second reading.

Jeff Toborg seconded the motion.

The motion was approved 5 to 1. (Cheryl Poage voted no.)

B. ORDINANCE NO 9.74.2 - Second Reading

A Bill for an Ordinance to Approve the Amended and Restated Establishing Intergovernmental Agreement for the Douglas County Housing Authority, a Multi-jurisdictional Housing Authority By and Among the City of Lone Tree, the Town of Castle Rock, The Town of Parker, the City of Castle Pines and Douglas County

Department: Community Development, Bryce Matthews

In 2003, the Town entered into an Intergovernmental Agreement (IGA) with the City of Lone Tree, Town of Castle Rock and Douglas County to create a multi-jurisdictional housing authority referred to as the Douglas County Housing Authority (the Authority). The City of Castle Pines is not an original member because it was incorporated in 2007 after the creation of the Authority. In 2019, Castle Pines requested membership in the Authority.

The proposed IGA amendment would add the City of Castle Pines as a member of the Douglas County Housing Authority. It also includes several updates to the IGA that address obsolete or outdated sections including those related to the Authority's bylaws.

Public Comment: None

Cheryl Poage moved to approve Ordinance No. 9.74.2 on second reading.

Renee Williams seconded the motion.

The motion was approved unanimously.

The meeting was adjourned at 7:32 P.M.

Carol Baumgartner, Town Clerk

Mike Waid, Mayor



Request for Town Council Action

Date: September 21, 2020

Submitted By: BrieAnna Simon, Associate Planner
John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **BOWEY PROPERTY - Annexation and Zoning**
Department: Community Development, BrieAnna Simon
Second Reading: October 5, 2020

EXECUTIVE SUMMARY

The subject property, known as the Bowey property (the "Bowey Property"), is located in unincorporated Douglas County but has been surrounded by the Town of Parker for greater than three (3) years. The Town proposes an enclave annexation of the Bowey Property and concurrent zoning to the A-Agricultural District designation. The attached ordinances will accomplish the annexation and zoning of the Bowey Property. The amended resolution will set the second reading of the annexation ordinance for November 2, 2020. The resolution is being amended to correct the legal description for the Bowey Property.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Bowey property is located on the northeast corner of Parker Road and Pine Drive. The subject property is approximately 48.9 acres in total area and is currently undeveloped. The Bowey property has been completely surrounded by the Town of Parker for a period of greater than three (3) years and is considered an enclave under the Municipal Annexation Act of 1965 and related state law.

The Town has committed to a policy of actively pursuing the annexation of enclaves. The Parker 2035 Master Plan identifies the subject property as part of the Town's Planning Area for future growth and development. The proposed annexation is therefore consistent with the Master Plan as well as the state mandated Three-Mile Plan for future annexation.

The purpose of Resolution No. 20-042.1, Series of 2020, is to correct the legal description of the Bowey Property, and to schedule the second reading of the annexation ordinance for the Bowey Property for November 2, 2020.

As required by Parker's Charter, all properties that are proposed for annexation must also be

zoned at the same time. The Town is proposing to zone the Bowey property to the A-Agricultural District designation described in the Parker Land Development Ordinance. This zoning is consistent with the current Douglas County zoning of the Bowey Property, which is A1-Agricultural One. The proposed zoning will ensure that the use of the Bowey Property for agricultural uses may continue, until the Bowey Property is developed. The public hearing to change the zoning of the Bowey Property is scheduled for November 2, 2020.

FINANCIAL IMPACT

None.

STRATEGIC GOAL(S)



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH



ENHANCE ECONOMIC
VITALITY

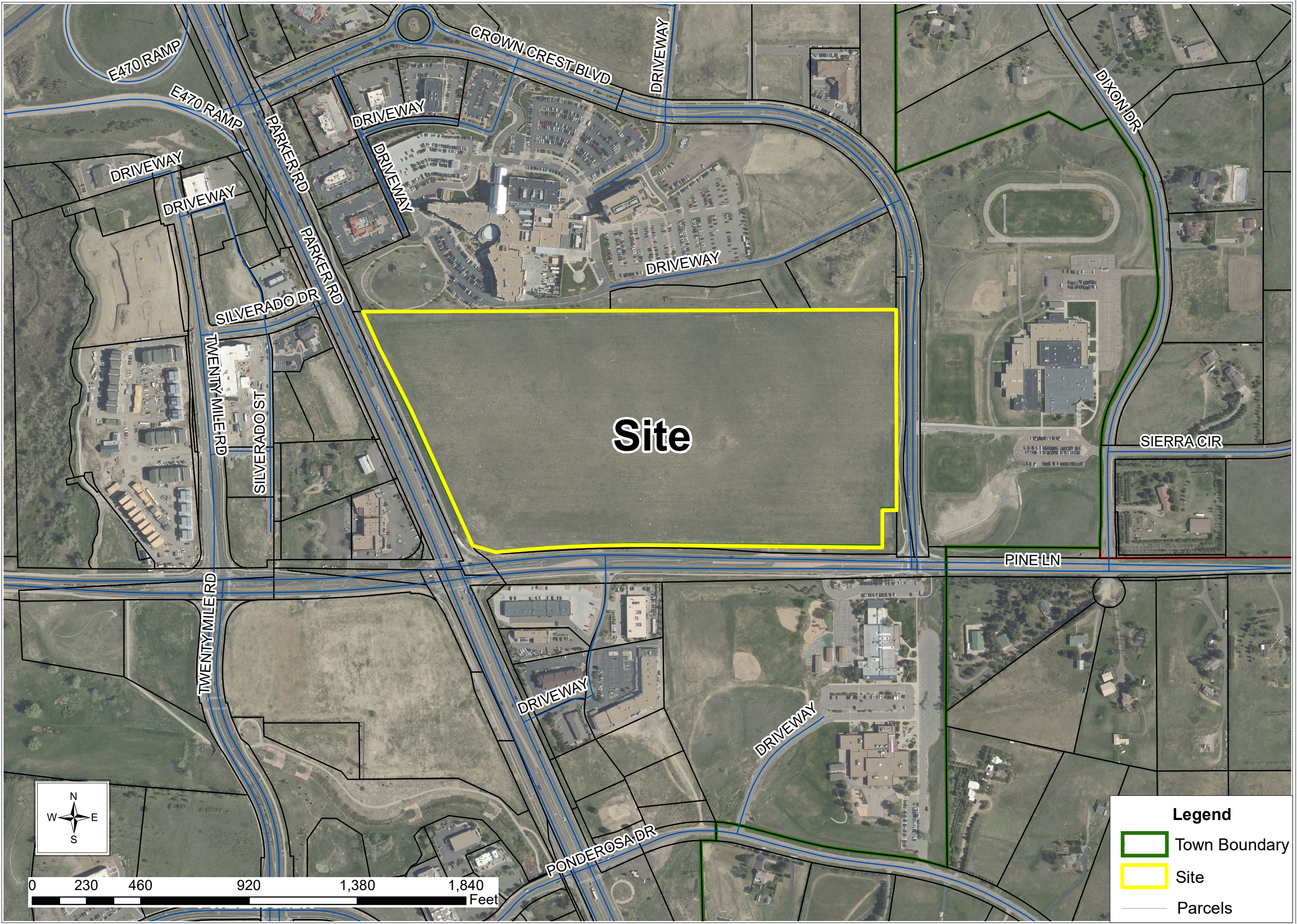
ATTACHMENTS

1. Vicinity map
2. Planning Commission Staff Report
3. Resolution No. 20-042.1
4. Ordinance 2.274 - Annexation
5. Ordinance 3.356 - Zoning

RECOMMENDED MOTION

I move to approve Resolution No. 20-042.1, Ordinance Nos. 2.274 and 3.356 on first reading and to schedule Ordinance Nos. 2.274 and 3.356 for second reading for October 5, 2020, as part of the consent agenda.

Bowey Property Annexation





Planning Commission Staff Report

Planning Commission Date: 9/10/2020

Town Council Date: 10/5/2020

Hearing Type: Public Hearing
BOWEY PROPERTY – Zoning
TRAKiT No.: Z20-001

Location: Generally located on the northeast corner of Parker Road and Pine Drive

Project Planner: BrieAnna Simon, Associate Planner

Applicant(s): Town of Parker Community Development Department

Executive Summary: The 48.9 acre Bowey Property is proposed to be zoned Agricultural in conjunction with an annexation (ANX20-001). The site is an unplatted parcel located on the northeast corner of Parker Road and Pine Drive. The property is currently zoned Agricultural One (A1) in Douglas County.

Staff Recommendation: Approval

RECOMMENDED MOTION

“I move the Planning Commission recommend Town Council approve the Bowey Property zoning request.”

ALTERNATIVE MOTIONS

*“I move the Planning Commission recommend Town Council approve the **Bowey Property** zoning request, subject to the following conditions:”*

-List proposed conditions

*“I move the Planning Commission recommend Town Council deny the **Bowey Property** zoning as the request does not meet the following approval criteria:”*

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

*“I move the Planning Commission vote to continue the **Bowey Property** zoning to a future date.”*

I. BACKGROUND/DISCUSSION

The subject property, known as the Bowey Property, is located in unincorporated Douglas County and is surrounded by the Town of Parker. The Town is processing an enclave annexation of the Bowey Property and will zone the property A-Agricultural District, which is the Town zoning most similar to the existing County zoning.

The Bowey Property is located on the northeast corner of Parker Road and Pine Drive. The subject property is approximately 48.9 acres owned by the Bowey Family Partnership LLLP. The Bowey Property has been completely surrounded by the Town of Parker for a period of not less than three (3) years and is considered an enclave under the Municipal Annexation Act of 1965. The Town has committed to a policy of actively pursuing the annexation of enclaves. The subject property is located within the Town's Planning Area described in the Parker 2035 Master Plan and the proposed annexation is consistent with the Parker 2035 Master Plan.

Vicinity Map



II. PRIOR ACTIONS

Date	Action
N/A	The annexation and zoning requests are the first actions by the Town related to the subject properties.

III. CURRENT SITE DATA

Existing Zoning	Agriculture One (Douglas County)		
Overlay District	N/A		
PD & Plan Area	Agriculture (proposed)		
Master Plan Area	Medical		
Site Acreage	48.912 acres		
Subdivision	Unplatted		
Existing Use	Vacant		
Surrounding Uses			
	Master Plan Land Use	Zoning	Existing Use
North	Medical	PD – Planned Development	Parker Adventist Hospital
South	Central Commercial	Modified C - Commercial District	Commercial
East	Medical	Public Facilities District	Sierra Middle School
West	Regional Commercial Retail	PD - Planned Development	Mixed Office/ Commercial/Restaurants

IV. PARKER 2035 MASTER PLAN

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

MASTER PLAN CONSISTENCY	
Master Plan Designation	Medical ☒ Consistent ☐ Inconsistent
Master Plan Character Discussion	Medical: This Character Area focuses on state of the art medical care, preventative health care and wellness to create an industry synergy that ensures a successful business environment. Appropriate uses include hospitals, medical offices, health care clinics and facilities, rehabilitation centers and hotels. Retail uses are appropriate where they provide an ancillary service in size, scale and purpose to the medical uses.
Consistent Goals/Strategies	<u>Land Use 1.C</u> <u>Land Use 1.E</u>
Staff Analysis	The subject property is part of an enclave annexation where the proposed zoning is consistent with the property's current Douglas County zoning. The subject property is located along Parker Road surrounded by properties within the Town boundaries and located within the Town's growth boundary. The annexation and zoning fulfills the Town of Parker goal of actively pursuing annexation of enclaves and roads to allow for continuity of services within the Parker 2035 Master Plan's Planning Area.

V. LAND DEVELOPMENT ORDINANCE

DEVELOPMENT POTENTIAL (Rezoning)			
Provisions	As recommended by the Master Plan	Proposed	Analysis
Units Per Acre	None	One unit is allowed per every 10 acres	☐ Consistent ☐ Inconsistent ☐ No Change ☒ N/A
Allowed Uses	Hospitals, medical offices, health care clinics and facilities, rehabilitation centers, hotels, and retail uses	Agricultural uses	☐ Consistent ☐ Inconsistent ☒ No Change
Height/Stories	None	35 feet	☒ Consistent ☐ Inconsistent ☐ No Change
Staff Analysis	The proposed zoning will be compatible with the current zoning in Douglas County. As detailed in the analysis above, the proposed annexation provides an opportunity to bring the proposed zoning into compliance with the Town's Master Plan. An additional rezoning and associated analysis of compliance of the future request will be required when the property is developed in the future. The annexation and zoning fulfills the Town of Parker goal of actively pursuing annexation of enclaves and roads to allow for continuity of services within the Parker 2035 Planning Area.		

VI. ACCESS, CIRCULATION & TRAFFIC ANALYSIS

The subject property currently has a right-in/right-out access to Pine Lane that serves as access to the existing agricultural uses. This access is sufficient for the current use of the property. Additional access will be required when the property is developed in the future.

VII. APPROVAL CRITERIA

Title 13.04.240.f. Approval Considerations for Rezoning Requests:

1. A need exists for the proposal.

A need exists for the annexation and zoning of the subject property, for the reasons that it will (1) allow the Town to consolidate services and recognize efficiencies of scale and delivery of services; and (2) promote orderly growth, continuity of development and certainty of development within the subject property and surrounding areas within the Town and the Town Urban Growth Area.

Based on this analysis, staff has determined that this criterion has been met.

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

This property is considered an enclave, located within unincorporated Douglas County but surrounded by the Town of Parker. The Town has been working for several years to clean up the Town's boundaries and annex these enclave areas. The subject property is contiguous with the Town and is located within the Town's Planning Area as described in the Parker 2035 General Land Use Plan.

For the reason that the subject property has been identified as property to be annexed, zoned and developed in the Town, the subject property is indeed the correct site for annexation and zoning.

Based on this analysis, staff has determined that this criterion has been met.

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

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

The subject property is currently zoned Agriculture One in unincorporated Douglas County. The zoning application for the subject property is for A-Agricultural District under the Town's Land Development Ordinance, which is mostly consistent with the current development standards and uses of the existing zoning in Douglas County. The property proposed for annexation is entirely surrounded by the Town and has been surrounded for more than three years.

Based on this analysis, staff has determined that this criterion has been met.

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

Roadway infrastructure exists around the property. No additional improvements are anticipated with the property's zoning. When the property develops in the future, additional access and circulation will be required.

Based on this analysis, staff has determined that this criterion has been met.

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

The Town does not anticipate significant additional municipal service costs with the proposed zoning.

Based on this analysis, staff has determined that this criterion has been met.

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

No new development is proposed as part of the zoning. Therefore, no additional environmental impacts are anticipated at this time. Any future development will be required to meet all environmental criteria set forth in the Land Development Ordinance.

Based on this analysis, staff has determined that this criterion has been met.

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

As detailed in Section IV of this staff report, the A-Agricultural District is consistent with the objectives identified within the Parker 2035 Master Plan.

Based on this analysis, staff has determined that this criterion has been met.

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.

The property is located adjacent to Cottonwood Water and Sanitation District and will require inclusion in the district. Infrastructure exists serving adjoining properties. When developed the property will be able to receive adequate services.

Based on this analysis, staff has determined that this criterion has been met.

VIII. SUMMARY REFERRAL AGENCY COMMENTS AND CONDITIONS

Agency	Comments
Parker Engineering	No Comment
Aztec Consultants	Minor corrections to be made on the zoning map - Corrections were made
Parker Building	No Comment
Fire Life Safety	No Comment
Douglas Country Planning	No Comment
Douglas County Public Works	No Comment
Douglas County Assessor's Office	No Comment
Douglas County School District	No Comment
Parker Police	No Comment
Parker Comprehensive Planning	The property is located within the E-470 Corridor/Medical Planning Area which recommends future medical uses and other supportive uses. The Agricultural zoning is similar to the current zoning in Douglas County and is consistent with the Parker 2035 Master Plan.
Parker Economic Development	Approved
IREA	No Comment
CenturyLink	No Comment
Comcast	No Comment
Cottonwood Water and Sanitation District	No Comment

IX. CONCLUSION

This zoning request is being processed concurrently with the annexation application as provided by the Town of Parker Home Rule Charter and Section 13.04.250 of the Parker Municipal Code and has been determined to meet the zoning approval criteria of the Parker Land Development Ordinance. Based on the analysis contained in this staff report, staff recommends that the Planning Commission recommend Town Council approve the request.

X. RECOMMENDED CONDITIONS

None

XI. ATTACHMENTS

1. Draft Zoning Ordinance
2. Zoning Map

Report Approved By: Bryce Matthews, Planning Manager

RESOLUTION NO. 20-042.1, Series of 2020

TITLE: A RESOLUTION AMENDING RESOLUTION NO. 20-042, SERIES OF 2020, SETTING THE DATE FOR CONSIDERATION OF THE ANNEXATION ORDINANCE FOR THE BOWEY PROPERTY FOR SECOND READING ON NOVEMBER 2, 2020

WHEREAS, the Town Council, on August 17, 2020, did adopt Resolution No. 20-042;

WHEREAS, the legal description attached as Exhibit A to Resolution No. 20-042 did not describe the property known as the Bowey Property;

WHEREAS, this Resolution amends Resolution No. 20-042 to include the corrected legal description;

WHEREAS, certain real property commonly known as the Bowey property is located in unincorporated Douglas County and is described in **Exhibit A** attached hereto and incorporated by this reference (the "Bowey Property"); and

WHEREAS, the Bowey Property is entirely contained within the outer boundaries of the Town of Parker, Colorado, and has been surrounded for a period of not less than three (3) years.

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

Section 1. The ordinance to annex the Bowey Property will be considered on second reading by the Town Council on November 2, 2020, at the Town of Parker Town Hall, which is located at 20120 East Mainstreet, Parker, Colorado 80138, to determine if the proposed annexation complies with the Constitution of the State of Colorado, Article II, Section 30(1)(c), and C.R.S. § 31-12-106(1).

RESOLVED AND PASSED this _____ day of _____, 2020.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

Legal Description

A parcel of land being a part of the Northwest Quarter of Section 10, Township 6 South, Range 66 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Commencing at the center quarter corner of said Section 10, whence the west quarter corner of said Section 10 bears south 89°47'29" west, a distance of 2,645.54 feet;

Thence along the east line of said northwest quarter north 00°07'00" west, a distance of 205.66 feet to the northerly boundary of the Town of Parker Ordinance 2.218 Pine Lane Northeast Annexation Map recorded at Reception No. 2011014832 in the records of the Douglas County, Colorado, Clerk and Recorder and the **point of beginning**:

Thence along the northerly boundary of said Annexation Map the following (4) courses:

1. North 89°21'44" west, a distance of 60.01 feet;
2. South 00°07'00" east, a distance of 160.01 feet;
3. North 89°21'44" west, a distance of 987.61 feet to the beginning of a tangent curve concave southerly having a radius of 5,805.00 feet;
4. Westerly along said curve through a central angle of 06°27'37", an arc length of 654.54 feet to the northerly boundary of the Town of Parker Ordinance 2.212 Pine Lane East Annexation Map recorded at Reception No. 2009096857 in said records.

Thence along said northerly boundary nontangent to said curve, north 74°14'22" west, a distance of 102.99 feet to the easterly boundary of the Town of Parker Ordinance 2.75 State Highway 83 Annexation Map recorded at Reception No. 9002842 of said records;

Thence along the easterly boundary of said Annexation Map the following (3) courses:

1. North 24°22'30" west, a distance of 630.01 feet;
2. North 27°14'15" west, a distance of 300.40 feet;
3. North 24°22'30" west, a distance 166.90 feet to the southerly boundary of the Town of Parker Ordinance 2.71 Crown Pointe Center Annexation Map recorded at Reception No. 9001001 of said records;

Thence along said southerly boundary north 89°47'25" east, a distance of 2,264.52 feet to said east line of the northwest quarter;

Thence along said east line, south 00°07'00" east, a distance of 851.29 feet the **point of beginning**.

Containing an area of 46.482 acres (2,024,739 square feet), more or less.

ORDINANCE NO. 2.274, Series of 2020

**TITLE: A BILL FOR AN ORDINANCE APPROVING AND ACCOMPLISHING
THE ANNEXATION OF CONTIGUOUS UNINCORPORATED
TERRITORY KNOWN AS THE BOWEY PROPERTY**

WHEREAS, the property described in attached **Exhibit A**, being in the County of Douglas, State of Colorado (the “Property”), is entirely contained within the outer the boundaries of the Town of Parker and has been so surrounded for a period of not less than three (3) years, as provided by Constitution of the State of Colorado, Article II, Section 30(1)(c), and C.R.S. § 31-12-106; and

WHEREAS, the Town Council of the Town of Parker, Colorado, has satisfied itself concerning the compliance of the proposed annexation of the Property with Constitution of the State of Colorado, Article II, Section 30(1)(c), and C.R.S. § 31-12-106(1).

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, THAT:

Section 1. The annexation of the Property meets all requirements of law and the annexation policy of the Town of Parker, and therefore, the said annexation is hereby approved and made effective.

Section 2. Upon the effective date of this Annexation Ordinance, the Property shall become subject to the Charter, ordinances, resolutions, rules and regulations of the Town of Parker.

Section 3. Considering all of the foregoing, and based on the conviction that annexation of the Property to the Town of Parker will serve the best interests of the Town of Parker, the Property is hereby annexed to the Town of Parker.

Section 4. The Town Clerk shall file for recording one certified copy of the Annexation Ordinance and one copy of the Annexation Map with the Clerk and Recorder of the County of Douglas, State of Colorado.

Section 5. The Annexation Map showing the boundaries of the newly annexed territory, as above described, shall be kept on file in the office of the Douglas County Clerk and Recorder.

Section 6. The Town Clerk shall file one certified copy of the Annexation Ordinance and one copy of the Annexation Map with the Division of Local Governments of the Department of Local Affairs.

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 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 8. This Annexation Ordinance shall become effective ten (10) days after the publication date of this Annexation Ordinance, except for the purpose of general taxation, and for such purposes it shall become effective on January 1st of the next succeeding year following passage of this Annexation Ordinance.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT A

Legal Description

A parcel of land being a part of the Northwest Quarter of Section 10, Township 6 South, Range 66 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Commencing at the center quarter corner of said Section 10, whence the west quarter corner of said Section 10 bears south 89°47'29" west, a distance of 2,645.54 feet;

Thence along the east line of said northwest quarter north 00°07'00" west, a distance of 205.66 feet to the northerly boundary of the Town of Parker Ordinance 2.218 Pine Lane Northeast Annexation Map recorded at Reception No. 2011014832 in the records of the Douglas County, Colorado, Clerk and Recorder and the **point of beginning**:

Thence along the northerly boundary of said Annexation Map the following (4) courses:

1. North 89°21'44" west, a distance of 60.01 feet;
2. South 00°07'00" east, a distance of 160.01 feet;
3. North 89°21'44" west, a distance of 987.61 feet to the beginning of a tangent curve concave southerly having a radius of 5,805.00 feet;
4. Westerly along said curve through a central angle of 06°27'37", an arc length of 654.54 feet to the northerly boundary of the Town of Parker Ordinance 2.212 Pine Lane East Annexation Map recorded at Reception No. 2009096857 in said records.

Thence along said northerly boundary nontangent to said curve, north 74°14'22" west, a distance of 102.99 feet to the easterly boundary of the Town of Parker Ordinance 2.75 State Highway 83 Annexation Map recorded at Reception No. 9002842 of said records;

Thence along the easterly boundary of said Annexation Map the following (3) courses:

1. North 24°22'30" west, a distance of 630.01 feet;
2. North 27°14'15" west, a distance of 300.40 feet;
3. North 24°22'30" west, a distance 166.90 feet to the southerly boundary of the Town of Parker Ordinance 2.71 Crown Pointe Center Annexation Map recorded at Reception No. 9001001 of said records;

Thence along said southerly boundary north 89°47'25" east, a distance of 2,264.52 feet to said east line of the northwest quarter;

Thence along said east line, south 00°07'00" east, a distance of 851.29 feet the **point of beginning**.

Containing an area of 46.482 acres (2,024,739 square feet), more or less.

ORDINANCE NO. 3.356, Series of 2020

TITLE: A BILL FOR AN ORDINANCE ZONING CERTAIN PROPERTY WITHIN THE TOWN OF PARKER, COLORADO, KNOWN AS THE BOWEY PROPERTY TO A-AGRICULTURAL DISTRICT PURSUANT TO THE TOWN OF PARKER LAND DEVELOPMENT ORDINANCE AND AMENDING THE ZONING ORDINANCE AND MAP TO CONFORM THEREWITH

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PARKER, COLORADO, THAT:

Section 1. Finding of Fact.

a. Application has been made for zoning certain property described in attached **Exhibit 1**, within the Town of Parker, Colorado, as A-Agricultural District, pursuant to the Town of Parker Land Development Ordinance (the “Property”).

b. Public notice has been given 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.

d. The requirements contained in Section 13.04.240(f) of the Parker Land Development Ordinance are satisfied for zoning the Property to A-Agricultural District, as described in the Parker Land Development Ordinance.

Section 2. The Property is hereby zoned A-Agricultural District, as described in the Parker Land Development Ordinance.

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 upon the later to occur of: (i) the date that is ten (10) days after final publication; or (ii) the date the Annexation Ordinance for the Property goes into effect, whichever occurs last.

INTRODUCED AND PASSED ON FIRST READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

Legal Description

A parcel of land being a part of the Northwest Quarter of Section 10, Township 6 South, Range 66 West of the Sixth Principal Meridian, County of Douglas, State of Colorado, more particularly described as follows:

Commencing at the center quarter corner of said Section 10, whence the west quarter corner of said Section 10 bears south 89°47'29" west, a distance of 2,645.54 feet;

Thence along the east line of said northwest quarter north 00°07'00" west, a distance of 205.66 feet to the northerly boundary of the Town of Parker Ordinance 2.218 Pine Lane Northeast Annexation Map recorded at Reception No. 2011014832 in the records of the Douglas County, Colorado, Clerk and Recorder and the **point of beginning**:

Thence along the northerly boundary of said Annexation Map the following (4) courses:

1. North 89°21'44" west, a distance of 60.01 feet;
2. South 00°07'00" east, a distance of 160.01 feet;
3. North 89°21'44" west, a distance of 987.61 feet to the beginning of a tangent curve concave southerly having a radius of 5,805.00 feet;
4. Westerly along said curve through a central angle of 06°27'37", an arc length of 654.54 feet to the northerly boundary of the Town of Parker Ordinance 2.212 Pine Lane East Annexation Map recorded at Reception No. 2009096857 in said records.

Thence along said northerly boundary nontangent to said curve, north 74°14'22" west, a distance of 102.99 feet to the easterly boundary of the Town of Parker Ordinance 2.75 State Highway 83 Annexation Map recorded at Reception No. 9002842 of said records;

Thence along the easterly boundary of said Annexation Map the following (3) courses:

1. North 24°22'30" west, a distance of 630.01 feet;
2. North 27°14'15" west, a distance of 300.40 feet;
3. North 24°22'30" west, a distance 166.90 feet to the southerly boundary of the Town of Parker Ordinance 2.71 Crown Pointe Center Annexation Map recorded at Reception No. 9001001 of said records;

Thence along said southerly boundary north 89°47'25" east, a distance of 2,264.52 feet to said east line of the northwest quarter;

Thence along said east line, south 00°07'00" east, a distance of 851.29 feet the **point of beginning**.

Containing an area of 46.482 acres (2,024,739 square feet), more or less.



Request for Town Council Action

Date: September 21, 2020

Submitted By: Kristin Hoffmann, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 5.75.3 - First Reading**
A Bill for an Ordinance to Amend Section 6.02.040 of the
Parker Municipal Code Concerning Exceptions to Tobacco
Smoking Restrictions
Department: Town Attorney, Kristin Hoffmann
Second Reading: October 5, 2020

EXECUTIVE SUMMARY

This ordinance amends Section 6.02.040 to comply with HB 20-1001, which raised the minimum age of a person to whom tobacco products may be sold from eighteen years of age to twenty-one years of age.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

HB 20-1001 raises the minimum age of a person to whom cigarettes, tobacco products and nicotine products may be sold from eighteen years of age to twenty-one years of age. Section 2 of HB 20-1001 includes revisions to the signage that must be displayed by retail tobacco businesses and cigar-tobacco bars concerning this new minimum age restriction.

This ordinance amends Section 6.02.040 of the Parker Municipal Code to provide for the same revisions to the signage requirements as HB 20-1001.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Ordinance No. 5.75.3

RECOMMENDED MOTION

I move to approve Ordinance No. 5.75.3 on first reading and to schedule second reading on October 5, 2020, as part of the consent agenda.

ORDINANCE NO. 5.75.3, Series of 2020

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTION 6.02.040 OF THE PARKER MUNICIPAL CODE CONCERNING EXCEPTIONS TO TOBACCO SMOKING RESTRICTIONS

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

Section 1. Section 6.02.040 of the Parker Municipal Code is amended to read as follows:

6.02.040 Exceptions to tobacco smoking restrictions.

The following are exempt from the tobacco smoking prohibitions in Section 6.02.030 above; provided, however, that such exceptions herein shall not apply to the smoking of marijuana to the extent otherwise prohibited by Section 8.08.060 of this Code:

* * *

(3) Any retail tobacco business. Except that it shall prohibit entry by any person under ~~eighteen~~ twenty-one years of age; and shall display signage in at least one conspicuous place and at least four inches by six inches in size stating either: "Smoking allowed. Children Persons under ~~eighteen~~ twenty-one years of age may not enter," or, in the case of retail tobacco business that desires to allow the use of ESDs but not other forms of smoking on the premises, "Vaping allowed. Children Persons under ~~eighteen~~ twenty-one years of age may not enter."

(4) A cigar-tobacco bar. However, such a business shall not expand its size or change its location from the size and location in which it existed as of December 31, 2005; and shall prohibit entry by any person under ~~eighteen~~ twenty-one years of age and shall display signage in at least one conspicuous place and at least four inches by six inches in size stating: "Smoking allowed. Children Persons under ~~eighteen~~ twenty-one years of age may not enter."

* * *

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 _____,
2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____,
2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney



Request for Town Council Action

Date: September 21, 2020

Submitted By:

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 1.539.3 - First Reading**
A Bill for an Ordinance to Adopt the 2020 Revised Budget for the Town of Parker and to Make Appropriations for the Same
Department: Finance, Rhonda Willey
Second Reading: October 5, 2020

EXECUTIVE SUMMARY

If approved, this ordinance will increase the Town's Public Improvement Fund's revenue by \$12,860,000 to account for the transfer of funds from Parker Authority for Reinvestment (PAR) from the loan agreement from Chase Bank which closed on September 4, 2020.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

In coordination with PAR, the Town of Parker developed a capital projects list for the Parker Central Area, which could be funded through the urban renewal area. The process in which the project list was developed included reviewing the Town's capital list and identifying projects within the urban renewal boundaries, and then PAR evaluated the projects based on eliminating or reducing blight.

The capital project list was finalized in June 2020. The project list includes 8 projects, totaling \$12,750,000. To fund these projects, PAR entered into a loan agreement with Chase Bank which was approved by the PAR Board on PAR Resolution 2020-03 on August 17, 2020. The loan closed on September 4, 2020. The projects would need to be substantially complete within 3 years.

The funds from the loan will be transferred to the Town of Parker in the Public Improvements Fund. This budget amendment will increase the revenue. The projects are part of the 2021 capital budget.

As part of this action, PAR will reimburse the Town \$900,000 from the outstanding interfund loan. This will pay the Parker Central Area's portion of the loan from 2014.

FINANCIAL IMPACT

Increasing the revenue in the Public Improvements Fund will give the Town the revenue source to construct the capital project that are part of the Parker Central Area of PAR.

STRATEGIC GOAL(S)



ENHANCE ECONOMIC
VITALITY



INNOVATE WITH
COLLABORATIVE
GOVERNANCE

ATTACHMENTS

1. Ordinance No. 1.539.3

RECOMMENDED MOTION

I move to approve Ordinance No. 1.539.3 on first reading and to schedule second reading for October 5, 2020, as part of the consent agenda.

ORDINANCE NO. 1.539.3, Series of 2020

TITLE: A BILL FOR AN ORDINANCE TO ADOPT THE 2020 REVISED BUDGET FOR THE TOWN OF PARKER AND TO MAKE APPROPRIATIONS FOR THE SAME

WHEREAS, the Home Rule Charter of the Town of Parker specifies that Town Council may make additional appropriations by ordinance during the fiscal year for unanticipated expenditures; and

WHEREAS, upon due and proper notice published and posted in accordance with the Town of Parker Home Rule Charter, said proposed budget revisions are open for inspection by the public at the Town Hall.

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

Section 1. The 2020 Revised Budget for the Town of Parker, Colorado, which is attached hereto as **Exhibit A** and incorporated by this reference, is hereby adopted and the monies are appropriated to the various funds as the same are budgeted.

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 _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

Town of Parker
2020 Revised Budget Ordinance 1.539.3
1st Reading
2nd Reading

Exhibit A

September 21, 2020
October 5, 2020

	<u>Revision</u>	<u>2020 Revised Budget</u>
<u>Public Improvements Fund</u>		
Beginning fund balance		\$ 24,246,016
Revenue		19,714,705
Revenue revision	12,860,000	12,860,000
Total revised revenue		<u>32,574,705</u>
Total available		<u>56,820,721</u>
Expenditures		26,594,980
Expenditures revision	-	-
Total revised expenditures		<u>26,594,980</u>
Ending fund balance		<u>\$ 30,225,741</u>

Town of Parker**Exhibit A****Summary of Revisions to 2019 Budget Ordinance 1.539.3**

1st reading 09/21/2020

2nd reading 10/05/2020

	Expenditure Adjustment	Revenue Adjustment	Net Cash Impact
Public Improvements Fund	-	12,860,000	12,860,000
Total all funds	\$ -	\$ 12,860,000	\$ 12,860,000

Town of Parker

Exhibit A

Detail of Budget Adjustments to 2020 Budget Ordinance 1.539.3

1st reading 09/21/2020

2nd reading 10/05/2020

Revenues

Public Improvements Fund

Transfer from Parker Authority for Reinvestment to fund urban renewal projects
in the Parker Central Area

12,860,000

Total Public Improvements Fund revenue adjustment

12,860,000



Request for Town Council Action

Date: September 21, 2020

Submitted By: Tom Gill, Associate Project Manager
Chris Hudson, Deputy Director of Engineering

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.323 - First Reading**
A Bill for an Ordinance to Approve the Intergovernmental Agreement By and Between the Colorado Department of Transportation and the Town of Parker Concerning Project: MTF 083A-144 (23970), Parker Road Trail: 20 Mile to Hess Road Funding for the Construction of the Parker Road Sidewalks Project (Twenty Mile Road to Hess Road)
Department: Engineering and Public Works, Tom Gill
Engineering and Public Works, Chris Hudson
Second Reading: October 5, 2020

EXECUTIVE SUMMARY

This item is for an ordinance to approve an intergovernmental agreement (IGA) with the Colorado Department of Transportation (CDOT) to receive state multi-modal funding for the construction of a trail/sidewalk on the west side of Parker Road from the Hilltop Road/Twenty-Mile Road intersection to the Hess Road intersection.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town of Parker is proposing to construct a trail/sidewalk on the west side of Parker Road from the Hilltop Road/Twenty-Mile Road intersection to the Hess Road intersection in 2021. Although some portions of this trail/sidewalk exist along this section of Parker Road, the vast majority of Parker Road does not have an improved walkway. In addition to the sidewalk, the project will also include a spur trail to the Cherry Creek Regional Trail at McCabe Meadows.

Through the Denver Regional Council of Governments (DRCOG), the Town was approved to receive partial state multi-modal funding for construction of this trail/sidewalk. An intergovernmental agreement (IGA) with CDOT is required to receive these funds. The proposed IGA is for direct construction funding and is a 50/50 split with 50% of the construction funding being reimbursed by the state up to \$1,000,000. The Town will be required to fund the remaining 50% of the direct construction cost. The state funding cannot be used for

non-direct construction expenses like design, material testing or construction administration and the Town will be responsible for these costs. The state funding comes with considerable administration, including increased documentation and environmental clearances that must be submitted/approved with CDOT oversight.

The Town's consultant is currently working on the final design for this section of trail/sidewalk. The Town is intending to competitively bid and award the construction contract in 2021 with construction occurring during the 2021 construction season. Approximately two (2) years ago, the Town constructed a federally funded section of trail/sidewalk on the east side of Parker Road between Plaza Drive and the Sulphur Gulch Trail. That project was successfully funded and completed with a similar IGA with CDOT.

FINANCIAL IMPACT

As with any new sidewalk construction, long-term maintenance should be anticipated. Given typical use and proper initial construction, the sidewalk should last for 30 years. Snow removal is not typically the Town's responsibility unless the Town is the adjacent property owner. While this sidewalk will be predominately on CDOT property, CDOT does not own or maintain sidewalks and the Town will be responsible for any damage and/or replacement.

STRATEGIC GOAL(S)



**SUPPORT AN
ACTIVE COMMUNITY**



**INNOVATE WITH
COLLABORATIVE
GOVERNANCE**

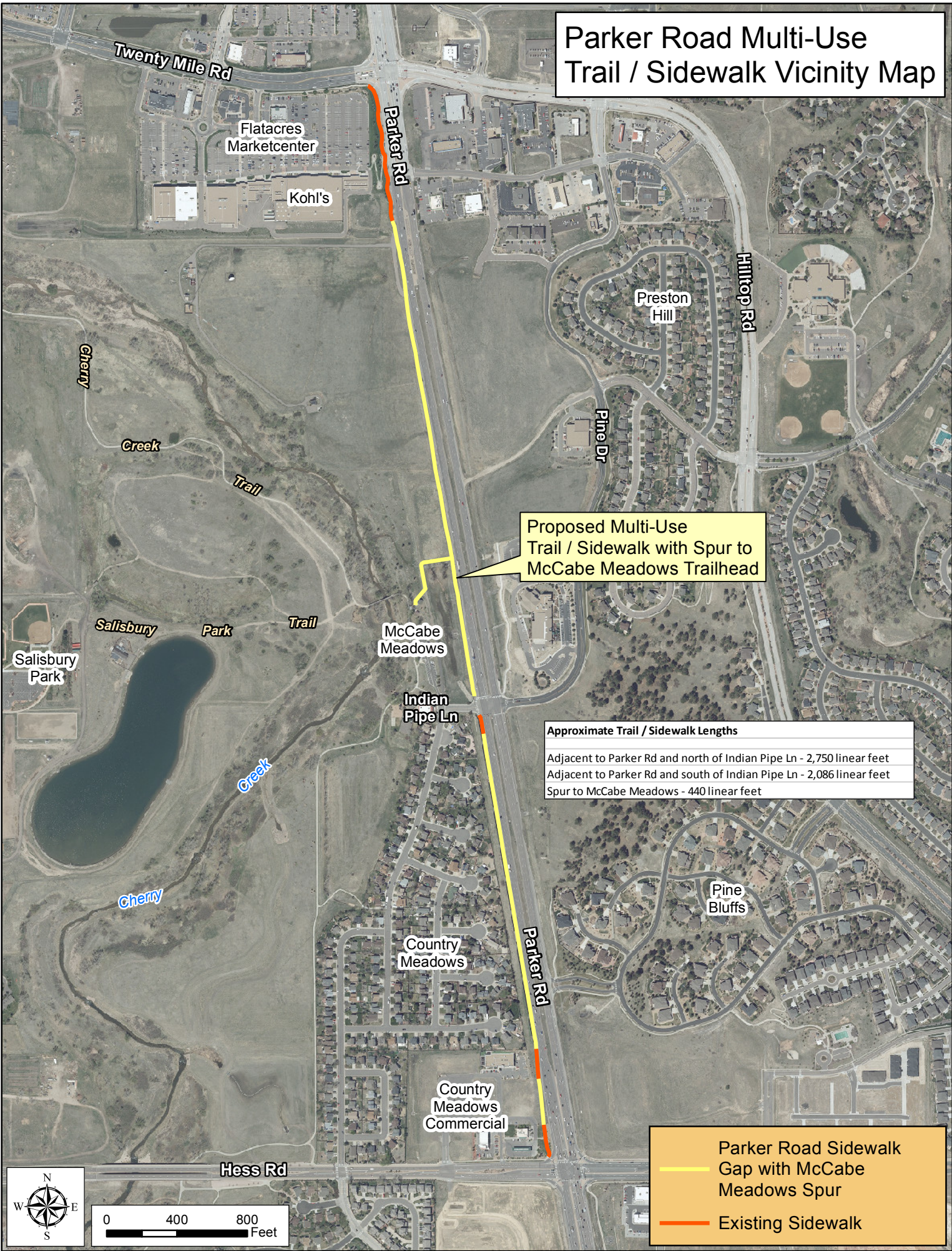
ATTACHMENTS

1. Vicinity Map
2. Ordinance No. 9.323

RECOMMENDED MOTION

I move to approve Ordinance No. 9.323 on first reading and to schedule second reading for October 5, 2020, as part of the consent agenda.

Parker Road Multi-Use Trail / Sidewalk Vicinity Map



ORDINANCE NO. 9.323, Series of 2020

TITLE: A BILL FOR AN ORDINANCE TO APPROVE THE INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE COLORADO DEPARTMENT OF TRANSPORTATION AND THE TOWN OF PARKER CONCERNING PROJECT: MTF 083A-144 (23970), PARKER ROAD TRAIL: 20 MILE TO HESS ROAD

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 Colorado Department of Transportation and the Town of Parker concerning Project: MTF 083A-144 (23970), Parker Road Trail: 20 Mile to Hess Road, 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 _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

OLA #: 331002131
Routing #: 20-HA1-XC-03054

State SLAWRK
PROJECT: MTF 083A-144 (23970)
Parker Road Trail: 20 Mile to Hess Road

REGION: 1
JH

CONTRACT

THIS CONTRACT made this ____ day of _____, _____, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and TOWN OF PARKER hereinafter referred to as the "Contractor" or the "Local Agency."

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function: , GL Acct: 4512000010, (Contract Encumbrance Amount: \$0.00.)
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for Multi-Use Trail/Sidewalk on Parker Road from 20 Mile Rd. to Hess Road, with a spur to Cherry Creek Trail and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written "Notice to Proceed" prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
5. The Local Agency has requested that State funds be made available for project MTF 083A-144 (23970), Parker Road Trail: 20 Mile to Hess Road referred to as the "Project" or the "Work." Such Work will be performed in Parker, Colorado, specifically described in **Exhibit A**.
6. The State has funds available and desires to provide 50% of the funding for the work. Local Agency will provide the other 50%. State funds **may be** awarded pursuant to Multimodal Transportation Options Funding ("MMOF"). MMOF means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (5)(a)(III) and (5)(b)(III) and any other money that the general assembly may appropriate or transfer to the fund. These funds are subject to an expiration date.
7. The Local Agency desires to comply with all state and other applicable requirements, including the State's general administration of the project through this contract, in order to obtain state funds for the project.
8. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
11. The Local Agency can more advantageously perform the Work.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Project or the Work under this contract shall consist of Multi-Use Trail/Sidewalk on Parker Road from 20 Mile Rd. to Hess Road, with a spur to Cherry Creek Trail, in Parker, Colorado, as more specifically described in **Exhibit A**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in **Section 27** of this contract

2. This contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit B** (Local Agency Resolution)
5. **Exhibit C** (Funding Provisions)
6. **Exhibit D** (Option Letter)

Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, or on the date made, whichever is later. It shall terminate on June 25, 2030, or sooner if any of the State's funding expires, or is sooner terminated or unless performance is extended in accordance with this Contract.

Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- C. Funding will be detailed in **Exhibit C** of the funding provisions.

Section 5. Project Payment Provisions

- A. The State will reimburse the Local Agency for incurred costs relative to the project following the State's review and approval of such charges, subject to the terms and conditions of this Contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the project, and will not be reimbursed by the State.
- B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in **Exhibit C**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
 1. In accordance with the provisions of **Section 5** and with the terms and conditions of this contract;
 2. Necessary for the accomplishment of the Work;
 3. Reasonable in the amount for the goods and services provided;
 4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
 5. Incurred for Work performed after the effective date of this contract;
 6. Satisfactorily documented.
- C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.
 1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
 2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.
- D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
 1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to

- the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State. If the project is funded by MMOF, then billing for all work must be submitted 30 days prior to end of State fiscal year. The State fiscal year ends June 30th. MMOF projects must submit final billing for all work 30 days prior to the end of the State fiscal year that funds expire. If MMOF are used, and the State knows that the funds will expire, the State shall promptly notify Local Agency of the expiration date. The State will promptly notify the Local Agency if that expiration date changes.
- F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
 2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
 3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
 4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

Section 6. Option Letter Modification

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on Exhibit C, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

- A. Option to begin a phase and/or increase or decrease the encumbrance amount.
The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc.). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.
- B. Option to transfer funds from one phase to another phase.
The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

C. Option to do both Options A and B.

The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

Section 7. State and Local Agency Commitments

The Scope of Work in **Exhibit A** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The “Responsible Party” referred to in this contract means the Responsible Party as identified in the Scope of Work in **Exhibit A**.

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the responsible party shall comply with the following requirements, as applicable:
 - a. perform or provide the Plans, to the extent required by the nature of the Work.
 - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
 - c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
 - d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
 - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
 - f. provide final assembly of Plans and contract documents.
 - g. be responsible for the Plans being accurate and complete.
 - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
2. If the Local Agency is the responsible party:
 - a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with State requirements.
 - c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:
 - (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
 - (2) it shall ensure that all changes in the consultant contract have prior approval by the State. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
 - (3) it shall require that all consultant billings under that contract shall comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - (4) it (or its consultant) shall use the CDOT procedures described in **Exhibit A** to administer that design consultant subcontract, to comply with 23 CFR 172.5(b).

- (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency's attorney/authorized representative certifying compliance with 23 CFR 172.5(b).
 - (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose."
 - (b) "Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project."
 - (c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."
 - (d) The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State requirements.
- B. Construction [if applicable]
1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the Scope of Work in **Exhibit A**. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements as described in the Scope of Work in **Exhibit A**.
 2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
 3. If the Local Agency is the responsible party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
 - (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
 - (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
 - c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
 - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency and the State in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
 - (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the

Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.

- (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.
- (4) All force account work shall have prior approval of the State and shall not be initiated until the State has issued a written notice to proceed.

C. State's obligations

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the Scope of Work in **Exhibit A**, within the Work of this contract.

Section 8. ROW Acquisition and Relocation

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

Section 9. Utilities

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

Section 10. Railroads

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

- A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
- B. Obtaining the railroad's detailed estimate of the cost of the Work.
- C. Establishing future maintenance responsibilities for the proposed installation.
- D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

Section 11. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

Section 12. Maintenance Obligations

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State will make periodic inspections of the project to verify that such improvements are being adequately maintained.

Section 13. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

Section 14. Termination Provisions

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.
Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.
If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
- C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 15. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 16. Representatives and Notice

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

If to State

If to the Local Agency

CDOT Region: 1	Town of Parker
Tracy Vance	Chris Hudson
Project Manager	Deputy Director of Engineering
2829 West Howard Place	20120 East Main Street
Denver, CO 80204	Parker, CO 80134
303-512-4090	303-805-3227

Section 17. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 18. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 19. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 20. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 21. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 22. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 23. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect

beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 24. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

Section 25. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 26. Statewide Contract Management System

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§Statewide Contract Management System** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

Section 27. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

Section 28. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

THE LOCAL AGENCY TOWN OF PARKER Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO Jared S. Polis Department of Transportation By _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director Date: _____
2nd Local Agency Signature if needed Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General By _____ Signature – Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Colorado Department of Transportation Date: _____

Exhibit A –Statement of Work

23970

MTF 083A-144

Scope of Work

Parker Road: Multi-Use Trail/Sidewalk

MTF 083A-144 (23970)

This project is for the Construction of a multi-use trail/sidewalk adjacent to the west side of Parker Road (State Highway 83) between the Twenty Mile Road intersection to the Hess Road intersection. The project will include a spur to the Cherry Creek Trail.

The project is funded with Multi-Modal Options Funding (MMOF). MMOF funding expenditures shall be invoiced by June 1st of the year they expire.

EXHIBIT B, LOCAL AGENCY RESOLUTION

EXHIBIT C – FUNDING PROVISIONS**MTF 083A-144 (23970) MMOF****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$2,000,000.00, which is to be funded as follows:

1. BUDGETED FUNDS				
a.	State Funds (50.00% of Participating Costs)			\$1,000,000.00
b.	Local Agency Matching Funds (50.00% of Participating Costs)			\$1,000,000.00
TOTAL BUDGETED FUNDS				\$2,000,000.00
2. ESTIMATED PAYMENT TO LOCAL AGENCY				
a.	State Funds Budgeted			\$1,000,000.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$1,000,000.00
3. FOR CDOT ENCUMBRANCE PURPOSES				
a.	Total Encumbrance Amount			\$2,000,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109			\$0.00
Net to be encumbered as follows:				\$1,000,000.00
<i>Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.</i>				
WBS Element 23970.10.30	Performance Period Start*/End Date N/A / N/A	Design	3020	\$0.00
WBS Element 23970.20.10	N/A / N/A	Const.	3301	\$0.00

*The Local Agency should not begin work until **both** of the following are in place:

- 1) The execution of the document encumbering funds for the respective phase; and
- 2) Local Agency receipt of the official Notice to Proceed. Any work performed before these milestones are achieved will not be reimbursable.

B. Matching Funds

The matching ratio for this Work is 50.00% State funds to 50.00% Local Agency funds, it being understood that such ratio applies only to the \$2,000,000.00 of total budgeted funds, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total cost of performance of the Work is less than \$2,000,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$1,000,000.00 (for CDOT accounting purposes, the State funds of \$1,000,000.00 will be encumbered, but the Local Agency matching funds of \$1,000,000.00 will NOT be encumbered), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the State funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 6 of this contract.

EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below

AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (Insert the following language for use with the Option A):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.*).

Option B (Insert the following language for use with Option B):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.*).

Option C *(Insert the following language for use with Option C):*

In accordance with the terms of the original Agreement *(insert CMS routing # of original Agreement)* between the State of Colorado, Department of Transportation and *(insert the Local Agency's name here)*, the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. *(The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.*

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now *(insert total encumbrance amount)*, as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: *(indicate total budgeted funds)* as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

Jared S. Polis, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

Form Updated: December 19, 2012



Request for Town Council Action

Date: September 21, 2020

Submitted By: Alex Mestdagh, Engineering Service Manager

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.291.1 - First Reading**
A Bill for an Ordinance Approving the Amendment to Agreement Regarding Final Design and Construction of Fee-In-Lieu Drainage and Flood Control Improvements for Green Acres Tributary at Compark Village South (Agreement No. 19-06.01A, Project No. 107382) By and Between Urban Drainage and Flood Control District d/b/a Mile High Flood District and the Town of Parker
Department: Engineering and Public Works, Michael Grabczyk
Engineering and Public Works, Alex Mestdagh

Second Reading: **October 5, 2020**

EXECUTIVE SUMMARY

This item proposes an amendment to an Intergovernmental Agreement (IGA) between the Town and the Mile High Flood District (MHFD) regarding improvements to Green Acres Tributary at the Compark Village South development. This amendment codifies the construction costs for these developer-funded improvements that will be constructed by MHFD at no cost to the Town.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Green Acres Tributary is a major drainageway located within the northwestern area of the Town. A portion of the drainageway is located within the proposed Compark Village South development, which is located south of E-470 and north of the Grandview Estates subdivision.

In accordance with Town Code, the developer of the Compark Village South property is required to design and construct any master planned improvements to the major drainageway.

The Mile High Flood District has agreed to construct these improvements to Green Acres Tributary as a Fee-in-Lieu Improvement (FILI) project. In a FILI arrangement, the developer funds 100% of the cost to design and construct the improvements, while the District manages the design and construction contracts with assistance and input from Town Staff. This

arrangement is attractive to the Town and District due to their increased control over the project, and is attractive to the developer because they can remove this work from the scope of improvements they will oversee.

The developer funding for the FILI improvements will be codified and collected by the Town through the Subdivision Agreement for the Compark Village South development. Thus, an IGA between the Town and District is necessary to transfer the developer funding to the District and memorialize the improvements that will be designed and constructed by the District. This IGA was originally executed in 2019 to codify the design of the FILI improvements, and with final design of the improvements now complete, is now proposed to be amended to include the construction costs.

FINANCIAL IMPACT

These improvements will be funded 100% by the Compark Village South developer, and will be constructed at no cost to the Town. The total cost to design and construct the improvements is \$5,124,214.

STRATEGIC GOAL(S)



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH



PROMOTE A SAFE AND
HEALTHY COMMUNITY



INNOVATE WITH
COLLABORATIVE
GOVERNANCE

ATTACHMENTS

1. Vicinity Map
2. Ordinance 9.291.1

RECOMMENDED MOTION

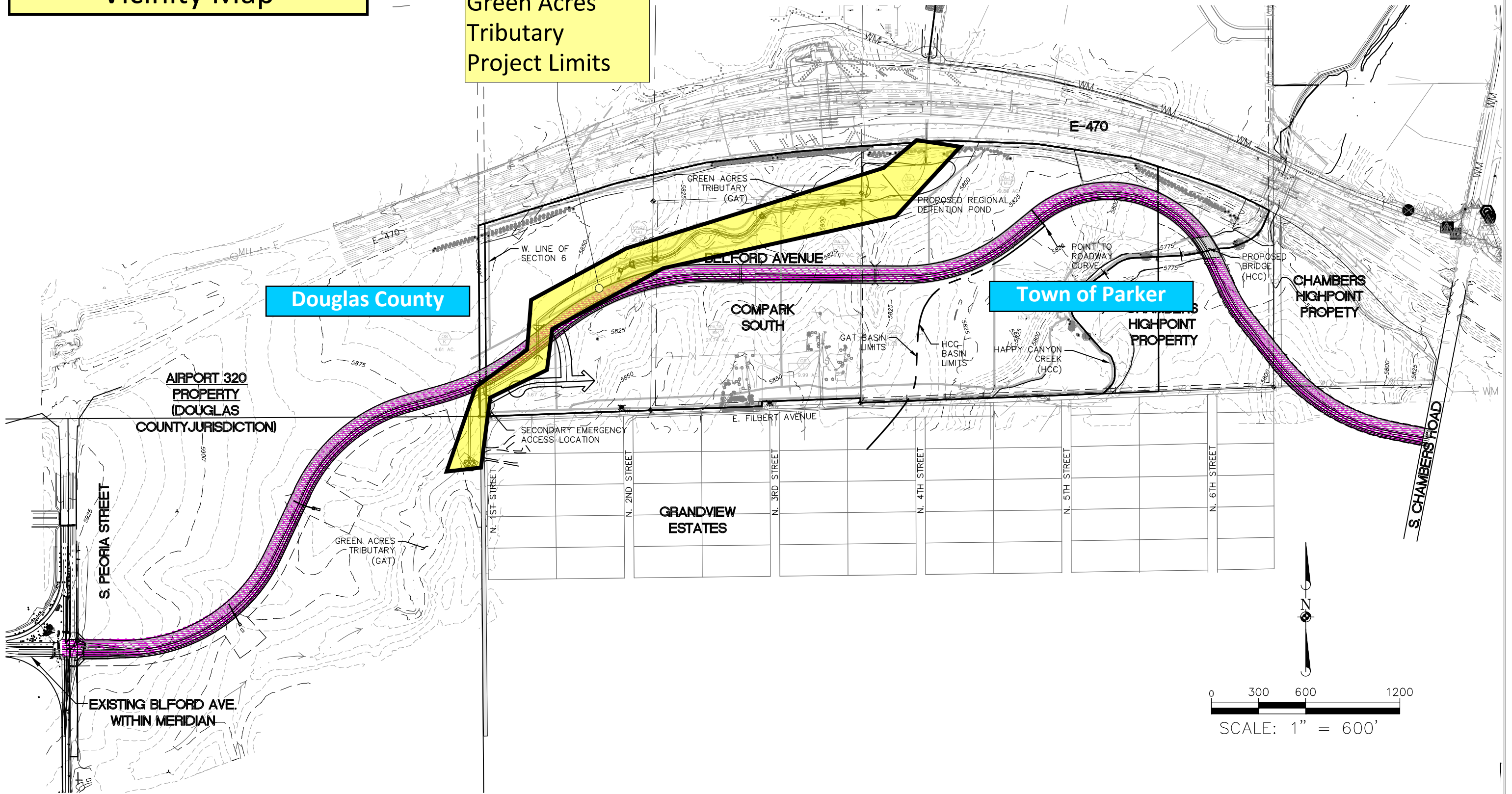
I move to approve Ordinance No. 9.291.1 on first reading and to schedule second reading for October 5, 2020, as part of the consent agenda.

Green Acres Tributary
Vicinity Map

Green Acres
Tributary
Project Limits

Douglas County

Town of Parker



0 300 600 1200
SCALE: 1" = 600'



ORDINANCE NO. 9.291.1, Series of 2020

TITLE: A BILL FOR AN ORDINANCE APPROVING THE AMENDMENT TO AGREEMENT REGARDING FINAL DESIGN AND CONSTRUCTION OF FEE-IN-LIEU DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR GREEN ACRES TRIBUTARY AT COMPARK VILLAGE SOUTH (AGREEMENT NO. 19-06.01A, PROJECT NO. 107382) BY AND BETWEEN URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD 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 Amendment to Agreement Regarding Final Design and Construction of Drainage and Flood Control Improvements for Green Acres Tributary at Compark Village South (Agreement No. 19-06.01A, Project No. 107382) by and between Urban Drainage and Flood Control District d/b/a Mile High Flood 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 _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

AMENDMENT TO
AGREEMENT REGARDING
FINAL DESIGN AND CONSTRUCTION
OF FEE-IN-LIEU DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR
GREEN ACRES TRIBUTARY AT COMPARK VILLAGE SOUTH
TOWN OF PARKER

Agreement No. 19-06.01A
Project No. 107382

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

WITNESSETH:

WHEREAS, PARTIES have entered into "Agreement Regarding Final Design and Construction of Fee-in-Lieu Drainage and Flood Control Improvements for Green Acres Tributary at Compark Village South, Town of Parker" (Agreement No. 19-06.01) dated July 16, 2019; and

WHEREAS, PARTIES now desire to construct drainage and flood control improvements for Green Acres Tributary at Compark Village South; and

WHEREAS, PARTIES desire to increase the level of funding by \$4,645,467; and

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

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

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

1. Paragraph 4. PROJECT COSTS AND ALLOCATION OF COSTS is deleted and replaced as follows:

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:

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. Vegetation establishment
 6. Final design administrative fee
 7. Construction administrative fee

- B. It is understood that PROJECT costs as defined above are not to exceed \$5,124,214 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

<u>PROJECT ITEM</u>		<u>AS</u> <u>AMENDED</u>	<u>ORIGINAL</u>
1.	Final design	\$ 456,897	\$ 456,897
2.	Right of way	\$ -0-	\$ -0-
3.	Construction	\$ 4,103,790	\$ -0-
4.	Contingencies	\$ 376,500	\$ -0-
5.	Vegetation Establishment	\$ 103,620	\$ -0-
	Sub Total	\$ 5,040,807	\$ 456,897
<u>ADMINISTRATIVE ITEM</u>			
6.	Final Design Administrative Fee	\$ 21,850	\$ 21,850
7.	Construction Administrative Fee	\$ 61,557	\$ -0-
	Sub Total	\$ 83,407	\$ 21,850
	Grand Total	\$ 5,124,214	\$ 478,747

This breakdown of 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.

2. Paragraph 5. MANAGEMENT OF FINANCES is deleted and replaced as follows:

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 \$5,124,214 shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. 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).

- 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 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.

Under \$500,000	8%
\$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%

3. All other terms and conditions of Agreement No. 19-06.01 shall remain in full force and effect.

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 D/B/A
MILE HIGH FLOOD DISTRICT

By_____

Name Ken A. MacKenzie

Title Executive Director

Date_____

Checked By

TOWN OF PARKER

(SEAL)

By _____
Mike Waid

ATTEST:

Title Mayor

Carol Baumgartner, Town Clerk

Date _____

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

Green Acres Tributary FILI

8/14/2020

Phase	Cost	Notes
Conceptual Design	\$0	<i>Establishes land, time, and funding needed</i>
Final Design and Permitting	\$451,897	<i>Typically 10% to 20% of construction cost</i>
Contractor Value Engineering	\$5,000	<i>Typically \$5,000 to \$10,000 depending on project scale</i>
MHFD Final Design Phase Fee	\$21,850	<i>\$2,400 startup + \$1,645/month + \$3,000 closeout</i>
Design Phase Total =	\$478,747	
Construction ¹	\$2,990,235	<i>Typically \$500 to \$1,000 per linear foot</i>
Vegetation Construction	\$775,000	
Construction Contingency (10%)	\$376,500	<i>Typically 15% of Construction Cost (refundable)</i>
Construction Engineering Services	\$338,555	<i>Typically 5% to 10% of Construction Costs</i>
Vegetation Establishment ²	\$103,620	<i>Weed control, watering, re-seeding</i>
MHFD Construction Phase Fee	\$61,557	<i>Percentage of construction cost (min 0.6%, max 8.0%)</i>
Construction Phase Total =	\$4,645,467	
Total Project Cost =	\$5,124,214	

¹Construction cost provided by Naranjo, based on 100% plans and quantities.

² 3-year vegetation maintenance



Request for Town Council Action

Date: September 21, 2020

Submitted By: Kristin Hoffmann, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.303.1 - First Reading**
A Bill for an Ordinance Approving a First Amended and Restated Intergovernmental Agreement Between the Town of Parker, Colorado, and the Belford North Metropolitan District
Department: Town Attorney, Kristin Hoffmann
Second Reading: October 5, 2020

EXECUTIVE SUMMARY

This ordinance approves the First Amended and Restated Intergovernmental Agreement between the Town and the Belford North Metropolitan District. The public hearing on the First Amended and Restated Service Plan for the District is scheduled for October 5, 2020.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

In March 2018, the Town Council approved the original service plan for Belford North Metropolitan District, which now serves as the commercial district for the Belford project. Belford South Metropolitan District serves as the residential district. A proposed First Amended and Restated Service Plan for the Belford North Metropolitan District is set for public hearing on October 5, 2020.

This ordinance approves the First Amended and Restated Intergovernmental Agreement between the Town and the District. Attached is an analysis of the Belford North Metropolitan District and the Belford South Metropolitan District's proposed amended and restated service plans and intergovernmental agreements.

FINANCIAL IMPACT

The District shall impose a property tax of 5 mills, which shall be remitted to the Town and used for the purpose of funding capital costs or the costs of maintenance of the Town infrastructure, as identified in Exhibit B of the intergovernmental agreement.

STRATEGIC GOAL(S)



ATTACHMENTS

1. Summary Memo
2. Ordinance No. 9.303.1

RECOMMENDED MOTION

I move to approve Ordinance No. 9.303.1 on first reading and to schedule second reading on October 5, 2020, as part of the consent agenda.

MEMORANDUM

To: Town Council
From: Kristin Schledorn, Deputy Town Attorney
Date: September 8, 2020
Re: Amended and Restated Service Plans for Belford North and Belford South Metropolitan Districts

The following sets forth an analysis on the proposed First Amended and Restated Service Plan for Belford North Metropolitan District (“BNMD”) and the proposed Second Amended and Restated Service Plan (collectively, the “Service Plans”) for Belford South Metropolitan District (“BSMD” and collectively with BNMD, the “Districts”) which are set for a public hearing before the Town Council on October 5, 2020. This report summarizes key information about the Districts and the Service Plans.

As background, the Town Council in March 2016 approved the original service plan for BSMD, which was subsequently organized and is an existing special district. BSMD contains the residential portions of the Belford project south of Belford Avenue. BNMD contains the commercial portions of the project, north of Belford Avenue. In March 2018, BSMD amended its service plan and Town Council approved the original service plan for BNMD, which was subsequently organized and is an existing district, to provide that BSMD would serve as the residential district and BNMD would serve as the commercial district.

Belford South and Belford North Metropolitan Districts

Developer/Property Owner: Westside Investment Partners LLC/470 Compark LLC

Attorney: Spencer Fane (Tom George, Esq.)

Finance: D.A. Davidson

Accounting/Management: CliftonLarsonAllen LLP

Engineer: Manhard Consulting

Bond Counsel: Sherman & Howard

Location: South of E-470, west of Chambers Road, north and south of Belford Avenue

Area/Land Use: BSMD 84.6 acres (residential)
BNMD 65.48 acres (commercial)

- Build Out Schedule:** Per Financial Plan, build out anticipated to occur by 2024 for BSMD and 2025 for BNMD (445 residential units and approximately 365,000 sq. ft. of commercial)
- Projected Assessed:** Projected total assessed valuation (AV) for all development at completion of project build out, anticipated for completion year noted above (per Financial Plan, with 2-year lag for AV realization):
- \$9,271,506 for Belford North
\$ 7,123,111 for Belford South
- Powers:** To provide the Public Improvements, including street improvements; storm drainage improvements; sanitary sewer improvements; water main improvements; and parks and open space improvements. The District is also authorized to own, operate and maintain Public Improvements not dedicated to the Town or other public entity.
- Improvement Costs:** \$45,354,646, total estimated improvement costs as listed in Exhibit D of the Service Plans, of which \$25,285,394 is for street improvements; \$8,955,236 is for storm drainage improvements; \$3,245,670 is for sanitary sewer improvements; \$3,991,197 is for water main improvements and \$3,877,149 is for parks and open space improvements.
- Debt Issuance:** While the Financial Plan indicates that the Districts' bonding capacity is projected to be approximately \$88,806,250 based on a par amount of \$71,045,000 as calculated pursuant to Section 9 of the Service Plans, the District is limited to debt issuance of no more than the Service Plans' debt limit of \$56,700,000.
- All Debt must meet statutory requirements.
- Debt Limit:** \$56,700,000
- Mill Levy:** 77 mills total, comprised of up to 57 mills for debt service (Maximum Debt Mill Levy), subject to a Mill Levy Adjustment (see comment 2); up to 10 mills for operations and maintenance (Operations and Maintenance Mill Levy); 5 mills for regional infrastructure (Infrastructure Capital Mill Levy), subject to a Mill Levy Adjustment; and 5 mills to be remitted to the Town (Town Capital and Maintenance Mill Levy), subject to a Mill Levy Adjustment, to be used for specified projects, including maintenance and operation of all roadways, storm sewer, and associated items constructed within Town right-of-way; maintenance and operation of regional roadways

serving the District; and maintenance and operation of all storm sewer, detention ponds, stream and channel 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.

Fees: The Service Plans propose a district development fee of \$25,000 for single family detached or attached units and \$20,000 for multi-family units. For uses other than a single family or multi-family residential structures, the service plans propose a development fee of \$25,000 per SFE of water and/or wastewater demand (see comment 1).

Comments:

1. The proposed Service Plans and intergovernmental agreements generally conform to the Town's model service plan and IGA, with the exception of the continued assessment and collection of a development fee of \$25,000/\$20,000 rather than in the amounts of \$2,000/\$1,500 as stated in the model service plan. In approving the BSMD service plan in 2016, Town Council approved this authority and in 2018 approved similar authority for BNMD, with the fee being \$25,000/SFE (rather than per square foot). In addition, the Districts may collect a development fee from the Chambers Highpoint property to pay to finance the costs of Public Improvements, including extensions of water and wastewater infrastructure necessary to obtain service from Stonegate Village Metropolitan District.

2. The proposed Service Plans identify a Mill Levy Adjustment, which allows the mill levies to be adjusted (Gallagherized) using 2019 as the base year. Therefore, the current mill levy proposed for debt service is 57.398 mills.

ORDINANCE NO. 9.303.1, Series of 2020

TITLE: A BILL FOR AN ORDINANCE APPROVING A FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO, AND THE BELFORD NORTH METROPOLITAN DISTRICT

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

Section 1. The Town Council of the Town of Parker hereby approves a First Amended and Restated Intergovernmental Agreement between the Town of Parker, Colorado, and the Belford North Metropolitan District, 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 _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

FIRST AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO, AND BELFORD NORTH METROPOLITAN DISTRICT

THIS AGREEMENT (the “Agreement”) is made and entered into as of this ____ day of _____, 20__, by and between the TOWN OF PARKER, a home rule municipal corporation of the State of Colorado (the “Town”), and the BELFORD NORTH METROPOLITAN DISTRICT, 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 First Amended and Restated Service Plan approved by the Town on _____ (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 previously approved that certain Compark Village South Filing No. 1 Minor Development Plat, approved by Town Council on September 19, 2016, an Approved Development Plan for purposes of the Service Plan, and it is anticipated that the Town will in the future approve or enter into one or more additional Approved Development Plans (as defined in the Service Plan), all of which will identify, among other things, Public Improvements (as defined in the Service Plan) necessary for facilitating development for property within the Service Area and specific regional improvements necessary or desirable in connection with the impacts of the development of the Property (the “Regional Infrastructure”); and

WHEREAS, pursuant to an Approved Development Plan, the Town and District may share in the responsibilities for constructing and owning the Regional Infrastructure; and

WHEREAS, in accordance with the provisions of the Service Plan and as further set forth herein, 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 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 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 (“Town Infrastructure”); and

WHEREAS, in accordance with the provisions of the Service Plan and as further set forth herein, 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 an election under TABOR to enable it to impose the Town Capital and Maintenance Mill Levy and to issue debt repayable from the Town Capital and Maintenance Mill Levy; and

WHEREAS, the Parties further acknowledge that the District will have certain ongoing administrative obligations, as well as maintenance obligations with regard to the Public Improvements and Regional Infrastructure, and in accordance with the provisions of the Service Plan, the District will levy a property tax (the “Operation and Maintenance Mill Levy”) for such purposes; and

WHEREAS, the Parties understand and agree it is contemplated that the District and the Belford South Metropolitan District (together, the “Districts”) may cooperate with each other concerning the planning, design, construction, ownership, operation and maintenance of certain infrastructure that benefits the taxpayers and inhabitants of the Districts’ combined Service Area, and that each of the Districts may additionally have its own particular infrastructure needs; and

WHEREAS, the Town and the District previously entered into that certain Intergovernmental Agreement dated December 2, 2019 (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 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. The Town agrees that for economic efficiency in financing 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 Debt (as defined in the Service Plan), provided that the proceeds generated from the pledge of the Infrastructure Capital Mill Levy may only be used to pay costs associated with Regional Infrastructure.

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 Town Capital and Maintenance Mill Levy is set forth on Exhibit B to this Agreement.

3. Operation and Maintenance Mill Levy. The District may impose a property tax of up to 10 mills, which shall be used for the ongoing administrative expenses of the District and for the maintenance of certain of the Public Improvements and Regional Infrastructure, as set forth on Exhibit C to this Agreement. 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 applicable Approved Development Plan(s), 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, 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.

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 commencing 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 maintenance obligations in connection with the Public Improvements and the Regional Infrastructure in a timely and adequate manner. The District acknowledges and agrees that the 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 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 all voter authorizations necessary 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 received by the District from the Mill Levies that are due to the Town as required herein no later than March 15 and June 30 each year, and the Town shall deposit and maintain such revenues in a separate fund earmarked specifically for use only as set forth in this Agreement (the "Belford Metropolitan District Fund"). Any revenues from the Mill Levies the District receives after June 30 that are due to the Town as required herein shall be remitted to the Town within 30 days of their receipt. The monies in the Belford North Metropolitan District Fund may be applied to any design, planning, engineering, surveying, construction management, labor, materials, operations and administrative costs related to construction of the Regional Infrastructure and the Town Infrastructure as further detailed in this Agreement. 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 all applicable Approved Development Plans, including but not limited to final approved plats, other rules and regulations of the Town, and applicable provisions of the Town Code. The District shall not be authorized to operate and maintain any part or all of the Public Improvements, or any other improvements, public or private, or to own fee title to any real property, unless specifically provided for in an Approved Development Plan, this Agreement or a 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 Belford South Metropolitan District, shall not issue Debt in excess of \$56,700,000 in total aggregate principal amount, provided that such limitation shall not be applicable to refunding Bonds issued by the District to refund outstanding Debt. The Debt limitation shall not apply to the pledge of property tax or specific ownership tax revenues derived from mill levies or other revenues between the District and Belford South Metropolitan District.

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. 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 Town's approval of the District's Service Plan, 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 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 Districts may file a consolidated Annual Report.

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: Belford North Metropolitan District
c/o CliftonLarsonAllen LLP
Attn: Bob Blodgett, District Manager
8390 E. Crescent Parkway, Suite 300
Greenwood Village, CO 80111
Phone: 303-779-5710
Fax: 303-779-0348
Email: Bob.Blodgett@claconnect.com

With a copy to:

Belford North Metropolitan District
c/o Spencer Fane LLP
Attn: Tom George
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Phone: 303-839-3800
Fax: 303-839-3838
Email: tgeorge@spencerfane.com

To the Town:

Town of Parker 20120 E. Mainstreet Parker, CO 80138-7334 Attn: Town Attorney's Office cc: Mary Lou Brown, Finance Director Phone: (303) 841-0353 Fax: (303) 840-9792
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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. Cooperation among the Districts. Pursuant to the Service Plan, the Town acknowledges and agrees that the District may cooperate with Belford South Metropolitan District 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 one or more intergovernmental agreements among the Districts.

19. 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 either of the Districts between the 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 may be executed in as many as 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 merges, supersedes and replaces 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.

M. No Waiver of Governmental Immunity. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall be deemed a waiver of any protections afforded the Parties pursuant to Colorado law, including, but not limited to, the Colorado Governmental Immunity Act.

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:

Town Attorney's Office

BELFORD NORTH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
_____, President
Belford North Metropolitan District

ATTEST:

Secretary

EXHIBIT A

Utilization of Infrastructure Capital Mill Levy

The revenues derived from the Infrastructure Capital Mill Levy may be retained by the District and used for the planning, design, financing, acquisition and/or construction of the following infrastructure and improvements, which infrastructure and improvements the Parties agree shall be considered Regional Infrastructure:

1. regional stormwater improvements, including but not limited to improvements associated with Green Acres Tributary and Happy Canyon Creek, and other regional stormwater channels and detention/retention facilities;
2. arterial streets, including but not limited to Belford Avenue and South Chambers Road, and appurtenances, including but not limited to traffic safety improvements;
3. right-of-way landscaping (edges and medians) along arterial street rights-of-way;
4. regional water and sanitary sewer improvements;
5. regional open space, regional trails, and other regional park and recreation improvements;
6. all other regional improvements specifically identified in an Approved Development Plan (as defined in the Service Plan) approved by the Town to be planned, designed and constructed by the District;
7. all other regional improvements that may be planned, designed, or constructed by either of the Districts.

EXHIBIT B

Utilization of Town Capital and Maintenance Mill Levy

Revenues derived from the Town Capital and Maintenance Mill Levy may be used by the Town for the purpose of funding capital costs or the costs of maintenance of Town Infrastructure necessary in connection with the impacts of development in the District, including the following:

1. maintenance and operation of all roadways, storm sewer, and associated items constructed within Town right-of-way;
2. maintenance and operation of regional roadways serving the District; and
3. maintenance and operation of all storm sewer, detention ponds, stream and channel 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.

EXHIBIT C

Utilization of Operation and Maintenance Mill Levy

The District may use the revenues derived from the Operation and Maintenance Mill Levy for the ongoing administrative expenses of the District and the operation and maintenance of Public Improvements and Regional Infrastructure, which Public Improvements and Regional Infrastructure shall include but are not limited to the following:

1. regional stormwater improvements, including but not limited to regional stormwater channels and detention/retention facilities;
2. collector and arterial streets and appurtenances, including but not limited to traffic safety improvements;
3. right-of-way landscaping (edges and medians) along collector, arterial and other street rights-of-way;
4. regional water and sanitary sewer improvements;
5. regional open space, regional trails, and other regional park and recreation improvements;
6. all other regional improvements specifically identified in an Approved Development Plan (as defined in the Service Plan) approved by the Town to be owned, operated and/or maintained by the District;
7. community parks and recreation facilities and amenities and associated grounds and landscaping;
8. all other improvements and operations specifically identified in an Approved Development Plan approved by the Town to be owned, operated, maintained and/or provided by the District;
9. all improvements that may be planned, designed or constructed by the District until such time as such improvements are dedicated, conveyed or transferred to and accepted by the applicable accepting jurisdiction(s); and
10. all other improvements that may be owned, operated and/or maintained by either of the Districts.



Request for Town Council Action

Date: September 21, 2020

Submitted By: Kristin Hoffmann, Deputy Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **ORDINANCE NO. 9.304.1 - First Reading**
A Bill for an Ordinance Approving a Second Amended and Restated Intergovernmental Agreement Between the Town of Parker, Colorado, and the Belford South Metropolitan District
Department: Town Attorney, Kristin Hoffmann
Second Reading: October 5, 2020

EXECUTIVE SUMMARY

This ordinance approves the Second Amended and Restated Intergovernmental Agreement between the Town and the Belford South Metropolitan District. The public hearing on the Second Amended and Restated Service Plan for the District is scheduled for October 5, 2020.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

In March 2016, the Town Council approved the original service plan for Belford South Metropolitan District, which now serves as the residential district for the Belford project. Belford North Metropolitan District serves as the commercial district. A proposed Second Amended and Restated Service Plan for the Belford South Metropolitan District is set for public hearing on October 5, 2020.

This ordinance approves the Second Amended and Restated Intergovernmental Agreement between the Town and the District. Attached is an analysis of the Belford North Metropolitan District and the Belford South Metropolitan District's proposed amended and restated service plans and intergovernmental agreements.

FINANCIAL IMPACT

The District shall impose a property tax of 5 mills, which shall be remitted to the Town and used for the purpose of funding capital costs or the costs of maintenance of the Town infrastructure, as identified in Exhibit B of the intergovernmental agreement.

STRATEGIC GOAL(S)



ATTACHMENTS

1. Summary Memo
2. Ordinance No. 9.304.1

RECOMMENDED MOTION

I move to approve Ordinance No. 9.304.1 on first reading and to schedule second reading on October 5, 2020, as part of the consent agenda.

MEMORANDUM

To: Town Council
From: Kristin Schledorn, Deputy Town Attorney
Date: September 8, 2020
Re: Amended and Restated Service Plans for Belford North and Belford South Metropolitan Districts

The following sets forth an analysis on the proposed First Amended and Restated Service Plan for Belford North Metropolitan District (“BNMD”) and the proposed Second Amended and Restated Service Plan (collectively, the “Service Plans”) for Belford South Metropolitan District (“BSMD” and collectively with BNMD, the “Districts”) which are set for a public hearing before the Town Council on October 5, 2020. This report summarizes key information about the Districts and the Service Plans.

As background, the Town Council in March 2016 approved the original service plan for BSMD, which was subsequently organized and is an existing special district. BSMD contains the residential portions of the Belford project south of Belford Avenue. BNMD contains the commercial portions of the project, north of Belford Avenue. In March 2018, BSMD amended its service plan and Town Council approved the original service plan for BNMD, which was subsequently organized and is an existing district, to provide that BSMD would serve as the residential district and BNMD would serve as the commercial district.

Belford South and Belford North Metropolitan Districts

Developer/Property Owner: Westside Investment Partners LLC/470 Compark LLC

Attorney: Spencer Fane (Tom George, Esq.)

Finance: D.A. Davidson

Accounting/Management: CliftonLarsonAllen LLP

Engineer: Manhard Consulting

Bond Counsel: Sherman & Howard

Location: South of E-470, west of Chambers Road, north and south of Belford Avenue

Area/Land Use: BSMD 84.6 acres (residential)
BNMD 65.48 acres (commercial)

Build Out Schedule: Per Financial Plan, build out anticipated to occur by 2024 for BSMD and 2025 for BNMD (445 residential units and approximately 365,000 sq. ft. of commercial)

Projected Assessed: Projected total assessed valuation (AV) for all development at completion of project build out, anticipated for completion year noted above (per Financial Plan, with 2-year lag for AV realization):

\$9,271,506 for Belford North
\$ 7,123,111 for Belford South

Powers: To provide the Public Improvements, including street improvements; storm drainage improvements; sanitary sewer improvements; water main improvements; and parks and open space improvements. The District is also authorized to own, operate and maintain Public Improvements not dedicated to the Town or other public entity.

Improvement Costs: \$45,354,646, total estimated improvement costs as listed in Exhibit D of the Service Plans, of which \$25,285,394 is for street improvements; \$8,955,236 is for storm drainage improvements; \$3,245,670 is for sanitary sewer improvements; \$3,991,197 is for water main improvements and \$3,877,149 is for parks and open space improvements.

Debt Issuance: While the Financial Plan indicates that the Districts' bonding capacity is projected to be approximately \$88,806,250 based on a par amount of \$71,045,000 as calculated pursuant to Section 9 of the Service Plans, the District is limited to debt issuance of no more than the Service Plans' debt limit of \$56,700,000.

All Debt must meet statutory requirements.

Debt Limit: \$56,700,000

Mill Levy: 77 mills total, comprised of up to 57 mills for debt service (Maximum Debt Mill Levy), subject to a Mill Levy Adjustment (see comment 2); up to 10 mills for operations and maintenance (Operations and Maintenance Mill Levy); 5 mills for regional infrastructure (Infrastructure Capital Mill Levy), subject to a Mill Levy Adjustment; and 5 mills to be remitted to the Town (Town Capital and Maintenance Mill Levy), subject to a Mill Levy Adjustment, to be used for specified projects, including maintenance and operation of all roadways, storm sewer, and associated items constructed within Town right-of-way; maintenance and operation of regional roadways

serving the District; and maintenance and operation of all storm sewer, detention ponds, stream and channel 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.

Fees: The Service Plans propose a district development fee of \$25,000 for single family detached or attached units and \$20,000 for multi-family units. For uses other than a single family or multi-family residential structures, the service plans propose a development fee of \$25,000 per SFE of water and/or wastewater demand (see comment 1).

Comments:

1. The proposed Service Plans and intergovernmental agreements generally conform to the Town's model service plan and IGA, with the exception of the continued assessment and collection of a development fee of \$25,000/\$20,000 rather than in the amounts of \$2,000/\$1,500 as stated in the model service plan. In approving the BSMD service plan in 2016, Town Council approved this authority and in 2018 approved similar authority for BNMD, with the fee being \$25,000/SFE (rather than per square foot). In addition, the Districts may collect a development fee from the Chambers Highpoint property to pay to finance the costs of Public Improvements, including extensions of water and wastewater infrastructure necessary to obtain service from Stonegate Village Metropolitan District.

2. The proposed Service Plans identify a Mill Levy Adjustment, which allows the mill levies to be adjusted (Gallagherized) using 2019 as the base year. Therefore, the current mill levy proposed for debt service is 57.398 mills.

ORDINANCE NO. 9.304.1, Series of 2020

TITLE: A BILL FOR AN ORDINANCE APPROVING A SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO, AND THE BELFORD SOUTH METROPOLITAN DISTRICT

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

Section 1. The Town Council of the Town of Parker hereby approves a Second Amended and Restated Intergovernmental Agreement between the Town of Parker, Colorado, and the Belford South Metropolitan District, 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 _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this ____ day of _____, 2020.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

EXHIBIT 1

SECOND AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO, AND BELFORD SOUTH METROPOLITAN DISTRICT

THIS AGREEMENT (the “Agreement”) is made and entered into as of this ____ day of _____, 20__, by and between the TOWN OF PARKER, a home rule municipal corporation of the State of Colorado (the “Town”), and the BELFORD SOUTH METROPOLITAN DISTRICT, 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 Second Amended and Restated Service Plan approved by the Town on _____ (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 previously approved that certain Compark Village South Filing No. 1 Minor Development Plat, approved by Town Council on September 19, 2016, an Approved Development Plan for purposes of the Service Plan, and it is anticipated that the Town will in the future approve or enter into one or more additional Approved Development Plans (as defined in the Service Plan), all of which will identify, among other things, Public Improvements (as defined in the Service Plan) necessary for facilitating development for property within the Service Area and specific regional improvements necessary or desirable in connection with the impacts of the development of the Property (the “Regional Infrastructure”); and

WHEREAS, pursuant to an Approved Development Plan, the Town and District may share in the responsibilities for constructing and owning the Regional Infrastructure; and

WHEREAS, in accordance with the provisions of the Service Plan and as further set forth herein, 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 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 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 (“Town Infrastructure”); and

WHEREAS, in accordance with the provisions of the Service Plan and as further set forth herein, 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 an election under TABOR to enable it to impose the Town Capital and Maintenance Mill Levy and to issue debt repayable from the Town Capital and Maintenance Mill Levy; and

WHEREAS, the Parties further acknowledge that the District will have certain ongoing administrative obligations, as well as maintenance obligations with regard to the Public Improvements and Regional Infrastructure, and in accordance with the provisions of the Service Plan, the District will levy a property tax (the “Operation and Maintenance Mill Levy”) for such purposes; and

WHEREAS, the Parties understand and agree it is contemplated that the District and the Belford North Metropolitan District (together, the “Districts”) may cooperate with each other concerning the planning, design, construction, ownership, operation and maintenance of certain infrastructure that benefits the taxpayers and inhabitants of the Districts’ combined Service Area, and that each of the Districts may additionally have its own particular infrastructure needs; and

WHEREAS, the Town and the District previously entered into that certain Amended and Restated Intergovernmental Agreement dated December 2, 2019 (the “First Amended and Restated IGA”), which First Amended and Restated 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 to replace and supersede in its entirety the First Amended and Restated 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. The Town agrees that for economic efficiency in financing 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 Debt (as defined in the Service Plan), provided that the proceeds

generated from the pledge of the Infrastructure Capital Mill Levy may only be used to pay costs associated with Regional Infrastructure.

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 Town Capital and Maintenance Mill Levy is set forth on Exhibit B to this Agreement.

3. Operation and Maintenance Mill Levy. The District may impose a property tax of up to 10 mills, which shall be used for the ongoing administrative expenses of the District and for the maintenance of certain of the Public Improvements and Regional Infrastructure, as set forth on Exhibit C to this Agreement. 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 applicable Approved Development Plan(s), 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, 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.

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 commencing 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 maintenance obligations in connection with the Public Improvements and the Regional Infrastructure in a timely and adequate manner. The District acknowledges and agrees that the 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 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 all voter authorizations necessary 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 received by the District from the Mill Levies that are due to the Town as required herein no later than March 15 and June 30 each year, and the Town shall deposit and maintain such revenues in a separate fund earmarked specifically for use only as set forth in this Agreement (the "Belford Metropolitan District Fund"). Any revenues from the Mill Levies the District receives after June 30 that are due to the Town as required herein shall be remitted to the Town within 30 days of their receipt. The monies in the Belford South Metropolitan District Fund may be applied to any design, planning, engineering, surveying, construction

management, labor, materials, operations and administrative costs related to construction of the Regional Infrastructure and the Town Infrastructure as further detailed in this Agreement. 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 all applicable Approved Development Plans, including but not limited to final approved plats, other rules and regulations of the Town, and applicable provisions of the Town Code. The District shall not be authorized to operate and maintain any part or all of the Public Improvements, or any other improvements, public or private, or to own fee title to any real property, unless specifically provided for in an Approved Development Plan, this Agreement or a 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 Belford North Metropolitan District, shall not issue Debt in excess of \$56,700,000 in total aggregate principal amount, provided that such limitation shall not be applicable to refunding Bonds issued by the District to refund outstanding Debt. The Debt limitation shall not apply to the pledge of property tax or specific ownership tax revenues derived from mill levies or other revenues between the District and Belford North Metropolitan District.

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. 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 Town's approval of the District's Service Plan, 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 Districts may file a consolidated Annual Report.

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: Belford South Metropolitan District
 c/o CliftonLarsonAllen LLP
 Attn: Bob Blodgett, District Manager
 8390 E. Crescent Parkway, Suite 300
 Greenwood Village, CO 80111
 Phone: 303-779-5710
 Fax: 303-779-0348
 Email: Bob.Blodgett@claconnect.com

With a copy to:

Belford South Metropolitan District
c/o Spencer Fane LLP
Attn: Tom George
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Phone: 303-839-3800
Fax: 303-839-3838
Email: tgeorge@spencerfane.com

To the Town: Town of Parker
 20120 E. Mainstreet
 Parker, CO 80138-7334
 Attn: Town Attorney's Office
 cc: Mary Lou Brown, Finance Director
 Phone: (303) 841-0353
 Fax: (303) 840-9792

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. Cooperation among the Districts. Pursuant to the Service Plan, the Town acknowledges and agrees that the District may cooperate with Belford North Metropolitan District 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 one or more intergovernmental agreements among the Districts.

19. 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 either of the Districts between the 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 may be executed in as many as 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 merges, supersedes and replaces all prior negotiations, representations, and agreements, including the First Amended and Restated 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.

M. No Waiver of Governmental Immunity. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall be deemed a waiver of any protections afforded the Parties pursuant to Colorado law, including, but not limited to, the Colorado Governmental Immunity Act.

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:

Town Attorney's Office

BELFORD SOUTH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
_____, President
Belford South Metropolitan District

ATTEST:

Secretary

EXHIBIT A

Utilization of Infrastructure Capital Mill Levy

The revenues derived from the Infrastructure Capital Mill Levy may be retained by the District and used for the planning, design, financing, acquisition and/or construction of the following infrastructure and improvements, which infrastructure and improvements the Parties agree shall be considered Regional Infrastructure:

1. regional stormwater improvements, including but not limited to improvements associated with Green Acres Tributary and Happy Canyon Creek, and other regional stormwater channels and detention/retention facilities;
2. arterial streets, including but not limited to Belford Avenue and South Chambers Road, and appurtenances, including but not limited to traffic safety improvements;
3. right-of-way landscaping (edges and medians) along arterial street rights-of-way;
4. regional water and sanitary sewer improvements;
5. regional open space, regional trails, and other regional park and recreation improvements;
6. all other regional improvements specifically identified in an Approved Development Plan (as defined in the Service Plan) approved by the Town to be planned, designed and constructed by the District;
7. all other regional improvements that may be planned, designed, or constructed by either of the Districts.

EXHIBIT B

Utilization of Town Capital and Maintenance Mill Levy

Revenues derived from the Town Capital and Maintenance Mill Levy may be used by the Town for the purpose of funding capital costs or the costs of maintenance of Town Infrastructure necessary in connection with the impacts of development in the District, including the following:

1. maintenance and operation of all roadways, storm sewer, and associated items constructed within Town right-of-way;
2. maintenance and operation of regional roadways serving the District; and
3. maintenance and operation of all storm sewer, detention ponds, stream and channel 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.

EXHIBIT C

Utilization of Operation and Maintenance Mill Levy

The District may use the revenues derived from the Operation and Maintenance Mill Levy for the ongoing administrative expenses of the District and the operation and maintenance of Public Improvements and Regional Infrastructure, which Public Improvements and Regional Infrastructure shall include but are not limited to the following:

1. regional stormwater improvements, including but not limited to regional stormwater channels and detention/retention facilities;
2. collector and arterial streets and appurtenances, including but not limited to traffic safety improvements;
3. right-of-way landscaping (edges and medians) along collector, arterial and other street rights-of-way;
4. regional water and sanitary sewer improvements;
5. regional open space, regional trails, and other regional park and recreation improvements;
6. all other regional improvements specifically identified in an Approved Development Plan (as defined in the Service Plan) approved by the Town to be owned, operated and/or maintained by the District;
7. community parks and recreation facilities and amenities and associated grounds and landscaping;
8. all other improvements and operations specifically identified in an Approved Development Plan approved by the Town to be owned, operated, maintained and/or provided by the District;
9. all improvements that may be planned, designed or constructed by the District until such time as such improvements are dedicated, conveyed or transferred to and accepted by the applicable accepting jurisdiction(s); and
10. all other improvements that may be owned, operated and/or maintained by either of the Districts.



Request for Town Council Action

Date: September 21, 2020

Submitted By: Dennis Trapp, Projects Administrator
Chris Hudson, Deputy Director of Engineering

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 20-045**
A Resolution Accepting the Conveyance of an Underground Power Line Easement from Parker Water and Sanitation District for the Bar CCC Property

Department: Parks and Recreation, Dennis Trapp
Engineering and Public Works, Chris Hudson

EXECUTIVE SUMMARY

Acceptance of the proposed underground power line easement from Parker Water and Sanitation District (PWSD) will facilitate future improvements to Bar CCC Park that require a power source which include lighting for the parking lot (*see attached vicinity map with easement highlighted in yellow*).

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town desires to acquire an easement from PWSD for the future construction and installation of an underground power line. This easement, which is just south of the existing Bar CCC parking lot, consists of approximately 0.013 acres (*see map attached to the easement agreement*) and will allow the Town to eventually connect into an existing IREA transformer power source. This power source will provide power to light the proposed parking lot improvements and power for the associated irrigation system. These capital improvements are currently on hold for budgetary reasons, but since the proposed power line easement will be a permanent easement, we would like to move forward with this conveyance at this time. Acceptance of this easement will not affect existing uses or programming at this park.

FINANCIAL IMPACT

Conveyance to the Town of the proposed power line easement from PW&SD will have no fiscal impacts.

STRATEGIC GOAL(S)



SUPPORT AN
ACTIVE COMMUNITY



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Bar CCC Easements Vicinity Map
2. Resolution No. 20-045

RECOMMENDED MOTION

I move to approve Resolution No. 20-045, as part of the consent agenda.

Bar CCC Easements Vicinity Map

Bar CCC
Park

Parker Water and
Sanitation District
Parcel

Drainage / Access / Lighting
Easement

Town of
Parker
Parcel

TWENTY MILE RD

Utility Easement

Super-
Target



0 100 200
Feet



Drainage / Access / Lighting Easement

Utility Easement

RESOLUTION NO. 20-045, Series of 2020

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF AN UNDERGROUND POWER LINE EASEMENT AGREEMENT FROM PARKER WATER AND SANITATION DISTRICT FOR THE BAR CCC PROPERTY

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement for the purpose of an underground power line;

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 an underground power line from Parker Water and Sanitation District for the Bar CCC property, as provided in the Underground Power Line 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 _____, 2020.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

UNDERGROUND POWER LINE EASEMENT AGREEMENT

THIS UNDERGROUND POWER LINE EASEMENT AGREEMENT (the "Easement Agreement") is dated this ____ day of _____, 2020, by the Parker Water and Sanitation District, having an address at 18100 E. Woodman Drive, Parker, Colorado 80134 ("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 an underground power line, 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 an underground power line. Grantee shall have the specific rights of ingress and egress, consistent with this Easement Agreement, for the construction, reconstruction, operation and maintenance of an underground power line, 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. Title. Grantor makes no warranties as to title to the Easement Property.

3. Operation and Maintenance.

a. The operation and maintenance of the underground power line described herein and located within the Easement Property shall be the responsibility of the Grantee.

b. If Grantee fails to adequately maintain the underground power line located within the Easement Property, and within fourteen (14) days after the date of written notice from Grantor, 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

Grantor may do so as provided herein. Notwithstanding the foregoing, Grantor may, in the event of an emergency, as determined by Grantor in its sole discretion, clean, cure or correct any damage caused by Grantee's failure to adequately maintain the underground power line located within the Easement Property. The Grantee shall reimburse the Grantor for the cost of such maintenance.

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.

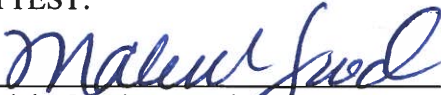
IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date and year first above written.

**GRANTOR: PARKER WATER AND
SANITATION DISTRICT**



Ron R. Redd, P.E., District Manager

ATTEST:



Maleia Good, Executive Coordinator

GRANTEE: TOWN OF PARKER

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

A UTILITY AND LIGHTING EASEMENT OVER AND ACROSS THAT PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NUMBER 9225194 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER; SITUATED IN THE EAST HALF OF SECTION 21, 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 EAST QUARTER CORNER OF SAID SECTION 21, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 21 BEARS NORTH 01°43'17" WEST WITH ALL BEARINGS HEREIN RELATED THERETO;

THENCE SOUTH 19°38'49" WEST, A DISTANCE OF 330.70 FEET TO THE **POINT OF BEGINNING**, BEING A POINT ON THE SOUTHERLY BOUNDARY OF LOT 1, BAR CCC, SUBDIVISION EXEMPTION PLAT, AS RECORDED UNDER RECEPTION NUMBER 2010021856 IN SAID RECORDS;

THENCE SOUTH 00°47'50" WEST, A DISTANCE OF 47.37 FEET;

THENCE NORTH 89°12'10" WEST, A DISTANCE OF 12.00 FEET;

THENCE NORTH 00°47'50" EAST, A DISTANCE OF 46.10 FEET TO A POINT ON SAID SOUTHERLY BOUNDARY OF LOT 1;

THENCE NORTH 84°45'48" EAST, ALONG SAID SOUTHERLY BOUNDARY, A DISTANCE OF 12.07 FEET TO THE **POINT OF BEGINNING**.

CONTAINING AN AREA OF 0.013 ACRES, (561 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A

0' 50' 100' 200'
SCALE: 1" = 100'

NE 1/4 SEC. 21,
T.6S., R.66W., SIXTH P.M.

LOT 1
BAR CCC,
SUBDIVISION
EXEMPTION
PLAT
REC. NO.
2010021856

NW 1/4 SEC. 22,
T.6S., R.66W.,
SIXTH P.M.

SE 1/4 SEC. 21,
T.6S., R.66W., SIXTH P.M.

UNPLATTED
REC. NO. 9225194

**POINT OF
COMMENCEMENT**

EAST 1/4 CORNER, SEC. 21
T6S, R66W, 6TH P.M.
FOUND NO. 6 REBAR WITH 2-1/2"
BRASS CAP STAMPED "S 16837"

SW 1/4 SEC. 22,
T.6S., R.66W.,
SIXTH P.M.

**POINT OF
BEGINNING**

N84°45'48"E 12.07'
N00°47'50"E 46.10'
S00°47'50"W 47.37'
N89°12'10"W 12.00'
S19°38'49"W 330.70'
N01°43'17"W 2724.85'

PARCEL CONTAINS
561 (SQ.FT.)
0.013 ACRES
MORE OR LESS

LOT 3
THE OVERLOOK AT
CHERRY CREEK
REC. NO. 2005053948



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: G:\DWG\EXHIBITS\
DWG NAME: Utility Easement.DWG
DWG: JEL CHK: JRW
DATE: 1/31/2019
SCALE: 1" = 100'



AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

EASEMENT EXHIBIT
E 1/2, SEC. 21, T6S, R66W, 6TH P.M.
PARKER, COLORADO

JOB NUMBER 19818-05

2 OF 2 SHEETS



Request for Town Council Action

Date: September 21, 2020

Submitted By: Dennis Trapp, Projects Administrator
Chris Hudson, Deputy Director of Engineering

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 20-046**
A Resolution Accepting the Conveyance of a Utility Easement Agreement from Parker Water and Sanitation District for the Bar CCC Property

Department: Parks and Recreation, Dennis Trapp
Engineering and Public Works, Chris Hudson

EXECUTIVE SUMMARY

Acceptance of the proposed utility easement from Parker Water and Sanitation District (PWSD) will facilitate future improvements to Bar CCC Park that require drainage infrastructure and the placement of parking lot light pole standards (*see attached vicinity map with easement highlighted in blue*).

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Town desires to acquire a utility easement from PWSD which is generally located along the west side of the existing parking lot at Bar CCC park (*see map attached to the easement agreement*). This easement will accommodate future drainage improvements related to paving of the parking lot, in addition to the electrical infrastructure necessary to provide future parking lot lighting and light standards. The easement is approximately 0.273 acres. These capital improvements are currently on hold for budgetary reasons, but since the proposed utility easement is a permanent easement, we would like to move forward with this conveyance at this time. Acceptance of this easement will not affect existing uses or programming at this park.

FINANCIAL IMPACT

The proposed conveyance of this utility easement at Bar CCC park will have no fiscal impacts to the Town.

STRATEGIC GOAL(S)



SUPPORT AN
ACTIVE COMMUNITY



PROMOTE A SAFE AND
HEALTHY COMMUNITY

ATTACHMENTS

1. Bar CCC Easements Vicinity Map
2. Resolution No. 20-046

RECOMMENDED MOTION

I move to approve Resolution No. 20-046, as part of the consent agenda.

Bar CCC Easements Vicinity Map

Bar CCC
Park

Parker Water and
Sanitation District
Parcel

Drainage / Access / Lighting
Easement

Town of
Parker
Parcel

TWENTY MILE RD

Utility Easement

Super-
Target



0 100 200
Feet



Drainage / Access / Lighting Easement

Utility Easement

RESOLUTION NO. 20-046, Series of 2020

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF A UTILITY EASEMENT AGREEMENT FROM PARKER WATER AND SANITATION DISTRICT FOR THE BAR CCC PROPERTY

WHEREAS, the Town Council of the Town of Parker desires to accept the grant of an easement for the purpose of a drainage pipe and appurtenant drainage facilities, light poles and appurtenant facilities (the “Utility Improvements”);

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 Utility Improvements from Parker Water and Sanitation District for the Bar CCC property, as provided in the Utility 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 _____, 2020.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

UTILITY EASEMENT AGREEMENT

THIS UTILITY EASEMENT AGREEMENT (the "Easement Agreement") is dated this ____ day of _____, 2020, by the Parker Water and Sanitation District, having an address at 18100 E. Woodman Drive, Parker, Colorado 80134 ("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 a drainage pipe and appurtenant drainage facilities, light poles and appurtenant facilities (collectively, the "Utility Improvements"), and access to construct, reconstruct, operate and maintain the Utility Improvements, 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 Utility Improvements. Grantee shall have the specific rights of ingress and egress, consistent with this Easement Agreement, for the construction, reconstruction, operation and maintenance of the Utility Improvements, 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. Title. Grantor makes no warranties as to title to the Easement Property.

3. Operation and Maintenance.

a. The operation and maintenance of the Utility Improvements described herein and located within the Easement Property shall be the responsibility of the Grantee.

b. If Grantee fails to adequately maintain the Utility Improvements located within the Easement Property, and within fourteen (14) days after the date of written notice from Grantor, 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 Grantor may do so as provided herein. Notwithstanding the foregoing, Grantor may, in the event of an emergency, as determined by Grantor in its sole discretion, clean, cure or correct any damage caused by Grantee's failure to adequately maintain the Utility Improvements located within the Easement Property. The Grantee shall reimburse the Grantor for the cost of such maintenance.

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.

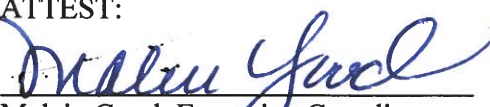
IN WITNESS WHEREOF, the parties hereto have executed this Easement Agreement as of the date and year first above written.

**GRANTOR: PARKER WATER AND
SANITATION DISTRICT**



Ron R. Redd, P.E., District Manager

ATTEST:



Maleia Good, Executive Coordinator

GRANTEE: TOWN OF PARKER

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT "A"

LEGAL DESCRIPTION

AN ACCESS AND MAINTENANCE EASEMENT OVER AND ACROSS THAT PARCEL OF LAND DESCRIBED IN THE DOCUMENT RECORDED UNDER RECEPTION NUMBER 9225194 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER; SITUATED IN THE EAST HALF OF SECTION 21, 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 EAST QUARTER CORNER OF SAID SECTION 21, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 21 BEARS NORTH 01°43'17" WEST WITH ALL BEARINGS HEREIN RELATED THERETO;

THENCE SOUTH 25°58'41" WEST, A DISTANCE OF 350.78 FEET TO THE **POINT OF BEGINNING**, BEING A POINT ON THE SOUTHERLY BOUNDARY OF LOT 1, BAR CCC, SUBDIVISION EXEMPTION PLAT, AS RECORDED UNDER RECEPTION NUMBER 2010021856 IN SAID RECORDS;

THENCE SOUTH 00°00'00" EAST, A DISTANCE OF 82.89 FEET TO A POINT ON THE NORTHERLY BOUNDARY OF LOT 3, THE OVERLOOK AT CHERRY CREEK, AS RECORDED UNDER RECEPTION NUMBER 2005053948 IN SAID RECORDS;

THENCE SOUTH 76°51'53" WEST, ALONG SAID NORTHERLY BOUNDARY, A DISTANCE OF 80.66 FEET;

THENCE NORTH 44°01'21" EAST, A DISTANCE OF 30.81 FEET;

THENCE NORTH 00°00'00" EAST, A DISTANCE OF 73.68 FEET;

THENCE NORTH 01°31'02" WEST, A DISTANCE OF 612.02 FEET;

THENCE NORTH 90°00'00" EAST, A DISTANCE OF 11.00 FEET TO A POINT ON THE WESTERLY BOUNDARY OF SAID LOT 1, BAR CCC, SUBDIVISION EXEMPTION PLAT;

THENCE, ALONG THE WESTERLY AND SOUTHERLY BOUNDARY OF SAID LOT 1, THE FOLLOWING TWO (2) COURSES;

1. SOUTH 01°31'02" EAST, A DISTANCE OF 610.87 FEET;
2. NORTH 84°45'48" EAST, A DISTANCE OF 46.35 FEET TO THE **POINT OF BEGINNING**.

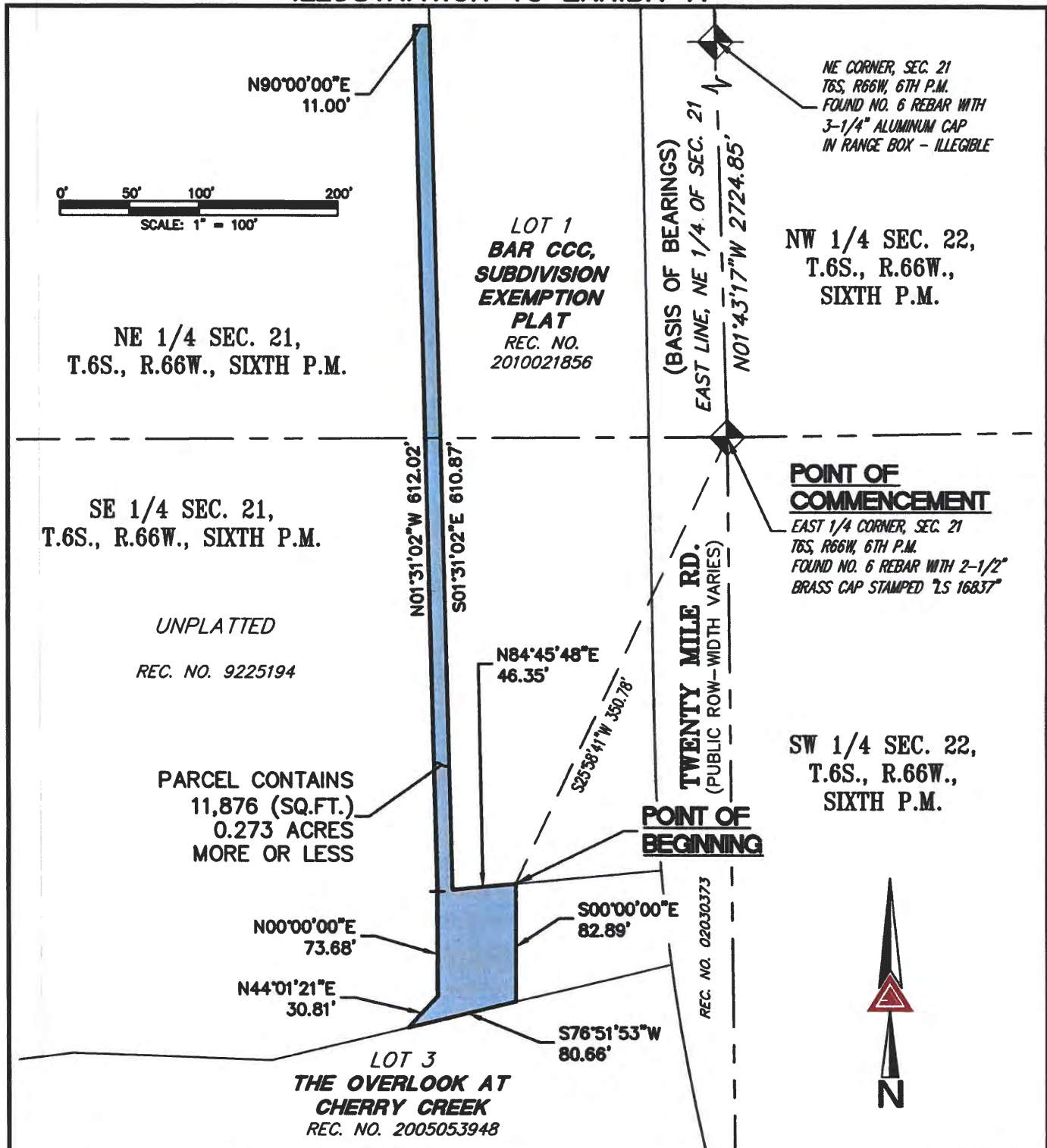
CONTAINING AN AREA OF 0.273 ACRES, (11,876 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



JAMES E. LYNCH, PLS NO. 37933
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



PATH: G:\DWG\EXHIBITS\
DWG NAME: Access Easement.DWG
DWG: JEL CHK: JRW
DATE: 1/28/2019
SCALE: 1" = 100'



300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

EASEMENT EXHIBIT
E 1/2, SEC. 21, T6S, R66W, 6TH P.M.
PARKER, COLORADO

JOB NUMBER 19818-05

2 OF 2 SHEETS



Request for Town Council Action

Date: September 21, 2020

Submitted By: Chris Hudson, Deputy Director of Engineering

Reviewed By: Michelle Kivela, Town Administrator

Title: **RESOLUTION NO. 20-048**
A Resolution Accepting the Conveyance of Real Property from the Board of County Commissioners of the County of Douglas for the East Side of Parker Road (State Highway 83) South of Lincoln Avenue

Department: Engineering and Public Works, Chris Hudson

EXECUTIVE SUMMARY

This item is for a resolution accepting conveyance of Douglas County property on the east side of Parker Road south of Lincoln Avenue needed for a proposed sidewalk/trail.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

In 2019, the Engineering/Public Works Department engaged a consultant to complete a conceptual design to finish the sidewalk/trail along the east side of Parker Road (State Highway 83) between Lincoln Avenue and Parkglenn Way. The recent commercial development at the southeast corner of Parker Road and Lincoln Avenue constructed a sidewalk/trail adjacent to their development, but a gap remains south to the Parkglenn Way intersection. The design identified an area owned by Douglas County where the sidewalk/trail will need to be constructed to eliminate this gap. As the Town will be constructing this missing section of sidewalk, Douglas County is conveying this property to eliminate future ownership and maintenance confusion. The Douglas County Commissioners approved this conveyance of property in August and a Town Council resolution is needed to accept the conveyance. Ultimately this property will need to be annexed and zoned by the Town.

FINANCIAL IMPACT

None at this time. The construction of the proposed sidewalk/trail will be a future capital improvement project.

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH

ATTACHMENTS

1. Property Vicinity Map
2. Resolution No. 20-048

RECOMMENDED MOTION

I move to approve Resolution No. 20-048, as part of the consent agenda.

Resolution 20-048
Accepting Conveyance -
Douglas County Property
Vicinity Map



Murdoch's

Lincoln Ave

Lowe's

Dransfeldt Rd

Parker Rd

Baldwin Ave

Parklenn Wy

Resolution 20-048
Douglas County Property
Exhibit A
(approx: 3,795 square feet)

Resolution 20-048
Douglas County Property
Exhibit B
(approx: 9,040 square feet)



0 200 400
Feet

RESOLUTION NO. 20-048, Series of 2020

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF REAL PROPERTY FROM THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS FOR THE EAST SIDE OF PARKER ROAD (STATE HIGHWAY 83) SOUTH OF LINCOLN AVENUE

WHEREAS, the Town Council of the Town of Parker desires to accept the conveyance of certain real property from the Board of County Commissioners of the County of Douglas for the east side of Parker Road (State Highway 83) south of Lincoln Avenue;

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 conveyance of the property interests 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 real property from the Board of County Commissioners of the County of Douglas for the east side of Parker Road (State Highway 83) south of Lincoln Avenue, as provided in the Quit Claim Deed attached as **Exhibit 1**, and incorporated by this reference.

RESOLVED AND PASSED this ____ day of _____, 2020.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

QUITCLAIM DEED

THIS DEED, made this _____ day of _____, 2020, between the **BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO**, a political subdivision of the State of Colorado, whose address is 100 Third Street, Castle Rock, Colorado 80104 (hereinafter "**Grantor**"), and the **TOWN OF PARKER**, a Colorado home rule municipality, whose address is 20120 East Mainstreet, Parker, Colorado 80138 (hereinafter "**Grantee**")

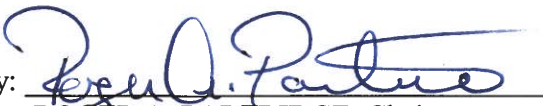
WITNESSETH, That Grantor, for and in consideration of the sum of TEN DOLLARS AND NO CENTS (\$10.00) AND OTHER GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, has remised, released, sold and quitclaimed, and by these presents does hereby remise, release, sell and quitclaim unto Grantee, its successors and assigns, forever, all the right, title, interest, claim and demand, if any, which Grantor has in and to the following described real property, together with improvements, if any, situate, lying and being in the County of Douglas, and State of Colorado to-wit:

**SEE EXHIBITS "A" & "B", ATTACHED HERETO AND
INCORPORATED HEREIN BY THIS REFERENCE**

TO HAVE AND TO HOLD the same, together with all and singular the appurtenances and privileges thereunto belonging or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatsoever, of Grantor, either in law or equity, to the only proper use, benefit and behoof of Grantee, its successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this deed on the date set forth above.

**BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF DOUGLAS, STATE OF COLORADO**

By: 
ROGER A. PARTRIDGE, Chair

Attest:

By: 
Kristin Randlett,
Deputy Clerk to the Board



STATE OF COLORADO)
)ss.
COUNTY OF DOUGLAS)

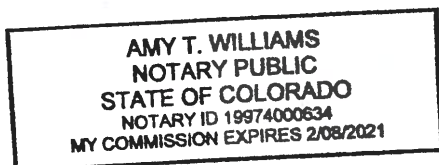
The foregoing instrument was acknowledged before me this 11th day of August, 2020, by Roger A. Partridge as Chair of the Board of County Commissioners of the County of Douglas, State of Colorado and Kristin Randlett as Deputy Clerk to the Board.

S E A L

Witness my hand and official seal


Notary Public

My commission expires: n/a



**LEGAL DESCRIPTION
EXHIBIT "A"**

A PARCEL OF LAND A PORTION OF BALDWIN AVENUE AS SHOWN ON THE PLAT OF PARKER HEIGHTS FILING NO. 1, RECORDED AT RECEPTION NO. 113057, IN THE OFFICIAL RECORDS OF THE CLERK AND RECORDER'S OFFICE OF DOUGLAS COUNTY, COLORADO, LYING WITHIN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF PARKER, SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF TRACT D, PARKER NORTH, 1ST AMENDMENT, RECORDED AT RECEPTION NO. DC9461273 IN SAID OFFICIAL RECORDS, WHENCE THE SOUTHERLY BOUNDARY OF SAID TRACT D BEARS SOUTH 68°59'26" EAST, A DISTANCE OF 342.09 FEET, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 5830.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 81°35'32" WEST;

THENCE ALONG THE WESTERLY BOUNDARY OF TRACT D, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°08'04", AN ARC LENGTH OF 115.43 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE **POINT OF BEGINNING**;

THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY AND CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°40'16", AN ARC LENGTH OF 68.30 FEET TO THE NORTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 130.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 12°37'33" WEST;

THENCE ALONG SAID NORTHERLY RIGHT-OF-WAY, THE FOLLOWING TWO (2) COURSES:

1. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°23'16", AN ARC LENGTH OF 19.03 FEET;
2. SOUTH 68°59'11" EAST, A DISTANCE OF 49.82 FEET TO THE SOUTHEAST CORNER OF LOT 2, PARKER KEYSTONE MINOR DEVELOPMENT AMENDMENT NO. 2, RECORDED AT RECEPTION NO. 2018007786 IN SAID RECORDS;

THENCE DEPARTING SAID NORTHERLY RIGHT-OF-WAY, SOUTH 00°29'15" EAST, A DISTANCE OF 64.48 FEET TO THE SOUTHERLY RIGHT-OF-WAY OF SAID BALDWIN AVENUE AND THE NORTHERLY BOUNDARY OF SAID TRACT D;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY AND SAID NORTHERLY BOUNDARY, NORTH 68°59'26" WEST, A DISTANCE OF 57.35 FEET TO THE **POINT OF BEGINNING**.

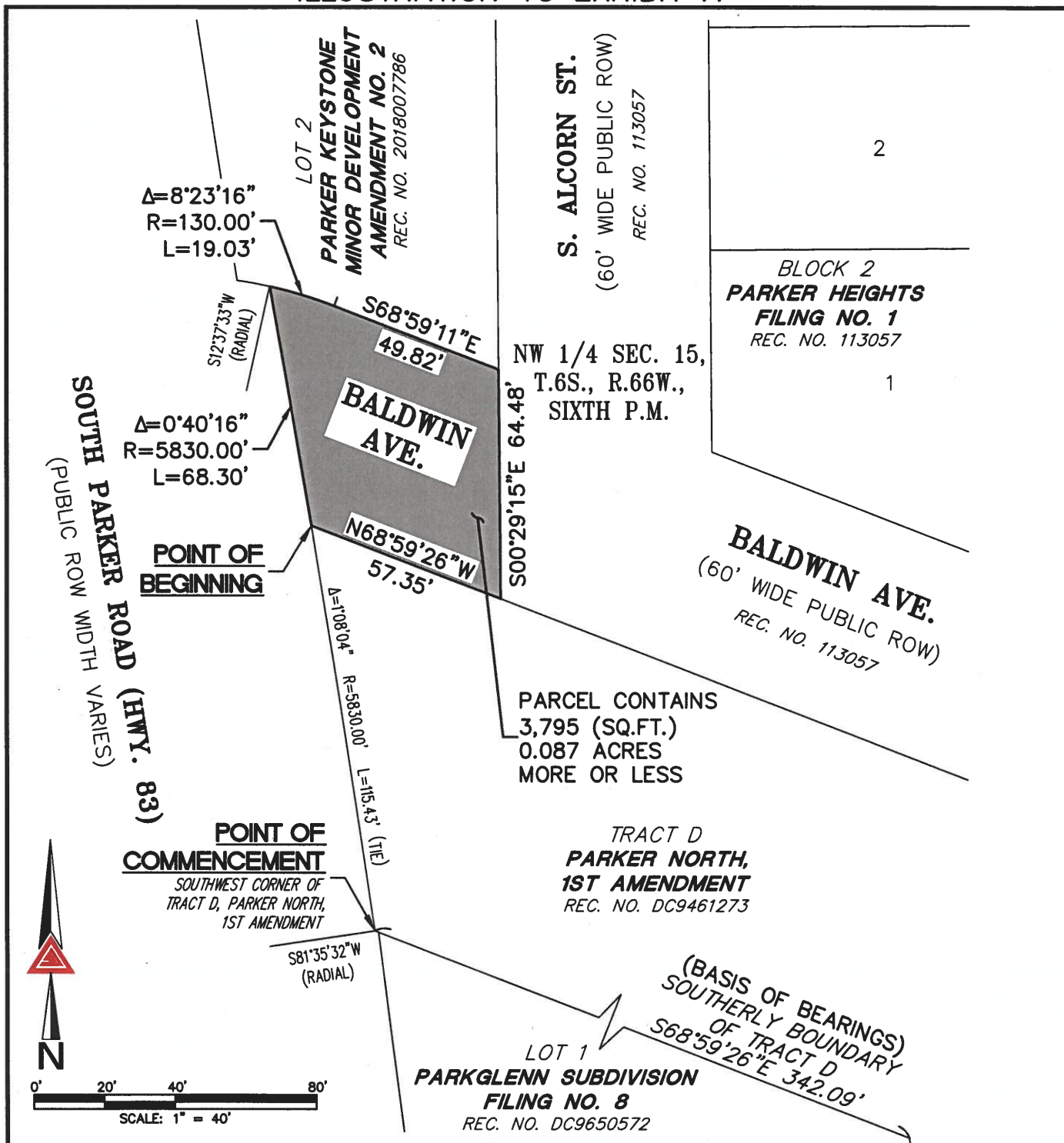
CONTAINING AN AREA OF 0.087 ACRES, (3,795 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

KARL D. SZYSZKOSKI
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR NO. 38691
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVENUE, SUITE 1, LITTLETON, CO 80122
(303) 718-1898



ILLUSTRATION TO EXHIBIT A



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH: _____
 DWG NAME: **ROW 1 - Parcel 2.DWG**
 DWG: **KDS** CHK: **JRW**
 DATE: **07-16-2020**
 SCALE: **1" = 40'**



AZTEC
CONSULTANTS, INC.

 **AZTEC**
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

Q: 24920-05 - PARKER ROAD PARK **GLENN WAY** **DWG/EXHIBITS**

EXHIBIT A

NW 1/4 SEC. 15, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO

JOB NUMBER 24920-05

2 OF 2 SHEETS

LEGAL DESCRIPTION
EXHIBIT "B"

A PARCEL OF LAND BEING A PORTION OF TRACT D, PARKER NORTH, 1ST AMENDMENT, RECORDED AT RECEPTION NO. DC9461273 IN THE OFFICIAL RECORDS OF THE CLERK AND RECORDER'S OFFICE OF DOUGLAS COUNTY, COLORADO, LYING WITHIN THE NORTHWEST QUARTER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF PARKER, SAID COUNTY AND STATE, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID TRACT D, WHENCE THE SOUTHERLY BOUNDARY OF SAID TRACT D BEARS SOUTH 68°59'26" EAST, A DISTANCE OF 342.09 FEET, BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 5830.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 81°35'32" WEST;

THENCE ALONG THE WESTERLY BOUNDARY OF SAID TRACT D, NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°08'04", AN ARC LENGTH OF 115.43 FEET TO THE NORTHERLY BOUNDARY OF SAID TRACT D;

THENCE ALONG SAID NORTHERLY BOUNDARY, SOUTH 68°59'26" EAST, A DISTANCE OF 119.58 FEET;

THENCE DEPARTING SAID NORTHERLY BOUNDARY, SOUTH 21°07'08" WEST, A DISTANCE OF 99.98 FEET TO THE SOUTHERLY BOUNDARY OF SAID TRACT D;

THENCE ALONG SAID SOUTHERLY BOUNDARY, NORTH 68°59'26" WEST, A DISTANCE OF 61.70 FEET TO THE **POINT OF BEGINNING**.

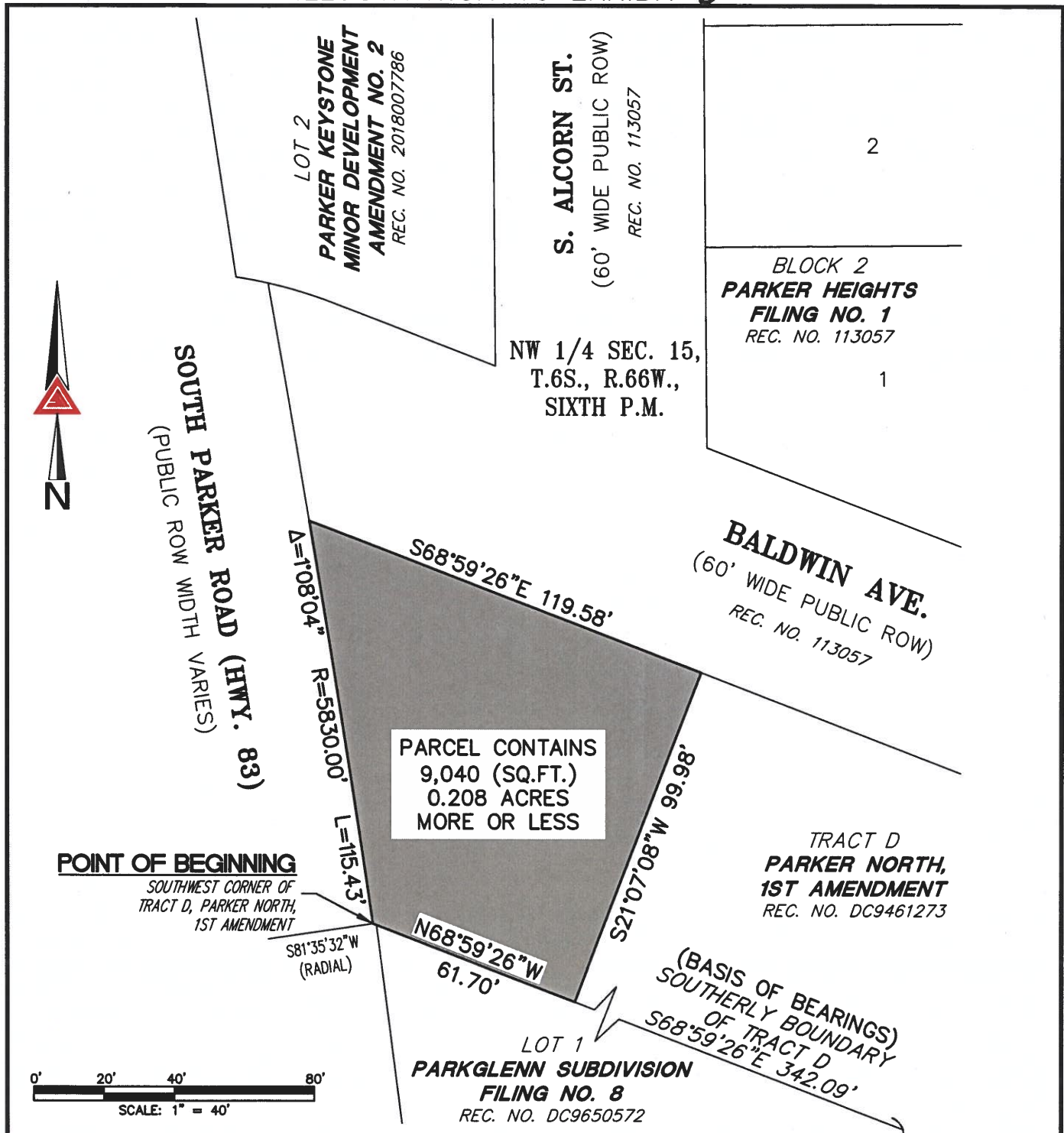
CONTAINING AN AREA OF 0.208 ACRES, (9,040 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



KARL D. SZYSZKOSKI
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR NO. 38691
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVENUE, SUITE 1, LITTLETON, CO 80122
(303) 718-1898

ILLUSTRATION TO EXHIBIT B



NOTE: THIS DRAWING DOES NOT REPRESENT A MONUMENTED LAND SURVEY AND IS ONLY INTENDED TO DEPICT THE ATTACHED LEGAL DESCRIPTION.

PATH:
DWG NAME: ROW 1 - Parcel 1.DWG
DWG: KDS CHK: JRW
DATE: 07-16-2020
SCALE: 1" = 40'



AZTEC
CONSULTANTS, INC.

300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)713-1898
Fax: (303)713-1897
www.aztecconsultants.com

Q: 24920-05 - PARKER ROAD PARKGLENN WAY.DWG\EXHIBITS\

EXHIBIT B

NW 1/4 SEC. 15, T.6S., R.66W., 6TH P.M.
DOUGLAS COUNTY, COLORADO

JOB NUMBER 24920-05

2 OF 2 SHEETS



Request for Town Council Action

Date: September 21, 2020

Submitted By: BrieAnna Simon, Associate Planner
John Fussa, Community Development Director

Reviewed By: Michelle Kivela, Town Administrator

Title: **CAROUSEL FARMS FILING NO. 1, LOTS 11 and 12,
BLOCK 1 - Fence Variance**

EXECUTIVE SUMMARY

The subject properties are located in the Carousel Farms Planned Development (PD) that is marketed as the Enclave at Pine Grove neighborhood at the intersection of Mainstreet and Newlin Gulch Boulevard. The applicant, Julie Trail, is requesting two (2) variances to allow a six (6) foot high, solid privacy fence on two (2) properties located adjacent to a dedicated open space tract. The fences have already been installed.

STAFF RECOMMENDATION

Deny

BACKGROUND/DISCUSSION

The applicant, Julie Trail, is requesting a variance to allow a six (6) foot high, solid privacy fence adjacent to dedicated open space with a trail connecting Mainstreet to Hayloft Street.

Julie is representing Thomas Menefee and herself as owners of *Carousel Farms Filing 1, Lot 11, Block 1* located on the west side of the open space and Mi In Yoon and Sung Yoon Jeong as owners of *Carousel Farms Filing 1, Lot 12, Block 1* located on the east side of the open space. The lots back to Mainstreet and the area in question is the side yard of each property adjacent to the open space. Both property owners have recently installed the six (6) foot high, solid privacy fence adjacent to the existing split rail fence along their side yard bordering the open space.

Century Communities constructed the homes on the subject properties in 2018 with a split rail fence in the side yards adjacent to the dedicated open space tract with trail. The lots were designed, platted and developed as part of Carousel Farms PD Filing No. 1 that was approved by the Town Council in September, 2016. The Council approval included a master landscape and fence plan for the development. The approved plans indicate that the side yard for each lot bordering the open space with trail are required to have a split rail fence.

The Land Development Ordinance (LDO) requires that fencing adjacent to open space be of an open (split rail) design with a maximum height of four (4) feet. The intent of this requirement is to ensure that dedicated open space is accessible, open and visible to the public nor enclosed or walled-off by unsightly fence canyons. The requirement also seeks to enhance public safety by maintaining visibility and “eyes on the street” within open space areas. Typically, these open

areas are proximate to residential uses and contain trails, parks or recreational facilities where there is public benefit in maintaining visibility to promote public safety.

The LDO provides a process and criteria for variances at Section 13.04.260 - Variances and requires applicants to demonstrate a hardship for approval at Section 13.04.260b(2) as follows:

Authorize variances from the strict application of the provision of this Chapter and [Chapter 13.09](#) of this Title in order to relieve any peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of this Title.

After review, staff has determined that the requested variances do not satisfy the requirements for relief set forth in the LDO as indicated above. There are no known peculiar or exceptional difficulties associated with the dedicated open space, adjacent residential side yards or the requirement for an open (split rail) fence with a maximum height of four (4) feet. This condition is commonly found throughout Town where residential yards adjacent to dedicated open space typically have an open (split rail) fence with a maximum height of four (4) feet.

This condition is found within the Enclave at Pine Grove neighborhood including the subject properties and along the eastern border with Bradbury Ranch where there are multiple residential lots with rear yards adjacent to dedicated open space that have open (split rail) fences of a maximum four (4) feet in height. The subject properties and the adjacent dedicated open space do not have an exceptional configuration, shape or topographic condition that would cause a hardship and require the installation of a non-conforming six (6) foot high, solid privacy fence. Staff has therefore determined that the criteria required for variance approval are not been satisfied.

Additionally, Section 13.04.260(e) provides that "No variance shall be granted where, in the opinion of the Council...the request is determined to be a self-imposed hardship that can be rectified by means other than a variance." Here the Applicants purchased their respective lots in a finished condition with an approved split rail fence adjacent to open space. The Applicants replaced the split rail fence without approval of the Town. As an alternative, the applicant has the option of planting additional landscaping along their side property line adjacent to the dedicated open space that would provide screening, privacy and a buffer from residents of the neighborhood using the open space and trail.

Planning Commission heard this item on September 10, 2020 and recommended approval for both locations. This recommendation was based on the proximity to Mainstreet, length of the open space segment in question, and as the variance will not be detrimental to the Town.

Planning Commission recommended approval with the following two conditions:

- 1) The existing split rail fence, adjacent to the privacy fence be removed.
- 2) The privacy fence be updated with additional decorative details in order to match the existing privacy fence along Mainstreet.

FINANCIAL IMPACT

None

STRATEGIC GOAL(S)



PROMOTE A SAFE AND
HEALTHY COMMUNITY



DEVELOP A VISIONARY
COMMUNITY THROUGH
BALANCED GROWTH

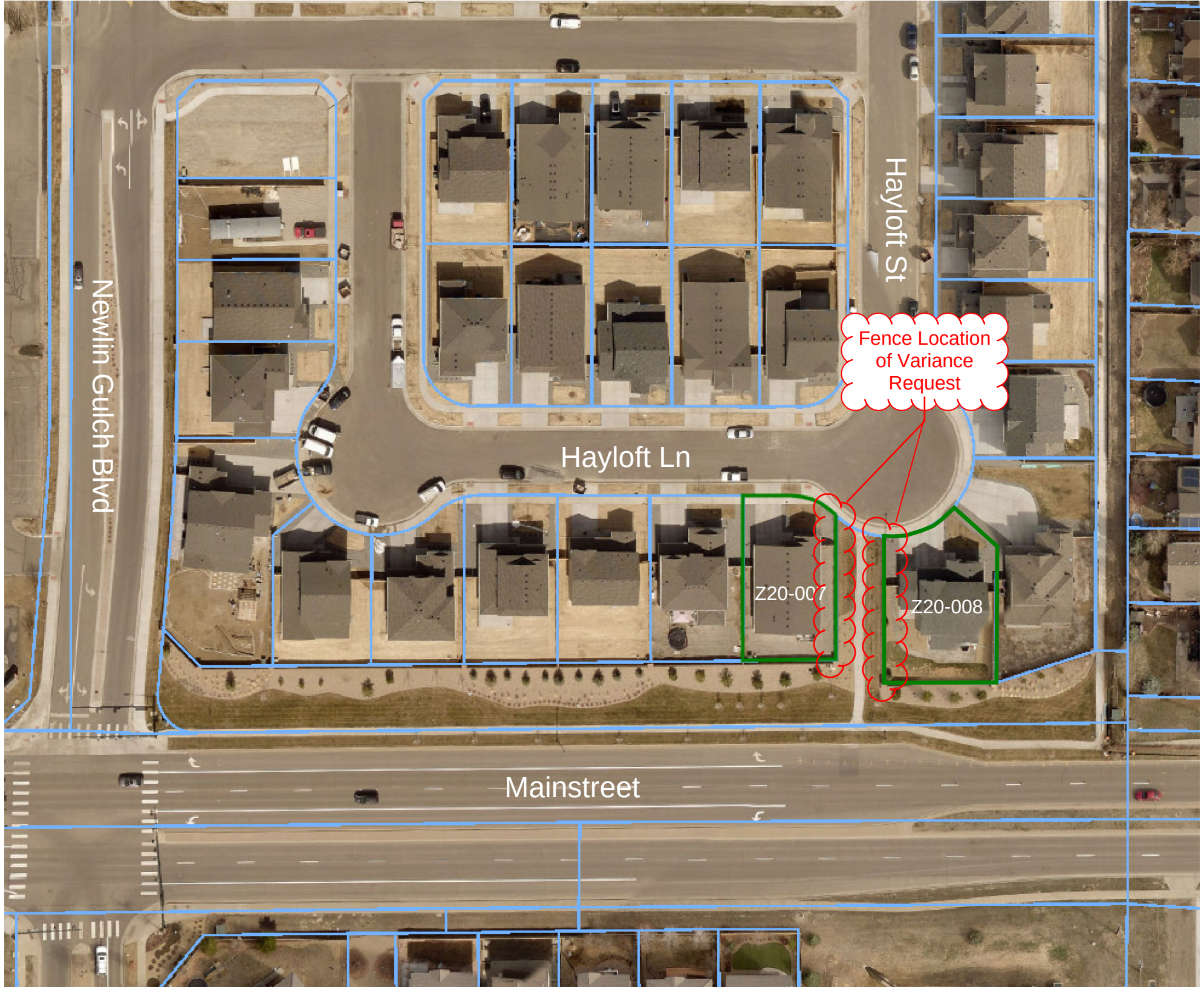
ATTACHMENTS

1. Z20-007 and Z20-008 Vicinity Map
2. Z20-007 & Z20-008_Fence Variance_PC Staff Report_Final
3. Photo_Fence Variance_Carousel_Sept 2020

RECOMMENDED MOTION

Town staff recommends that Town Council deny the Carousel Farms Filing 1, Lot 11, Block 1 - Fence Variance to not allow the six-foot high, solid privacy fence adjacent to dedicated open space because the request does not satisfy the following criteria for approval found at Section 13.04.260b(2) of the LDO:

There are no peculiar and exceptional practical difficulties; there is no exceptional and undue hardship by reason of exceptional narrowness, shallowness or shape of the specific piece of property; and there are no exceptional topographic conditions or other extraordinary and exceptional situation or condition of the piece of property that require additional fence height or a solid fence beyond that which is permitted by code.



Newlin Gulch Blvd

Hayloft St

Hayloft Ln

Fence Location
of Variance
Request

Z20-007

Z20-008

Mainstreet



Planning Commission Staff Report

Planning Commission Date: 9/10/2020

Town Council Date: 9/21/2020

Hearing Type: Public Hearing
CAROUSEL FARMS FILING NO. 1, LOTS 11 AND 12,
BLOCK 1 – Fence Variance
TRAKiT Nos.: Z20-007 and Z20-008

Location: 16022 Hayloft Lane and 11092 Hayloft Street

Project Planner: BrieAnna Simon, Associate Planner

Applicant: Julie Trail, Home Owner and Neighbor

Executive Summary: The applicant, Julie Trail, is requesting two variances to allow for a six (6) foot privacy fence adjacent to open space on separate lots. The sites are located northeast of the intersection of Mainstreet and Newlin Gulch Boulevard.

Staff Recommendation: Denial

RECOMMENDED MOTION

“I move the Planning Commission recommend Town Council deny the Carousel Farms Filing 1, Lot 11, Block 1 - Fence Variance to not allow the six-foot privacy fence adjacent to open space as the request does not meet the following approval criteria:”

- There are no peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property

“I move the Planning Commission recommend Town Council deny the Carousel Farms Filing 1, Lot 12, Block 1 - Fence Variance to not allow the six-foot privacy fence adjacent to open space as the request does not meet the following approval criteria:”

- There are no peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property

ALTERNATIVE MOTIONS

"I move the Planning Commission recommend Town Council approve the Carousel Farms Filing 1, Lot 11, Block 1 - Fence Variance to allow the six-foot privacy fence adjacent to open space with the following conditions:

- The existing split rail fence, adjacent to the privacy fence be removed.*
- The privacy fence be updated with additional decorative details in order to match the existing privacy fence along Mainstreet."*

"I move the Planning Commission recommend Town Council approve the Carousel Farms Filing 1, Lot 12, Block 1 - Fence Variance to allow the six-foot privacy fence adjacent to open space with the following conditions:

- The existing split rail fence, adjacent to the privacy fence be removed.*
- The privacy fence be updated with additional decorative details in order to match the existing privacy fence along Mainstreet."*

"I move the Planning Commission vote to continue the Carousel Farms Filing 1, Lot 11, Block 1 - Fence Variance to allow the six-foot privacy fence adjacent to open space to a future date."

"I move the Planning Commission vote to continue the Carousel Farms Filing 1, Lot 12, Block 1 - Fence Variance to allow the six-foot privacy fence adjacent to open space to a future date."

I. BACKGROUND/DISCUSSION

The applicant, Julie Trail, is requesting a variance to allow for a six (6) foot privacy fence adjacent to open space. Julie is representing herself and Thomas Menefee as owners of *Carousel Farms Filing 1, Lot 11, Block 1* and representing Mi In Yoon and Sung Yoon Jeong as owners of *Carousel Farms Filing 1, Lot 12, Block 1* on the other side of the trail l corridor. The sites are located northeast of the intersection of Mainstreet and Newlin Gulch Boulevard. Both lots have recently constructed a six-foot privacy fence directly adjacent to the existing split rail fence, along the trail in the open space between the two lots.

The homes on both lots were constructed in 2018 and the split rail fence was installed by the developer. The subject properties were platted and developed as part of Carousel Farms Filing No. 1, which was approved in September of 2016. This approval included a master landscape and fence plan.

The approved plans indicated the fence locations in question are required to be a split rail fence. This approval was based on Section 13.07145(c)(9)(e)(2) of the land development ordinance, which states:

"Where public parks or open space are bordered predominantly by private rear or side yards, only open fences (e.g., split rail fences) no higher than forty-eight (48) inches may be erected on the common boundaries with the park or open space. Opaque fences and walls (e.g., privacy fences) are prohibited in yards bordering the park or open space."

Vicinity Map



II. PRIOR ACTIONS

Date	Action
9/21/2016	Carousel Farms Filing No. 1 Final Plat Approval

III. CURRENT SITE DATA

Existing Zoning	PD - Planned Development		
Overlay District	N/A		
PD & Plan Area	Carousel Farms Planned Development		
Master Plan Area	Medium Density Residential		
Site Acreage	Lot 11 – 0.133 Acres Lot 12 - 0.153 Acres		
Subdivision	Carousel Farms Filing No. 1		
Existing Use	Both properties consist of one single-family residence.		
Surrounding Uses			
	Master Plan Land Use	Zoning	Existing Use
North	Medium Density Residential	PD - Planned Development	Single Family Residential
South	Medium Density Residential	PD - Planned Development	Single Family Residential
East	Medium Density Residential	PD - Planned Development	Single Family Residential
West	Medium Density Residential	PD - Planned Development	Single Family Residential

IV. LAND DEVELOPMENT ORDINANCE

ZONING CONSISTENCY – Section 13.07.145			
Provisions	Existing/Required	Proposed	Analysis
Fence Height	48 inches maximum (4 feet)	6 feet	☐ Consistent ☒ Inconsistent ☐ N/A
Fence Detail	Open fences (e.g., split rail fences)	Opaque	☐ Consistent ☒ Inconsistent ☐ N/A
Landscaping	Title 13.06.070	The proposed variance will not alter any exterior landscaping.	☒ Consistent ☐ Inconsistent ☐ N/A
Staff Analysis	Staff has determined that the proposed fence does not meet the requirements and intent of Title 13.07.145 - Common open space. The applicant is requesting a variance from this section of the code.		

V. ACCESS, CIRCULATION & TRAFFIC ANALYSIS

The property for Lot 11 has vehicular access from Hayloft Lane and Lot 12 from Hayloft Street. There are no proposed changes to the existing vehicular access or traffic circulation.

VI. APPROVAL CRITERIA

Title 13.04.260.b. Criteria for approval for Variance:

In order to grant relief from the Land Development Ordinance, the applicant must demonstrate any peculiar and exceptional practical difficulties or exceptional and undue hardship that cause the need for the variance. The code defines by reason of exceptional as any of the following:

1. narrowness,
2. shallowness or shape of a specific piece of property or
3. by reason of exceptional topographic conditions or
4. other extraordinary and exceptional situation or condition of such piece of property

If the Town determines such relief may be granted, the variances shall not result in substantial detriment to the public good and substantially impairing the intent and purpose of this Title.

Applicant analysis and findings:

Request for Variance. We are requesting a variance according to Municipal Code Section 13.04.260(b)(2) that authorizes the Town of Parker to grant a variance in order to relieve any peculiar and exceptional practical difficulty or undue hardship by reason of an exceptional situation or condition of a property if such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Code. While the verbiage of the Code limits the granting of variances to the height of the fence allowed, we are requesting that the City Planning Committee and Town Council consider our request for a variance for the type of fence allowed - an opaque privacy fence to be allowed on our property that abuts the common open space.

Reasons for Variance. In general, we believe the 6' opaque privacy fence promotes our health, safety and welfare without any detriment to the public good or impairment to the purpose of the Municipal Code. Here are the specific reasons supporting our request for a variance:

1. Intent of the Code. While the intent of the Code is understandable and makes sense, we feel that the Code does not take into consideration properties that abut common open spaces AND busy roadways. Although we are located next to a common open space, we also find ourselves located 50' from a busy roadway that presents a very specific and exceptional set of issues that other properties that abut common open spaces do not have to manage. In our situation, there is a direct conflict between the Code's intent to preserve a natural, welcoming, open feel to common open spaces for its residents and the Code's intent to protect its residents and their well-being.

2. Safety. A 40" Split Rail Fence with Horizontal Rails is Easily Mastered by Children and Dogs. Our house backs up to Mainstreet and while it has a posted 40 mph speed limit, most cars and trucks are consistently exceeding that speed limit. Like most children, our son enjoys climbing and exploring. The existing horizontal rails on the Split Rail Fence makes it easy for him to climb the fence. In a matter of minutes, my son could be walking in Mainstreet. The same can be said for most mid-sized to large dogs with any jumping ability (golden retrievers, labradors, poodles, shepherds, cattedogs, etc.). In addition, a 6' privacy fence greatly deters would-be burglars from considering a home invasion versus having a 40"
3. Minimize Chance of Abduction. Working along the same lines as #2 above, a fence needs to be at least 5' high to minimize child abductions. Cars stop in the turn lane on Mainstreet, 50' from our house. This proximity increases the chances of someone attempting to grab our son from the backyard and speed away down Mainstreet. I have reviewed relevant research (Office of Child Care from the Maryland State Department of Education) that supports the need to have fences of at least 5' in height to minimize the chances of a child abduction. The 6' privacy fence greatly reduces the chances of an attempted abduction.
4. Proximity to Mainstreet/Unauthorized Use of the Common Sidewalk. Someone recently rode a motorcycle down the common open space sidewalk from Hayloft Lane to get to Mainstreet. While this is a rare event, it will happen again and it raises safety concerns for us, our children and pets. A 6' privacy fence ensures that children and pets are isolated from the risk of being able to scale a smaller fence and gain access to the common open space sidewalk.
5. Reduced Road Noise in Our Backyard. Since installing the 6' privacy fence along the border of the common open space, we have experienced a dramatic reduction in noise from Mainstreet. This greatly improves our quality of life and allows us to spend more time in our backyard without having to deal with constant road noise.
6. Reduced Garbage in Our Backyard. Since installing the 6' privacy fence along the border of the common open space, we have experienced a dramatic reduction in garbage and debris from Mainstreet coming into our backyard. Random trash from Mainstreet creates dangers to my son and pets.
7. Backyard is a Safe Haven. Our 6' privacy fence has created a safe haven for us during the COVID-19 pandemic. With required social distancing, stay-at-home orders and not having access to parks, the 6' privacy fence has allowed us to provide our son with a safe place to explore and be a kid without having to worry about him scaling a 40" Split Rail Fence or something/someone from outside of our property negatively affecting us.
8. Financial Hardship. We made a substantial investment when we paid a contractor to install our high quality, visually pleasing privacy fence after it was approved by the HOA. The fence does not disrupt the physical aesthetic of the neighborhood and actually makes the area look more uniform instead of having a privacy fence on the rear side of our backyard and then a Split Rail Fence on the side of our property abutting the common open space. Paying a contractor to remove the privacy fence would create a financial hardship for us.

9. Neighbor Support. We have included several signed letters from our neighbors that show their support of us being granted a variance and allowed to retain the existing privacy fence. These are neighbors who are very familiar with our property, its proximity to Mainstreet and the issues we (as well as our neighbor) have encountered with only having a Split Rail Fence in such close proximity to Mainstreet. In addition, our HOA is very aware of the particular situation we (and our neighbor) face after approving our request to install the privacy fence and have directed us to apply for this variance.

Staff analysis and findings:

The Land Development Ordinance restricts fencing adjacent to open space to be open fencing no greater than four feet in height. The intent of this is to ensure that dedicated open space is accessible and open to the public, is not walled off creating unsightly fence canyons and to enhance safety by increasing visibility and “eyes on the street” within the public areas. Typically, these open areas are adjacent to trails, parks, and other pedestrian activities. Having open and limited height on fences, provides additional visibility of the pedestrian areas and enhance the presence of safety within these areas.

The requested variance has not been determined to meet the set forth in the code. The request for a taller fence is not due to topographic conditions or an undue hardship created by the physical characteristics of the lots in question, such as shape or size. Therefore, staff has determined that this criterion for a variance has not been satisfied.

The applicant may choose to add enhanced landscaping on their property along the open rail fence without the need for variance approval. This landscaping may address some of the property owner’s concerns noted in their application.

Following are photos of the non-approved six foot fences erected by the applicant, behind the approved, for the development and by the Homeowners’ Association, split-rail fences:



VII. SUMMARY REFERRAL AGENCY COMMENTS AND CONDITIONS

Agency	Comments
Fire Life Safety	No Comment
Parker Public Works	No Comment
South Metro Fire & Rescue Authority	No comment
Parker Water and Sanitation District	Approved
IREA	Approved
CenturyLink	No comment
Comcast	No comment
Carousel Farms HOA	Please be advised that the Enclave at Pine Grove Homeowners Association ("Association") has received and reviewed the property owners' requests for a variance to the fencing that was approved for the community. After careful consideration, the Association has determined that Association does not support any variance to the approved fencing. The current approved open rail fence designated for these lots complies with the Town's development codes and has been implemented in most of the communities in the Town of Parker. The Association does not find that there are any special or unique circumstances regarding the subject properties which would necessitate a change in the approved plans or approval of a variance. To date, the Architectural Review Committee has denied the property owners' requests for approval to change the existing fences or to have double fencing. Violation letters have been sent to the property owner's requesting that the privacy fences be removed.

VIII. CONCLUSION

After evaluating the information provided by the applicant for a variance staff has determined that the request does not meets the approval criteria set forth in the Land Development Ordinance and outlined in Section VII of this staff report.

IX. RECOMMENDED CONDITIONS

Staff recommends that the Planning Commission recommend that the Town Council deny the Carousel Farms *Filing 1, Lot 11, Block 1 - Fence Variance* to not allow the six-foot privacy fence adjacent to open space as the request does not meet the following approval criteria.

- There are no peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property

Staff recommends that the Planning Commission recommend that the Town Council deny the Carousel Farms *Filing 1, Lot 12, Block 1* - Fence Variance to not allow the six-foot privacy fence adjacent to open space as the request does not meet the following approval criteria.

- There are no peculiar and exceptional practical difficulties or exceptional and undue hardship by reason of exceptional narrowness, shallowness or shape of a specific piece of property or by reason of exceptional topographic conditions or other extraordinary and exceptional situation or condition of such piece of property

X. ATTACHMENTS

1. Applicant's Project Narrative for Lot 11
2. Applicant's Project Narrative for Lot 12

Report Approved By: Bryce Matthews, Planning Manager



PARK
PUBLIC HEAR

PUBLIC
PARK
PUBLIC HEAR



Request for Town Council Action

Date: September 21, 2020

Submitted By: Jim Maloney, Town Attorney

Reviewed By: Michelle Kivela, Town Administrator

Title: **Tax and Fee Assistance Program Agreement for The Wild Goose Saloon**

Department: **Town Attorney, Jim Maloney**

EXECUTIVE SUMMARY

Wild Goose Saloon, LLC (the “Wild Goose”), submitted an application for financial assistance under the Town of Parker Tax and Fee Assistance Program. The Town Council is required to hold a public hearing before considering a TAP Agreement for approval.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

The Wild Goose is planned as a 7,200-sf indoor eating/drinking/entertainment establishment with a 6,300-sf patio in the Greater Downtown District of Parker. The Wild Goose Saloon will employ approximately 60 individuals when fully operational. The capital investment is estimated at \$3.6 million. Annual sales are estimated to be \$3.6 million initially, growing to \$4.2 million over three (3) years. The Wild Goose meets the following goals of the TAP Program:

- produces increased sales taxes;
- provides new jobs (employment);
- provides for the creation or enhancement of a unique downtown; and
- contributes to the diversity of jobs and employment opportunities.

FINANCIAL IMPACT

Under the TAP Agreement, Wild Goose will receive:

- fifty percent (50%) of the enhanced sales taxes generated by the project, excluding the Parks and Recreation Sales Tax, for a maximum of three (3) one-year terms; and
- fifty percent (50%) of development fees, which include permit fees, plan check fees, and construction use taxes collected by the Town during the construction permitting process for the initial construction of the project
- The maximum period that the TAP Agreement will be in effect is three (3) years or until the maximum sum of \$154,000 is shared, whichever occurs first, at which time the TAP

Agreement will terminate.

STRATEGIC GOAL(S)



ENHANCE ECONOMIC
VITALITY

ATTACHMENTS

1. Wild Goose TAP Agreement

RECOMMENDED MOTION

I move to approve the staff recommendation.

**TAX AND FEE ASSISTANCE PROGRAM AGREEMENT
FOR WILD GOOSE SALOON, L.L.C.**

THIS AGREEMENT, made and entered into this 8 day of September, 2020, by and between Wild Goose Saloon, L.L.C., a Colorado limited liability company (the "Owner"), and the Town of Parker, Colorado (the "Town").

RECITALS:

A. The Town adopted Chapter 4.2 of the Parker Municipal Code, entitled TAX AND FEE ASSISTANCE PROGRAM (collectively referred to as the "Ordinance" or the "TAP Program"), to encourage recruitment, retention, establishment and/or expansion of businesses within the Town, thereby stimulating the economy of and providing employment for residents of the Town and others, further expanding the goods and services available for purchase and consumption by businesses and residents of the Town, and further increasing the sales taxes and fees collected by the Town.

B. The Owner desires to participate in the TAP Program and to share in the enhanced sales tax derived from the business described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "New Business"), which is located at the 11132 & 11160 Pikes Peak Drive, Parker, Colorado, 80134, and more particularly described in **Exhibit B**, which is attached hereto and incorporated by this reference (the "Property"), for the installation of the public or public-related improvements described in **Exhibit C**, which is attached hereto and incorporated by this referenced (the "Improvements"), to the extent allowed in this Agreement.

C. The Owner shall be deemed the recorded owner of the real property upon which the New Business is operated and is solely entitled to reimbursement provided for herein for purposes of this Agreement, whether or not the Owner owns all or any portion of the real property upon which the New Business is operated at the relevant time, since the Owner is responsible for the installation of the Improvements.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the parties hereto, to be kept and performed by each of them, the parties agree as follows:

1. **Term and Condition Precedent.**

a. The Town and the Owner acknowledge and agree that this Agreement describes a certain condition precedent, which is contained in Paragraph 5 of this Agreement (the "Condition Precedent"), that must be performed on or before December 31, 2021 (the "Condition Deadline"). In the event that the Condition Precedent described in Paragraph 5 of this Agreement is fully satisfied on or before the Condition Deadline, Town and the Owner each agree to promptly execute the Certificate of Compliance attached as **Exhibit D** and incorporated by this reference, which establishes that the terms and conditions contained in Paragraph 5 of this Agreement have been satisfied. In the event the Condition Precedent is not satisfied by the Condition Deadline, then this Agreement will automatically terminate, and any action or approval made or undertaken by either party to this Agreement shall be null and void and of no force or effect.

b. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence on the issuance of the Town's written authorization for the New Business to operate on the Property and shall terminate one (1) year from the date in which the Town issues the written authorization for the New Business to operate on the Property; provided, however, that, subject to the terms of the next succeeding sentence, this Agreement shall automatically renew for additional one-year terms. The term of this Agreement may be renewed for up to two (2) one-year terms. This Agreement shall automatically renew for each additional one-year term, provided, however, amounts shall not be paid to the Owner in any year for which the Town has not appropriated sufficient funds for payment in such year, or the Town has disbursed the maximum amount, as provided in Paragraph 2.d. of this Agreement.

2. Qualification of Property for the TAP Program. The Town agrees that the New Business qualifies for the TAP Program and the Improvements are improvements for public and/or public-related purposes that will enhance the competitive position of the Town within the Denver metropolitan area market place. The following provisions shall apply for each year in which this Agreement is in effect for the New Business located on the Property:

a. Fifty percent (50%) of the "Enhanced Sales Taxes," as defined in the Ordinance, collected by the Town and derived from the New Business located on the Property, excluding the half percent (0.5%) Town sales tax described in Section 4.02.080(b) of the Parker Municipal Code ("Parks and Recreation Sales Tax"), shall be segregated by the Town Finance Director to be utilized for this Agreement.

b. In determining the amount of "Enhanced Sales Taxes," the "base amount" as defined in the Ordinance and agreed to by the Town and the Owner shall be Twenty-Four Thousand Four Hundred Fifty-Six and 00/100 Dollars (\$24,456.00) per year for the initial year and each of the two (2) remaining one-year terms (including the Parks and Recreation Sales Tax), which amount represents the good faith determination by the Owner and the Town of the amount of sales tax that would be generated without assistance from the Town.

c. The Owner shall share in the Enhanced Sales Taxes derived from the New Business located on the Property in the amount of Fifty percent (50%) of the Enhanced Sales Taxes, excluding the Parks and Recreation Sales Tax, for the three (3) one-year terms of the Agreement. The Owner shall also share in building permit fees, which include permit, plan check fees, and construction use taxes collected by the Town (the "Fee Repayment") during the construction permitting process for the initial construction of the New Business on the Property. The amount of the Fee Repayment shall be fifty percent (50%) of the building permit fees, which include permit fees, plan check fees, and construction of use taxes collected by the Town, excluding the Douglas County use tax and the half percent (0.5%) Town use tax described in Section 4.02.080(b) of the Parker Municipal Code. The Fee Repayment shall be used for reimbursement of the Improvements, as described herein. The Fee Repayment shall, together with the Enhanced Sales Tax, be used for reimbursement of the Improvements, as described in Paragraph 2.d. of this Agreement.

d. The Enhanced Sales Taxes from the New Business located on the Property shall be shared and the Owner's share thereof shall be disbursed on a quarterly basis commencing on the date specified in Paragraph 1.b. of this Agreement for reimbursement of the cost of Improvements

described in Exhibit C. The Fee Repayment will be paid to the Owner upon the construction and installation of the Improvements or the issuance of the certificate of occupancy for the New Business, whichever occurs last. The maximum period of time that this Agreement shall be in effect is three (3) years (commencing on the issuance of the Town's written authorization for the New Business to operate on the Property as described in Paragraph 1.b.) or until the maximum sum of One Hundred Fifty-Four Thousand Dollars (\$154,000.00) derived from (i) Enhanced Sales Taxes defined herein and (ii) the Fee Repayment defined herein have been paid to Owner for reimbursement for the Improvements, whichever occurs first, at which time this Agreement shall terminate. It is expressly understood by the parties that this Agreement will terminate as provided in Paragraph 1.b. of this Agreement or upon the occurrence of the earlier to be reached of the maximum time as provided in the preceding sentence (whether or not the maximum amount to be shared has been reached) or disbursement of the maximum amount to be shared as provided in the preceding sentence (whether or not the maximum time set forth has expired).

e. The base amount for Enhanced Sales Taxes is divided into twelve (12) monthly increments by agreement of the Owner and the Town as shown on **Exhibit E**, which is attached hereto and incorporated by this reference. In the event the sales taxes received from the Property do not at least equal the monthly base amount for any month, there shall be no sharing of funds for that month and no increment shall be shared until the cumulative sales taxes received from the Property for the applicable twelve-month cycle exceed the cumulative base amount for such period.

f. This Agreement is a personal agreement between the Town and the Owner which does not run with the land and shall not be recorded against the Property. Further, this Agreement shall never constitute a debt or obligation of the Town within any constitutional or statutory provision.

g. Any Enhanced Sales Taxes subject to this Agreement shall be escrowed in the event there is a legal challenge to the TAP Program or the approval of this Agreement.

h. The obligations, benefits and/or the provisions of this Agreement may not be assigned in whole or in part without the express authorization of the Parker Town Council and no third party shall be entitled to rely upon or enforce any provisions hereon.

i. At the end of the term of this Agreement as provided for herein, any monies segregated by the Town Finance Director which have not been expended as hereunder provided may be transferred to another account of the Town or used in any manner determined by the Town in its sole discretion, excluding any amounts escrowed pursuant to Paragraph 2.g. of this Agreement.

j. From the Enhanced Sales Taxes proceeds segregated by the Town Finance Director, the Town shall pay the Owner upon satisfaction of the obligations related to the Improvements, as described in Exhibit C of this Agreement. The Owner shall provide documentation acceptable to the Town to establish that the obligations described in Exhibit C have been satisfied.

3. Nonappropriations/Multi-Fiscal Year Obligations. Notwithstanding anything in this Agreement to the contrary, this Agreement is specifically subject to annual appropriation of sufficient funds to pay Enhanced Sales Taxes as provided by this Agreement. In the event that appropriation of sufficient funds is not made in any year, resulting in the inability of the Town to pay Enhanced Sales Taxes hereunder, the Town shall not be obligated to make payment of the nonappropriated amounts in such year.

4. Subordination. Notwithstanding anything in this Agreement to the contrary, the Owner shall have no right, claim, lien, or priority in or to the Town's sales tax or use tax revenue superior to or on parity with the rights, claims, or liens of the holders of any sales tax or use tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes or use taxes, existing or hereafter issued by the Town, and that all rights of the Owner are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales tax or use tax revenue bonds, certificates of participation, notes, certificates, or debentures, issued by the Town and payable from or secured by any sales taxes.

5. Condition Precedent to be Satisfied. The Condition Precedent to be satisfied on or before the Condition Deadline is the issuance of the Town's written authorization for the New Business to operate on the Property, on or before December 31, 2021. In the event that the Condition Precedent have not been satisfied and the Certificate of Compliance has not been executed by the parties on or before the Condition Deadline, then this Agreement shall automatically terminate and any action or approval undertaken by either party to this Agreement to satisfy any Condition Precedent shall be null and void and of no force or effect. Upon the execution of the Certificate of Compliance by the parties hereto, the Town and Owner shall satisfy the terms and conditions contained in this Agreement.

6. Remedies. The Owner waives any constitutional claims against the Town arising out of a breach of this Agreement. The Owner's remedies against the Town under this Agreement are limited to breach of contract claims.

7. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts 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, 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, and the parties shall cooperate to cure any legal defects in this Agreement or the TAP Program.

9. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Douglas County, Colorado.

10. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon the earlier of actual receipt or seventy-two (72) hours after deposit in the United States mail with the proper

address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the Town: Town Administrator
 Town of Parker
 20140 East Mainstreet
 Parker, Colorado 80138

Notice to the Owner: Gene Gregory
 Wild Goose Saloon, L.L.C.
 367 Sandy Hollow Trail
 Franktown, Colorado 80116

11. Entire Agreement - Amendments. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement between the Owner and the Town acting pursuant to Town Council authorization, as provided by the Ordinance.

12. Effective Date. This Agreement shall be effective and binding upon the parties immediately upon the day and year first above written.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

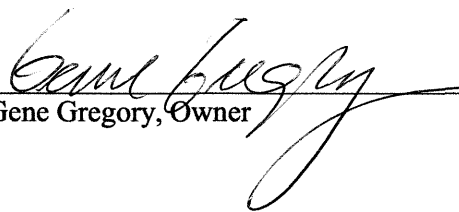
ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

**OWNER: WILD GOOSE SALOON L.L.C., a
Colorado limited liability company**

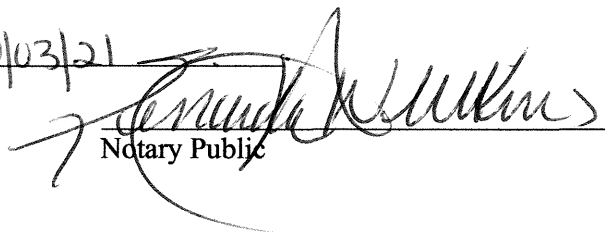

Gene Gregory, Owner

STATE OF COLORADO)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 8th day of September
2020, by Gene Gregory, as Owner of Wild Goose Saloon L.L.C., a Colorado limited liability
company.

My commission expires: 10/03/21

SEAL


Notary Public

SENAIDA A WILKINS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID# 20094027771
MY COMMISSION EXPIRES OCT. 03, 2021

EXHIBIT LIST

Exhibit A	Description of Wild Goose Saloon
Exhibit B	Legal Description of the Property
Exhibit C	Improvements
Exhibit D	Certificate of Compliance
Exhibit E	Base Amount

EXHIBIT A

DESCRIPTION OF WILD GOOSE SALOON

The Wild Goose Saloon proposes to create a new eating/drinking/entertainment establishment in the Greater Downtown District of Parker. The Wild Goose Saloon will build a 7,200-sf building and 6,300-sf patio, along with all necessary parking, landscaping, civil and other necessary improvements associated with the structure contemplated.

The capital investment is estimated at \$3.6 million and represents a significant investment in, and commitment to, the Town. Annual sales are estimated to be \$3.6 million initially growing to \$4.2 million over 3 years. The increased operation will employ approximately 60 individuals when fully operational. The new location is scheduled to begin construction this fall and open in fall of 2021.

EXHIBIT B

LEGAL DESCRIPTION

LOTS 1 AND 2, PARKER HILLTOP TOWN SQUARE - 1ST AMENDMENT, RECORDED
APRIL 4, 2008 AT RECEPTION NO. 2008024417, LOCATED IN THE SOUTHEAST
QUARTER OF SECTION 22, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH
PRINCIPAL MERIDIAN, TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF
COLORADO

EXHIBIT C

IMPROVEMENTS

The obligations and improvements which are public or public-related and eligible under the "Tax and Fee Assistance Program Agreement" include the improvement to in-fill lots of undeveloped property in the Greater Downtown District in the Town of Parker with a sales-tax-generating enterprise and an initial capital investment of more than \$3.6 million. The new business will both create approximately 60 new jobs and also result in diversity of sales tax generation and an enhancement of the Greater Downtown District.

The Wild Goose Saloon meets the following goals of the Town's Tax and Fee Assistance Program (TAP):

- Produces increased sales taxes
- Provides new jobs (employment)
- Creates or enhances a unique downtown
- Contributes to the diversity of jobs and employment opportunities

EXHIBIT D

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED by the undersigned authorized representatives of the Town of Parker and Wild Goose Saloon, L.L.C., in connection with that certain Tax and Fee Assistance Program Agreement for Wild Goose Saloon L.L.C., dated _____, 2020 (the "Agreement"), that:

The Condition Precedent described in Paragraph 5 of the Agreement was fully satisfied on or before September 30, 2021.

IN WITNESS WHEREOF, the parties sign this Certificate of Compliance this ____ day of _____, 20__.

TOWN OF PARKER, COLORADO

By: _____,
_____, Mayor

ATTEST:

_____, Town Clerk

**OWNER: WILD GOOSE SALOON L.L.C., a
Colorado limited liability company**

Gene Gregory, Owner

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Gene Gregory, as Owner of Wild Goose Saloon L.L.C., a Colorado limited liability company.

My commission expires: _____.

SEAL

Notary Public

EXHIBIT E

BASE AMOUNT

YEAR 1 through 3

Month #1	\$ 2,038.00
Month #2	\$ 2,038.00
Month #3	\$ 2,038.00
Month #4	\$ 2,038.00
Month #5	\$ 2,038.00
Month #6	\$ 2,038.00
Month #7	\$ 2,038.00
Month #8	\$ 2,038.00
Month #9	\$ 2,038.00
Month #10	\$ 2,038.00
Month #11	\$ 2,038.00
Month #12	<u>\$ 2,038.00</u>
Total Annual Base	\$24,456.00



Request for Town Council Action

Date: September 21, 2020
Submitted By: Jim Maloney, Town Attorney
Reviewed By: Michelle Kivela, Town Administrator
Title: Tax and Fee Assistance Program Agreement for Big Tool Box
Department: Town Attorney, Jim Maloney

EXECUTIVE SUMMARY

Jackalope Properties LLC (“Jackalope”) submitted an application for financial assistance under the Town of Parker Tax and Fee Assistance Program. The Town Council is required to hold a public hearing before considering a TAP Agreement for approval.

STAFF RECOMMENDATION

Approve

BACKGROUND/DISCUSSION

Jackalope is planned as a 32,000-sf indoor and 87,000-sf outdoor business that includes an Ace Hardware, Nursery Garden Center, Sprinkler Center and Repair and Rental. The capital investment in the building is estimated at \$8.7 million. Jackalope will employ 45 individuals full-time and 75 part-time when fully operational. Annual sales are estimated to be \$5.3 million initially, growing to \$8.6 million over five (5) years. Jackalope meets the following goals of the TAP Program:

- produces increased sales taxes;
- provides new jobs (employment);
- provides for the creation or enhancement of a unique downtown; and
- contributes to the diversity of jobs and employment opportunities.

FINANCIAL IMPACT

Under the TAP Agreement, Jackalope will receive:

- fifty percent (50%) of the enhanced sales taxes generated by the project, excluding the Parks and Recreation Sales Tax, for a maximum of six (6) one-year terms; and
- fifty percent (50%) of development fees, which include permit fees, plan check fees, and construction use taxes collected by the Town during the construction permitting process for the initial construction of the project.
- The maximum period that the TAP Agreement will be in effect is six (6) years or until the maximum sum of \$600,000 is shared, whichever occurs first, at which time the TAP

Agreement will terminate.

STRATEGIC GOAL(S)



ENHANCE ECONOMIC
VITALITY

ATTACHMENTS

1. Big Tool Box TAP Agreement

RECOMMENDED MOTION

I move to approve the staff recommendation.

**TAX AND FEE ASSISTANCE PROGRAM AGREEMENT
FOR JACKALOPE PROPERTIES LLC**

THIS AGREEMENT, made and entered into this 10th day of September, 2020, by and between Jackalope Properties LLC, a Colorado limited liability company (the "Owner"), and the Town of Parker, Colorado (the "Town").

RECITALS:

A. The Town adopted Chapter 4.2 of the Parker Municipal Code, entitled TAX AND FEE ASSISTANCE PROGRAM (collectively referred to as the "Ordinance" or the "TAP Program"), to encourage recruitment, retention, establishment and/or expansion of businesses within the Town, thereby stimulating the economy of and providing employment for residents of the Town and others, further expanding the goods and services available for purchase and consumption by businesses and residents of the Town, and further increasing the sales taxes and fees collected by the Town.

B. The Owner desires to participate in the TAP Program and to share in the enhanced sales tax derived from the business described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "New Business"), which is located at the 12450 S. Parker Road, Parker, Colorado, 80134, and more particularly described in **Exhibit B**, which is attached hereto and incorporated by this reference (the "Property"), for the installation of the public or public-related improvements described in **Exhibit C**, which is attached hereto and incorporated by this referenced (the "Improvements"), to the extent allowed in this Agreement.

C. The Owner shall be deemed the recorded owner of the real property upon which the New Business is operated and is solely entitled to reimbursement provided for herein for purposes of this Agreement, whether or not the Owner owns all or any portion of the real property upon which the New Business is operated at the relevant time, since the Owner is responsible for the installation of the Improvements.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the parties hereto, to be kept and performed by each of them, the parties agree as follows:

1. **Term and Condition Precedent.**

a. The Town and the Owner acknowledge and agree that this Agreement describes a certain condition precedent, which is contained in Paragraph 5 of this Agreement (the "Condition Precedent"), that must be performed on or before December 31, 2021 (the "Condition Deadline"). In the event that the Condition Precedent described in Paragraph 5 of this Agreement is fully satisfied on or before the Condition Deadline, Town and the Owner each agree to promptly execute the Certificate of Compliance attached as **Exhibit D** and incorporated by this reference, which establishes that the terms and conditions contained in Paragraph 5 of this Agreement have been satisfied. In the event the Condition Precedent is not satisfied by the Condition Deadline, then this Agreement will automatically terminate, and any action or approval made or undertaken by either party to this Agreement shall be null and void and of no force or effect.

b. Subject to the terms and conditions of this Agreement, the term of this Agreement shall commence on the issuance of the Town's written authorization for the New Business to operate on the Property and shall terminate one (1) year from the date in which the Town issues the written authorization for the New Business to operate on the Property; provided, however, that, subject to the terms of the next succeeding sentence, this Agreement shall automatically renew for additional one-year terms. The term of this Agreement may be renewed by up to five (5) one-year terms. This Agreement shall automatically renew for each additional one-year term, provided, however, amounts shall not be paid to the Owner in any year for which the Town has not appropriated sufficient funds for payment in such year, or the Town has disbursed the maximum amount, as provided in Paragraph 2.d. of this Agreement.

2. Qualification of Property for the TAP Program. The Town agrees that the New Business qualifies for the TAP Program and the Improvements are improvements for public and/or public-related purposes that will enhance the competitive position of the Town within the Denver metropolitan area market place. The following provisions shall apply for each year in which this Agreement is in effect for the New Business located on the Property:

a. Fifty percent (50%) of the "Enhanced Sales Taxes," as defined in the Ordinance, collected by the Town and derived from the New Business located on the Property, excluding the half percent (0.5%) Town sales tax described in Section 4.02.080(b) of the Parker Municipal Code ("Parks and Recreation Sales Tax"), shall be segregated by the Town Finance Director to be utilized for this Agreement.

b. In determining the amount of "Enhanced Sales Taxes," the "base amount" as defined in the Ordinance and agreed to by the Town and the Owner shall be Ninety-Two Thousand Six Hundred Twenty-Eight and 00/100 Dollars (\$92,628.00) per year for the initial year and each of the five (5) remaining one-year terms (including the Parks and Recreation Sales Tax), which amount represents the good faith determination by the Owner and the Town of the amount of sales tax that would be generated without assistance from the Town.

c. The Owner shall share in the Enhanced Sales Taxes derived from the New Business located on the Property in the amount of Fifty percent (50%) of the Enhanced Sales Taxes, excluding the Parks and Recreation Sales Tax, for the six (6) one-year terms of the Agreement. The Owner shall also share in building permit fees, which include permit, plan check fees, and construction use taxes collected by the Town (the "Fee Repayment") during the construction permitting process for the initial construction of the New Business on the Property. The amount of the Fee Repayment shall be fifty percent (50%) of the building permit fees, which include permit fees, plan check fees, and construction of use taxes collected by the Town, excluding the Douglas County use tax and the half percent (0.5%) Town use tax described in Section 4.02.080(b) of the Parker Municipal Code. The Fee Repayment shall be used for reimbursement of the Improvements, as described herein. The Fee Repayment shall, together with the Enhanced Sales Tax, be used for reimbursement of the Improvements, as described in Paragraph 2.d. of this Agreement.

d. The Enhanced Sales Taxes from the New Business located on the Property shall be shared and the Owner's share thereof shall be disbursed on a quarterly basis commencing on the date specified in Paragraph 1.b. of this Agreement for reimbursement of the cost of

Improvements described in Exhibit C. The Fee Repayment will be paid to the Owner upon the construction and installation of the Improvements or the issuance of the certificate of occupancy for the New Business, whichever occurs last. The maximum period of time that this Agreement shall be in effect is six (6) years (commencing on the issuance of the Town's written authorization for the New Business to operate on the Property as described in Paragraph 1.b.) or until the maximum sum of Six Hundred Thousand Dollars (\$600,000.00) derived from (i) Enhanced Sales Taxes defined herein and (ii) the Fee Repayment defined herein have been paid to Owner for reimbursement for the Improvements, whichever occurs first, at which time this Agreement shall terminate. It is expressly understood by the parties that this Agreement will terminate as provided in Paragraph 1.b. of this Agreement or upon the occurrence of the earlier to be reached of the maximum time as provided in the preceding sentence (whether or not the maximum amount to be shared has been reached) or disbursement of the maximum amount to be shared as provided in the preceding sentence (whether or not the maximum time set forth has expired).

e. The base amount for Enhanced Sales Taxes is divided into twelve (12) monthly increments by agreement of the Owner and the Town as shown on **Exhibit E**, which is attached hereto and incorporated by this reference. In the event the sales taxes received from the Property do not at least equal the monthly base amount for any month, there shall be no sharing of funds for that month and no increment shall be shared until the cumulative sales taxes received from the Property for the applicable twelve-month cycle exceed the cumulative base amount for such period.

f. This Agreement is a personal agreement between the Town and the Owner which does not run with the land and shall not be recorded against the Property. Further, this Agreement shall never constitute a debt or obligation of the Town within any constitutional or statutory provision.

g. Any Enhanced Sales Taxes subject to this Agreement shall be escrowed in the event there is a legal challenge to the TAP Program or the approval of this Agreement.

h. The obligations, benefits and/or the provisions of this Agreement may not be assigned in whole or in part without the express authorization of the Parker Town Council and no third party shall be entitled to rely upon or enforce any provisions hereon.

i. At the end of the term of this Agreement as provided for herein, any monies segregated by the Town Finance Director which have not been expended as hereunder provided may be transferred to another account of the Town or used in any manner determined by the Town in its sole discretion, excluding any amounts escrowed pursuant to Paragraph 2.g. of this Agreement.

j. From the Enhanced Sales Taxes proceeds segregated by the Town Finance Director, the Town shall pay the Owner upon satisfaction of the obligations related to the Improvements, as described in Exhibit C of this Agreement. The Owner shall provide documentation acceptable to the Town to establish that the obligations described in Exhibit C have been satisfied.

3. Nonappropriations/Multi-Fiscal Year Obligations. Notwithstanding anything in this Agreement to the contrary, this Agreement is specifically subject to annual appropriation of sufficient funds to pay Enhanced Sales Taxes as provided by this Agreement. In the event that appropriation of sufficient funds is not made in any year, resulting in the inability of the Town to pay Enhanced Sales Taxes hereunder, the Town shall not be obligated to make payment of the nonappropriated amounts in such year.

4. Subordination. Notwithstanding anything in this Agreement to the contrary, the Owner shall have no right, claim, lien, or priority in or to the Town's sales tax or use tax revenue superior to or on parity with the rights, claims, or liens of the holders of any sales tax or use tax revenue bonds, notes, certificates, or debentures payable from or secured by any sales taxes or use taxes, existing or hereafter issued by the Town, and that all rights of the Owner are, and at all times shall be, subordinate and inferior to the rights, claims, and liens of the holders of any and all such sales tax or use tax revenue bonds, certificates of participation, notes, certificates, or debentures, issued by the Town and payable from or secured by any sales taxes.

5. Condition Precedent to be Satisfied. The Condition Precedent to be satisfied on or before the Condition Deadline is the issuance of the Town's written authorization for the New Business to operate on the Property, on or before December 31, 2021. In the event that the Condition Precedent have not been satisfied and the Certificate of Compliance has not been executed by the parties on or before the Condition Deadline, then this Agreement shall automatically terminate and any action or approval undertaken by either party to this Agreement to satisfy any Condition Precedent shall be null and void and of no force or effect. Upon the execution of the Certificate of Compliance by the parties hereto, the Town and Owner shall satisfy the terms and conditions contained in this Agreement.

6. Remedies. The Owner waives any constitutional claims against the Town arising out of a breach of this Agreement. The Owner's remedies against the Town under this Agreement are limited to breach of contract claims.

7. Severability. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the courts 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, 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, and the parties shall cooperate to cure any legal defects in this Agreement or the TAP Program.

9. Governing Law. The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be in Douglas County, Colorado.

10. Notice. All notice required under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective upon the earlier of actual receipt or seventy-two (72) hours after deposit in the United States mail with the proper

address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the Town: Town Administrator
Town of Parker
20140 East Mainstreet
Parker, Colorado 80138

Notice to the Owner: Marley Hodgson
Jackalope Properties LLC
8080 South Holly Street
Centennial, Colorado 80122

11. Entire Agreement - Amendments. This Agreement embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein, and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. This Agreement may be amended by written agreement between the Owner and the Town acting pursuant to Town Council authorization, as provided by the Ordinance.

12. Effective Date. This Agreement shall be effective and binding upon the parties immediately upon the day and year first above written.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

OWNER: JACKALOPE PROPERTIES LLC, a
Colorado limited liability company



Marley Hodgson, Owner

Connecticut
STATE OF ~~COLORADO~~

COUNTY OF New London

)
)ss. Strington
)

The foregoing instrument was acknowledged before me this 11 day of September
2020, by Marley Hodgson, as Owner of Jackalope Properties LLC, a Colorado limited liability
company.

My commission expires: July 31, 2023

SEAL


Notary Public

ERIN E. TIRRELL
NOTARY PUBLIC
MY COMMISSION EXPIRES JULY 31, 2023

EXHIBIT LIST

Exhibit A	Description of Jackalope Properties LLC
Exhibit B	Legal Description of the Property
Exhibit C	Improvements
Exhibit D	Certificate of Compliance
Exhibit E	Base Amount

EXHIBIT A

DESCRIPTION OF JACKALOPE PROPERTIES LLC

Jackalope Properties LLC is a 32,000-square-foot indoor and 87,000-square-foot outdoor business that includes an Ace Hardware, Nursery Garden Center, Sprinkler Center and Repair and Rental. Along all necessary parking, landscaping, civil and other necessary improvements associated with the new business.

The capital investment in the new building is estimated at \$8.7 million and represents a significant investment in, and commitment to, the Town. Annual sales are estimated to be \$5,300,000 initially growing to \$8.6 million over 5 years. The new business will employ approximately 45 individuals full-time and 75 part-time when fully operational.

EXHIBIT B

LEGAL DESCRIPTION

A Replat of Lot 1, Block 1 and Tract A, Jackalope Subdivision, Filing No. 1
Part of the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 34, Township 6 South, Range 66 West of
the 6th Principal Meridian
Town of Parker, County of Douglas, State of Colorado

EXHIBIT C

IMPROVEMENTS

The obligations and improvements which are public or public-related and eligible under the "Tax and Fee Assistance Program Agreement" include the redevelopment of the Property with a sales-tax-generating enterprise and an initial capital investment of more than \$8.7 million. The new business will both create approximately 30 full-time and 75 part-time jobs and also result in diversity of sales tax generation and an enhancement of a new business located in the southern part of the Town. The proposed development of the property will be designed to meet the goals and objectives of the Parker Road corridor zone standards, as outlined in the Town of Parker commercial design standards updated January 17, 2017.

EXHIBIT D

CERTIFICATE OF COMPLIANCE

IT IS HEREBY CERTIFIED by the undersigned authorized representatives of the Town of Jackalope Properties LLC, in connection with that certain Tax and Fee Assistance Program Agreement for Jackalope Properties LLC, dated _____, 2020 (the "Agreement"), that:

The Condition Precedent described in Paragraph 5 of the Agreement was fully satisfied on or before December 31, 2021.

IN WITNESS WHEREOF, the parties sign this Certificate of Compliance this ____ day of _____, 20__.

TOWN OF PARKER, COLORADO

By: _____,
_____, Mayor

ATTEST:

_____, Town Clerk

**OWNER: JACKALOPE PROPERTIES LLC, a
Colorado limited liability company**

Marley Hodgson, Owner

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Marley Hodgson, as Owner of Jackalope Properties LLC, a Colorado limited liability company.

My commission expires: _____.

SEAL

Notary Public

EXHIBIT E

BASE AMOUNT

YEAR 1 through 5

Month #1	\$ 7,719.00
Month #2	\$ 7,719.00
Month #3	\$ 7,719.00
Month #4	\$ 7,719.00
Month #5	\$ 7,719.00
Month #6	\$ 7,719.00
Month #7	\$ 7,719.00
Month #8	\$ 7,719.00
Month #9	\$ 7,719.00
Month #10	\$ 7,719.00
Month #11	\$ 7,719.00
Month #12	<u>\$ 7,719.00</u>
Total Annual Base	\$92,628.00