

**TOWN OF PARKER COUNCIL AGENDA
JANUARY 3, 2017**

Notes:

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

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

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

1. **TOWN COUNCIL MEETING SCHEDULE**

- (a) **5:30 P.M. – Call to Order Town Council Meeting and Roll Call**
- (b) **Executive Session – Immediately following Call to Order/Roll Call – (See Attached)**
- (c) **Reconvene Town Council Meeting at 7:00 P.M. or as soon thereafter as the regular public meeting can be conducted.**

2. **SWEARING-IN OF MAYOR AND COUNCILMEMBERS**

3. **15 MINUTE BREAK**

4. **SPECIAL PRESENTATIONS**

5. **PARKER CHAMBER OF COMMERCE UPDATES**

6. **DOWNTOWN BUSINESS ALLIANCE UPDATES (First Meeting of Month)**

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

8. **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**

December 5, 2016

December 12, 2016

B. **SLOPE EASEMENT TERMINATION AGREEMENT FOR THE ENCLAVE AT CHERRY CREEK APARTMENTS, LLC**

Department: Engineering, Alex Mestdagh

C. **RESOLUTION NO. 17-001**

A Resolution to Amend Resolution No. 16-001 Establishing a Designated Public Place for the Posting of Meeting Notices as Required by the Colorado Open Meetings Law

Department: Town Clerk, Carol Baumgartner

- D. *RESOLUTION NO. 17-002*
A Resolution to Appoint Regular Members to the Parker Cultural and Scientific Commission and to Appoint the Chair
Department: Cultural, Elaine Mariner
- E. *RESOLUTION NO. 17-003*
A Resolution to Appoint Regular Members to the Parker Creative District Executive Committee and to Appoint the Chair
Department: Cultural, Elaine Mariner
- F. *RESOLUTION NO. 17-004*
A Resolution to Determine that Lot 2, Block 1, Parker Heights Property Annexation Petition Substantially Complies with the Requirements of the Annexation Act of 1965 and to Set a Public Hearing Date for March 6, 2017
Department: Community Development, Patrick Mulready
- G. *RESOLUTION NO. 17-005*
A Resolution Accepting the Conveyance of Real Property from the Board of County Commissioners of the County of Douglas, State of Colorado, for the Harvie Property by General Warranty Deed
Department: Recreation, Dennis Trapp
Town Attorney, Jim Maloney
- H. *RESOLUTION NO. 17-006*
A Resolution Accepting the Conveyance of Real Property from the Board of County Commissioners of the County of Douglas, State of Colorado, for the Harvie Property by Quit Claim Deed
Department: Recreation, Dennis Trapp
Town Attorney, Jim Maloney
- I. *RESOLUTION NO. 17-007*
A Resolution Accepting Conveyance of Real Property from Richmond Homes of Colorado, Inc. for the East-West Trail East of Motsenbocker Road.
Department: Engineering, Tom Gill
- J. *CONTRACTS ABOVE \$100,000*
- *2017 Townwide Resurfacing Program (CIP17-007)*
Amount: \$670,580.60
Contractor: Chavez Construction, Inc.
Department: Engineering, Chris Hudson
 - *Parker Consolidated School Restoration Project - Phase III*
Amount: \$937,655.00
Contractor: Wattle & Daub Contractors
Department: Engineering, Tom Gill
- K. *RESOLUTION NO. 17-008*
A Resolution Approving the Form of Intergovernmental Agreement Proposed to be Entered Into by Belford South Metropolitan District Regarding the Assignment to the District of Water and Wastewater Service Equivalents by Stonegate Village Metropolitan District
Department: Town Attorney, Jim Maloney

L. *ORDINANCE NO. 3.326 – First Reading*
A Bill for an Ordinance to Amend Sections 13.04.200, 13.06.020, 13.06.070 and 13.10.200, and to Add a New Section 13.04.207 of the Parker Municipal Code, to Address Development Impacts and Development Standards as They Relate to Multiple-Family Uses Within the Town of Parker

Department: Community Development, John Fussa
Community Development, Jason Rogers
Community Development, Bryce Matthews
Second Reading: January 17, 2017

9. **TOWN ADMINISTRATOR**

- Reports

10. **PUBLIC HEARINGS**

TAX AND FEE ASSISTANCE PROGRAM AGREEMENT FOR ALL FIRED UP! LLC

(Continued from 12/5/2016 Meeting)

Applicant: All Fired Up, LLC, Jon Liberati, Manager
Location: 12311 Pine Bluffs Way, #107, Parker, Colorado 80134
Department: Economic Development, Matt Carlson

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

12. **ADJOURNMENT**

Parker Town Council

Executive Session Agenda

January 3, 2017

“To consider documents protected from disclosure by the Colorado Open Records Act, pursuant to C.R.S. § 24-6-402(4)(g).”

1. Consideration of deliberative materials assembled for the benefit of the Town Council related 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), with the South Metro Fire Rescue Authority [**POSTPONED FROM 12/5/16**]

"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)."

2. Section 13.10.200 of the Parker Municipal Code, related to architectural and design standards for commercial, industrial and multi-family projects and Ordinance No. 3.326.
3. Colorado Revised Statutes Section 32-1-905(2.5), related to the appointment of directors to the Pine Bluffs Metropolitan District

“To consider the purchase, acquisition, lease, transfer or sale of real, personal or other property, pursuant to C.R.S. § 24-6-402(4)(a).”

4. The purchase of real property needed to construct J. Morgan Boulevard south of Stroh Road.

**TOWN OF PARKER COUNCIL
MINUTES
DECEMBER 5, 2016**

Mayor Mike Waid called the meeting to order at 5:52 P.M. Councilmember Debbie Lewis arrived at 6:16 P.M.

Town Attorney Jim Maloney announced that the topics for discussion in Executive Session were four (4) items. Under C.R.S. § 24-6-402(4)(b) there were three (3) items, the first was to receive legal advice on specific legal questions on Section 2.05.060 of the Parker Municipal Code related to establishing a conflict of interest and disclosing a conflict of interest, the second was to receive legal advice on specific legal questions on Section 13.10.200 of the Parker Municipal Code, related to architectural and design standards for commercial, industrial and multi-family projects and the third was to receive legal advice on specific legal questions on Section 10.11.080 of the Parker Municipal Code, related to the Reata Ridge Metropolitan District service plan and election; under C.R.S. 24-6-402(4) (e) there was one item for request by ACG, LLC, to extend the sale and purchase agreement for the Mainstreet Gym property.

EXECUTIVE SESSION

Josh Martin moved and Joshua Rivero 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 Town Council did not address specific legal questions related to architectural and design standards for commercial, industrial and multi-family projects.

The motion was approved unanimously.

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

The motion was approved unanimously.

REGULAR MEETING

Mayor Waid reconvened the meeting at 6:59 P.M.

Youngsters from the audience led the Council and audience in the Pledge of Allegiance.

SPECIAL PRESENTATIONS

• **Special Olympics Tip-A-Cop Trophy Presentation**

Police Chief David King introduced Jan Gordon, the liaison for all law enforcement Special Olympics. They raised a total of \$70,000 statewide. The trophy was given to Debbie Daily, Police Department Dispatcher.

PARKER CHAMBER OF COMMERCE UPDATES – None

DOWNTOWN BUSINESS ALLIANCE UPDATES – None

PUBLIC COMMENTS

Suzanne Setr, 10730 Mt. ???) inquired about the landscaping at Walgreen's on Lincoln and So. Parker Road. She was asked to speak with Jason Rogers.

The following individuals spoke against the Parker Place Hotel:

Brittany Yarborough, 19636 Victorian Dr. #B4
Bill Witwer, 15885 Savory Circle
Lisa Monette, 10796 Foxwood Ct.
Beau Jeanmard, 10788 Foxwood Ct.
Aaron Trail (Sulfur Gulch Trail and Pikes Peak)
Coleen Moeller, 11401 Canterbury Lane
Sean Richardson, 11056 Tim Tam Way
David Denslow, 10787 Vista Rd
Gary Lasater
Scott Wright, 12065 S. Majestic Rd.
Joe Oltmann, 8245 N. Keith Ct., Castle Pines, CO
Duane Hightman, Mainstreet,
C.J. Cox, 20515 Oakbrook Lane
Shenka Hagan, 10842 Bayfield Way
Justin O'Reilly, Buckhorn St.
Terry Dodd, Marlborough Dr.
Jeff Toborg
Danielle Strnad
Julie Allen, 23017 Briarleaf Ave.

The following individual spoke in favor of the Parker Place Hotel:

Susan Bertocchi, Cherrywood Drive

REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL

Amy Holland

- Mayor's tree lighting
- Rotary Club contributed a flag in O'Brien Park

Joshua Rivero

- Process has started to interview library trustee.

Renee Williams

- Attended Denver Economic Development Holiday Party
- Chamber of Commerce Open House
- Goodbye party for Gil Rossmiller

Debbie Lewis

- Chamber of Commerce Open House
- Gil Rossmiller's goodbye party

- Thanked everyone for their condolences, cards and texts which helped her get through the last week or so.

John Diak

- Thanksgiving and holiday events

Mike Waid

- Flag pole dedication (given to Town by Rotary Club)
- Nancy Gripman Statue Event
- Turkey Day 5K Run
- Mayor Tree Lighting
- Cram the Cruiser Event
- Sagewood Middle School (why not to do drugs, smoke, etc.)
- Narrator for the Parker Chorale at PACE
- Fundraiser at Cimarron School Festival of Trees

CONSENT AGENDA

- A. *APPROVAL OF MINUTES*
November 21, 2016
- B. *NINTH ADDENDUM TO AGREEMENT WITH JUDGE KEVIN SIDEL*
Department: Human Resources, Melisa Geringer
- C. *RESOLUTION NO. 16-072*
A Resolution Adopting an Administrative Fee to Defray the Cost of Processing Paper Filings for Tax Returns Pursuant to Section 4.03.450(d) of the Parker Municipal Code
Department: Finance, Don Warn+D
- D. *RESOLUTION NO. 16-073*
A Resolution to Amend Resolution No. 15-046, Series of 2015, Concerning the Town of Parker Records Retention Schedule Supplements and for Exceptions to Schedule 55.080 and Schedule 75.020G.
Department: Town Attorney, Jim Maloney
- E. *ORDINANCE NO. 1.289.3 – First Reading (Continued from 11/21/16)*
A Bill for an Ordinance to Approve the Third Amendment to the Cooperative Agreement Between the Town of Parker, Colorado and the Parker Authority for Reinvestment for Administrative Services
Department: Economic Development, Weldy Feazell
Second Reading: December 12, 2016

Josh Rivero asked to remove Consent Agenda Item 7E.

Josh Martin seconded the motion.

The motion was approved 5-0-1. (Holland abstained as she declared a conflict of interest.)

Amy Holland moved and Josh Martin seconded to approve Consent Agenda Items 7A through 7D.

The motion was approved unanimously.

Amy Holland had filed a disclosure with the Secretary of State stating that she was employed as of July 18, 2016 by MARS Hospitality, LLC. She first recused herself at the July 18, 2016 Town Council meeting. She left the Council Chambers at this point.

At the last meeting Town Council could have used the rule of necessity which would have allowed Amy Holland to vote in order to preserve the quorum. The Town Council decided to continue this item to tonight when all of Council was in attendance to avoid using the Rule of Necessity. Allegations were made at the Planning Meeting and on social media that some of Council had a financial interest. Before the Town Council votes on Item 7E, the Mayor took a moment and addressed each member asking if they had any interest.

Mayor: Josh Martin, do you have a financial interest in the hotel?

Josh Martin: No.

Mayor: Do you have an interest in the applicant?

Josh Martin: No.

Mayor: In this project?

Josh Martin: No.

Mayor: Joshua Rivero, do you have a financial interest in the hotel?

Joshua Rivero: No.

Mayor: Do you have an interest in the applicant?

Joshua Rivero: No.

Mayor: Any other interest?

Joshua Rivero: His adult daughter is an employee of my business. His wife's partner is the CPA for personal and business.

Mayor: Renee Williams, do you have a financial interest in the hotel?

Renee Williams: No.

Mayor: Do you have an interest in the applicant?

Renee Williams: No

Mayor: Do you have any other interest?

Renee Williams: Approximately 8 years ago May Jackson & Hendricks did her business taxes for two years. She knows Mike May and while he owned Trappers Restaurant, she ate there.

Mayor: Debbie Lewis, do you have a financial interest in the hotel?

Debbie Lewis: No.

Mayor: Do you have an interest in the applicant?

Debbie Lewis: No.

Mayor: Do you have any other interest?
Debbie Lewis: Tracy May is not my campaign manager, Debbie did this herself. Kena Peterson did her web page. Tracy May did her taxes, she gets no money from her, she (Debbie) pays them money. Debbie had a \$500 campaign contribution from MARS Corp. She ate at Trappers when he had it and when he didn't have it. Tracy May was her treasurer this time and 4 years ago because she (May) is her accountant.

Mayor: John Diak, do you have a financial interest in the hotel?
John Diak: No.
Mayor: Do you have an interest in the applicant?
John Diak: No
Mayor: Do you have any other interest?
John Diak: No. I spoke to the Chronicle on Friday and disclosed that since October 7, 2014 I have been an advisor to their employees and received \$200 for the Plan. He also subleases his office from May Jackson & Hendricks.

Town Attorney Jim Maloney explained the legal standard of conflict of interest.

Renee Williams moved that Josh Martin does not have a conflict of interest.

Joshua Rivero seconded the motion.

The motion was approved 4-0-1. (Martin abstained.)

Joshua Rivero moved that Renee Williams does not have a conflict of interest.

Debbie Lewis seconded the motion.

The motion was approved 4-0-1. (Williams abstained.)

Renee Williams moved that Joshua Rivero does not have a conflict of interest.

Debbie Lewis seconded the motion.

The motion was approved 4-0-1. (Rivero abstained.)

Renee Williams moved that Debbie Lewis does not have a conflict of interest.

Joshua Rivero seconded the motion.

The motion as approved 4-0-1. (Lewis abstained.)

Josh Rivero moved that John Diak does not have a conflict of interest.

Renee Williams seconded the motion.

The motion was approved 4-0-1. (Diak abstained.)

CONSENT AGENDA ITEM 7E

Joshua Rivero moved and Renee Williams seconded to approve Consent Agenda Item 7E.

The motion was approved 5-0.

Amy Holland returned to the Council Chambers.

TOWN ADMINISTRATOR

• **Reports**

There were none.

PUBLIC HEARINGS

A. **ORDINANCE NO. 1.493 – Second Reading**
A Bill for an Ordinance to Adopt the 2017 Budget and to Make Appropriations for the Same

Department: Finance, Don Warn

On September 16, at the Council retreat, staff presented, for consideration, the major components of the budget including capital outlay, new positions, contributions to others and the compensation plan. Also discussed were revenue projections that went into the creation of this budget. A draft of the proposed budget was provided to Council on October 3, 2016. The proposed budget includes the items that were presented on October 3, 2016 and also reflects the direction provided by Town Council.

The proposed budget is balanced across all funds and the presentation highlighted major items included within the proposed budget.

Public Comment

- Terry Dodd, Marlborough Drive
- Scott Wright, 12065 S. Majestic Way
- Sean Richardson, Tim Tam Way

Public comment was closed at 8:46 P.M.

Don Warn announced that the Town has a new transparency portal which will go live tomorrow. It is called the Parker Open Budget. This new website communicates our budget in an easy-to-understand way and provides you a visual interface to explore and search through the budget and find answers to your questions. The link is:

www.ParkerOnline.org/OpenBudget

Josh Martin moved to approve Ordinance No. 1.493 on second reading.

Renee Williams seconded the motion.

The motion was approved unanimously.

B. TOWN OF PARKER AND DOUGLAS COUNTY FOURTH AMENDMENT TO INTERGOVERNMENTAL AGREEMENT AND COMPREHENSIVE DEVELOPMENT PLAN

Department: Community Development, Ryan McGee

8:51 P.M.

Section(s) 4.1.2 Region B is being amended at the request of Grandview Estates Homeowners Association to preserve the rural character of the subdivision and clarify standards for (re)development. This amendment also establishes a new Region I within the Community Separation Buffer of the CDP.

The amendment designates mining/quarry land use(s) as a Use by Special Review within the Permitted and Special Uses table of the CDP. The addition of Region I also establishes that the existing Acme Brick company clay mine may continue to operate for a period not to exceed the sooner occurrence of 15 years from the date of Douglas County Use by Special Review approval or July 4, 2032. (A detailed report is available in the Planning Department.)

Public Comment

- Charles Buckman, 12460 N. Third St., supports IGA and asked Council to approve.
- Scott Wright, 12065 S. Majestic, asked if there was a plan to give Grandview Estates some amenities in Parker, i.e., water. Mr. Wright was asked to contact Parker Water & Sanitation District.

(1) ORDINANCE NO. 9.71.5 – Second Reading

A Bill for an Ordinance to Approve the Fourth Amendment to the Intergovernmental Agreement Between the Town of Parker and the Board of County Commissioners of the County of Douglas Regarding the Fourth Amendment to the Comprehensive Development Plan Between the Town of Parker and Douglas County for Areas Within their Respective Jurisdictions

Renee Williams moved to approve Ordinance No. 9.71.5 on second reading.

Debbie Lewis seconded the motion.

The motion was approved unanimously.

(2) ORDINANCE NO. 9.70.5 – Second Reading

A Bill for an Ordinance to Approve the Fourth Amendment to the Mutually Binding and Enforceable Comprehensive Development Plan Between the Town of Parker and Douglas County for Areas Within the Town of Parker and Douglas County

Amy Holland moved to approve Ordinance No. 9.70.5 on second reading.

Josh Rivero seconded the motion.

The motion was approved unanimously.

C. BLAIR INDUSTRIAL CENTER LOT 25 – Use by Special Review

Applicant:	K-9 State of Mind, LLC, Kari Solberg
Location:	6280 Progress Lane
Department:	Community Development, Stacey Nerger

8:58 P.M.

The applicant, K-9 State of Mind, LLC, seeks approval of a Use by Special Review to allow a dog training and overnight boarding facility.

Applicant

Gregory Tristan, E. Technology Way, Denver, advised that there would be a 6-foot wood fence and it will have barbed wire at the top. The barbed wire would exceed the 6 feet.

Josh Rivero stated that we have another facility that has an 8-foot fence; he would hate to see a dog go into the barbed wire.

Public Comment

- Virginia Ellis, E. River Chase Way

Joshua Rivero moved to approve, based upon staff findings, with the five conditions contained in the staff report and a condition that we have an 8 foot fence like other facilities in Town.

Amy Holland seconded the motion.

The motion was approved unanimously.

D. TAX AND FEE ASSISTANCE PROGRAM AGREEMENT FOR ALL FIRED UP! LLC

Applicant:	All Fired Up, LLC, Jon Liberati, Manager
Location:	12311 Pine Bluffs Way, #107, Parker, Colorado 80134
Department:	Economic Development, Matt Carlson

The applicant has asked to have this item continued.

Renee Williams moved to continue this item to a date certain of January 3, 2016.

Debbie Lewis seconded the motion.

The motion was approved unanimously.

FIRST AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES

(for advertising purchased for the PACE Center)

Amount: \$263,000.00
Contractor: Evolution Communications Agency
Department: Cultural, Elaine Mariner
Cultural, Carrie Glassburn

This is to approve a First Amendment to the Advertising Agency of Record contract with Evolution Communications Agency to extend their services for a second year. This is a “not to exceed” contract so that advertising purchases can shift across media categories (e.g., digital vs. print vs. radio) if necessary as determined jointly by Evolution and Cultural Department staff.

Public Comment

- Sean Richardson, 11056 Tim Tam Way

Josh Rivero moved to approve the First Amendment to the contract with Evolution Communications Agency in the amount of \$263,000.00.

Renee Williams seconded the motion.

The motion was approved unanimously.

SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES (for producing theatre company for the PACE Center)

Amount: \$200,000.00
Contractor: Inspire Creative, Inc.
Department: Cultural, Elaine Mariner
Cultural, Shaun Albrechtson

This item is to request approval for a second amendment to the master agreement with Inspire Creative to extend their services as the producing company for theatrical presentations for a third year. Individual agreements will be issued for each production to address the specific details but the total will not exceed \$200,000.00

Renee Williams moved to approve the second amendment to the contract with Inspire Creative in the amount of \$200,000.00.

John Diak seconded the motion.

The motion was approved unanimously.

ORDINANCE NO. 1.491 – Second Reading

A Bill for an Ordinance to Approve the Memorandum of Understanding Among Arapahoe County Sheriff’s Office, Cunningham Fire Protection District, South Metro Fire Rescue Fire Protection District, and the Town of Parker, Concerning the Arapahoe County Type IV All Hazards Incident Management Team

Department: Police Department, Doreen Jokerst

The Town is seeking to enter into a Memorandum of Understanding (MOU) with the Arapahoe County Sheriff, Cunningham Fire Protection District and South Metro Fire Rescue Authority for participation on the Arapahoe County Type IV All Hazards Incident Management Team (AHIMT).

Public Comment – None

Amy Holland moved to approve Ordinance No. 1.491 on second reading.

Joshua Rivero seconded the motion.

The motion was approved unanimously.

ORDINANCE NO. 1.466.1 – Second Reading

A Bill for an ordinance to Amend the Definitions Section and Sections 2.2, 2.3, 2.4, 3.3, 3.6, 3.8, 3.11, 3.15, 4.1, 4.4, 4.6, 4.11, 4.16, 5.8, 8.3, 8.4, 8.5, and 9.4 of the Town of Parker Personnel Manual

Department: Human Resources, Melisa Geringer

This revision addresses inconsistent and outdated information.

Public Comment – None

Renee Williams moved to approve Ordinance No. 1.466.1 on second reading.

Josh Martin seconded the motion.

The motion was approved unanimously.

ORDINANCE NO. 1.480.1 – Second Reading

A Bill for an Ordinance to Approve the First Amendment to the Purchase and Sale of the Gym Property By and Between the Town of Parker and ACG, LLC

Department: Economic Development, Weldy Feazell

Council previously approved the Purchase and Sale Agreement between the Town of Parker and ACG, LLC, d/b/a Parker Tap House and Distillery, for the redevelopment of the Schoolhouse Gymnasium property. The original agreement had an error in the legal description for the property and outlined a financing deadline of December 5, 2016, for the closing of the property. The First Amendment will correct the legal description and extend the financing deadline to March 31, 2017.

Public Comment

- Scott Wright, 12065 S. Majestic Way

Renee Williams moved to approve Ordinance No. 1.480.1 on second reading.

Joshua Rivero seconded the motion.

The motion was approved unanimously.

ORDINANCE NO.1.494 – Second Reading

A Bill for an Ordinance to Levy General Property Taxes for the Year 2016 to Help Defray the Costs of Government for the Town of Parker, Colorado, for the 2017 Budget Year

Department: Finance, Don Warn

The Town of Parker must certify a mill levy to Douglas County prior to December 15, 2016 in order to collect property taxes for the 2017 budget year.

The mill levy of 2.602 mills is the same as the prior year. The voters approved exemption of Town revenues from the TABOR Amendment so that the restriction to an increase of the local growth factor plus inflation does not apply. We cannot increase the mill levy without a vote of the citizens; therefore, we will continue to use the rate of 2.602 mills.

The amount of property tax that an owner of a home with an actual value of \$300,000 would have to pay to the Town of Parker is approximately \$62 per year. Assessed valuation and the resulting property tax revenue increased one percent.

Public Comment – None

Joshua Rivero moved to approve Ordinance 1.494 on second reading.

Amy Holland seconded the motion.

The motion was approved unanimously.

The meeting was adjourned at 9:30 P.M.

Carol Baumgartner, Town Clerk

Mike Waid, Mayor

**TOWN OF PARKER COUNCIL
MINUTES
DECEMBER 12, 2016**

Mayor Mike Waid called the meeting to order at 5:49 P.M. All Councilmembers were present.

Town Attorney Jim Maloney announced that the topics for discussion in Executive Session were two (2) items. Under C.R.S. § 24-6-402(4)(b) there were two items, the first was to receive legal advice on specific legal questions on Section 13.10.200 of the Parker Municipal Code and the second was to receive legal advice on specific legal questions on Chapter 6.01 of the Parker Municipal Code.

EXECUTIVE SESSION

Josh Martin moved and Joshua Rivero 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. § 24-6-40294(b).

The motion was approved unanimously.

Renee Williams moved and Josh Martin to come out of Executive Session at 6:35 P.M.

The motion was approved unanimously.

REGULAR MEETING

Mayor Waid reconvened the meeting at 10:43 P.M. Councilmember Holland was absent.

PUBLIC COMMENTS

Joe Oltman, 8245 N. Keith Ct., Castle Pines
Dawn Hamilton, 12023 Blackwell Way
Tracy Hutchins, DTC Parkway
David Denslow, 10787 Vista Rd.
Jason Longman, 11052 Glacier Park Circle
Scott Wright, 12065 S. Majestic
Todd Hendriks
Virginia Ellis, 92715 E. River Chase Way
Shrenka Hagan, Town & Country

REPORTS, ITEMS AND COMMENTS FROM MAYOR AND COUNCIL – None

CONSENT AGENDA

A. *INTENTIONALLY LEFT BLANK*

- B. *RESOLUTION NO. 16- 071*
A Resolution to Exempt Certain Real Property Commonly Known as Parker Central Area Filing No. 1, First Amendment, from the Definition of Subdivision and Subdivided Land as Contained in the Town of Parker Land Development Ordinance
Department: Engineering, Alex Mestdagh

- C. *RESOLUTION NO. 16- 074*
A Resolution Accepting the Conveyance of a Drainage Easement from Parkwood East, LLC, for Tract A, Cottonwood Highlands Filing No. 4
Department: Engineering, Alex Mestdagh

- D. *RESOLUTION NO. 16-075*
A Resolution Accepting the Conveyance of Real Property from Your Storage Center at Apache, LLC, for Tract B, Lincoln Meadows Filing No. 1
Department: Community Development, Patrick Mulready

Josh Martin moved to approve Consent Agenda Items 4A through 4D.

Renee Williams seconded the motion.

The motion was approved unanimously.

TOWN ADMINISTRATOR

• **Reports**

The Town Administrator’s monthly report is on the Town’s website.

PUBLIC HEARINGS

PARKER PLACE HOTEL

Applicant:	Mainstreet Pier, LLC
Location:	Northwest corner of E. Mainstreet and Victorian Drive (East)
Department:	Economic Development, Weldy Feazell

10:52 P.M.

Public Comment

- Lisa Monette, 10796 Foxwood Ct.
- Terry Dodd, 11450 Marlborough Dr.
- Steve Pritchard, 19124 E. Custer Ave.

Public Comment was closed at 10:57 P.M.

(1) **TAX AND FEE ASSISTANCE PROGRAM AGREEMENT FOR PARKER PLACE HOTEL**

Renee Williams moved to deny the Tax and Fee Assistance Program Agreement for Parker Place Hotel.

Josh Martin seconded the motion.

The motion was approved unanimously.

(2) **ORDINANCE NO. 1.289.3 - Second Reading**
A BILL FOR AN ORDINANCE TO APPROVE THE THIRD AMENDMENT TO COOPERATION AGREEMENT BETWEEN THE TOWN OF PARKER, COLORADO, AND THE PARKER AUTHORITY FOR REINVESTMENT FOR ADMINISTRATIVE SERVICES

Renee Williams moved to deny Ordinance No. 1.289.3.

Josh Martin seconded the motion.

The motion was approved unanimously.

The meeting was adjourned at 11:08 P.M.

Carol Baumgartner, Town Clerk

Mike Waid, Mayor

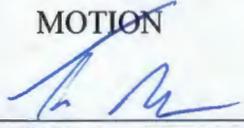


ITEM NO: 8B
DATE: 01/03/2017

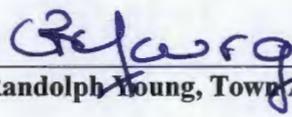
REQUEST FOR TOWN COUNCIL ACTION

TITLE: SLOPE EASEMENT TERMINATION AGREEMENT FOR THE ENCLAVE AT CHERRY CREEK APARTMENTS, LLC

- | | |
|--|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input checked="" type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input type="checkbox"/> RESOLUTION |



Tom Williams, Director of Engineering



G. Randolph Young, Town Administrator

ISSUE:

This item accompanies an agreement terminating a slope easement for Pine Lane on Lot 1, Enclave Property Minor Development that is no longer necessary due to development.

PRIOR ACTION:

Town Council previously accepted this slope easement in 2006.

FUNDING/BUDGET IMPACT:

None.

BACKGROUND:

The Town of Parker owns a slope easement located on the property that has been developed as The Enclave at Cherry Creek (the "Easement"). The Easement was dedicated via a Slope Easement Agreement that was entered into between Ameriwest Communities, L.L.C., as the grantor and the Town of Parker, Colorado, as the grantee, and recorded on November 20, 2006 with the Douglas County Clerk and Recorder at Reception Number 2006101086. This Easement was obtained to allow the construction of the roadway embankments for Pine Lane.

This property has since been developed as apartment homes. The grading associated with the Site Plan has leveled the site for development, eliminating the roadway embankment slopes currently on the property. These improvements have eliminated the need for the existing easement.

RECOMMENDATION:

Staff recommends that Town Council approve the agreement terminating the slope easement on this property.

PREPARED/REVIEWED BY:

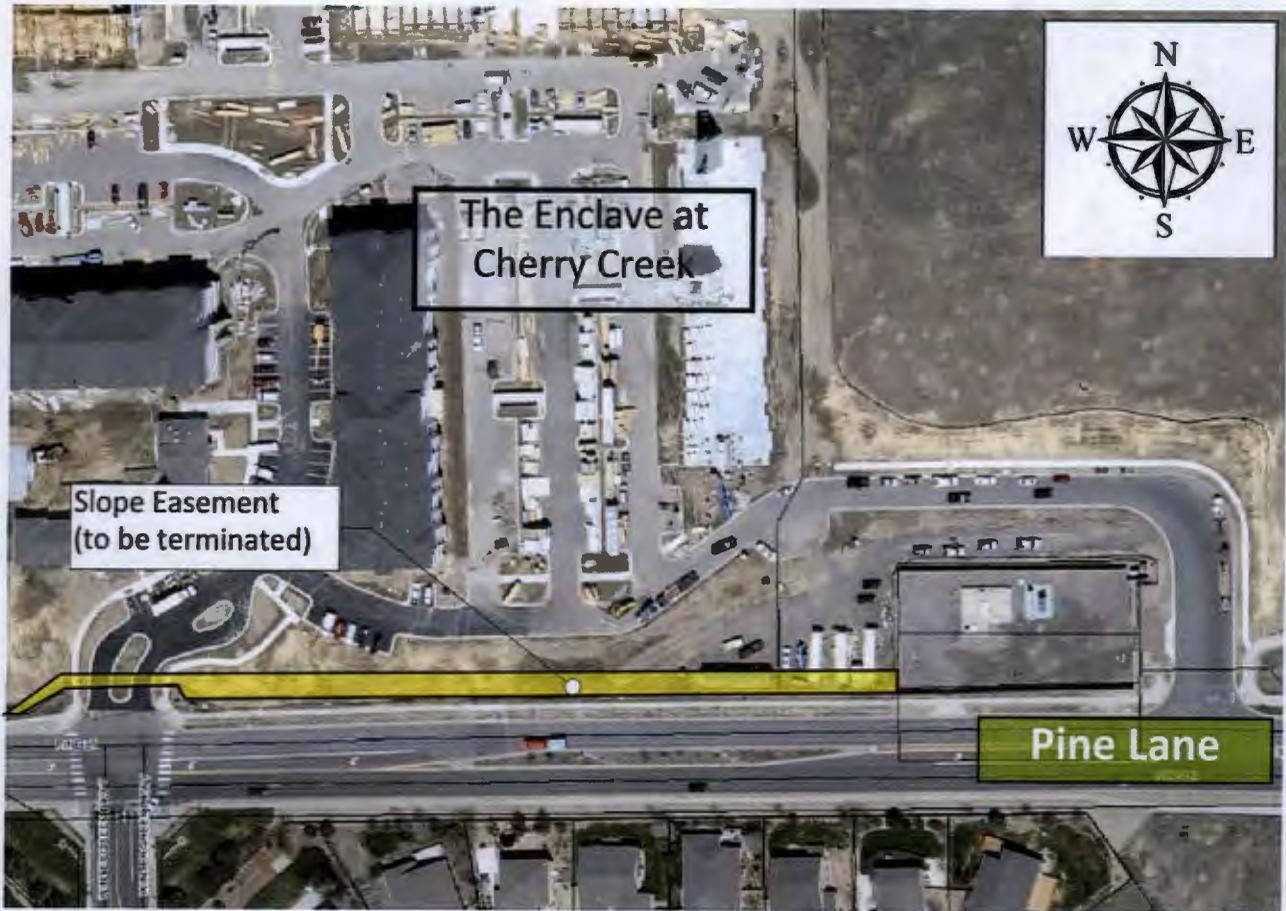
Alex Mestdagh, Engineering Services Manager; Jim Maloney, Town Attorney

ATTACHMENTS:

1. Vicinity Map
2. Slope Easement Termination Agreement
3. Slope Easement Agreement (6 pages)(Exhibit to the agreement)

RECOMMENDED MOTION:

"I move to approve the Slope Easement Termination Agreement for the Enclave at Cherry Creek Apartments, LLC, as a part of the consent agenda."



Slope Easement Termination Vicinity Map

When recorded, return to:

Foster Graham Milstein & Calisher, LLP
 Attn: Alexandra H. Katich
 360 S. Garfield St., Ste. 600
 Denver, CO 80211

SLOPE EASEMENT TERMINATION AGREEMENT

This SLOPE EASEMENT TERMINATION AGREEMENT (this "Agreement") is entered into this ____ day of _____, 201__, by and between The Enclave at Cherry Creek Apartments, LLC, a Colorado limited liability company, c/o The Spanos Corporation, a California corporation, whose legal address is 10100 Trinity Parkway, Stockton, California 95219 ("Spanos"), as the successor to Ameriwest Communities, L.L.C., a Colorado limited liability company ("Ameriwest"), and the Town of Parker, a Colorado home rule municipality, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 (the "Town"). Spanos and the Town are sometimes collectively referred to herein as the "Parties."

RECITALS

A. Spanos is the owner of certain real property legally described in Exhibit A, attached hereto and incorporated herein (the "Property");

B. The Property is encumbered by that certain slope easement dated November 20, 2006, between Ameriwest and the Town, recorded November 28, 2006, at Reception No. 200610186, and attached hereto as Exhibit B (the "Slope Easement"); and

C. Section 3 of the Slope Easement provides that the easement granted therein may be released by the Town, as Grantee (as defined in the Slope Easement), upon the construction of an approved development on the Easement Property (as defined in the Slope Easement) which provides the necessary subjacent support and protection of Pine Drive (as defined in the Slope Easement) that is created by the Slope Easement.

D. The Town agrees that the conditions for termination pursuant to Section 3 of the Slope Easement have been met, and Spanos and the Town agree that the Property should no longer be encumbered by or subject to the Slope Easement, and have agreed to terminate, release and/or vacate the Slope Easement in its entirety.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, together with the mutual covenants and promises herein set forth, it is hereby agreed as follows:

1. The above recitals are hereby incorporated into and made a part of this Agreement.

2. The Town hereby terminates the Slope Easement pursuant to the terms of Section 3 therein, in its entirety, and releases the Property and all other encumbered real property from all restrictions and/or encumbrances of the Slope Easement.

3. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

4. This Agreement may be recorded in the real property records of the Douglas County Clerk and Recorder's Office at the election of Spanos.

5. This Agreement contains the complete and entire agreement between the parties concerning the matters set forth herein, and neither party makes any warranties, express or implied, except those (if any) expressly set forth in this Agreement.

6. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Colorado.

7. The invalidation or unenforceability in any particular circumstances of any of the provisions of this Agreement will in no way affect any of the other provisions hereof, which will remain in full force and effect.

8. This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument and agreement. Counterparts may be delivered via facsimile or e-mail and will be effective for purposes of executing this Agreement and any amendment thereto.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

**LEGAL DESCRIPTION
PARCEL PE-5A**

A PARCEL OF LAND BEING A PART OF THAT PROPERTY DESCRIBED IN DEED RECORDED UNDER RECEPTION NO. 2005054370 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTH HALF OF SECTION 9, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF SOUTH 89°03'35" WEST 3180.47 FEET TO THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF LOT 2 BLOCK 1 CHERRYWOOD SUBDIVISION FILING NO. 1, A SUBDIVISION RECORDED UNDER RECEPTION NO. 00019566 IN SAID RECORDS;

THENCE ALONG SAID SOUTHEASTERLY EXTENSION AND SAID EASTERLY LINE NORTH 27°30'55" WEST 52.17 FEET TO THE SOUTHERLY LINE OF SAID PROPERTY, THE NORTHERLY LINE OF PINE LANE, AND THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 27°30'55" WEST 11.22 FEET;

THENCE DEPARTING SAID EASTERLY LINE NORTH 89°24'40" EAST 93.56 FEET;

THENCE NORTH 56°45'15" EAST 31.50 FEET;

THENCE NORTH 89°24'40" EAST 687.04 FEET TO THE WESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 380 AT PAGE 8 IN SAID RECORDS;

THENCE ALONG SAID WESTERLY LINE SOUTH 00°51'37" EAST 15.00 FEET;

THENCE SOUTH 89°24'40" WEST 590.97 FEET;

THENCE NORTH 44°07'44" WEST 11.81 FEET;

THENCE SOUTH 89°03'40" WEST 90.00 FEET;

THENCE SOUTH 56°45'15" WEST 38.82 FEET TO SAID SOUTHERLY LINE OF SAID PROPERTY AND SAID NORTHERLY LINE OF PINE LANE;

THENCE ALONG SAID SOUTHERLY AND NORTHERLY LINES SOUTH 89°24'40" WEST 82.15 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.244 ACRES (10,610 SQ. FT.), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



**DEAN E. CATES
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR P.L.S. 22561
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.**

LINE TABLE		
LINE	BEARING	LENGTH
L1	N27°30'55"W	11.22'
L2	N44°07'44"W	11.61'
L3	S89°03'40"W	90.00'
L4	S56°45'15"W	36.82'
L5	S89°24'40"W	82.15'

LOT 2, BLOCK 1
CHERRYWOOD SUBDIVISION
FILING NO. 1
REC. NO. 00019588

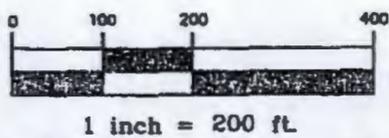
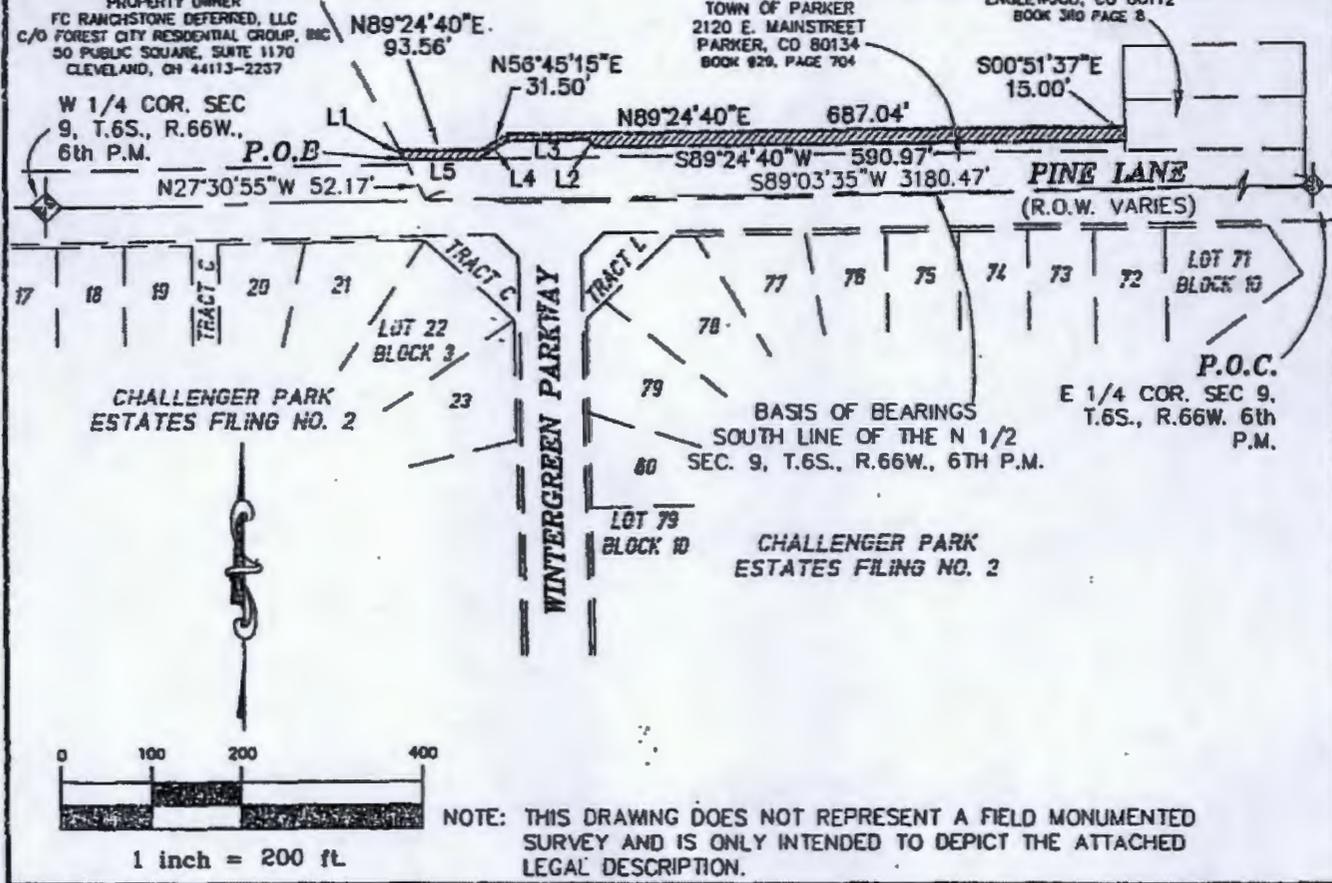
PROPERTY OWNER
AMERIWEST COMMUNITIES, LLC
2550 WILLOW LN, SUITE 3
THOUSAND OAKS, CA 91361
REC. NO. 2005054370

PARCEL PE--5A
CONTAINS
10,610 sq. ft.
0.244 acres

PROPERTY OWNER
FC RANCHSTONE DEFERRED, LLC
C/O FOREST CITY RESIDENTIAL GROUP, INC
50 PUBLIC SQUARE, SUITE 1170
CLEVELAND, OH 44113-2237

PROPERTY OWNER
TOWN OF PARKER
2120 E. MAINSTREET
PARKER, CO 80134
BOOK 929, PAGE 704

PROPERTY OWNER
ARIAPHOE CO. WATER & WASTEWATER AUTH
7305 SOUTH POTOMAC STREET, SUITE 150
ENGLEWOOD, CO 80112
BOOK 340 PAGE 8



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

PATH: P:\24903-07.DWG
DWG NAME: PAR PE-5A.DWG
DWG: JLM CHK: DEC
DATE: 07-26-06
SCALE: 1" = 200'



Aztec CONSULTANTS, Inc.
300 East Mineral Avenue, Suite 1
Littleton, Colorado 80122
Phone: (303) 713-1498 Fax: (303) 713-1997

PERMANENT EASEMENT
N 1/2 SEC. 9, T.6S., R.66W., 6TH P.M.
TOWN OF PARKER, COUNTY OF DOUGLAS
JOB NUMBER 24903-07
2 OF 2 SHEETS

SLOPE EASEMENT

THIS EASEMENT, made this 20th day of November, 2006, between **AMERIWEST COMMUNITIES, L.L.C.**, a Colorado limited liability company, GRANTOR, whose legal address is 370 N. Westlake Blvd. #130, Thousand Oaks, CA 91362 and the and **TOWN OF PARKER**, a Colorado Home Rule Municipality, **GRANTEE**, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138.

WHEREAS, Grantee desires to acquire an easement for the purpose of drainage and drainage facilities, as well as for slope, 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 and in consideration of the sum of Ten dollars (\$10.00) paid 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, for and in consideration of the easement rights herein granted and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantee does hereby covenant and agree as follows:

1. Grant of Easement. Grantor does hereby grant and convey unto Grantee, its successors, assigns, lessees, licensees and agents, an easement under and through the Easement Property, for the purpose of providing and maintaining (1) a proper sight distance and line of sight, (2) lateral support, and (3) proper drainage grade, as determined by the Parker Public Works Department, for a public roadway, road shoulder and attendant road improvements and construction. Grantee, its successors, contractors or assigns, and their agents and employees shall have full right to enter at all times upon said premises to survey, construct, repair, remove, replace, reconstruct, inspect, improve and maintain a suitable slope or grade which will provide the above mentioned proper sight distance and line of sight, lateral support, and proper drainage grade. Grantor retains the right to use said property for any and all purposes which will not interfere with the Grantee's full use and enjoyment of the rights acquired herein. Provided, however, Grantor or his successors, assigns and subsequent Grantees, will not use or improve said property or grant any easements upon, over, across or under said property without first obtaining the written consent of the Grantee. Such consent will not be unreasonably withheld provided that the sight distance and line of sight, lateral support and proper drainage grade necessary for the roadway and its attendant facilities, as determined by the Grantee, is maintained.

2. Unencumbered Title. Grantor for himself, his successors and assigns, does covenant, grant, bargain and agree with the Grantee, its successors and assigns, that at the time of the signing

2006101086

and delivery of this easement, he is well seized of the property on which the easement above conveyed is located, and has good, sure, perfect, absolute and indefeasible estate, in law, in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the above easement in the manner and form set forth above, and that the property is free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature whatsoever.

3. Easement Subject to Release. Grantor and Grantee agree that this Easement may be released by Grantee upon the construction of an approved development on the Easement Property which provides the necessary subjacent support and protection of Pine Drive that is created by this Easement.

4. Operation and Maintenance. The operation and maintenance of the facilities within the Easement Property shall be the responsibility of the Grantee.

5. Grantor Defined. The word "Grantor" as used herein, whenever the context requires or permits, shall include the heirs, personal representative, 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.

6. 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.

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

8. 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(S): AMERIWEST COMMUNITIES, L.L.C.
A Colorado limited liability company

[Signature]
By: _____
Manager
Its: _____

STATE OF _____
COUNTY OF JEFFERSON

)
) ss.
)

The foregoing instrument was acknowledged before me this 20th day of October, 2006 by Michael Sanders as the MANAGER of AmeriWest Communities, L.L.C.

My commission expires: 11-8-2006

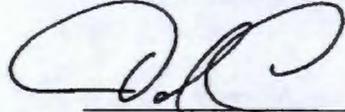
Witness my hand and official seal.
[Signature]
Notary Public



Name and Address of Person Creating Newly Created Legal Description (§38-35-106.5, C.R.S.)

GRANTEE:

TOWN OF PARKER



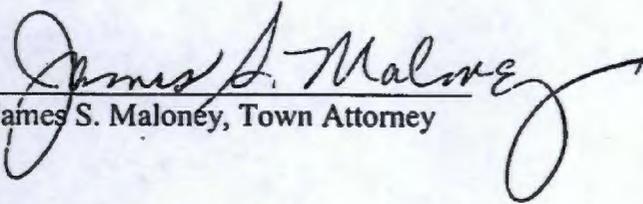
David Casiano, Mayor

ATTEST:



Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:



James S. Maloney, Town Attorney

LEGAL DESCRIPTION
PARCEL PE-5A

A PARCEL OF LAND BEING A PART OF THAT PROPERTY DESCRIBED IN DEED RECORDED UNDER RECEPTION NO. 2005054370 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE, LOCATED IN THE NORTH HALF OF SECTION 9, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE TOWN OF PARKER, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 9;

THENCE ALONG THE SOUTHERLY LINE OF SAID NORTH HALF SOUTH 89°03'35" WEST 3180.47 FEET TO THE SOUTHEASTERLY EXTENSION OF THE EASTERLY LINE OF LOT 2 BLOCK 1 CHERRYWOOD SUBDIVISION FILING NO. 1, A SUBDIVISION RECORDED UNDER RECEPTION NO. 00019566 IN SAID RECORDS;

THENCE ALONG SAID SOUTHEASTERLY EXTENSION AND SAID EASTERLY LINE NORTH 27°30'55" WEST 52.17 FEET TO THE SOUTHERLY LINE OF SAID PROPERTY, THE NORTHERLY LINE OF PINE LANE, AND THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EASTERLY LINE NORTH 27°30'55" WEST 11.22 FEET;

THENCE DEPARTING SAID EASTERLY LINE NORTH 89°24'40" EAST 93.56 FEET;

THENCE NORTH 56°45'15" EAST 31.50 FEET;

THENCE NORTH 89°24'40" EAST 687.04 FEET TO THE WESTERLY LINE OF THAT PARCEL OF LAND DESCRIBED IN DEED RECORDED IN BOOK 380 AT PAGE 8 IN SAID RECORDS;

THENCE ALONG SAID WESTERLY LINE SOUTH 00°51'37" EAST 15.00 FEET;

THENCE SOUTH 89°24'40" WEST 590.97 FEET;

THENCE NORTH 44°07'44" WEST 11.61 FEET;

THENCE SOUTH 89°03'40" WEST 90.00 FEET;

THENCE SOUTH 56°45'15" WEST 36.82 FEET TO SAID SOUTHERLY LINE OF SAID PROPERTY AND SAID NORTHERLY LINE OF PINE LANE;

THENCE ALONG SAID SOUTHERLY AND NORTHERLY LINES SOUTH 89°24'40" WEST 82.15 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.244 ACRES (10,810 SQ. FT.), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEAN E. CATES
COLORADO LICENSED PROFESSIONAL LAND SURVEYOR P.L.S. 22561
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.

LINE TABLE		
LINE	BEARING	LENGTH
L1	N27°30'55"W	11.22'
L2	N44°07'44"W	11.61'
L3	S89°03'40"W	90.00'
L4	S56°45'15"W	36.82'
L5	S89°24'40"W	82.15'

LOT 2, BLOCK 1
CHERRYWOOD SUBDIVISION
FILING NO. 1
REC. NO. 00019558

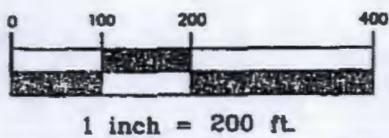
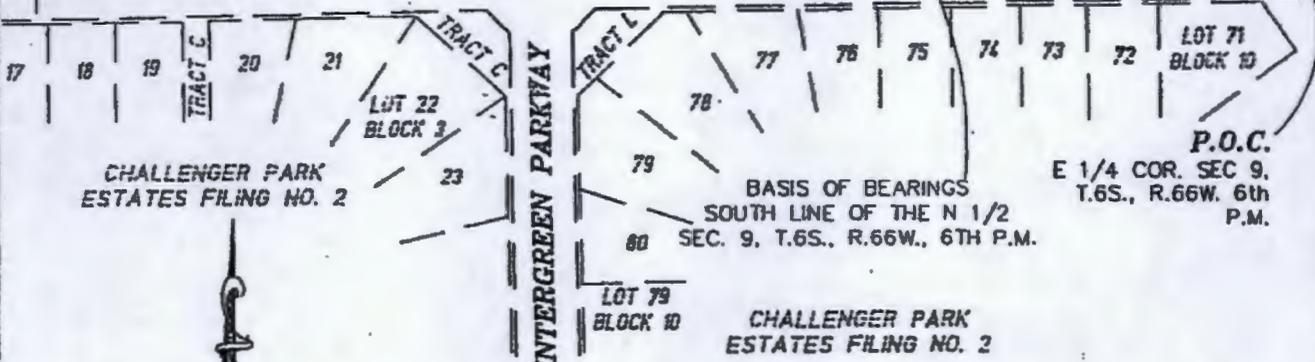
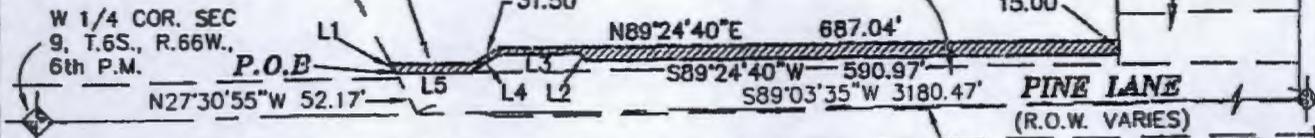
PROPERTY OWNER
AMERIWEST COMMUNITIES, LLC
2550 WILLOW LN, SUITE 3
THOUSAND OAKS, CA 91361
REC. NO. 2005054370

PARCEL PE-5A
CONTAINS
10,610 sq. ft.
0.244 acres

PROPERTY OWNER
FC RAHOUSTONE DEFERRED, LLC
C/O FOREST CITY RESIDENTIAL GROUP, INC
50 PUBLIC SQUARE, SUITE 1170
CLEVELAND, OH 44113-2237

PROPERTY OWNER
TOWN OF PARKER
2120 E. MAINSTREET
PARKER, CO 80134
BOOK 929, PAGE 704

PROPERTY OWNER
ARAPAHOE CO. WATER & WASTEWATER AUTH
7305 SOUTH POTOMAC STREET, SUITE 150
ENGLEWOOD, CO 80112
BOOK 380 PAGE 8



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

PATH: P:\24903-07.DWG
DWG NAME: PAR PE-5A.DWG
DWG: JLM CHK: DEC
DATE: 07-26-06
SCALE: 1" = 200'



AzTEC CONSULTANTS, Inc.
300 East Mineral Avenue, Suite 1
Littleton, Colorado 80122
Phone: (303) 713-1996 Fax: (303) 713-1997

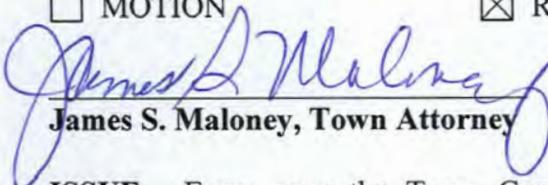
PERMANENT EASEMENT
N 1/2 SEC. 9, T.6S., R.66W., 6TH P.M.
TOWN OF PARKER, COUNTY OF DOUGLAS
JOB NUMBER 24903-07
2 OF 2 SHEETS

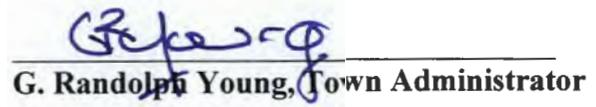


REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-001 – A Resolution to Amend Resolution No. 16-001
Establishing a Designated Public Place for the Posting of Meeting Notices as
Required by the Colorado Open Meetings Law

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 st READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 nd READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |


James S. Maloney, Town Attorney


G. Randolph Young, Town Administrator

ISSUE: Every year the Town Council designates the public place for posting of public meetings, as required by state law.

PRIOR ACTION: None.

FUNDING/BUDGET IMPACT: None.

BACKGROUND: As required by the Colorado Open Meetings Law, each year the Town must designate a public place for posting of meeting notices. This Resolution designates Town Hall as the public place for posting notices.

RECOMMENDATION: Approve.

PREPARED/REVIEWED BY: Carol Baumgartner, Town Clerk; James S. Maloney, Town Attorney

ATTACHMENT: Resolution No. 17-001

RECOMMENDED MOTION: "I move to approve Resolution No. 17-001, as a part of the consent agenda."

RESOLUTION NO. 17-001, Series of 2017

TITLE: A RESOLUTION TO AMEND RESOLUTION NO. 16-001 ESTABLISHING A DESIGNATED PUBLIC PLACE FOR THE POSTING OF MEETING NOTICES AS REQUIRED BY THE COLORADO OPEN MEETINGS LAW

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

Section 1. Town Hall shall constitute the designated public place for the posting of meeting notices, as required by the Colorado Open Meetings Law. The Town Clerk shall be responsible for posting the required notices no later than twenty-four (24) hours prior to the holding of the meeting. All meeting notices shall include specific agenda information, where possible.

RESOLVED AND PASSED this _____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk



PARKER
C O L O R A D O

Town Council Packet





ITEM NO: 8D
DATE: 01/03/2017

REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-002 - A Resolution to Appoint Regular Members to the Parker Cultural and Scientific Commission and to Appoint the Chair

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |

Elaine Mariner

Elaine Mariner, Cultural Director

G. Randolph Young

G. Randolph Young, Town Administrator

ISSUE:

The terms of five (5) regular members of the Parker Cultural and Scientific Commission expired December 31, 2016. All five of the regular members desire to be reappointed for an additional two-year term, and the current Chair desires to be reappointed as Chair for 2017.

PRIOR ACTION:

None

FUNDING/BUDGET IMPACT:

None

BACKGROUND:

Diane Roth was originally appointed to the Cultural Commission in 2011 and has served as Chair since 2014. Lance Martin and Michael G. Edwards were originally appointed in 2014, Katie Kendrick was originally appointed in 2015 to fill a vacancy, and Kelly Gibson was originally appointed in 2016 to fill a vacancy. All of them desire to be reappointed.

RECOMMENDATION:

Approve the Resolution

PREPARED/REVIEWED BY:

Elaine Mariner, Cultural Director and Jim Maloney, Town Attorney

ATTACHMENTS:

Resolution No. 17-002

RECOMMENDED MOTION:

"I move to approve Resolution No. 17-002, as a part of the consent agenda."

RESOLUTION NO. 17-002, Series of 2017

TITLE: A RESOLUTION TO APPOINT REGULAR MEMBERS TO THE PARKER CULTURAL AND SCIENTIFIC COMMISSION AND TO APPOINT THE CHAIR

WHEREAS, the terms of five (5) regular members of the Parker Cultural and Scientific Commission (the "Commission") expired on December 31, 2016;

WHEREAS, the Town Council of the Town of Parker desires to reappoint these five (5) regular members for another two (2) years, as described herein;

WHEREAS, Section 2.04.020 of the Parker Municipal Code provides that the Town Council shall appoint one member of the Commission to be Chair; and

WHEREAS, the Town Council desires to appoint the Chair to the Commission.

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 reappoints five (5) regular members to the Commission for the term ending December 31, 2018, as described in **Exhibit A**, which is attached hereto and incorporated by this reference.

Section 2. The Town Council of the Town of Parker hereby appoints Diane Roth as the Chair of the Commission.

RESOLVED AND PASSED this ____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

1. Four (4) Regular Parker Cultural and Scientific Commission Board Members for a term up to and including December 31, 2017.

- a. Charles Gaughan
- b. Kari Osborne
- c. Andrew Hawkins
- d. Elizabeth Lamonica

2. Five (5) Regular Parker Cultural and Scientific Commission Board Members for a term up to and including December 31, 2018.

- a. Diane Roth
- b. Lance Martin
- c. Michael G. Edwards
- d. Katie Kendrick
- e. Kelly Gibson

3. Two (2) Alternate Parker Cultural and Scientific Commission Members for a term up to and including December 31, 2018.

- a. _____
- b. _____

4. Ex Officio Member and Alternate.

- a. Amy Holland
- b. John Diak



PARKER
C O L O R A D O

Town Council Packet

Tel: 303.841.0353 • Fax: 303-840-9792 • www.parkeronline.org





ITEM NO: 8E
DATE: 01/03/2017

REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-003 - A Resolution to Appoint Regular Members to the Parker Creative District Executive Committee and to Appoint the Chair

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |

Elaine Mariner

Elaine Mariner, Cultural Director

G. Randolph Young

G. Randolph Young, Town Administrator

ISSUE:

The terms of three (3) regular members of the Parker Creative District Executive Committee expired December 31, 2016. Two of the members desire to be reappointed. One member moved out of Parker, creating a vacancy on the Committee. The Chair must be appointed annually.

PRIOR ACTION:

None

FUNDING/BUDGET IMPACT:

None

BACKGROUND:

Brian Dickman was originally appointed to the Creative District Executive Committee when it formed in February 2015, and has served as Chair since July 2016. He desires to be reappointed and to continue to serve as Chair for 2017. Theresa was originally appointed to the Cultural Commission in 2016 to fill a vacancy, and she desires to be reappointed. Carm Fogt was originally appointed as an alternate in July 2016, and she desires to be appointed as a regular member.

RECOMMENDATION:

Approve the Resolution

PREPARED/REVIEWED BY:

Elaine Mariner, Cultural Director and Jim Maloney, Town Attorney

ATTACHMENTS:

Resolution No. 17-003

RECOMMENDED MOTION:

"I move to approve Resolution No. 17-003, as a part of the consent agenda."

RESOLUTION NO. 17-003, Series of 2017

TITLE: A RESOLUTION TO APPOINT REGULAR MEMBERS TO THE PARKER CREATIVE DISTRICT EXECUTIVE COMMITTEE AND TO APPOINT THE CHAIR

WHEREAS, the terms of three (3) regular members of the Parker Creative District Executive Committee (the "Committee") expired on December 31, 2016;

WHEREAS, the Town Council of the Town of Parker desires to appoint regular members to the Committee, as described in **Exhibit A**, which is attached hereto and incorporated by this reference;

WHEREAS, Section 2.09.030 of the Parker Municipal Code provides that the Town Council shall appoint one member of the Committee to be Chair; and

WHEREAS, the Town Council desires to appoint the Chair of the Committee.

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 appoints three (3) regular members to the Committee for the term ending December 31, 2018, as described in Exhibit A.

Section 2. The Town Council hereby appoints Brian Dickman the Chair of the Committee.

RESOLVED AND PASSED this _____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A

1. Two (2) Regular Parker Cultural and Scientific Commission Board Members for a term up to and including December 31, 2017.

- a. Sara Crowe
- b. Kelly Benson

2. Three (3) Regular Parker Cultural and Scientific Commission Board Members for a term up to and including December 31, 2018.

- a. Brian Dickman
- b. Carm Fogt
- c. Teresa Hawkins-Garcea

3. Two (2) Alternate Parker Creative District Executive Committee Members for a term up to and including December 31, 2018.

- a. _____
- b. _____

4. Ex Officio Member.

Elaine Mariner, Cultural Director



PARKER
C O L O R A D O

Town Council Packet





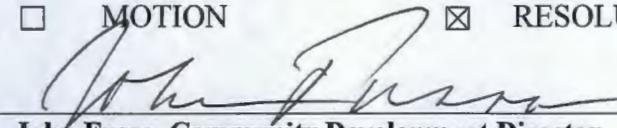
ITEM NO: 8F
DATE: 01/03/2017

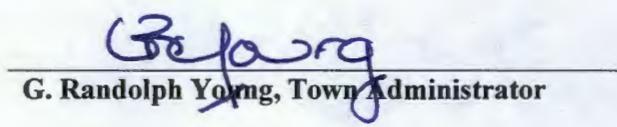
REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-004

A Resolution to Determine that Lot 2, Block 1, Parker Heights Property Annexation Petition Substantially Complies with the Requirements of the Annexation Act of 1965 and to Set a Public Hearing Date for March 6, 2017

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |


John Fussa, Community Development Director


G. Randolph Young, Town Administrator

ISSUE:

The applicant, Armstrong Capital Development LLC, is proposing to annex and commercially zone a lot currently located within Douglas County. The property is located immediately east of several parcels annexed in March 2016 and is situated near the southeast corner of Lincoln Avenue and Parker Road. This lot is within the Parker Heights subdivision and currently has a Douglas County residential zoning designation.

PRIOR ACTION:

The subject property is adjacent to the Parker Keystone property that was annexed to the Town in March, 2016 with a Modified Commercial zoning.

FUNDING/BUDGET IMPACT:

None

BACKGROUND:

The property has sufficient contiguity with the Town's incorporated boundary to meet statutory annexation requirements. This property is located within the Town's Urban Growth Area as specified by the Parker 2035 Master Plan. The proposed annexation will expand the Parker Keystone commercial site by 0.21 acres.

Approval of this resolution will set a public hearing date for March 6, 2017 and initiate the State regulated public notice procedures. These procedures include publishing a public notice in the newspaper for five consecutive weeks and mailing registered public notices to the special districts 25 days prior to the public hearing.

On February 21, 2017, the Ordinance for annexation will be on the Town Council consent agenda for first reading.

On February 23, 2017, the proposed zoning associated with this annexation will be reviewed by the Planning Commission for a recommendation to Town Council.

RECOMMENDATION:

Staff recommends that Town Council approve Resolution Nos. 17-004, as part of the consent agenda.

PREPARED/REVIEWED BY:

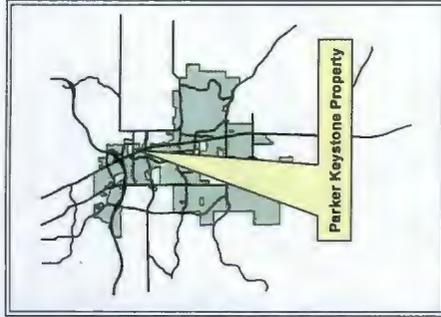
Patrick Mulready, Senior Planner; Bryce Matthews, Planning Manager; Jason Rogers, Deputy Community Development Director; John Fussa, Community Development Director

ATTACHMENTS:

1. Vicinity Map
2. Resolution 17-004

RECOMMENDED MOTION:

"I move to approve Resolution No. 17-004, as a part of the consent agenda."



Legend

- Town Boundary
- Site
- Roads

Narrative:
Resolution concerning substantial compliance with the requirements of the Annexation Act of 1965, and setting a Public Hearing for March 6, 2017

Planner: Patrick Muiresady
Hearing Schedules:
Town Council Consent Item:
January 3, 2017



RESOLUTION NO. 17-004, Series of 2017

TITLE: A RESOLUTION TO DETERMINE THAT LOT 2, BLOCK 1, PARKER HEIGHTS PROPERTY ANNEXATION PETITION SUBSTANTIALLY COMPLIES WITH THE REQUIREMENTS OF THE ANNEXATION ACT OF 1965 AND TO SET A PUBLIC HEARING DATE FOR MARCH 6, 2017

WHEREAS, the Petitioner owns certain real property in Douglas County commonly known as the Lot 2, Block 1, Parker Heights property.

WHEREAS, pursuant to C.R.S. § 31-12-107, this Town Council, sitting as the governing body of the Town of Parker, Colorado, hereby determines that the proposed annexation of the real property described in Exhibit A is in substantial compliance with C.R.S. § 31-12-107(1); and

WHEREAS, the Town Council of the Town of Parker, Colorado, has satisfied itself concerning the substantial compliance for the proposed annexation to and by the Town of Parker, Colorado.

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

Section 1. The proposed annexation of the real property described in Exhibit A substantially complies with C.R.S. § 31-12-107(1).

Section 2. A public hearing on said annexation will be conducted on March 6, 2017, 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 C.R.S. §§ 31-12-104 and 31-12-105 or such part thereof as may be required to establish eligibility under the terms of Title 31, Article 12, Part 1, as amended, known as the Municipal Annexation Act of 1965, and the Constitution of the State of Colorado, Article II, Section 30, as amended.

Section 3. Any person living within the area proposed to be annexed, any landowner of lands thereof, any resident of the municipality to which the area is proposed to be annexed, any municipality located within one mile of the proposed annexation, or the Board of County Commissioners of Douglas County, may appear at such hearing and present evidence upon any matter to be determined by the Town Council.

RESOLVED AND PASSED this _____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk



PARKER
C O L O R A D O

Town Council Packet

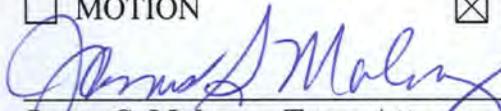


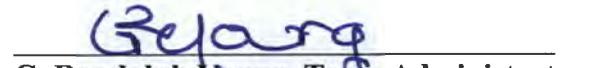


REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-005 – A Resolution Accepting the Conveyance of Real Property from the Board of County Commissioners of the County of Douglas, State of Colorado, for the Harvie Property by General Warranty Deed

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 st READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 nd READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |


James S. Maloney, Town Attorney


G. Randolph Young, Town Administrator

ISSUE: The Douglas County Board of County Commissioners has approved the deeds necessary to convey the Harvie Property to the Town. The Town desires to accept ownership of the Harvie Property. Under the Parker Municipal Code, the Town Council is required to pass a resolution in order to accept the ownership of real property.

PRIOR ACTION: On December 13, 2016, the Douglas County Board of County Commissioners approved the deeds necessary to convey the Harvie Property to the Town.

FUNDING/BUDGET IMPACT: The General Warranty Deed is being conveyed to the Town at no cost. However, the Town is required to maintain the Harvie Property, as provided by the Conservation Easement.

BACKGROUND: On February 20, 1996, Ray J. Harvie granted the Douglas County Land Conservancy a “Deed of Conservation Easement In Gross” (the “Conservation Easement”) for the real property described in the attached vicinity map, which is approximately 75 acres, including a county road commonly referred to as “Pope Road” (the “Harvie Property”). Also on February 20, 1996, Mr. Harvie conveyed the Harvie Property to Douglas County by General Warranty Deed, subject to the Conservation Easement. The General Warranty Deed provided that Mr. Harvie could live on the Harvie Property for the remainder of his life and upon his death, the Harvie Property would be known as the “Ray J. Harvie Park.” Douglas County desires to convey the Harvie Property to the Town and the Town desires to own the Harvie Property, except for that portion of the Harvie Property that is occupied by Pope Road. The purpose of the attached General Warranty Deed is to convey the Harvie Property to the Town, excluding Pope Road (71.061 acres). The purpose of the Quit Claim Deed is for the county to convey to the Town the gap between Mainstreet and the Harvie Property, as depicted in the legal description attached to the Quit Claim Deed (17,330 square feet). In order to accept the General Warranty Deed and the Quit Claim Deed, the Town Council is required to accept these deeds by resolution, as provided by the Parker Municipal Code.

RECOMMENDATION: Approve.

PREPARED/REVIEWED BY: Dennis Trapp, Projects Administrator; James S. Maloney, Town Attorney

ATTACHMENT(S):

1. Vicinity map
2. Resolution No. 17-005, along with the General Warranty Deed

RECOMMENDED MOTION: "I move to approve Resolution No. 17-005, as a part of the consent agenda."

Harvie Property Parcel Conveyances from County Vicinity Map



RESOLUTION NO. 17-005, Series of 2017

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF REAL PROPERTY FROM THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, FOR THE HARVIE PROPERTY BY GENERAL WARRANTY DEED

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, State of Colorado, for the Harvie Property;

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, State of Colorado, for the Harvie Property, as provided in the General Warranty Deed attached as **Exhibit 1**, and incorporated by this reference.

RESOLVED AND PASSED this ____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

GENERAL WARRANTY DEED

THIS DEED is made this 13th day of December, 2016, between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, whose legal address is 100 Third Street, Castle Rock, Colorado 80104 ("Grantor") and the TOWN OF PARKER, a Colorado municipal corporation, whose legal address is 20120 E. Mainstreet, Parker, Colorado 80138 ("Grantee").

Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, its successors and assigns forever, all of the real property, together with improvements, if any, situate, lying and being in the County of Douglas, State of Colorado, described as follows:

See Exhibit "A" attached hereto and incorporated herein

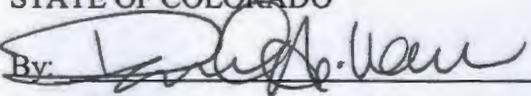
TOGETHER with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, the reversions, remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described, with the appurtenances, unto Grantee, its successors and assigns forever. And Grantor, for Grantor and Grantor's successors and assigns, does covenant, grant, bargain, and agree to and with Grantee, its successors and assigns, that at the time of the ensealing and delivery of these presents, Grantor is well seized of the premises above conveyed; has good, sure, perfect, absolute and indefeasible estate of inheritance, in law, in fee simple, and has good right, full power and authority to grant, bargain, sell and convey the same in manner and form as aforesaid; and that the same are free and clear from all former and other grants, bargains, sales, liens, taxes, assessments, encumbrances and restrictions of whatever kind or nature whatsoever, except any easements, covenants or restrictions of record.

Grantor shall and will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of Grantee, its successors and assigns, against all and every person or persons lawfully claiming the whole or any part thereof.

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: 

Name: DAVID A. WEAVER

Title: CHAIR

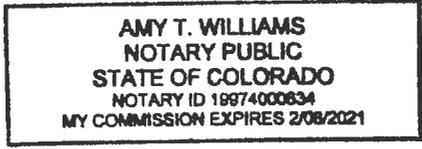
STATE OF COLORADO)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 13th day of December, 2016, by David A. Weaker as Chair of the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO.

Witness my hand and official seal.

My commission expires: n/a

Amy Williams



Notary Public

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF THE NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH QUARTER CORNER OF SAID SECTION 24;

THENCE ALONG THE NORTHERLY LINE OF SAID NORTHEAST QUARTER SOUTH 89°14'29" EAST, A DISTANCE OF 2,585.51 FEET TO AN EXISTING FENCE LINE ON THE WESTERLY SIDE OF POPE ROAD;

THENCE SOUTHWESTERLY ALONG SAID EXISTING FENCE LINE THE FOLLOWING (12) COURSES:

1. SOUTH 09°27'07" WEST, A DISTANCE OF 21.10 FEET;
2. SOUTH 03°29'43" WEST, A DISTANCE OF 99.37 FEET;
3. SOUTH 05°34'46" WEST, A DISTANCE OF 105.18 FEET;
4. SOUTH 08°44'32" WEST, A DISTANCE OF 62.52 FEET;
5. SOUTH 12°39'26" WEST, A DISTANCE OF 15.09 FEET;
6. SOUTH 17°05'43" WEST, A DISTANCE OF 117.46 FEET;
7. SOUTH 20°20'39" WEST, A DISTANCE OF 71.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 250.00 FEET;
8. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°24'08", AN ARC LENGTH OF 71.57 FEET;
9. TANGENT TO SAID CURVE SOUTH 36°44'47" WEST, A DISTANCE OF 595.55 FEET;
10. SOUTH 43°42'09" WEST, A DISTANCE OF 198.89 FEET;
11. NORTH 48°34'31" WEST, A DISTANCE OF 19.32 FEET;
12. SOUTH 39°02'05" WEST, A DISTANCE OF 208.01 FEET TO THE NORTHERLY LINE OF EAST MAINSTREET RECORDED IN BOOK 1422 AT PAGE 526 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE;

THENCE ALONG SAID NORTHERLY LINE SOUTH 83°01'13" WEST, A DISTANCE OF 12.64 FEET TO THE NORTHERLY LINE OF EAST MAINSTREET RECORDED AT RECEPTION NO. 2003021410 IN SAID RECORDS;

THENCE ALONG SAID NORTHERLY LINE SOUTH 89°02'54" WEST, A DISTANCE OF 452.08 FEET TO THE SOUTHERLY LINE OF THE NORTH HALF OF SAID NORTHEAST QUARTER;

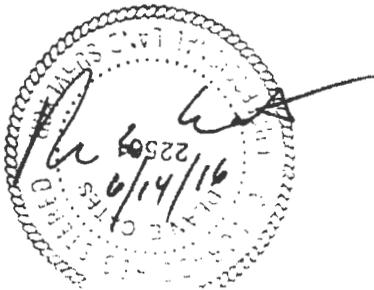


EXHIBIT A
LEGAL DESCRIPTION
CONTINUED

THENCE ALONG SAID SOUTHERLY LINE NORTH 89°51'45" WEST, A DISTANCE OF 1350.25 FEET
TO THE POINT OF BEGINNING.

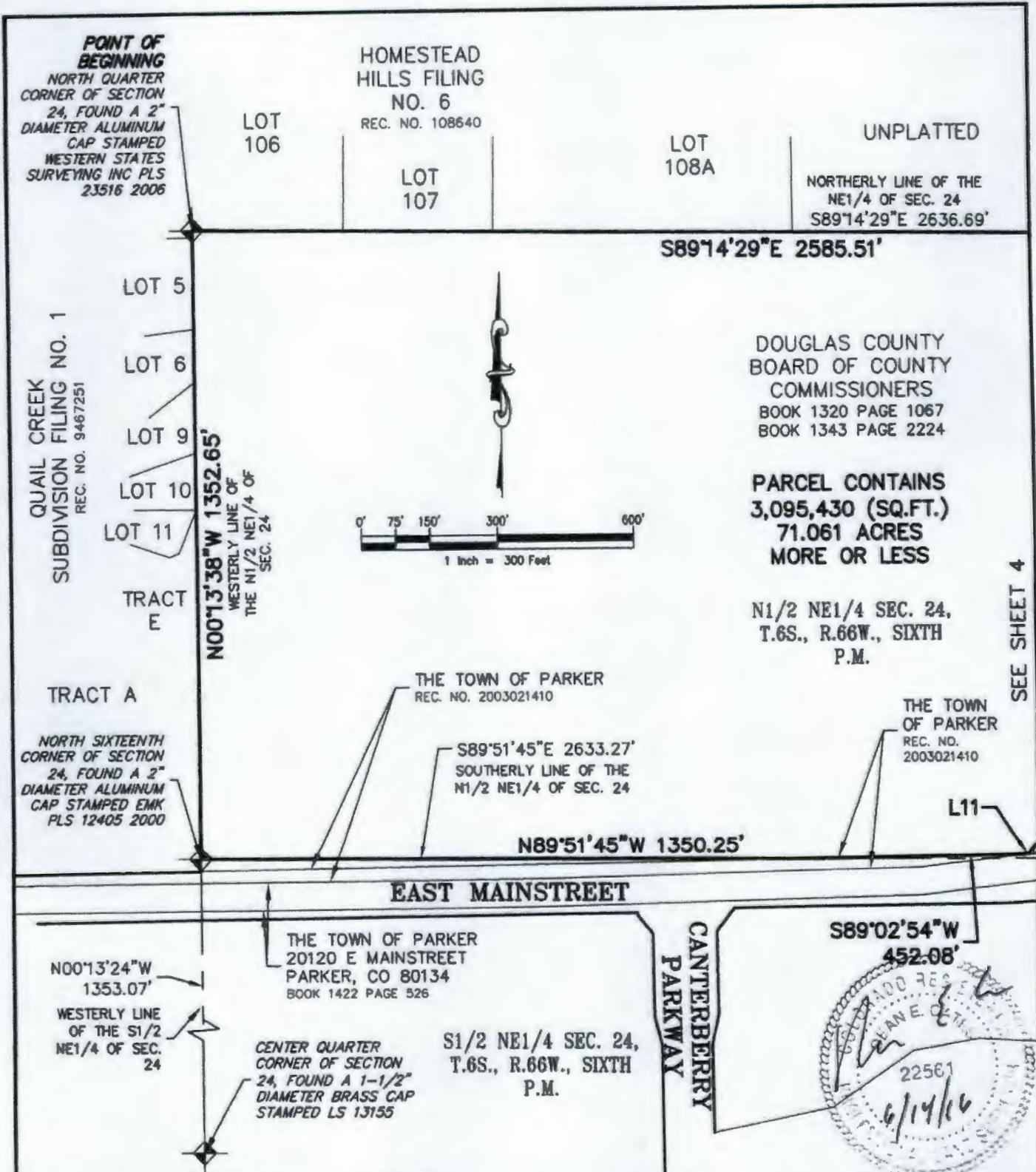
CONTAINING AN AREA OF 71.061 ACRES, (3,095,430 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



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

PATH: G:\24916-15.DWG
DWG NAME: harvie QC LD REV
DWG: DEC CHK: JW
DATE: 06-09-16
SCALE: 1" = 300'

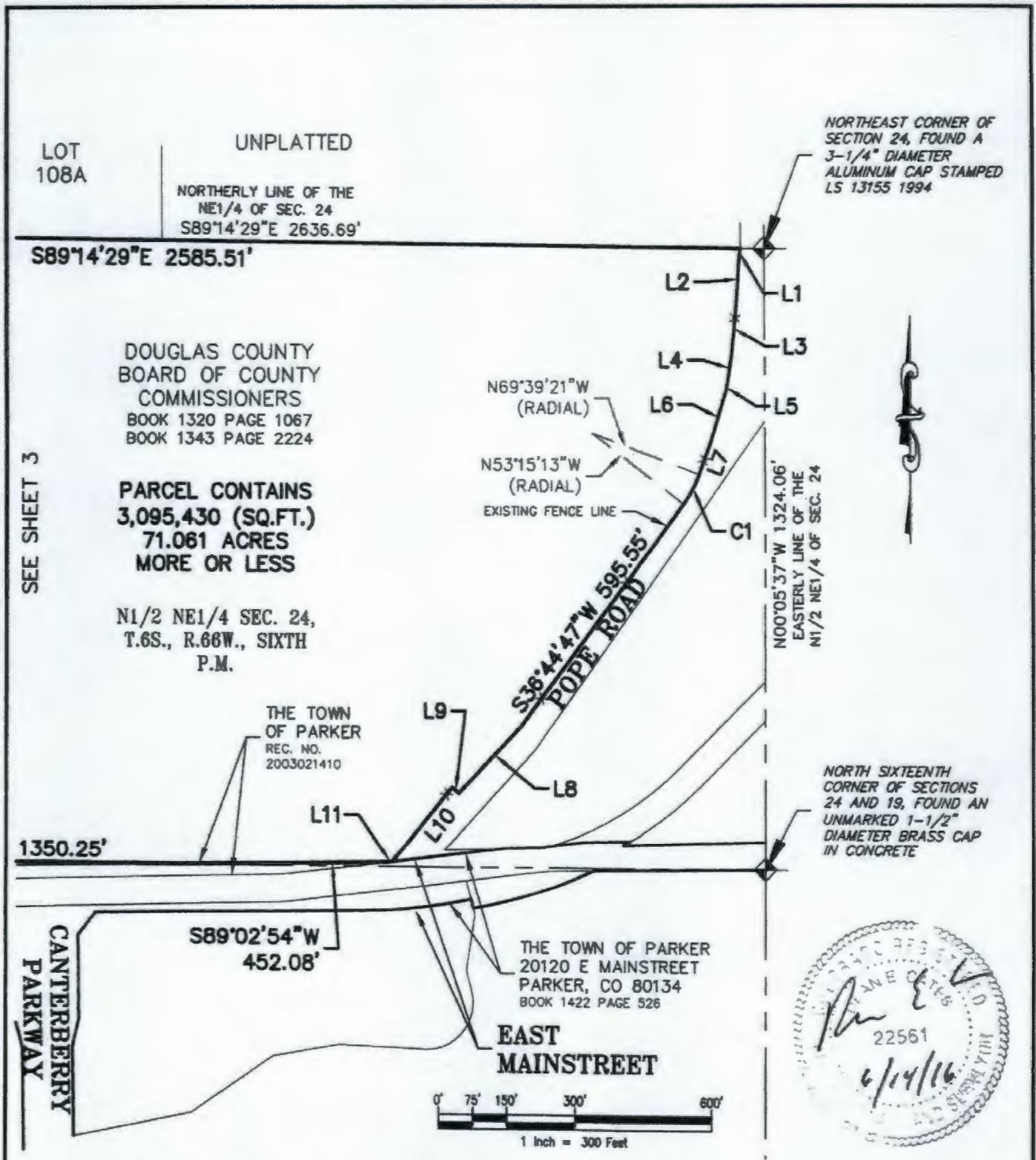
AZTEC
CONSULTANTS, INC.

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

EXHIBIT A
NE1/4 S24, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO

JOB NUMBER 24915-14 3 OF 5 SHEETS

ILLUSTRATION TO EXHIBIT A



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

PATH: Q:\24915-15\DWG
 DWG NAME: harvie QC LD REV
 DWG: DEC CHR: JRW
 DATE: 06-09-16
 SCALE: 1" = 300'

AZTEC
 CONSULTANTS, INC.

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

EXHIBIT A
 NE1/4 S24, T6S, R66W, SIXTH PM
 DOUGLAS COUNTY, COLORADO

JOB NUMBER 24915-14 4 OF 5 SHEETS

ILLUSTRATION TO EXHIBIT A

LINE TABLE			CURVE TABLE			
LINE	BEARING	LENGTH	CURVE	DELTA	RADIUS	LENGTH
L1	S09°27'07"W	21.10'	C1	16°24'08"	250.00'	71.57'
L2	S03°29'43"W	99.37'				
L3	S05°34'46"W	105.18'				
L4	S08°44'32"W	62.52'				
L5	S12°39'26"W	15.09'				
L6	S17°05'43"W	117.46'				
L7	S20°20'39"W	71.14'				
L8	S43°42'09"W	198.89'				
L9	N48°34'31"W	19.32'				
L10	S39°02'05"W	208.01'				
L11	S83°01'13"W	12.64'				



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

PATH: G:\24915-15\DWG
 DWG NAME: harvie QC LD REV
 DWG: DEC CHK: JRW
 DATE: 06-09-16
 SCALE: NA



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

EXHIBIT A
 NE1/4 S24, T6S, R66W, SIXTH PM
 DOUGLAS COUNTY, COLORADO

JOB NUMBER 24915-14

5 OF 5 SHEETS



PARKER
C O L O R A D O

Town Council Packet

Tel: 303.841.0353 • Fax: 303-840-9792 • www.parkeronline.org

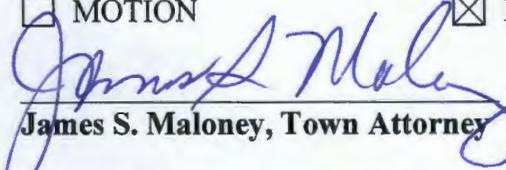


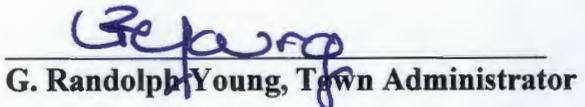


REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-006 – A Resolution Accepting the Conveyance of Real Property from the Board of County Commissioners of the County of Douglas, State of Colorado, for the Harvie Property by Quit Claim Deed

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 st READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 nd READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |


James S. Maloney, Town Attorney


G. Randolph Young, Town Administrator

ISSUE: The Douglas County Board of County Commissioners has approved the deeds necessary to convey the Harvie Property to the Town. The Town desires to accept ownership of the Harvie Property. Under the Parker Municipal Code, the Town Council is required to pass a resolution in order to accept the ownership of real property.

PRIOR ACTION: On December 13, 2016, the Douglas County Board of County Commissioners approved the deeds necessary to convey the Harvie Property to the Town.

FUNDING/BUDGET IMPACT: The Quit Claim Deed is being conveyed to the Town at no cost. However, the Town is required to maintain the Harvie Property, as provided by the Conservation Easement.

BACKGROUND: On February 20, 1996, Ray J. Harvie granted the Douglas County Land Conservancy a “Deed of Conservation Easement In Gross” (the “Conservation Easement”) for the real property described in the attached vicinity map, which is approximately 75 acres, including a county road commonly referred to as “Pope Road” (the “Harvie Property”). Also on February 20, 1996, Mr. Harvie conveyed the Harvie Property to Douglas County by General Warranty Deed, subject to the Conservation Easement. The General Warranty Deed provided that Mr. Harvie could live on the Harvie Property for the remainder of his life and upon his death, the Harvie Property would be known as the “Ray J. Harvie Park.” Douglas County desires to convey the Harvie Property to the Town and the Town desires to own the Harvie Property, except for that portion of the Harvie Property that is occupied by Pope Road. The purpose of the General Warranty Deed is to convey the Harvie Property to the Town, excluding Pope Road (71.061 acres). The purpose of the attached Quit Claim Deed is for the county to convey to the Town the gap between Mainstreet and the Harvie Property, as depicted in the legal description attached to the Quit Claim Deed (17,330 square feet). In order to accept the General Warranty Deed and the Quit Claim Deed, the Town Council is required to accept these deeds by resolution, as provided by the Parker Municipal Code.

RECOMMENDATION: Approve.

PREPARED/REVIEWED BY: Dennis Trapp, Projects Administrator; James S. Maloney, Town Attorney

ATTACHMENT(S):

1. Vicinity map
2. Resolution No. 17-006, along with the Quit Claim Deed

RECOMMENDED MOTION: "I move to approve Resolution No. 17-006, as a part of the consent agenda."

Harvie Property Parcel Conveyances from County Vicinity Map



RESOLUTION NO. 17-006, Series of 2017

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF REAL PROPERTY FROM THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, FOR THE HARVIE PROPERTY BY QUIT CLAIM DEED

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, State of Colorado, for the Harvie Property;

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, State of Colorado, for the Harvie Property, as provided in the Quit Claim Deed attached as **Exhibit 1**, and incorporated by this reference.

RESOLVED AND PASSED this _____ day of _____, 2017.

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 NORTHEAST QUARTER OF SECTION 24, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTH SIXTEENTH CORNER OF SAID SECTION 24;

THENCE ALONG THE SOUTHERLY LINE OF THE NORTH HALF OF SAID NORTHEAST QUARTER SOUTH 89°51'45" EAST, A DISTANCE OF 1,350.25 FEET TO THE INTERSECTION WITH THE NORTHERLY LINE OF THAT PARCEL OF LAND RECORDED AT RECEPTION NO. 2003021410 IN THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER'S OFFICE;

THENCE ALONG SAID NORTHERLY LINE SOUTH 89°02'54" WEST, A DISTANCE OF 1350.33 FEET TO THE WESTERLY LINE OF THE SOUTH HALF OF SAID NORTHEAST QUARTER;

THENCE ALONG SAID WESTERLY LINE NORTH 00°13'24" WEST, A DISTANCE OF 25.67 FEET TO THE POINT OF BEGINNING;

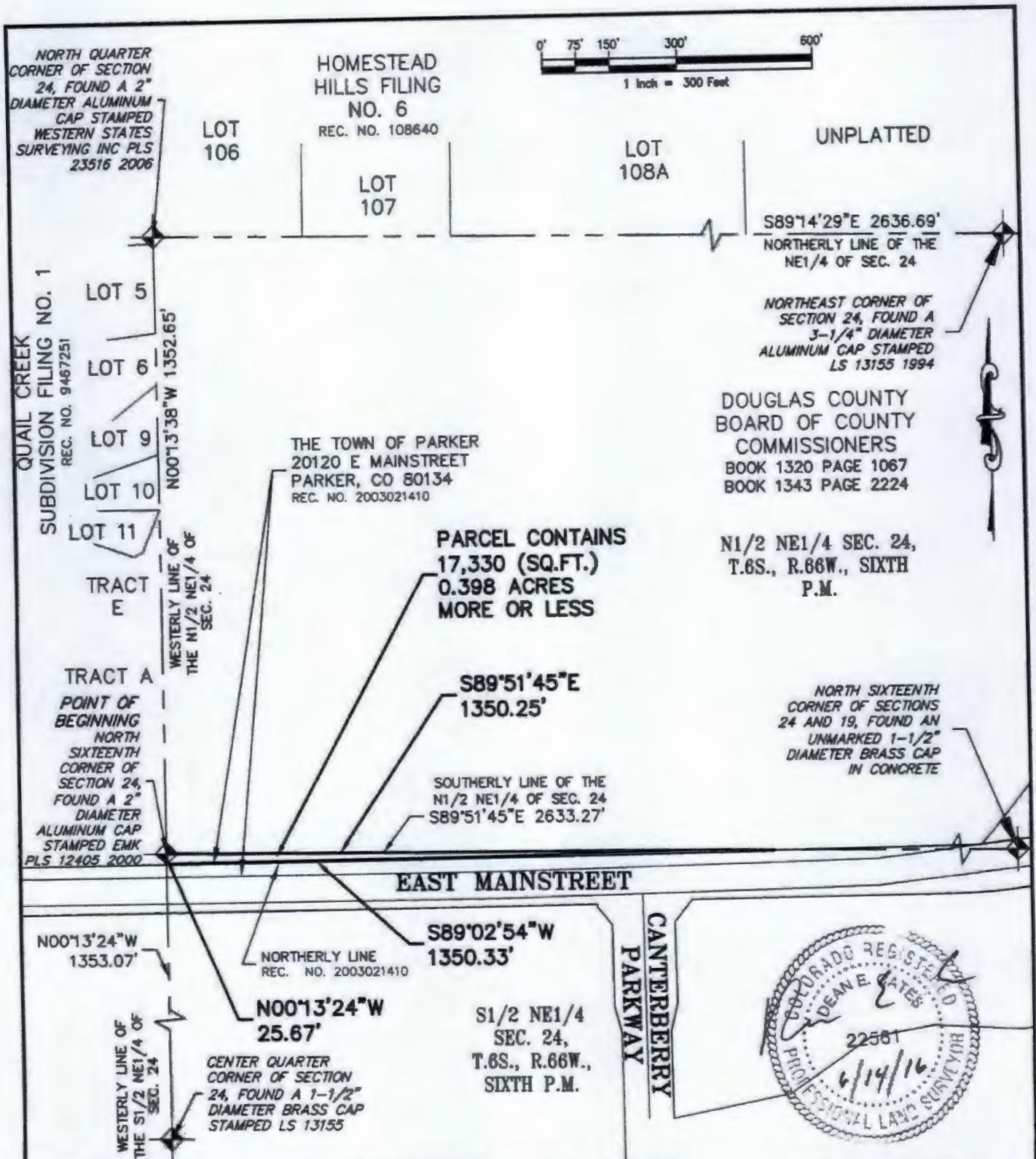
CONTAINING AN AREA OF 0.398 ACRES, (17,330 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

ILLUSTRATION TO EXHIBIT A



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

PATH: e:\24916-15\DWG
 DWG NAME: harvie GAP LD
 DWG: DEC CHK: RW
 DATE: 06-09-16
 SCALE: 1" = 300'

AZTEC
 CONSULTANTS, INC.
 300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1896
 Fax: (303)713-1897
 www.aztecconsultants.com

EXHIBIT A
NE1/4 S24, T6S, R66W, SIXTH PM
DOUGLAS COUNTY, COLORADO



PARKER

COLORADO

Town Council Packet



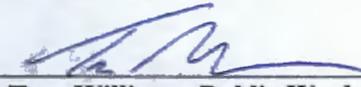


ITEM NO: 8I
DATE: 01/03/2017

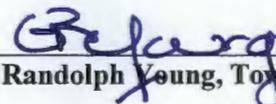
REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 17-007 - A Resolution Accepting the Conveyance of Real Property from Richmond Homes of Colorado, Inc., for the East-West Trail East of Motsenbocker Road

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |



Tom Williams, Public Works and Engineering
Director



G. Randolph Young, Town Administrator

ISSUE:

Conveyance of a bike and pedestrian trail easement from Richmond Homes of Colorado, Inc., for the East-West Trail east of Motsenbocker Road.

PRIOR ACTION:

None.

FUNDING/BUDGET IMPACT:

Funding for the trail construction is part of the Parks, Recreation and Open Space Fund.

BACKGROUND:

This easement is needed for the future bike/pedestrian trail associated with the East-West Trail east of Motsenbocker Road. A resolution is needed to accept this conveyance. The Town anticipates construction of this segment of the East-West Trail in 2017.

RECOMMENDATION:

Approve the resolution.

PREPARED/REVIEWED BY:

Thomas Gill, Associate Project Manager
Chris Hudson, Public Works Manager

ATTACHMENTS:

- 1) Vicinity Map (1 page)
- 2) Resolution (10 pages)

RECOMMENDED MOTION:

"I move to approve Resolution No. 17-007, as a part of the consent agenda."

East / West Trail Easements from Richmond Homes Vicinity Map



Trail Easements

East / West Trail

Todd Dr

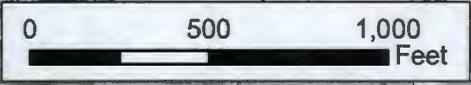
Cherry Creek Trail

Overlook at
Cherry Creek

Mainstreet

Molsenbocker Rd

Molsenbocker Rd



RESOLUTION NO. 17-007, Series of 2017

TITLE: A RESOLUTION ACCEPTING THE CONVEYANCE OF REAL PROPERTY FROM RICHMOND HOMES OF COLORADO, INC., FOR THE EAST-WEST TRAIL EAST OF MOTSENBOCKER ROAD

WHEREAS, the Town Council of the Town of Parker desires to accept the conveyance of certain property interests for an easement for a bike and pedestrian trail from Richmond Homes of Colorado, Inc., for the East-West Trail East of Motesenbocker Road;

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 an easement for a bike and pedestrian trail from Richmond Homes of Colorado, Inc., for the East-West Trail East of Motesenbocker Road, as provided in the Recreational Trail Easement Agreement, which is attached hereto 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 _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

RECREATIONAL TRAIL EASEMENT AGREEMENT

THIS RECREATIONAL TRAIL EASEMENT AGREEMENT is made this ____ day of _____, 2016, between Richmond Homes of Colorado, Inc. (hereinafter referred to as the "Grantor"), and the Town of Parker, Colorado, a Colorado municipal corporation (hereinafter referred to as the "Town").

1. Grant of Easement. In consideration of good and valuable consideration, the receipt of which is hereby acknowledged, the Grantor hereby grants to the Town an easement for a bike and pedestrian trail, including the maintenance, repair, removal and replacement of such trail and appurtenances thereto, in, under, through and across the property described in **Exhibit A**, which is attached hereto and hereinafter referred to as the "Trail Easement Across the Grantor's Property".

2. Infringement and Correction. The Town is hereby given and granted possession of the above-described easement, and the Grantor covenants and agrees that no structure, fixture, improvement or other obstruction above or below ground that will interfere with the purposes aforesaid will be placed, erected, installed or permitted on the above-described easement. The Grantor further covenants and agrees that, in the event the terms of this paragraph are violated by the Grantor, or any person acting by, through or on behalf of the Grantor, such violation will be corrected and eliminated within a reasonable time upon receipt of written notice of such violation from the Town, after which the Town shall have the right, following a reasonable period of time, to correct or eliminate such violation and the Grantor shall promptly pay the actual costs thereof.

3. Obligations of the Town. The Town shall maintain the above-described easement in good condition at all times. All work performed by the Town on the property of the Grantor shall be done with care and all damage to the Grantor's land and improvements, to the extent said improvements are constructed or installed in accordance with this Easement Agreement, shall be promptly paid for or repaired at the expense of the Town. The Town's obligation herein shall include the restoration of the land and improvements to their condition prior to the damage.

4. Insurance. The Town shall maintain general liability insurance in an amount not less than the limits specified in the Colorado Governmental Immunity Act, as amended, for the Trail Easement Across the Grantor's Property for bodily injury and property damage losses attributable to the maintenance, operation and use of the bike and pedestrian trail.

5. Binding Effect. The terms and provisions of this Easement Agreement shall be binding upon and inure to the benefit of the respective heirs, personal representatives, beneficiaries, successors, grantees and assigns of the parties hereto, and the burdens or benefits of the provisions of this Easement Agreement shall be deemed covenants running with said easement.

6. Recordation. This Easement Agreement shall be recorded in the real estate records of the Douglas County Clerk and Recorder's Office.

Executed and delivered the day and year first above written.

GRANTOR: RICHMOND HOMES OF COLORADO, INC.

By: Eric R. Kubly
Eric R. Kubly - VP of Land Development
[Please print name/title]

STATE OF COLORADO)
)ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me this 20th day of August, 2016, by Eric R. Kubly, as VP of Land Dev of Richmond Homes of Colorado, Inc..

My commission expires: 6-11-2019

ANGELA M. LASHLEY
SE NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20034019384
MY COMMISSION EXPIRES JUNE 11, 2019

Angela M. Lashley
Notary Public

TOWN OF PARKER, COLORADO

By: _____
Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF TRACT E, THE OVERLOOK AT CHERRY CREEK FILING NO. 2, A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 2015052312, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO, CLERK AND RECORDER'S OFFICE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF PARKER, SAID COUNTY AND STATE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER-SOUTH 1/16 CORNER OF SAID SECTION 21, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 21 BEARS NORTH 00°40'39" WEST;

THENCE ALONG THE NORTHERLY LINE OF THE SOUTH HALF OF SAID SOUTHEAST QUARTER NORTH 89°39'16" EAST, A DISTANCE OF 170.27 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF RESOLUTION DRIVE RECORDED AT RECEPTION NO. 2015052306 IN SAID RECORDS AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY HAVING A RADIUS OF 300.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS SOUTH 66°07'23" EAST;

THENCE ALONG SAID EASTERLY RIGHT-OF-WAY LINE THE FOLLOWING (2) COURSES:

1. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°02'39", AN ARC LENGTH OF 0.23 FEET;
2. TANGENT TO SAID CURVE NORTH 23°55'16" EAST, A DISTANCE OF 21.71 FEET TO THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF A 20 FOOT WIDE TRAIL EASEMENT AS SHOWN ON SAID PLAT AND **POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE NORTH 23°55'16" EAST, A DISTANCE OF 10.97 FEET;

THENCE DEPARTING SAID EASTERLY RIGHT-OF-WAY LINE NORTH 89°39'16" EAST, A DISTANCE OF 514.25 FEET;

THENCE SOUTH 00°20'44" EAST, A DISTANCE OF 10.00 FEET TO THE NORTHEAST CORNER OF SAID 20 FOOT WIDE TRAIL EASEMENT;

THENCE ALONG THE NORTHERLY LINE OF SAID TRAIL EASEMENT AND THE WESTERLY EXTENSION THEREOF SOUTH 89°39'16" WEST, A DISTANCE OF 518.76 FEET TO THE **POINT OF BEGINNING**.

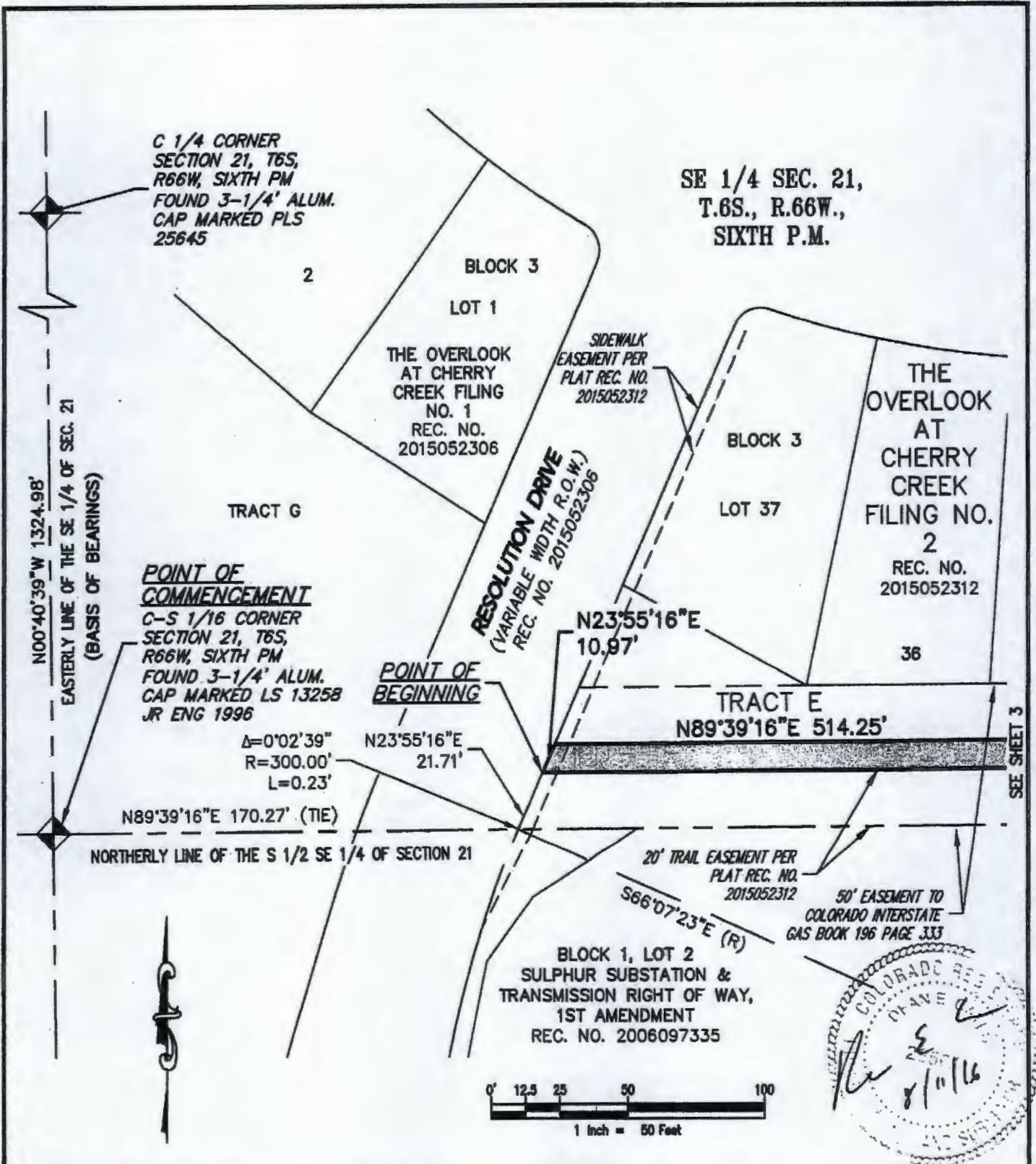
CONTAINING AN AREA OF 0.119 ACRES, (6,165 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.

DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898



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: Q:\31918-05\DWG\EXHIBITS
 DWG NAME: EW TRAIL ESMT
 DWG: MDW CHK: DEC
 DATE: 08-08-2016
 SCALE: 1" = 50'

AZTEC
 CONSULTANTS, INC.

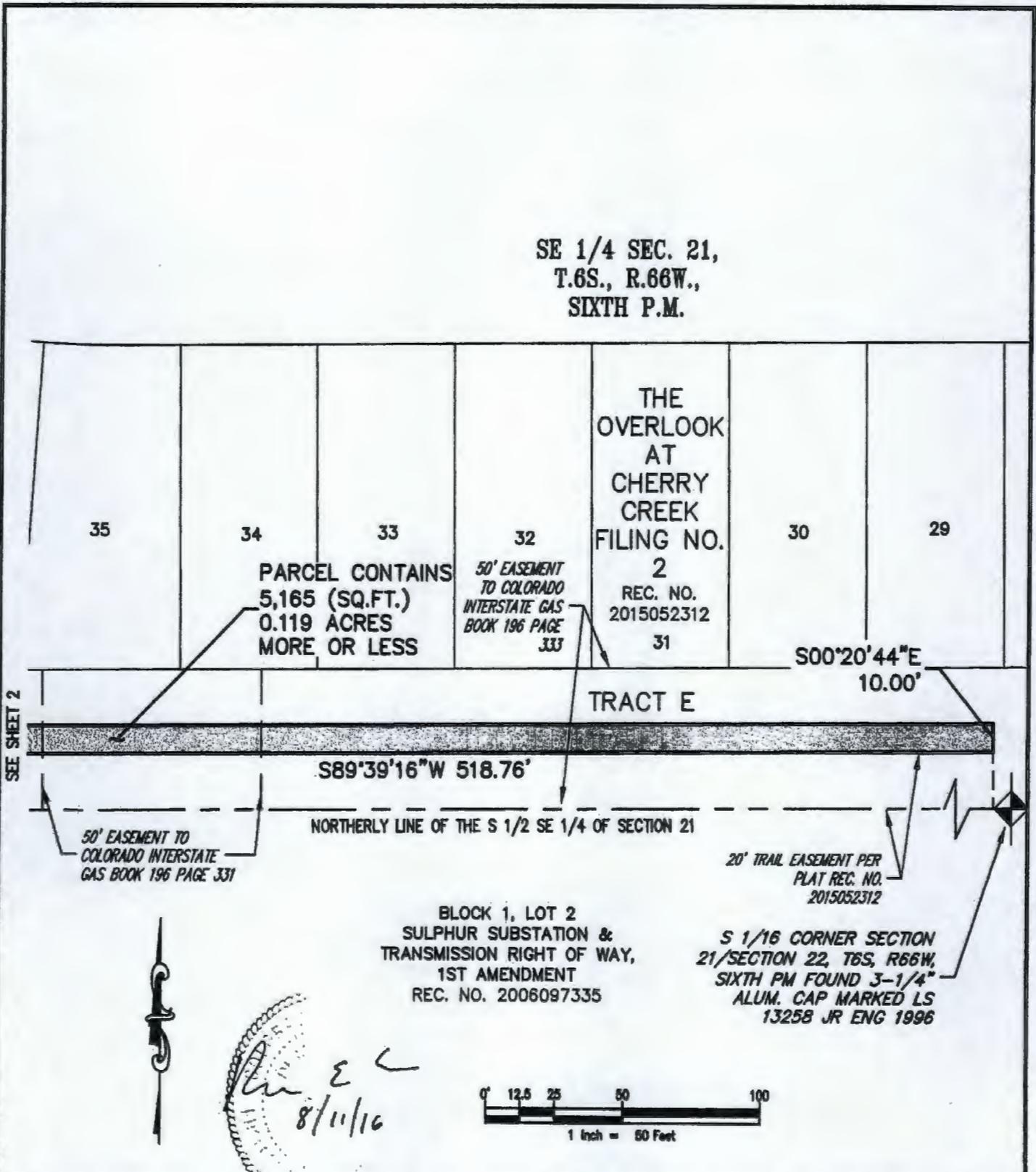
300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1898
 Fax: (303)713-1897
 www.aztecconsultants.com

TRAIL EASEMENT
 SE 1/4 SEC 21 T6S R66W 6TH PM
 PARKER, COLORADO

JOB NUMBER 31918-05 2 of 3 SHEETS

ILLUSTRATION TO EXHIBIT A

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



SEE SHEET 2

PARCEL CONTAINS
5,165 (SQ.FT.)
0.119 ACRES
MORE OR LESS

50' EASEMENT
TO COLORADO
INTERSTATE GAS
BOOK 196 PAGE
333

THE
OVERLOOK
AT
CHERRY
CREEK
FILING NO.
2
REC. NO.
2015052312
31

S00°20'44\"/>E
10.00'

TRACT E

S89°39'16\"/>W 518.76'

NORTHERLY LINE OF THE S 1/2 SE 1/4 OF SECTION 21

50' EASEMENT TO
COLORADO INTERSTATE
GAS BOOK 196 PAGE 331

20' TRAIL EASEMENT PER
PLAT REC. NO.
2015052312

BLOCK 1, LOT 2
SULPHUR SUBSTATION &
TRANSMISSION RIGHT OF WAY,
1ST AMENDMENT
REC. NO. 2006097335

S 1/16 CORNER SECTION
21/SECTION 22, T6S, R66W,
SIXTH PM FOUND 3-1/4\"/>
ALUM. CAP MARKED LS
13258 JR ENG 1996



Handwritten signature and date:
8/11/16



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

PATH: G:\31816-05\DWG\EXHIBITS
DWG NAME: EW TRAIL ESMT
DWG: MDW CHK: DEC
DATE: 08-08-2016
SCALE: 1" = 50'

AZTEC
CONSULTANTS, INC.
300 East Mineral Ave,
Suite 1
Littleton, Colorado 80122
Phone: (303)715-1896
Fax: (303)715-1897
www.aztecconsultants.com

TRAIL EASEMENT
SE 1/4 SEC 21 T6S R66W 6TH PM
PARKER, COLORADO

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND BEING A PART OF TRACT E, THE OVERLOOK AT CHERRY CREEK FILING NO. 2, A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 2015052312, IN THE RECORDS OF THE DOUGLAS COUNTY, COLORADO, CLERK AND RECORDER'S OFFICE, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 21, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF PARKER, SAID COUNTY AND STATE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTER-SOUTH 1/16 CORNER OF SAID SECTION 21, WHENCE THE CENTER QUARTER CORNER OF SAID SECTION 21 BEARS NORTH 00°40'39" WEST;

THENCE ALONG THE NORTHERLY LINE OF THE SOUTH HALF OF SAID SOUTHEAST QUARTER NORTH 89°39'16" EAST, A DISTANCE OF 170.27 FEET TO THE WESTERLY LINE OF SAID TRACT E AND THE **POINT OF BEGINNING**:

THENCE CONTINUING ALONG SAID NORTHERLY LINE NORTH 89°39'16" EAST, A DISTANCE OF 43.62 FEET TO THE EASTERLY LINE OF SAID TRACT E;

THENCE ALONG THE EASTERLY AND SOUTHERLY LINES OF SAID TRACT E THE FOLLOWING (7) COURSES:

1. SOUTH 57°02'52" WEST, A DISTANCE OF 45.69 FEET;
2. SOUTH 36°03'11" WEST, A DISTANCE OF 28.59 FEET;
3. SOUTH 11°24'21" WEST, A DISTANCE OF 84.95 FEET;
4. SOUTH 20°26'43" WEST, A DISTANCE OF 87.17 FEET;
5. SOUTH 00°40'55" EAST, A DISTANCE OF 97.51 FEET;
6. SOUTH 13°55'21" WEST, A DISTANCE OF 47.65 FEET;
7. SOUTH 73°59'32" WEST, A DISTANCE OF 36.13 FEET;

THENCE DEPARTING SAID SOUTHERLY LINE NORTH 14°28'01" EAST, A DISTANCE OF 57.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 135.00 FEET;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°10'45", AN ARC LENGTH OF 35.77 FEET;

THENCE TANGENT TO SAID CURVE NORTH 00°42'44" WEST, A DISTANCE OF 58.42 FEET TO SAID WESTERLY LINE OF TRACT E AND THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 175.00 FEET, THE RADIUS POINT OF SAID CURVE BEARS NORTH 42°52'12" WEST;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING (4) COURSES:

1. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 21°57'10", AN ARC LENGTH OF 67.05 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE WESTERLY HAVING A RADIUS OF 190.00 FEET;

2. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°43'09", AN ARC LENGTH OF 55.44 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE EASTERLY HAVING A RADIUS OF 473.00 FEET;
3. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°06'21", AN ARC LENGTH OF 91.68 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE EASTERLY HAVING A RADIUS OF 300.00 FEET;
4. NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°18'47", AN ARC LENGTH OF 22.58 FEET TO THE POINT OF BEGINNING.

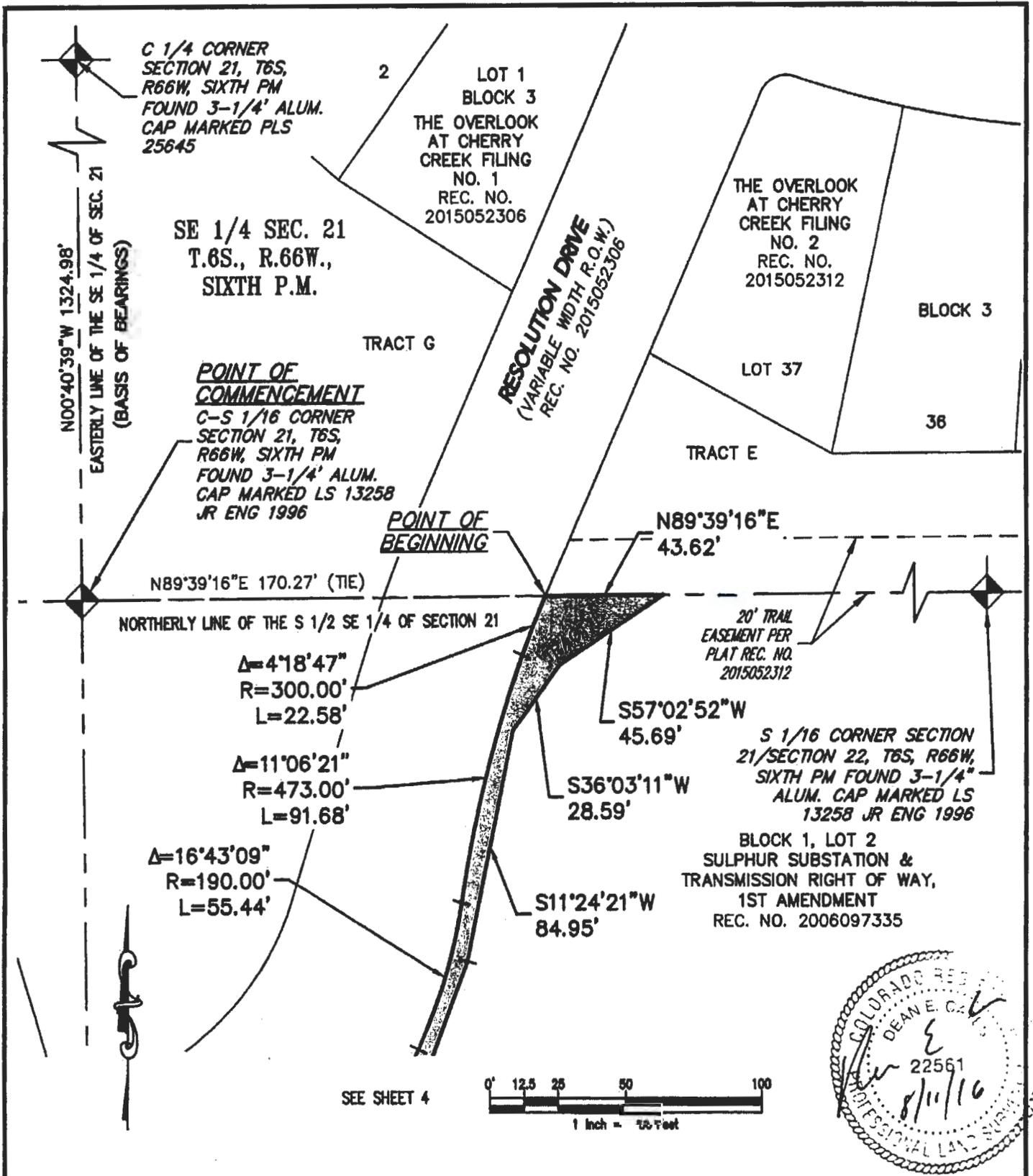
CONTAINING AN AREA OF 0.152 ACRES, (6,642 SQUARE FEET), MORE OR LESS.

EXHIBIT ATTACHED AND MADE A PART HEREOF.



DEAN E. CATES, PLS
FOR AND ON BEHALF OF AZTEC CONSULTANTS, INC.
300 E. MINERAL AVE., SUITE 1, LITTLETON, CO 80122
303-713-1898

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: e:\31916-05\DWG\EXHIBITS
 DWG NAME: PERM ESMT
 DWG: MDW CHK: DEC
 DATE: 08-08-2016
 SCALE: 1" = 50'



300 East Mineral Ave,
 Suite 1
 Littleton, Colorado 80122
 Phone: (303)713-1896
 Fax: (303)713-1897
 www.aztecconsultants.com

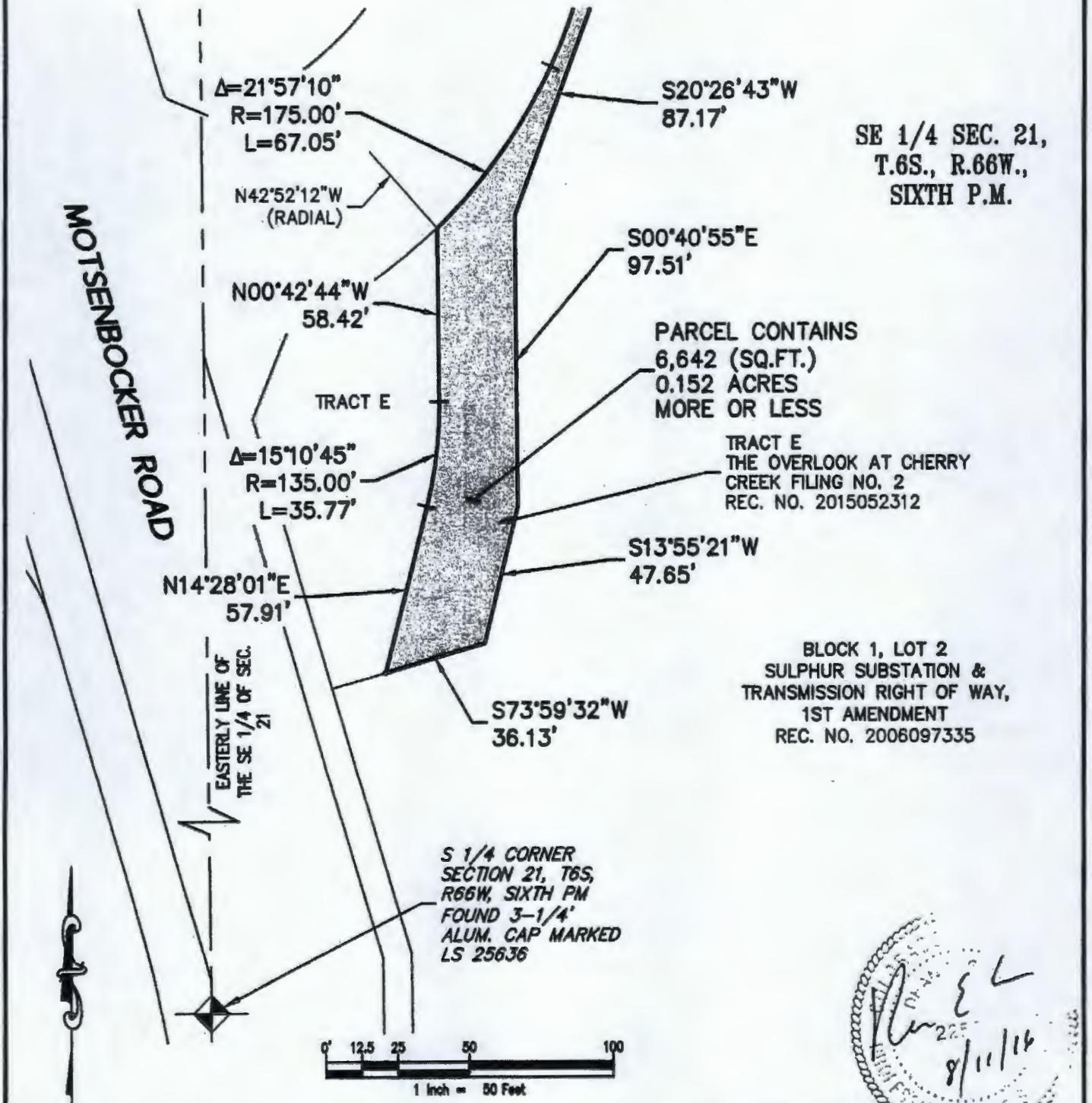
TRAIL EASEMENT
SE 1/4 SEC 21 T6S R66W 6TH PM
PARKER, COLORADO

JOB NUMBER 31916-05

3 of 4 SHEETS

ILLUSTRATION TO EXHIBIT A

SEE SHEET 3



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

PATH: Q:\31916-05\DWG\EXHIBITS
 DWG NAME: PERM ESMT
 DWG: MDW CHK: DEC
 DATE: 08-08-2016
 SCALE: 1" = 50'

AZTEC
 CONSULTANTS, INC.

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

TRAIL EASEMENT
SE 1/4 SEC 21 T6S R66W 6TH PM
PARKER, COLORADO

8/11/16



ITEM NO: 8J
DATE: 01/03/2017

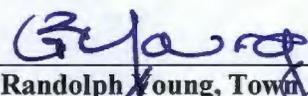
REQUEST FOR TOWN COUNCIL ACTION

TITLE: CONTRACTS ABOVE \$100,000 – 2017 Townwide Resurfacing Program (CIP 17-007)

- | | |
|--|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input checked="" type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input type="checkbox"/> RESOLUTION |



Tom Williams, Director of Public Works & Engineering



G. Randolph Young, Town Administrator

ISSUE:
Award of a trade contractor agreement with Chavez Construction Inc. for the 2017 Townwide Resurfacing Program (CIP 17-007).

PRIOR ACTION:
None.

FUNDING/BUDGET IMPACT:
Funding for this annual roadway maintenance project has been appropriated in the Public Works – Streets fund (101-4310). The Town needs to maintain our roadway investment through annual maintenance activities in order to maximize the usable life.

BACKGROUND:
The Town issued a “Notice to Bidders” for proposals for the 2017 Townwide Resurfacing Program (CIP 17-007) in the second half of November with the proposals (bids) publically opened on December 15, 2016. The project consists of the asphalt pavement milling and overlays on Ponderosa Drive, Omaha Avenue, Willow Park Drive and Club Drive plus on two (2) streets near Gold Rush Elementary School. More detailed information on the 2017 roadway maintenance areas are anticipated to be presented to Town Council at an April study session.

The Town received bids from seven (7) contractors with Chavez Construction Inc. being the lowest responsible bidder. Chavez Construction Inc. has not completed any Town of Parker annual roadway maintenance and capital improvement projects in the past. Town staff has contacted their references and received good feedback. One of the references was for a roadway reconstruction project in the Town of Castle Rock. The Town of Castle Rock provided favorable reviews of their work and would contract with them again in the future. Therefore the Town staff recommends moving forward with the contract award. The bid results were as follows:

1) Chavez Construction	\$ 670,580.60
2) Asphalt Specialties	\$ 726,634.95
3) Brannan Sand & Gravel	\$ 773,121.50
4) PLM Asphalt & Concrete	\$ 778,510.25
5) Martin Marietta Materials	\$ 787,011.02
6) Schmidt Construction	\$ 809,002.50
7) The Perfect Patch	\$ 845,771.19
Engineer's Estimate	\$ 683,000.00

RECOMMENDATION:

Award the contract with Chavez Construction Inc. in the amount of \$ \$670,580.60 for the 2017 Townwide Resurfacing Program (CIP 17-007).

PREPARED/REVIEWED BY:

Chris Hudson, Public Works Manager

ATTACHMENTS:

None.

RECOMMENDED MOTION:

"I move to approve the staff recommendation, as a part of the consent agenda."



ITEM NO: 8J(2)
DATE: 01/03/2017

REQUEST FOR TOWN COUNCIL ACTION

TITLE: CONTRACTS ABOVE \$100,000 - Parker Consolidated School Restoration Project - Phase III

- | | |
|--|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input checked="" type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input type="checkbox"/> MOTION | <input type="checkbox"/> RESOLUTION |

Elaine Mariner

Elaine Mariner, Cultural Director

G. Randolph Young

G. Randolph Young, Town Administrator

ISSUE:

Award of a trade contractor agreement with Wattle & Daub Contractors for the Parker Consolidated School, Phase III restoration work on the Parker Consolidated School (Mainstreet Center/Schoolhouse).

PRIOR ACTION:

In May 2014, Town Council approved the State Historic Fund grant contract for Phase I to fund restoration work on the front windows and entrance at the Parker Consolidated School (Mainstreet Center). On March 2, 2015, Town Council approved a resolution approving a competitive proposal process for this project. Town Council approved the award to Wattle & Daub Contractors on March 16, 2015, for Phase I work. In April 2015, Town Council approved the State Historic Fund grant contract for Phase II for basement work. On November 16, 2015, Town Council approved the Phase II-A agreement. Then on January 19, 2016, and February 16, 2016, the Council approved contract modifications to the Phase II-A agreement. On March 7, 2016, Town Council awarded Phase II-B to Wattle & Daub Contractors and then approved a contract modifications on July 18, 2106 and September 6, 2016. Town Council also approved a single source contract resolution on September 6, 2016. In November 2016, Town Council approved the State Historic Fund grant contract for Phase III for upstairs and exterior work.

FUNDING/BUDGET IMPACT:

Funding for this work has been appropriated.

BACKGROUND:

Phases I and II which comprised mostly of schoolhouse basement work has been completed. The final phase (Phase III) will include first floor and exterior work. Major contract items will include cleaning and attaching radiators, restoring and repairing windows and doors, installing an elevator, and replacing the roof. Wattle & Daub Contractors has and continues to do excellent restoration work. Completion of Phase III is anticipated to be in the fall of 2017.

RECOMMENDATION:

Award the contract with Wattle & Daub Contractors in the amount of \$937,655 for the Parker Consolidated School Restoration Project, Phase III.

PREPARED/REVIEWED BY:

Thomas Gill, Associate Project Manager
Chris Hudson, Public Works Manager
Elaine Mariner, Cultural Director

ATTACHMENTS:

None

RECOMMENDED MOTION:

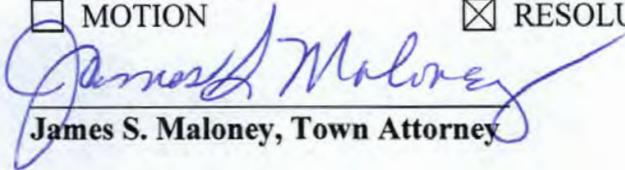
"I move to approve the staff recommendation, as a part of the consent agenda."

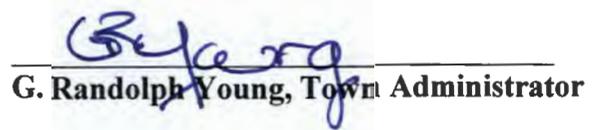


REQUEST FOR TOWN COUNCIL ACTION

TITLE: RESOLUTION NO. 017-008 – A Resolution Approving the Form of Intergovernmental Agreement Proposed to Be Entered Into by Belford South Metropolitan District Regarding the Assignment to the District of Water and Wastewater Service Equivalents by Stonegate Village Metropolitan District

- | | |
|---|--|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 st READING |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 nd READING |
| <input type="checkbox"/> MOTION | <input checked="" type="checkbox"/> RESOLUTION |


James S. Maloney, Town Attorney


G. Randolph Young, Town Administrator

ISSUE: The Intergovernmental Agreement (the “IGA”) between the Town and the Belford South Metropolitan District (the “District) requires that the District obtain the review and approval of the Town before the District can enter into any intergovernmental agreement. The District is requesting that the Town approve an intergovernmental agreement between the District and Stonegate Village Metropolitan District (“SVMD”) and Compark Business Campus Metropolitan District (“CBCMD”).

PRIOR ACTION: The Town Council approved the Service Plan for the District on March 21, 2016 (the “Service Plan”). The Town Council approved the IGA between the Town and the District on September 6, 2016.

FUNDING/BUDGET IMPACT: None.

BACKGROUND: The Service Plan anticipates the District will receive water and wastewater services from SVMD. More specifically, the Service Plan anticipates the District will become a party to an agreement with SVMD and CBCMD to obtain an allocation of capacity in SVMD's system, and address other matters including funding of SVMD facilities necessary to serve the build-out of the Belford South project and SVMD's service area. For this purpose, the District proposes to enter into the "Assignment of Water and Wastewater SFE- Belford South 204" with SVMD and CBCMD ("Belford Assignment Agreement") referenced in the attached report.

The IGA provisions of the Service Plan state any intergovernmental agreement with SVMD, as well as any other intergovernmental agreement proposed regarding the subject matter of the Service Plan, shall be subject to review and approval by the Town prior to execution. Town review is with reference to whether the intergovernmental agreement is in compliance with the Service Plan, the IGA between the Town and the District, and the terms of any Approved Development Plans or other instruments related to the Public Improvements.

Based on the District's letter and the drafts provided, as referenced in the attached report, it appears the Belford Assignment Agreement is consistent with the Service Plan and Town-District IGA. Section 3 of the attached Resolution contains a specific finding that the Town

Council's approval of the form of the agreement does not in any manner alter or waive any requirements of the Service Plan, the Town-District IGA, or any Approved Development Plans.

RECOMMENDATION: Approve.

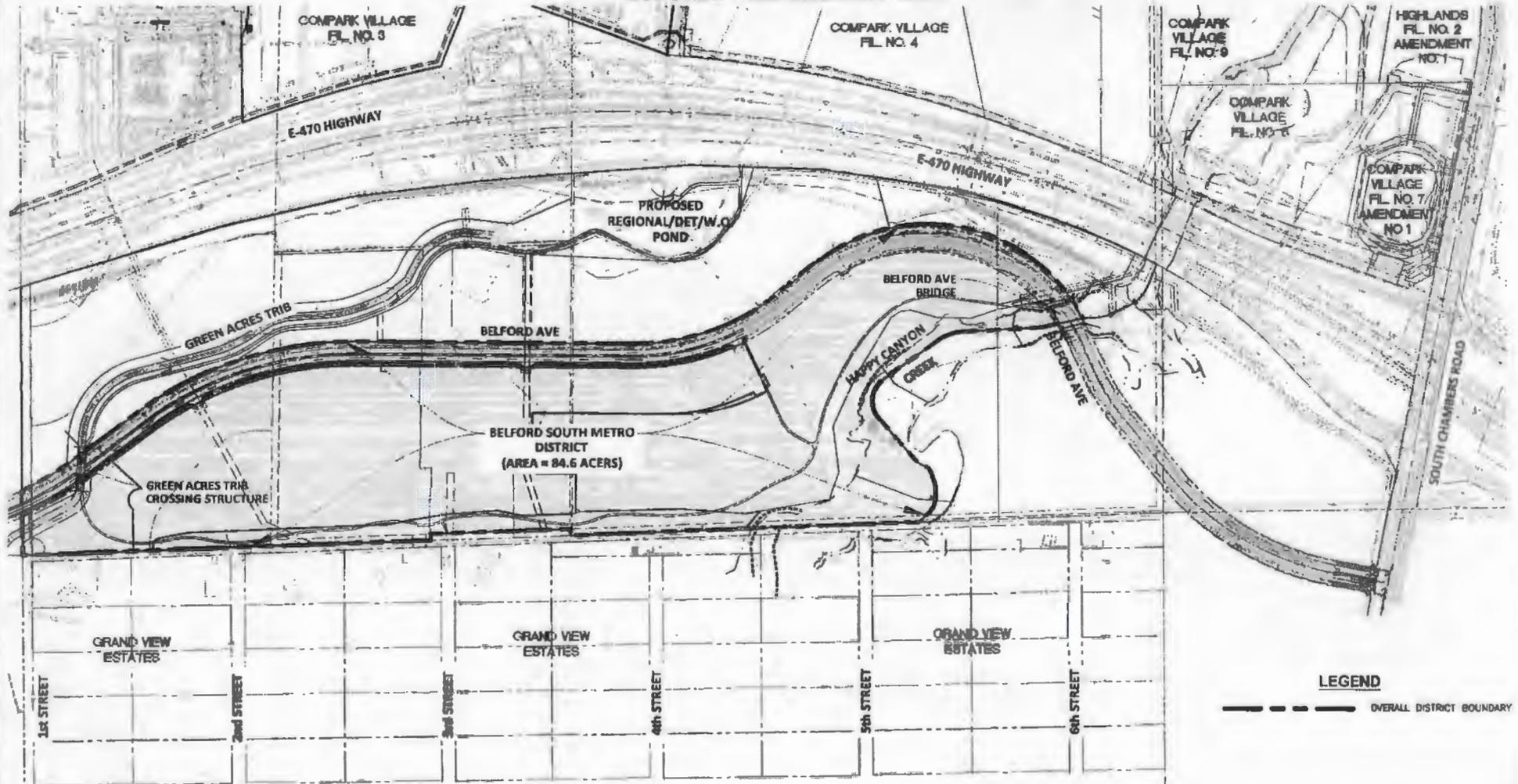
PREPARED/REVIEWED BY: Tom Williams, Director of Engineering; Patrick Mulready, Senior Planner; Sam Light, Esq., Special Counsel; James S. Maloney, Town Attorney

ATTACHMENT(S):

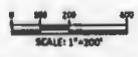
1. Map
2. Resolution No. 17-008
3. Written report

RECOMMENDED MOTION: "I move to approve Resolution No. 17-008."

**EXHIBIT C-1
BELFORD SOUTH METROPOLITAN DISTRICT
DISTRICT BOUNDARY MAP**



LEGEND
 - - - - - OVERALL DISTRICT BOUNDARY



SHT 1 OF 1



RESOLUTION NO. 17-008, Series of 2017

TITLE: A RESOLUTION APPROVING THE FORM OF INTERGOVERNMENTAL AGREEMENT PROPOSED TO BE ENTERED INTO BY BELFORD SOUTH METROPOLITAN DISTRICT REGARDING THE ASSIGNMENT TO THE DISTRICT OF WATER AND WASTEWATER SERVICE EQUIVALENTS BY STONEGATE VILLAGE METROPOLITAN DISTRICT

WHEREAS, THE TOWN COUNCIL OF PARKER FINDS:

A. By Resolution No. 16-022, the Town Council of the Town of Parker on March 21, 2016, approved a Service Plan (“Service Plan”) for the organization of Belford South Metropolitan District (“District”).

B. Section X of the Service Plan states in part that it is anticipated the District will become a party to an agreement with Compark Business Campus Metropolitan District (“CBCMD”) and Stonegate Village Metropolitan District (“SVMD”) relative to the allocation of capacity in SVMD’s water and wastewater systems to serve the District with SVMD water and wastewater service, and addressing other matters, including the construction of Public Improvements necessary to serve the District, and the funding of existing and future costs of improvements and/or expansions to the SVMD wastewater treatment plant, the SVMD water treatment plant, and the SVMD water supply system necessary to serve the build-out of the SVMD service area, including the Belford South Project within the District.

C. Pursuant to Section X of the Service Plan, any intergovernmental agreement with SVMD, and any other intergovernmental agreement proposed regarding the subject matter of the Service Plan, shall be subject to review and approval by the Town prior to execution thereof by the District, which Town review and approval shall be with reference to whether the intergovernmental agreement is in compliance with the Service Plan, the Intergovernmental Agreement between the Town and the District, and the terms of any Approved Development Plan or other instrument related to the Public Improvements.

D. The District has submitted to the Town a proposed “Assignment of Water and Wastewater SFE – Belford South 204” intergovernmental agreement by and among the District, SVMD and CBCMD (“District IGA”), which is attached hereto as **Exhibit 1** and incorporated herein by this reference, and is subject to Town review pursuant to Section X of the Service Plan.

E. Pursuant to state statute, the Town of Parker Municipal Code, and the Service Plan, the Town Council has authority to review the proposed District IGA.

F. The Town Council has reviewed the proposed District IGA and the related information submitted by and on behalf of the District in connection therewith and, based upon the representations of the District set forth in the proposed District IGA and in such related information, the Town Council has determined to adopt this resolution approving the form of the proposed District IGA.

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

Section 1. The foregoing recitals are incorporated in and made a part of this Resolution.

Section 2. Based upon the representations of the District, including the representations set forth in the proposed District IGA and in the related information submitted by and on behalf of the District in connection therewith, the Town Council of the Town of Parker hereby approves the District IGA in the form accompanying this Resolution, subject to Section 3 hereof.

Section 3. Town approval herein of the form of the District IGA does not in any manner amend, effect, alter, change or constitute any waiver or release of any terms, conditions, provisions, or requirements of the Service Plan or any intergovernmental agreement between the Town and the District. Further, Town approval herein of the form of the District IGA does not in any manner amend, effect, alter, change or constitute any waiver or release of any terms, conditions, provisions, or requirements of any development plans, annexation agreement, subdivision agreement, and other agreement with the Town governing development and the completion of Public Improvements within the District, all of which plans and agreements, including, without limitation, the Approved Development Plan, as defined in the Service Plan, and the Compark Village South Annexation Agreement, remain in full force and effect in accordance with their terms. Town approval herein of the form of the District IGA shall not be construed as a waiver of any of the Town's rights or remedies under the Service Plan, any intergovernmental agreement between the Town and the District, or any plans and agreements.

RESOLVED AND PASSED effective as of the ____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

EXHIBIT 1

DRAFT
McGEADY BECHER P.C.
December 21, 2016

ASSIGNMENT OF WATER AND WASTEWATER SERVICE SFE - BELFORD SOUTH 204

THIS ASSIGNMENT OF WATER AND WASTEWATER SERVICE SFE – BELFORD SOUTH 204 (this “Assignment”) is entered into to be effective as of the ___ day of _____, 2016 (the “Effective Date”), by and among STONEGATE VILLAGE METROPOLITAN DISTRICT, acting by and through its Water and Sewer Enterprise Funds (“SVMD”), COMPARK BUSINESS CAMPUS METROPOLITAN DISTRICT f/k/a E-470 Business Metropolitan District, in a limited capacity (“CBCMD” or “Assignor”) and BELFORD SOUTH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“Assignee”), each individually, a “Party,” and collectively, the “Parties.”

DEFINITIONS

1. “1997 Regional Facilities Agreement” – the December 4, 1997 Regional Facilities Agreement between SVMD and E-470 Business Metropolitan District as amended by that certain First Amendment to Regional Facilities Agreement dated August 31, 1998, by that certain Second Amendment to Regional Facilities Agreement dated March 15, 1999, by that certain Third Amendment to Regional Facilities Agreement dated August 15, 2001, and by that certain Fourth Amendment to Regional Facilities Agreement dated July 3, 2008.
2. “Agreement” – the Amended and Restated Regional Water and Wastewater Service Agreement between SVMD and CBCMD dated October 11, 2016, as amended from time to time.
3. “Annual Update” – the annual update, revision, supplement, or review of the SVMD Water and Wastewater Master Plan to reflect the best available information on the Water System and Wastewater System, including the basis and timing of anticipated Capital Costs, as determined appropriate or necessary at the sole discretion of SVMD.
4. “Assigned SFEs” – the Two Hundred Four (204) SFEs of CBCMD’s excess wastewater service capacity, defined as “CBCMD’s Excess Wastewater Service Capacity” in the Agreement, and water service capacity, defined as “CBCMD’s Excess Water Service Capacity” in the Agreement, transferred to Assignee pursuant to this Assignment.
5. “Assignee” or “BSMD” – Belford South Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services, whose jurisdictional boundaries are the same as “Assignee’s Service Area,” as shown on Exhibit A attached hereto and incorporated herein.
6. “Assignee’s Constructed Facilities” – water distribution and supply lines, pump stations, facilities, sewage collection lines, lift stations, irrigation lines, storage facilities, effluent land application facilities, storage or disposal areas and facilities, meters and data acquisition systems necessary for tele-monitoring, and any other facilities necessary, in the reasonable

opinion of the SVMD, to be constructed by Assignee and connected to the Wastewater System or Water System, Pursuant to Section 4.6 of this Assignment, to connect to the Water System and Wastewater System to provide service to Assignee's Service Area.

7. **"Assignee's Wastewater Service Ratio Portion"** – the 3.98% portion of the Wastewater Service Ratio assigned to Assignee based on the Assigned SFEs to the SVMD Service Area. The Wastewater Service Ratio is currently calculated as 23.5%, inclusive of such 3.98%.

8. **"Assignee's Water Service Ratio Portion"** – the 3.83% portion of the Water Service Ratio assigned to Assignee based on the Assigned SFEs to the SVMD Service Area. The Water Service Ratio is currently calculated as 23.25%, inclusive of such 3.83%.

9. **"Assignee's Service Area"** – the area that will receive water or wastewater service through the Water System or Wastewater System pursuant to this Assignment, as shown on Exhibit A attached hereto and incorporated herein.

10. **"Assignment"** – this Assignment of Water and Wastewater Service SFE – Belford South 204.

11. **"BNMD"** – Belford North Metropolitan District, a metropolitan district anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South.

12. **"Bonds"** – Collectively the Wastewater Bonds and the Water Bonds.

13. **"Capital Costs"** - Any costs incurred by SVMD necessary to meet requirements of state or federal laws and regulations, to acquire, develop or maintain a water supply, including costs associated with continued development of a renewable water supply, and for improvements, upgrades, or expansions to the Wastewater System and Water System necessary or appropriate to provide service within the SVMD Service Area. Capital Costs include previous and future payments on Debt or other financial obligations used for the same purposes. Capital Costs do not include the cost of Assignee's Constructed Facilities; which costs are the sole responsibility of Assignee. Capital Costs include, but are not limited to costs of materials, components, labor costs, change orders, design engineering, construction engineering, landscape architecture, soil testing and inspection, line and systems testing and inspection, site and right of way acquisition costs, and all legal, accounting, and other professional costs incurred in connection with the Capital Costs.

14. **"Capital Cost Share"** – Assignee's share of a Capital Cost, calculated as a Capital Cost associated with Wastewater System multiplied by Assignee's Wastewater Service Ratio Portion or a Capital Cost associated with the Water System multiplied by the Assignee's Water Service Ratio Portion.

15. **"Capital Cost True-Up Payment"** – A payment made by Assignee calculated by multiplying the Capital Costs by the difference between the Assignee's Wastewater Service Ratio Portion or the Assignee's Water Service Ratio Portion and ratio of the actual SFEs in

service, as illustrated in the chart on Exhibit C attached hereto and incorporated herein, as amended from time to time.

16. **“CBCMD”** - Compark Business Campus Metropolitan District f/k/a E- 470 Business Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, whose jurisdictional boundaries are shown on Exhibit A attached hereto and incorporated herein.

17. **“CHMD”** – Collectively, one or more metropolitan districts to be named the Chambers High Point Metropolitan District and anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services.

18. **“CBCMD’s Excess Wastewater Service Capacity”** – a portion of the Wastewater System Capacity within the CBCMD Wastewater Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

19. **“CBCMD’s Excess Water Service Capacity”** – a portion of the Water System Capacity within the CBCMD Water Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

20. **“Compark Service Area”** – an area previously described as the “Property” by the RFA, located in Douglas County, Colorado, and which includes Compark South, and is limited to the area described in Exhibit B, attached hereto and incorporated herein.

21. **“Compark South”** – A portion of the Compark Service Area as shown on the attached Exhibit B. Compark South includes the area within the District boundaries of BSMD, and the areas anticipated to be included within the District boundaries of BNMD and CHMD, when those Districts are organized.

22. **“Connection Charge”** – a rate, fee, toll, charge or combinations thereof, for a service user to have the right to make a physical connection between a service line and the Water System or Wastewater System. Connection Charges are imposed each time a connection is made to pay the cost associated with SVMD making, inspecting, or administering the physical connection. A connection charge is imposed in addition to usage fees or charges and System Access Fees.

23. **“Debt”** – the Bonds, future bonds or other debt obligations.

24. **“Effective Date”** – the effective date of this Assignment, _____, 2016.

25. **“Notice of Disagreement”** – a written notice given by one Party to another Party if a dispute arises under this Assignment, explaining the dispute and at least one alternative for a solution.

26. **“Party” and “Parties”** – individually or collectively the signatories to this Assignment.
27. **“PMD”** – E-470 Potomac Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, whose jurisdictional boundaries are shown on Exhibit A attached hereto and incorporated herein.
28. **“Projected Buildout”** – projected demand for service from the Water System or Wastewater System expressed in SFEs, determined from the land use approvals and existing planning and use data in effect from the applicable municipal or county government.
29. **“Resolution Committee”** – the President of the Board of Directors of SVMD, CBCMD and the authorized representative of the Assignee involved in a Notice of Disagreement, or designees thereof, and a Colorado registered professional engineer jointly appointed by agreement of the other members of the Board of Directors of SVMD and the appropriate persons of Assignee, which engineer shall have knowledge of the subject matter of the dispute (i.e., if a water facility is the subject of the dispute, the engineer shall have some knowledge of water systems engineering).
30. **“Rules and Regulations”** – the Rules and Regulations of SVMD adopted, amended and enforced pursuant to §32-1-1001(1)(m), C.R.S.
31. **“Service Area”** – An area provided water or wastewater service through the Water System or Wastewater System. As of the effective date of the Assignment, the SVMD Service Area comprises the property within the boundaries of SVMD, the boundaries of Lincoln Park Metropolitan District, and the Compark Service Area.
32. **“Service Charges”** – reoccurring periodic charges for service provided through the Water System and Wastewater System. Service charges currently are set by SVMD 2015 Resolution dated August 19, 2015 and include water and wastewater monthly usage fees and a WISE Renewable Water Fee, as may be amended from time to time.
33. **“SFE”** – the equivalent water or sewer service demand associated with a single family residential unit, as from time to time set forth and revised in the Rules and Regulations. As of the Effective Date, for purposes of planning and considering water treatment plant capacity and wastewater treatment plant capacity, one SFE of Water Service corresponds to approximately 1,053 gallons per day of treated water and one SFE of wastewater service corresponds to approximately 242.4 gallons per day of wastewater treatment. The number of SFEs associated with any specific use will be determined based on a standard conversion table or Rules and Regulations adopted by SVMD and amended from time to time.
34. **“SVMD”** – Stonegate Village Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, acting by and through its Water Utility Enterprise Fund and Sewer Utility Enterprise Fund, whose jurisdictional boundaries are shown on Exhibit A, attached hereto and incorporated herein.

35. **"SVMD Water and Wastewater Master Plan"** – a master plan of the Water System and the Wastewater System that is under development by SVMD at the time of the Effective Date and which is anticipated to be adopted by SVMD in 2016. The SVMD Water and Wastewater Master Plan will include, but not be limited to, a renewable water capital plan to identify infrastructure and water rights necessary to provide renewable water supplies within the Service Area.

36. **"System Access Fee"** – a fee imposed by SVMD on an individual service user within the Assignee's Service Area prior to connection to enable the service user to receive service from the Water System and Wastewater System. The System Access Fee as of the Effective Date is \$2,975.70 per SFE combined water and sewer tap. The System Access Fee shall be adjusted annually on September 1 of each year by the percentage increase or decrease in inflation as defined in Art. X, Sec. 20 of the Colorado Constitution, as determined by SVMD.

37. **"Termination Notice"** – written notice provided by SVMD to Assignee of SVMD's intent to terminate or suspend additional water and wastewater connections utilizing capacity in the Water System or Sewer System by Assignee, which shall contain at least:

- a. the specific cause for the proposed termination or suspension, including a demonstrated justification therefor;
- b. the duration of the proposed termination or suspension;
- c. at least one reasonable cure that Assignee may implement that would be acceptable to SVMD to avoid the termination or suspension, if possible. SVMD shall use best efforts to suggest a cure that will allow continued availability of service and new taps to Assignee at all times, and shall, if not prohibited by law, continue to make continued service and taps available without interruption up to the Assigned SFEs if the suggested cure is actually implemented, and assuming compliance with the Rules and Regulations by the individual customer;
- d. the method to be used by SVMD to continue service to taps within Assignee's Service Area previously connected to the Water System or Wastewater System, assuming continued adherence to the SVMD Rules and Regulations by the owners of such taps;
- e. the name of a person who can provide more information; and
- f. the effective date for commencement of the termination or suspension.

38. **"Unused Assigned SFEs"** – any Assigned SFE's not connected to and being served by the Water System and Wastewater System.

39. **"Wastewater Bonds"** – Wastewater Enterprise Revenue Bonds, Series 2014 issued by SVMD to improve and expand the Wastewater System.

40. **"Wastewater Service Capacity"** – the capacity of the Wastewater System, which may change from time to time, but which currently is estimated at 1,100,000 gallons per day (1.1 mgd).

41. **“Wastewater Service Ratio”** – the ratio of wastewater SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as 23.5% (1,205 SFEs Compark Service Area; 5,130 SFEs SVMD Service Area).

42. **“Wastewater System”** – the SVMD wastewater treatment plant, as well as related wastewater collection, conveyance, measurement, and discharge facilities, lift stations, force mains, meters, pipelines, manholes and other related appurtenances.

43. **“Water Bonds”** – Water Enterprise Revenue Bonds, Series 2015 issued by SVMD to improve or expand the Water System.

44. **“Water Service Capacity”** – the capacity of the Water System, which may change from time to time, but currently is estimated at 5,760,000 gallons per day (5.76 mgd).

45. **“Water Service Ratio”** – the ratio of water SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as 23.25% (1,237 SFEs Compark Service Area; 5,321 SFEs total SVMD Service Area).

46. **“Water System”** – the SVMD water treatment plant, as well as related water collection, storage, pipelines, conveyance and measurement facilities, meters, wells, and pump stations, storage and storage rights, ground and renewable water and water rights.

RECITALS

A. SVMD and CBCMD’s predecessor, E-470 Business Metropolitan District, entered into the 1997 Regional Facilities Agreement whereby SVMD allocated 1205 SFEs of capacity in its Wastewater System and Water System to CBCMD to serve portions of the Compark Service Area.

B. CBCMD and SVMD entered into the Amended and Restated Regional Water and Wastewater Service Agreement whereby CBCMD may assign a portion of CBCMD’s Excess Wastewater Service Capacity and CBCMD’s Excess Water Service Capacity.

C. CBCMD desires to assign certain rights, title, interests and obligations it may have under the Agreement, to Assignee, and Assignee desires to assume such rights, title, interests and obligations from CBCMD.

D. Specifically, CBCMD desires to transfer the Assigned SFEs in the SVMD Water and Wastewater System to Assignee and Assignee desires to assume the same.

E. Assignee agrees to construct the Assignee’s Constructed Facilities and pay the pro-rata share of the Capital Cost Share associated with the Assigned SFEs.

F. SVMD and Assignee desire to set forth the rights, obligations, and procedures for the assignment of the SFEs in the SVMD Water and Wastewater System from CBCMD’s Excess Wastewater Service Capacity and CBCMD’s Excess Water Service Capacity.

COVENANTS

NOW, THEREFORE, IN CONSIDERATION of the above recitals, the mutual covenants, considerations and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties Agree as follows:

ARTICLE I INCORPORATION

1.1 **Incorporation of Definitions and Recitals.** The definitions and recitals set forth above are incorporated into the terms of this Assignment.

1.2 **SVMD Rules and Regulations.** Assignee agrees to comply with SVMD's Rules and Regulations, as such is required by Section 1.2 of the Agreement.

ARTICLE II ASSIGNMENT AND TERM OF ASSIGNMENT

2.1 **Assignment; Assumption.** As of the Effective Date, CBCMD hereby transfers the Assigned SFEs to Assignee. As of the Effective Date, Assignee hereby accepts the Assigned SFEs and assumes and agrees to be bound by the terms of this Assignment and SVMD's Rules and Regulations related thereto.

2.1.1 **Restrictions on Assigned SFEs.** Assignee shall not sell, pledge, assign, encumber or alienate any Assigned SFEs for use outside of BSMD's boundaries without the prior consent of both SVMD and CBCMD.

2.2 **Unused Assigned SFEs.**

2.2.1 **Reverter of Unused Assigned SFEs.** Any Unused Assigned SFEs shall revert back to CBCMD pursuant to the terms of this Section 2.2. Upon the determination of the existence of any Unused Assigned SFEs, Assignee shall provide CBCMD notice of the number of Unused Assigned SFEs. Upon thirty (30) days of receipt of such notice, the unused SFEs shall revert back to CBCMD, unless either Assignee or CBCMD object to such reverter. If such objection exists, Assignee and CBCMD will resolve the dispute in accordance with Section 6.5 of this Assignment.

2.2.2 **Determination of Unused Assigned SFEs.** Unused Assigned SFEs shall be determined at the following time: (i) for residential property when the property is fully platted, and (ii) for commercial property when all the area within the property has been included in one or more site plans. Notwithstanding the above provision, if Assignee forfeits its Assigned SFEs under this Assignment pursuant to Section 5.8 or Section 6.4, any Unused Assigned SFEs shall be determined as of the date of dissolution or the date SVMD terminates service, respectively.

2.3 **Limited Party.** CBCMD is a limited party for the purpose of this Assignment. CBCMD agrees only to transfer the Assigned SFEs to Assignee and to accept any Unused

Assigned SFEs pursuant to Section 2.2, if applicable, and has no other responsibility or obligation under this Agreement to either Assignee or SVMD.

2.4 **Release.** The Parties agree that effective upon the transfer of the Assigned SFEs, CBCMD is released of any and all liability relating to Assignee's use of the Assigned SFEs and Assignee's compliance with SVMD's Rules and Regulations. In addition, CBCMD's Wastewater Service Ratio and Water Service Ratio are reduced as set forth in Section 3.1.4 hereof, and may be adjusted in the future as provided for in Section 3.1.4. Such release terminates either upon the connection of all the Assigned SFEs to the Water System and Wastewater System or upon any Unused Assigned SFEs reverting back to CBCMD pursuant to the terms of Section 2.2, at which time the rights and obligations of CBCMD and SVMD will be determined in accordance with the Agreement.

2.5 **Consent.** SVMD's execution of this Assignment shall constitute SVMD's consent to allow CBCMD to transfer the Assigned SFEs to Assignee.

2.6 **Term of Assignment.** This Assignment shall become effective upon execution and shall continue until all Assigned SFEs have been connected to and are being served by SVMD's Water System and Wastewater System or until all Unused Assigned SFEs revert back to CBCMD pursuant to the terms of Section 2.2.

ARTICLE III WATER AND WASTEWATER CAPACITY AND SERVICE

3.1 **Service Capacity Allocations.**

3.1.1 **Projected Service Needs.** Based on the Projected Buildout, SVMD is anticipated to provide wastewater service to 5130 SFEs and water service to 5321 SFEs. Of those totals, the Compark Service Area is projected to require 1205 SFEs of wastewater service and 1237 SFEs of water service, with 638 SFEs of wastewater service and 670 SFEs of water service projected to be served within the CBCMD and PMD boundaries, and Compark South requiring 567 SFEs of water and wastewater service. The area within Compark South is anticipated to be included within the district boundaries of BNMD, BSMD, and/or CHMD.

3.1.2 **Service Capacity.** The Water Service Capacity and Wastewater Service Capacity are currently limited primarily by the treatment capacity of the SVMD water treatment plant and wastewater treatment plant, though other portions of the Wastewater System and Water System may, from time to time, require upgrades, improvements, enlargements and other modifications to maintain or increase Water Service Capacity and Wastewater Service Capacity.

3.1.3 **Service Commitment.** Contingent on satisfaction of conditions and payments as provided in this Assignment, SVMD shall make available Wastewater System Capacity in the amount of the Assignee's Wastewater Service Ratio Proportion and Water System Capacity in the amount of the Assignee's Water Service Ratio Proportion, to provide wastewater and water service to Assignee's Service Area.

3.1.4 **Service Ratios.** CBCMD acknowledges that after the transfer of the Assigned SFEs to Assignee, the Wastewater Service Ratio and the Water Service Ratio for CBCMD will be adjusted to 19.51% and 19.41%, respectively, unless and until forfeiture and the Unused Assigned SFEs revert back to CBCMD pursuant to Section 2.2 of this Assignment, at which time the Wastewater Service Ratio and the Water Service Ratio for CBCMD shall be adjusted accordingly.

3.1.5 **Service Ratio Revisions.** The Wastewater Service Ratio and Water Service Ratio may be revised, resulting in a revision to the Assignee's Wastewater Service Ratio Proportion and Assignee's Water Service Ratio Proportion, in SVMD's reasonable discretion, without amendment of this Agreement in the event that the Projected Buildout or actual development changes. SVMD shall provide Assignee with written notice of and the opportunity to be heard prior to any changes to the Wastewater Service Ratio and Water Service Ratio.

3.2 **No Guarantee of Service, Limitations.**

3.2.1 **Service Capacity Uncertainties.** The Parties acknowledge that there is currently Water Service Capacity sufficient to serve the Projected Buildout of the SVMD Service Area, including all of the Compark Service Area, which includes Assignee's Service Area. Based on Projected Buildout, currently, there may not be sufficient Wastewater Service Capacity now existing to serve the Service Area. Historic development has generally been less than Projected Development, which may result in sufficient Wastewater Service Capacity to serve Compark South. Assignee also acknowledges that while the Compark Service Area Wastewater Service Ratio and Water Service Ratio are calculated from Projected Buildout expressed in terms of SFEs of wastewater or water service demand, until System Access Fees have been paid by Assignee and accepted by SVMD there is no guarantee that the Wastewater Service Capacity or Water Service Capacities can be converted to any specific number of SFEs. Further, Water Service Capacity or Wastewater Service Capacity may change based on the age of facilities, regulatory changes imposed by third parties, operational changes, facility upgrades, actual development and other factors. Therefore, there is no guarantee that SVMD will have at any point in time sufficient Wastewater Service Capacity or Water Service Capacity to provide service to the Compark Service Area, Compark South, or any other user with the SVMD Service Area when requested without system improvements or expansions as provided in the Agreement.

3.2.2 **Water Supply.** Water supply for the Water System is dependent upon natural resources and sources from which the quantity is variable and beyond the control of SVMD. Similarly, the provision of water and wastewater services is subject to various local, state and federal agencies. No liability shall attach to SVMD for any failure to accurately anticipate availability of the water supply, the availability of sewage treatment capacity, or the need to incur Capital Costs due to occurrences beyond the reasonable control of SVMD.

3.2.3 **Tap Curtailment.** If conditions develop such that it becomes apparent to SVMD that all areas outside SVMD's boundaries for which such services have been committed cannot be supplied adequately pursuant to this and similar agreements, SVMD reserves the right to discontinue the granting of additional taps; provided, however, SVMD shall be obligated to exercise this right of discontinuance uniformly outside and inside SVMD.

3.2.4 Access to Service. Access to wastewater and water service shall be on a first come first served basis, based on payment of all System Access Fees.

3.2.5 Insufficient Capacity. SVMD may deny connection to the Wastewater System or Water System if it determines, in its reasonable discretion, that Wastewater or Water Service Capacity are insufficient, until such time as additional Wastewater or Water Service Capacity is made available as provided in this Assignment.

3.2.6 Shortages and Limitation on Service. SVMD may, in order to comply with any applicable law, rule, directive, or order, and to enable it to provide adequate services to the SVMD Service Area, as well as other customers of SVMD in times of shortage or other practical or legal limitations on the ability of SVMD to provide the services contemplated under this Assignment, limit the delivery of water and sewer services, and/or restrict the use of water delivered under this Assignment. The extent to which limitation of services may be necessary to enable SVMD to provide adequately for all users of Water System and Wastewater System is a fact to be determined by SVMD as the occasion may require. The current determination by SVMD on this subject, which will not be changed without good reason, is as follows:

“The welfare of SVMD and its inhabitants requires stable water and sewer services not only for them but also that part of the adjacent area dependent on SVMD for the delivery of water and sewer services. While it is the purpose of SVMD to maintain systems and supplies adequate to meet the needs of all dependent upon SVMD for water and sewer services, there are many elements which make it uncertain whether such services can always be adequate for all, and therefore, in times of shortage or other practical or legal limitation, water use and use of SVMD's water and wastewater systems will be curtailed on the following basis, the first listed curtailment being adopted to meet the least serious situation and the succeeding curtailment being adopted in addition to prior listed curtailments, and the last curtailment to meet the gravest possible situation and one which every reasonable precaution must be taken to avoid, to-wit:

1. Restriction of uses (such as irrigation), which can be accomplished without serious injury to person or property and prohibition of non-essential uses.
2. Prohibition of irrigation except for commercial greenhouses.
3. Prohibition of every use except for domestic use and for essential commercial enterprises and industry.
4. Prohibition of all use except domestic uses.
5. In order to enable SVMD to provide an adequate supply of water to the people of SVMD without impairment of

essential deliveries of water under this and similar agreements, SVMD will impose any restrictions or prohibitions contemplated by Item 1. through 4., above, uniformly inside and outside SVMD.”

3.3 **Nature of Water Use.** All water furnished by SVMD is on a leasehold basis for users within the Assignee’s Service Area, which is within the Compark Service Area, for all the purposes for which SVMD has been decreed the right to appropriate water. Use of SVMD water does not include any right to make a succession of uses of such water. Upon completion of the primary use by a water user, all dominion over the water reverts completely to SVMD. All property rights to the water to be furnished by SVMD are reserved in SVMD. Nevertheless, there is no obligation on Assignee or on the water users within Assignee’s Service Area to create any particular volume of return flow from water delivered pursuant to this Assignment.

ARTICLE IV CONSTRUCTION AND COSTS OF SYSTEM FACILITIES, AND SERVICE

4.1 **Capital Cost Share.** To provide its proportional funding of Capital Costs associated with the Water System and Wastewater System, Assignee shall pay SVMD Assignee’s Capital Cost Share.

4.2 **Future Capital Costs.** Assignee is responsible for paying for future Capital Costs incurred by SVMD, including future payments on Debt or other financial obligations, in the amount of Assignee’s Capital Cost Share. Future Capital Costs shall be paid by Assignee by one or a combination of the following methods, at the discretion of SVMD:

4.2.1 **Capital Costs Paid without Rate Funding.** If SVMD funds Capital Costs without including the Assignee’s Capital Cost Share within its water and wastewater rates, fees, tolls, or charges applied within Assignee’s Service Area, Assignee shall pay the full amount of Assignee’s Capital Cost Share directly to SVMD. Subject to Section 5.4, Assignee shall pay its Capital Costs Share not less than thirty (30) days prior to SVMD incurring the obligation resulting in the Capital Cost, or if the Capital Cost is financed not less than thirty (30) days prior to the due date for SVMD to make its financing payment.

4.2.2 **Rate Refunding and True-Up Payment.** Assignee acknowledges that active service to SFEs may not be in proportion to projected SFEs at buildout, which is used to calculate the Wastewater Service or Water Service Ratios, and further calculate the Assignee’s Wastewater Service Ratio Proportion and the Assignee’s Water Service Ratio Proportion. Therefore, if SVMD includes a charge for Assignee’s Capital Cost Share within its water and wastewater rates, fees, tolls and charges applied within the Assignee’s Service Area, Assignee will also make a Capital Cost True-Up Payment to SVMD. The Capital Cost True-Up Payment shall be made not less than thirty (30) days prior to the due date for SVMD to make its Capital Cost payment, or annually by December 31, whichever occurs first.

4.3 **Capital Cost Share Funding.** Assignee shall have the discretion to fund its Capital Cost Share in any method determined by Assignee, including any legally available

revenue of the Assignee, within Assignee's Service Area. SVMD agrees to collect such fees, subject to an administrative fee reasonably designed to defray SVMD's actual collection and administrative costs related to said fees, to be deducted from the amounts remitted to Assignee.

4.4 **System Access Fee.** A System Access Fee shall be paid prior to connecting any service line to the Water System or Wastewater System. The System Access Fee shall be in lieu of a tap fee or system development charges and in recognition of Assignee's obligation to also pay Assignee's Capital Cost Share.

4.5 **No Offset.** No revenue received by SVMD from the assessment of service and/or Connection Charges for service within Assignee's Service Area or as allowed by the Rules and Regulations shall afford Assignee any right of offset, rebate or refund for or against any obligation created by this Assignment.

4.6 **Assignee's Constructed Facilities.**

4.6.1 **Responsibility.** At its sole cost and expense, Assignee shall be responsible for, or shall otherwise cause, the financing, design, development, construction and connection to the Wastewater System or Water System of all Assignee's Constructed Facilities that are necessary to extend service by the Wastewater System and Water System to serve customers within the Assignee's Service Area. Assignee may enter into agreements with other entities to fulfill its obligations regarding Assignee Constructed Facilities, but such delegation of responsibility shall not relieve Assignee of its obligations under this Article IV.

4.6.2 **Construction Obligations.** With respect to the construction of the Assignee's Constructed Facilities, Assignee agrees as follows:

4.6.2.1 To obtain approval of SVMD of all design and construction plans and specifications;

4.6.2.2 To design, construct, and inspect all Assignee's Constructed Facilities in accordance with the Rules and Regulations, approved plans and specifications, and standards of SVMD;

4.6.2.3 To the extent permitted by law, to hold harmless and indemnify SVMD for any and all losses or damages it may suffer or may be called upon to pay as a result of said construction;

4.6.2.4 To provide performance and payment bonds warranting the construction, installation, and operation of the Assignee's Constructed Facilities, and guaranteeing, at Assignee's sole cost and expense to make all needed and necessary repairs and replacements due to defective materials, design or workmanship, or failure to abide by approved design or construction plans, but not associated with ordinary and normal wear and tear. The performance and payment bonds will also hold SVMD harmless for payment to the contractor and any subcontractors, and guarantee one (1) year's maintenance on all Assignee's Constructed Facilities commencing on the date of transfer of the Assignee's Constructed Facilities to SVMD. If, within one (1) year from transfer the Assignee's Constructed Facilities appear to be defective or cease to operate as intended, then Assignee shall promptly replace the defective or improperly

operating portion or portions of such Assignee's Constructed Facilities at its cost and expense. If within ten (10) days after receipt of notice, Assignee has not undertaken repairs and/or replacement or if circumstances require immediate repairs, SVMD may, without further notice to Assignee, undertake the repairs and/or replacement at Assignee's expense;

4.6.2.5 To permit SVMD to observe and inspect any and all of the construction and notify Assignee's engineer of any improper construction;

4.6.2.6 To give SVMD reasonable notification (in any event not less than 24 hours including one business day) of the time proposed to make connections to the Water System or Wastewater System, and not connect the Assignee's Constructed Facilities to the Water System or Wastewater System until inspected and approved;

4.6.2.7 To acquire all necessary governmental approvals and contract for work and materials in accordance with Colorado and any other applicable laws, rules, regulations, and orders;

4.6.2.8 To make available to SVMD copies of any and all designs, plans, construction drawings, construction contracts, and related documents as SVMD may request from time to time;

4.6.2.9 To diligently and continuously prosecute to completion construction of the Assignee's Constructed Facilities in such manner as SVMD may reasonably determine to be in the best interests of both SVMD and Assignee; and

4.6.2.10 To reimburse SVMD for all engineering fees, inspection and approval fees, and other costs incurred by SVMD as a result of the construction of the Assignee's Constructed Facilities.

4.6.3 **Transfer of Facilities.** Within thirty (30) days after the date of completion of the construction of each phase of Assignee's Constructed Facilities, Assignee shall:

4.6.3.1 Deliver to SVMD a certificate from a registered professional engineer certifying that all Assignee's Constructed Facilities have been built for the phase and are operating in accordance with the plans and specifications approved by SVMD.

4.6.3.2 Execute and deliver to SVMD a good and sufficient bill of sale describing all of the components and personal property relating to such Assignee's Constructed Facilities, which bill of sale shall warrant that conveyance of the property described therein to SVMD is made free from any lien, claim, or demand.

4.6.3.3 Execute and deliver to SVMD a good and sufficient easement deed acceptable to SVMD conveying rights at least equal to rights it would enjoy in a dedicated street, including the right to ingress and egress necessary to operate and maintain the Assignee's Constructed Facilities.

4.6.3.4 Provide SVMD with surveyed, as-built drawings of the Assignee's Constructed Facilities, certified by a registered, professional engineer.

4.6.4 **Acceptance of Facilities.** In no event shall the SVMD be required to allow connection of the Assignee's Constructed Facilities to the Water System or Wastewater System or provide service to the Assignee's Constructed Facilities until such time as it, in its reasonable discretion, determines that the Assignee's Constructed Facilities have been properly completed and transferred to SVMD.

4.6.5 **Construction Claims.** Assignee agrees that it shall, to the extent practical and cost-effective as reasonably determined by Assignee, assert against any contractor involved in constructing any portion of the Assignee's Constructed Facilities which are contemplated by this Assignment, any claim that SVMD or Assignee may have against the contractor according to the terms of any construction contract and/or construction guarantee and/or warranty. SVMD specifically agrees that it will enforce such guarantees, promises, and warranties of a contractor whenever requested to do so by Assignee if (i) such request presents a plausible claim under the terms of the construction contract, construction guarantee, or warranty, and (ii) Assignee agrees in writing to individually bear any costs associated with such enforcement.

4.6.6 **Budget Report.** By October 15 of each year, Assignee shall provide to SVMD a report which shall include: (1) an itemized annual budget and schedule for construction of any Assignee's Constructed Facilities to be constructed in the upcoming year, (2) a summary description of development that occurred within Assignee's Service Area during the current year, and (3) a summary projection of development within Assignee's Service Area anticipated in the upcoming year. Any material change made to such budget by Assignee shall be provided to SVMD as soon as possible.

4.6.7 **Cost Recovery.** In the event Assignee is required by SVMD to oversize the Assignee's Constructed Facilities to allow SVMD to provide water or sewer service outside Assignee's Service Area, then the costs incurred by Assignee which are directly attributable to such over-sizing shall be reimbursed to Assignee prior to making any connections to the oversized Assignee's Constructed Facilities to provide service outside Assignee's Service Area. Provided, however, any cost recovery payments shall be paid only pursuant to a cost-recovery agreement to be entered into at the time of construction of the oversized Assignee's Constructed Facilities. Absent such a cost-recovery agreement, unless otherwise required by law, Assignee shall have no obligation to construct oversized Assignee's Constructed Facilities or receive reimbursement.

ARTICLE V OWNERSHIP AND OPERATION OF WATER AND WASTEWATER SYSTEM AND FACILITIES

5.1 **SVMD Ownership and Operation.** SVMD shall own the Water System and Wastewater System, and upon transfer to and acceptance by SVMD, the Assignee's Constructed Facilities, and shall be responsible for operating and maintaining the same.

5.2 **Service Obligation.** Contingent upon Assignee performing its obligations under this Assignment, SVMD shall incur Capital Costs as necessary to provide water and wastewater service to Assignee's Service Area. Except as specifically permitted by this Assignment, such service shall be of a quality and in quantity and pursuant to the same policies and standards as provided within the SVMD boundaries. SVMD shall maintain the Water System and Wastewater System with reasonable and normal care necessary to furnish the water and sewer service.

5.3 **Master Plan.** SVMD currently has under development the Water and Wastewater Master Plan. SVMD anticipates finalizing and adopting the Water and Wastewater Master Plan prior to 2017 and, upon adoption, shall provide a copy to Assignee. SVMD shall prepare and provide to Assignee the Annual Update no later than September 1 of each year, commencing in 2017. SVMD's manager and engineer shall meet with managers and engineers of Assignee semi-annually in the first quarter and third quarter of each year to review the Annual Update and Capital Costs assumptions. Assignee may submit comments on the Annual Update to SVMD by October 1 of the year of receipt, and shall consider the Annual Update in drafting its budget. SVMD shall consider Assignee's comments and make such modifications as it deems appropriate in its sole discretion, and report any modifications to the Annual Update to Assignee by November 15, to allow Assignee the opportunity to consider further adjustments to Assignee's budget. Additionally, with each Annual Update, SVMD shall provide Assignee with a list of Capital Costs anticipated to be incurred during the following year.

5.4 **Notice of Capital Costs.** Payment of Assignee's Capital Cost Share may require Assignee to issue bonds or obtain other financing that may need to meet certain statutory and constitutional requirements, including debt authorization elections. SVMD shall strive to give Assignee no less than 12 months' notice before incurring a Capital Cost that will require payment of Assignee's Capital Cost Share. Assignee recognizes that such notice may not be feasible. If such notice is not feasible, SVMD shall notify Assignee of the upcoming Capital Cost as soon as SVMD believes that the expenditure is likely to be made. In the event that Assignee cannot pay Assignee's Capital Cost Share when due, SVMD and Assignee will work together on interim funding solutions, or on Capital Cost revisions that recognize the funding limitations. To the extent SVMD and Assignee are not able to agree to solutions or modifications that allow Assignee to pay Assignee's Capital Cost Share when due, SVMD may incur the Capital Cost, and SVMD may impose a fee on all connected taps in Assignee's Service Area in an amount necessary to reasonably pay Assignee's Capital Cost Share. In that event, Assignee's Wastewater Service Ratio Proportion or Assignee's Water Service Ratio Proportion may be revised and Assignee's right to Wastewater or Water Service Capacity reduced until Assignee's Capital Cost Share has been paid; provided, however, that no connected tap shall be disconnected as a result.

5.5 **Wastewater Service Customers; Billing; Charges, Rate, Tolls and Other Fees.**

5.5.1 **SVMD Customers.** Properties provided water or wastewater service under this Assignment for which tap connections have been made shall become direct customers of SVMD. Billing for ongoing services will be performed by SVMD. SVMD shall have sole authority to read meters for the purpose of imposing and collecting Service Charges.

5.5.2 Rates, Fees, Tolls, Penalties, and Charges. SVMD may establish, revise, impose and collect Service Charges, Connection Charges, turn on fees, turn off fees, meter setting fees, penalties for damage to system components, bill collection fees, penalties, and similar rates, fees, tolls, and charges for individual customers receiving service from the Water System or Wastewater System. Such rates, fees, tolls and charges may be adopted and revised from time to time, and shall be applied uniformly among users similarly situated. With regard to any changes in fees, rates, tolls, penalties or charges, SVMD shall provide notice pursuant to Section 32-1-1001(2), C.R.S.

5.5.3 Proportionality of Charges. Rates, fees, tolls, penalties, and charges within Assignee's Service Area will be proportional to charges for similar uses within the SVMD boundaries; provided, however that SVMD may take into account differentials in the cost of providing services within Assignee's Service Area as compared to the cost of providing the same services within the SVMD boundaries, and as provided by Section 32-1-1006(1)(b), C.R.S. Where differential rates or charges are proposed for Assignee's Service Area, SVMD shall provide notice and an opportunity to be heard by Assignee prior to adoption of such rates or charges. SVMD may also take into account the fact that some portion of SVMD's cost of providing services within its own boundaries may be offset by ad valorem taxes. SVMD shall at all times have reasonable discretion to establish and apply criteria for determining, as to both without and within SVMD, appropriate fees, rates, tolls, penalties, and charges.

5.5.4 Rate Studies. To confirm that rates, tolls and charges for wastewater and water service, including any differential rates and charges established pursuant to Section 5.5.2, are reasonably related to SVMD's operation, maintenance, and Capital Costs, are uniform as applied to similarly situated users, SVMD shall annually review rates and periodically perform and update a rate study. Costs of such rate study shall be included in water and wastewater service fees and charges.

5.5.5 Assignee Surcharges. Upon adoption by Resolution of Assignee, if applicable, and at Assignee's request, SVMD shall impose and collect for Assignee's benefit reasonable surcharges for the purpose of supplementing Assignee's revenues for meeting covenants contained within, or payment of any general obligation bonds, or for the provision of capital reserves to fund Assignee's Constructed Facilities. SVMD may include a reasonable administrative fee for such collection service. Surcharges to fund Assignee's Constructed Facilities collected, less the additional administrative fee, shall be remitted to Assignee.

5.5.6 Delinquent or Non Payment of Fees by Customers. Properties provided water or wastewater service under this Agreement shall be subject to the powers of SVMD pursuant to Section 32-1-1006(1)(d), C.R.S., regarding delinquencies. Such customers shall also be subject to the lien power of SVMD pursuant to Section 32-1-1001(1)(j), C.R.S., and collection as provided by Section 32-1-1101(1)(e), C.R.S.

5.6 Change of Method of Providing Service. Notwithstanding the allocation of Wastewater Service Capacity and Water Service Capacity to Assignee and service by SVMD, nothing in this Assignment shall restrict SVMD from disposing of the Wastewater System or Water System, or changing its method by which it provides service to Assignee so long as SVMD continues to provide or arranges to provide Assignee with the services set forth in this

Assignment. If SVMD sells any of its Wastewater or Water System, SVMD shall still have the obligation to furnish substantially similar or better service to Assignee, but Assignee shall have no rights to the proceeds of the sale of such infrastructure; provided, however, that SVMD shall not sell a portion of the Wastewater System or Water System that necessitates additional funding from Assignee without SVMD's contribution of its proceeds from the sale of the Water System and/or the Wastewater System.

5.7 Service Provided by Assignee. Assignee will neither directly nor indirectly furnish, nor authorize the furnishing, of any water or sewer service within or without Assignee's Service Area through the Water System or Wastewater System. Nothing herein shall be construed as limiting Assignee's power to provide an independent source of water and sewer services not connected to the Water System or Wastewater System.

5.8 Assignee Dissolution. In the event Assignee seeks to dissolve pursuant to §32-1-701, *et. seq.*, C.R.S., if applicable, or pursuant to any other means, including, but not limited to bankruptcy, written notification of the filing or application for dissolution shall be provided to SVMD concurrently with any such filing, if applicable, or Assignee shall provide written notification to SVMD of its intention to dissolve as soon as possible. The plan for dissolution shall include provision for continuation of this Assignment, with a responsible entity acceptable to SVMD and CBCMD being substituted for Assignee as Party to this agreement. If no such provision is made for assumption of contractual obligation, then immediately upon dissolution of Assignee, this Assignment shall be null, void and of no further force or effect and any unused Assigned SFEs shall revert back to CBCMD pursuant to Section 2.2. Notwithstanding the foregoing, the dissolution of Assignee shall not affect the obligations of SVMD to continue to serve customers in Assignee's Service Area.

ARTICLE VI BREACH AND NON-BREACH

6.1 Non-Termination. Subject to SVMD's rights provided by law and its rules, regulations, policies, and procedures pertaining to violations or delinquent payments by individual service customers, the SVMD and Assignee agree that no breach of this Assignment shall justify or permit termination of the continuing obligations of this Assignment.

6.2 Breach, Remedies. In the event of breach of any provision of this Assignment, in addition to contractual remedies, either SVMD or Assignee may ask a court of competent jurisdiction for such legal and equitable remedies as may be available under the laws of Colorado, including entering a writ of mandamus to compel the Board of Directors of the defaulting Party to perform its duties under this Agreement, if applicable, and either Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Assignment including, without limitation, its obligations with respect to issuing bonds or otherwise incurring indebtedness or obtaining financing in order to raise funds required for payments hereunder.

6.3 Non-Breach, Non-Default. In the event that the trustee, identified in any trust indenture, trust agreement or similar instrument providing for the use of a trustee to enforce and

defend the rights of the holders of general obligation bonds or other bonds of Assignee, if applicable, has the authority, in the event of default in the debt service payments for such bonds, to direct the utilization of Assignee's funds in a manner that causes Assignee's obligations under this Assignment not to be paid in a timely manner, then such failure by Assignee to pay such amounts as they come due shall not be a default or breach of this Assignment. During such time as such trustee undertakes the foregoing actions, the operations of this Assignment shall be temporarily suspended, but all amounts otherwise payable by Assignee hereunder shall be deemed to be critical capital projects that the trustee shall pay in accordance with the priorities provided in the trust agreement or similar document. The Assignment shall continue in full force and effect immediately after the trustee ceases to perform such actions following default in the payment of Assignee's bonds.

6.4 Termination Notice, Opportunity for Cure. Notwithstanding any other provision of this Assignment to the contrary and except as may be required by law, if a dispute arises which would authorize or permit SVMD to terminate or suspend service to Assignee including termination of the right held by Assignee for continuing service or the connection of additional water and sewer taps utilizing capacity in the Water System or Wastewater System that has been assigned to Assignee pursuant to the Agreement, then SVMD shall provide a Termination Notice to Assignee and CBCMD. If Assignee does not comply with the suggested cure provided in the Termination Notice or an alternative cure reasonably acceptable to SVMD, or if Assignee commences a cure that will reasonably require more than thirty (30) days to complete but fails to diligently prosecute the cure to completion, then SVMD shall, after thirty (30) days following Assignee's receipt of such Termination Notice or cessation of diligent prosecution, terminate or suspend service as provided in the Termination Notice and all Unused Assigned SFEs shall revert back to CBCMD pursuant to Section 2.2 of this Assignment. No default by Assignee shall result in termination of service to a customer within Assignee's Service Area connected to the Water System or Wastewater System.

6.5 Dispute Resolution. Except as provided in Section 6.4 (Termination Notice, Opportunity for Cure), if a dispute arises under this Assignment, the complaining Party shall provide a written Notice of the Disagreement to the other Parties. If direct negotiation between the Parties fails to resolve the dispute within thirty (30) days of receipt of the Notice of Disagreement, and one Party requests the organization of a Resolution Committee, then:

6.5.1 Forthwith, the Resolution Committee shall meet to review such information as may be presented to the Resolution Committee, make such independent investigations, and decide the dispute by majority vote of the Resolution Committee at a meeting following reasonable notice at which all are present;

6.5.2 In its review of the dispute, the Resolution Committee shall review the facts, the technical objections, and any other materials deemed appropriate by the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute. The standards that the Resolution Committee shall use in the determination of any dispute shall include (1) whether the technical operation and maintenance characteristics of the Water System or Wastewater System or the Assignee's Constructed Facilities conform to this Assignment, (2) whether the Water System or Wastewater System or the Assignee's Constructed Facilities will overburden the Water or Wastewater Service Capacities or are likely to result in a

violation of any permit, water right, or law, (3) the reasonableness of the Party's position, and (4) the language of the Agreement and goals that the Parties sought to achieve in this Assignment;

6.5.3 The Resolution Committee shall, promptly upon making its decision, inform the Board of Directors or other authorized representative of the Parties in writing of such decision.

6.5.4 The decision of the Resolution Committee may be appealed to the Courts or, if the Resolution Committee fails to render a decision within thirty (30) days of its organization, then either Party may seek such other remedies as may be allowed by law. The Resolution Committee decision is not to be deemed a final, binding decision by arbitration.

ARTICLE VII MISCELLANEOUS

7.1 **Relationship of the Parties.** This Assignment does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

7.2 **Liability of Parties.** No provision, covenant or agreement contained in this Assignment, nor any obligations herein imposed upon each Party, nor the breach thereof, nor the issuance and sale of any bonds by a Party, shall constitute or create an indebtedness of the other Party within the meaning of any Colorado constitutional provision or statutory limitation. No Party shall have any obligation whatsoever to repay any debt or liability of the other Party.

7.3 **Assignment.** Neither this Assignment, nor any Party's rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment. A reversion pursuant to Section 2.2 is not deemed an assignment for purposes of this Section 7.3.

7.4 **Amendment and Modification.** This Assignment may not be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, except by an agreement in writing duly authorized and executed by all Parties. No consent of any non-Party shall be required for the negotiation and execution of any such agreement.

7.5 **Waiver.** No waiver or failure by any Party to insist upon the strict performance of any agreement, term, covenant or condition hereof, or failure to exercise of any right or remedy consequent upon any default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant or condition, or a waiver of any subsequent breach of the same or any other provision of this Assignment.

7.6 **Integration.** This Assignment contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Assignment shall be valid or binding.

7.7 **Severability.** Invalidation of any of the provisions of this Assignment or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Assignment.

7.8 **Survival of Obligations.** Unfulfilled obligations of any Assignee and SVMMD arising under this Assignment shall be deemed to survive the expiration or termination of this Assignment and the completion of the Water System or Wastewater System and the Assignee's Constructed Facilities which are the subject of this Assignment, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Further, any obligations of Assignee and CBCMD arising under Section 2.2 of this Assignment shall survive the expiration or termination of this Assignment. In order to provide notice to all property owners of the rights and obligations under this Assignment, the Parties agree that upon execution this Assignment shall be recorded against all property described in **Exhibit A**.

7.9 **Fair Dealing.** In all cases where the consent or approval of one Party is required before the any other may act, or where the agreement or cooperation of one or more Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Assignment as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on either Party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable Parties contracting at arms-length.

7.10 **Force Majeure.** Any Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government except for the Party to be excused; national fuel shortage; when satisfactory evidence of such cause is presented to the other Parties, and provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the Party not performing.

7.11 **Notices:** All notices required or permitted to be given hereunder between the Parties shall be in writing and shall be effective upon personal delivery, e-mail, or three (3) business days following deposit of the notices in the United States Mail, postage prepaid and addressed as follows, or to such other address designated by a Party upon notice as hereinabove provided:

To SVMMD:

Stonegate Village Metropolitan District
c/o District Manager
10252 Stonegate Parkway
Parker, CO 80134

With a Copy To

Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203-4358
Phone: 303-839-3800
Email: mdalton@spencerfane.com
Attn: Matthew R. Dalton

To CBCMD:

Compark Business Campus Metropolitan
District
c/o CliftonLarsonAllen
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Phone: 303-779-5710
Email: bob.blodgett@claconnect.com
Attn: Bob Blodgett

With a Copy To:

Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203-4358
Phone: 303-839-3800
Email: rkron@spencerfane.com
Attn: Rick Kron

With a Copy To:

McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: mmcgeady@specialdistrictlaw.com
Attn: MaryAnn M. McGeady

To Developer:

470 Compark LLC
290 Fillmore St., Suite #2
Denver, CO 80206
Phone: 303-881-6292
Email: michaelvickers@mvpcompark.com
Attn: Michael Vickers

To Assignee:

Belford South Metropolitan District
c/o CliftonLarsonAllen
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Phone: 303-779-5710
Email: bob.blodgett@claconnect.com
Attn: Bob Blodgett

With a Copy To:

McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: mmcgeady@specialdistrictlaw.com
Attn: MaryAnn M. McGeady

7.12 **Applicable Law.** This Assignment shall be construed and interpreted in accordance with the laws of the State of Colorado.

7.13 **Governmental Immunity Applies.** Nothing contained in this Assignment shall serve as a waiver of the protections afforded the Parties pursuant to the Colorado Governmental Immunity Act.

7.14 **Annual Appropriations.** The obligations of certain Parties under this Assignment, to the extent they require expenditure of funds, are subject to the annual appropriations of such funds by their Boards of Directors, in their sole authority. Notwithstanding the foregoing, once such funds are appropriated, such obligations shall become binding for the year of appropriation and may be enforced for the year of appropriation at any time subsequent to such appropriation. Further, those Parties shall include within their proposed annual budget for consideration by each of their Board of Directors sufficient funds to fulfill all obligations under this Assignment.

7.15 **Venue.** Venue for any litigation brought under this Assignment shall be in Douglas County, Colorado District Court.

7.16 **Attorney Fees.** In the event of any dispute between the Parties arising out of this Assignment, each Party shall be responsible for its own attorney fees.

7.17 **No Third Party Beneficiaries.** None of the terms, conditions, or covenants in this Assignment shall give or allow any claim, benefit or right of action by any person or entity other than the signatory Parties hereto. Any other person or entity affected by this Assignment shall be deemed an incidental beneficiary with no rights under this Assignment.

7.18 **Counterpart Execution.** This Assignment may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single agreement.

Made and entered into the year and date first above written.

**STONEGATE VILLAGE
METROPOLITAN DISTRICT**

By: _____
President

Attest:

Secretary

**COMPARK BUSINESS CAMPUS
METROPOLITAN DISTRICT**

By: _____
President

Attest:

Secretary

**ASSIGNEE:
BELFORD SOUTH METROPOLITAN
DISTRICT**

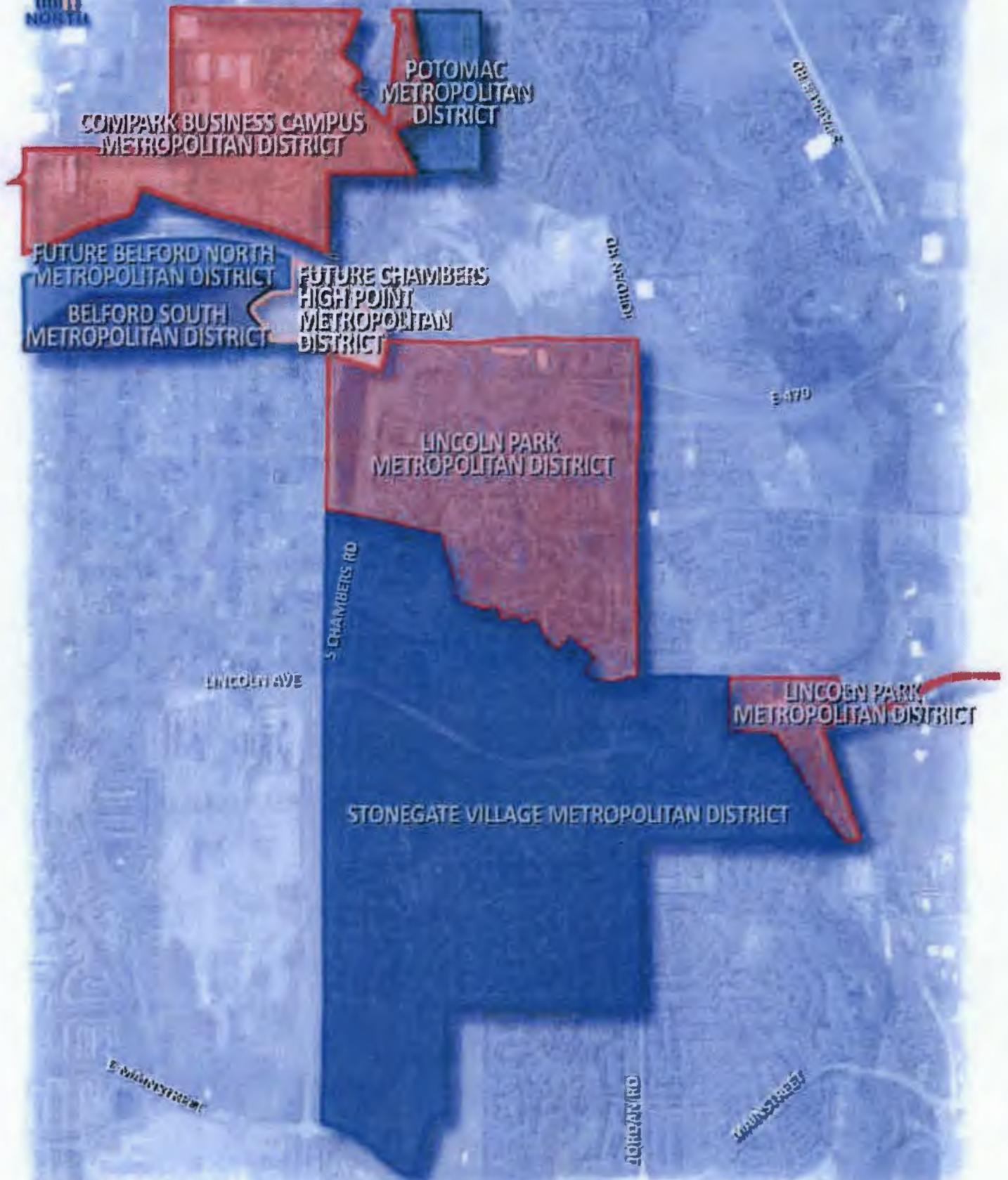
By: _____
President

Attest:

Secretary

EXHIBIT A

BSMD, CBCMD, PMD and SVMD Boundaries

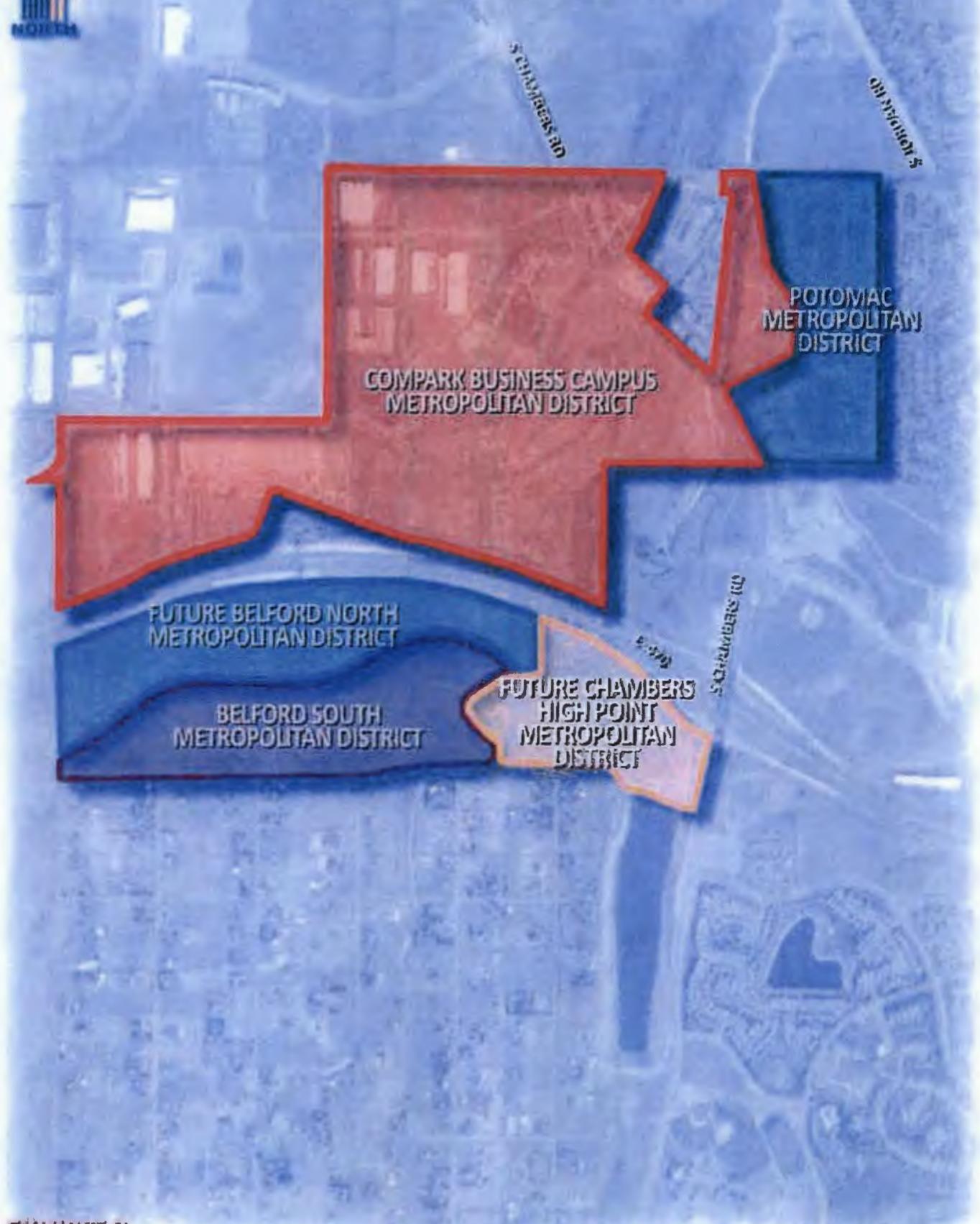


**EXHIBIT A
METROPOLITAN DISTRICT LIMITS**



EXHIBIT B

Compark Service Area and Compark South



**EXHIBIT B
METROPOLITAN DISTRICT LIMITS**



EXHIBIT C

CAPITAL COST TRUE-UP PAYMENT

	2014 Wastewater Revenue Bonds		2015 Water Revenue Bonds
Estimated System Capacity	5130		5321
Assigned SFEs (Belford)	192		204
Belford Portion of Capital Costs	<u>3.74%</u>		<u>3.83%</u>
 <u>2016 Bond Costs</u>			
Principal	\$ 230,000.00		\$ 245,000.00
Interest	\$ 537,206.000		\$ 599,356.00
	<u>\$ 767,206.00</u>		<u>\$ 844,356.00</u>
	3.74%		3.83%
Belford Portion	<u>\$ 28,714.14</u>		<u>\$ 32,371.48</u>

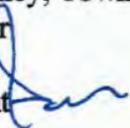
**Light
Kelly**

Attorneys at Law

Samuel J. Light
(303) 298-1601 tel
(303) 298-1627 fax
slight@lightkelly.com

MEMORANDUM

TO: James S. Maloney, Town Attorney
Town of Parker

FROM: Samuel J. Light 

DATE: December 22, 2016

SUBJECT: Belford South Metropolitan District – Request for Town Approval
of Intergovernmental Agreement

This memo is written in regards to the enclosed letter from McGeady Becher, P.C., counsel for the Belford South Metropolitan District (“District”), requesting approval of an intergovernmental agreement (“IGA”) for assignment to the District of water and wastewater equivalents (SFEs). The following summarizes the District’s request and related Service Plan requirement for Town review of proposed IGAs.

The Town Council approved the Service Plan for the District on March 21, 2016 by Resolution No. 16-022. The Service Plan anticipates the District will receive water and wastewater services from Stonegate Village Metropolitan District (“SVMD”). More specifically, the Service Plan anticipates the District will become a party to an agreement with SVMD and Compark Business Campus Metropolitan District (“CBCMD”) to obtain an allocation of capacity in SVMD’s system, and address other matters including funding of SVMD facilities necessary to serve the build-out of the Belford South project and SVMD’s service area. For this purpose, the District proposes to enter into the attached “Assignment of Water and Wastewater SFE – Belford South 204” with SVMD and CBCMD (“Belford Assignment Agreement”).

The IGA provisions of the Service Plan state any IGA with SVMD, as well as any other IGA proposed regarding the subject matter of the Service Plan, shall be subject to review and approval by the Town prior to execution. Town review is with reference to whether the IGA is in compliance with the Service Plan, the IGA between the Town and the District, and the terms of any Approved Development Plans or other instruments related to the Public Improvements.

As explained in the District’s enclosed letter, the Belford Assignment Agreement provides for CBCMD to assign to the District 204 SFEs, for service to 192 residential units and irrigation water for open space and landscaping within Compark Village South Filing No. 2, proposed to

be developed by KB Home. While the Service Plan anticipated the District would become a third party to the then-existing agreements between SVMD and CBCMD, the proposed structure is for an assignment of SFEs pursuant to a recently signed agreement between SVMD and CBCMD. Under this structure, the Belford Assignment Agreement is still an IGA subject to Town review, and the District's enclosed letter further explains the recently signed agreement between SVMD and CBCMD. This change in the anticipated structure does not in my opinion raise an issue of Service Plan compliance.

As part of its Service Plan, the District requested authority to assess and collect a Development Fee of \$25,000/\$20,000 for each detached/attached residential unit, rather than the standard rates as stated in the Model Service Plan. The District organizers at that time stated the higher Development Fee would essentially represent the tap fee for water and wastewater capital costs, and that the total capital fees anticipated to be assessed within the Project (i.e., the \$25,000 Development Fee and approximately \$3,500 SVMD System Access Fee, totaling \$28,500) would be less than or comparable to properties receiving service from other districts. As regards the proposed Belford Assignment Agreement, the District's enclosed letter represents the total "fee stack" is \$27,907.96, which is compliant with the Development Fee limits in the Service Plan. Apart from the District Development Fees, residents within the District will become direct customers of SVMD and pay service charges and fees directly to the SVMD.

As explained in the District's enclosed letter, the District will be responsible for financing the construction of facilities necessary to connect to SVMD's systems. Those improvements that are eligible Public Improvements under the Service Plan may be financed within the financial parameters of the Service Plan. The District is also obligated to pay its proportionate share of an annual capital cost share payment, representing a percentage of previously financed SVMD capital costs. According to the District's counsel, these payments will be made via Development Fees if available, or bond proceeds, within the parameters of the Service Plan.

Based on the District's enclosed letter and the drafts provided, it appears the Belford Assignment Agreement is consistent with the Service Plan and Town-District IGA. There is included with this memo a draft Town Council resolution for approval of the Belford Assignment Agreement. It includes at Section 3 a specific finding that the Town Council's approval of the form of the Agreement does not in any manner alter or waive any requirements of the Service Plan, the Town-District IGA, or any Approved Development Plans.

If you have any questions, please contact me.

Attachments:

1. McGeady Becher December 21, 2016 Letter Requesting Approval of Belford Assignment Agreement
2. Draft Town Council Resolution
3. Draft Assignment Agreement
4. Copy of SVMD-CBCMD Agreement
5. Belford South District Fee Resolution 2016-06-09
6. Belford Service Plan Article X, Intergovernmental Agreements

ATTACHMENT 1



December 21, 2016

VIA EMAIL AND U.S. MAIL

Town of Parker
c/o Sam Light, Esq.
Light Kelly, P.C.
101 University Blvd., Suite 210
Denver, CO 80206

Re: Belford South Metropolitan District – Request for Town Approval of IGA

Dear Mr. Light:

Article X of the Service Plan for Belford South Metropolitan District (the “District”), as approved on March 21, 2016, by the Town of Parker, Colorado (the “Town”) (the “Service Plan”), provides that any intergovernmental agreement to which the District is a party “shall be subject to Town review and approval prior to its execution by the District.” Accordingly, the District respectfully requests the Town’s approval of the enclosed Assignment of Water and Wastewater Service SFE – Belford South 204 by and among the District, Compark Business Campus Metropolitan District (“CBCMD”) and Stonegate Village Metropolitan District (“SVMD”) (the “Belford Assignment Agreement”).

Background

As stated in the Service Plan, property within the District will receive water and wastewater service from SVMD as evidenced by SVMD’s unconditional can and will serve letter, conditioned upon the District’s financing and construction of certain public improvements necessary to enable SVMD to provide such service.

SVMD and CBCMD (formerly known as E-470 Business Metropolitan District) entered into that certain Regional Facilities Agreement, dated December 4, 1997, which was subsequently amended in 1998, 1999, 2001 and 2008 (as amended, the “RFA”), setting forth the terms and conditions pursuant to which SVMD would provide water and wastewater service to property within CBCMD and certain other properties, including the methodology for allocating capacity in SVMD’s water system and wastewater system to future customers and for financing system improvements and expansion of same. SVMD subsequently issued its Wastewater Enterprise Bonds, Series 2014 (“Wastewater Bonds”) and Water Enterprise Revenue Bonds, Series 2015 (“Water Bonds” and, together with the Wastewater Bonds, the “SVMD Bonds”), the repayment

of which are secured by a pledge of customer service fees and charges paid by users who are connected to and receiving service from the SVMD systems.

As a result of changed circumstances, SVMD and CBCMD entered into that certain Amended and Restated Regional Water and Wastewater Service Agreement (the "**Amended RFA**"), dated as of October 10, 2016, a copy of which is enclosed for your reference. The material terms of the Amended RFA, as related to the proposed Assignment Agreement, include:

1. SVMD has allocated to CBCMD capacity (expressed in SFEs) in the SVMD water system and wastewater system reasonably calculated to serve property within CBCMD, Potomac Metropolitan District, the District, Chambers Highpoint Metropolitan District Nos. 1 and 3 and property north of the District commonly known as "Belford North" (such properties, collectively, the "**Compark Service Area**") based on current build-out projections.
2. In consideration of such allocation, CBCMD has agreed to (i) annually pay a portion of the debt service on the SVMD Bonds, (referred to in the Amended RFA as the "**Capital Cost Share**") and (ii) construct or cause the construction of public improvements necessary to connect users in the Compark Service Area to the SVMD systems (the "**CBCMD Constructed Facilities**"), which CBCMD Constructed Facilities will be conveyed to SVMD for ongoing operation and maintenance.
3. SVMD retained the right to provide service to future customers on a first come, first served basis, but CBCMD may secure from SVMD a guarantee of service with respect to all or any portion of its allocated SFEs by prepaying or causing to be prepaid the System Access Fee (as defined in the RFA) for use of such SFEs within the Compark Service Area.
4. SVMD is also required to provide notice to CBCMD in the event that it receives a request to provide service to users in excess of the respective capacities of its current systems prior to the connection of CBCMD's allocated SFEs, which will trigger CBCMD's "right of first refusal" to pay the System Access Fees for any SFEs for which the System Access Fees have not been paid to guarantee that such SFEs will be available for use in the Compark Service Area.
5. CBCMD may assign that portion of its allocated capacity that is not required to serve property within CBCMD's boundaries pursuant to an assignment agreement in form substantially as attached as Exhibit C to the Amended RFA (the "**Assignment Agreement**").

Although the Service Plan anticipated that the District would be a party to the Amended RFA, the parties concluded that limiting the parties to SVMD and CBCMD (i) is administratively more efficient than amending the agreement repeatedly to add more parties and (ii) establishes more clearly the respective rights and obligations of SVMD and CBCMD consistent with the original RFA. The parties also believe that the Assignment Agreement is a better mechanism for conveying SFEs to the other entities within the Compark Service Area and provides for fewer parties to be involved in resolving potential conflicts, while remaining consistent with the

expectations that water and wastewater service will be provided by SVMD to the Compark Service Area in phases to meet development as it occurs.

Belford Assignment Agreement

As stated in the Service Agreement, SVMD issued an unconditional can and will serve letter to the property within the District. The proposed Belford Assignment Agreement is the first of what is anticipated to be multiple Assignment Agreements pursuant to which CBCMD, with the consent of SVMD (which is also a party to the Assignment Agreements), will assign portions of its allocated SFEs to serve additional property within the Compark Service Area as such additional property is platted. Specifically, as set forth in the Belford Assignment Agreement:

1. CBCMD is assigning 204 SFEs (the "**Assigned SFEs**") of its allocated SFEs to the District, which as explained below, are necessary to obtain water and wastewater service from SVMD for 192 residential units and irrigation water for open space and other landscape tracts within Compark Village South Filing No. 2 (the "**Filing No. 2**"). Please note that, under SVMD's rules and regulations, 1 SFE is equivalent to a ¾-inch tap to serve a single-family residential unit. Accordingly, 192 of the 204 Assigned SFEs are for residential use and the additional 12 SFEs are for the 2-inch tap and 1.5-inch tap needed for irrigation of landscaped areas shown on the plat for Filing No. 2 and converted to SFEs in accordance with SVMD's SFE conversion methodology.
2. In consideration of the assignment of SFEs, the District is assuming the obligation to (i) annually pay a pro rata portion of the Capital Cost Share related to the Assigned SFEs and (ii) finance and construct or cause the construction of that portion of the CBCMD Constructed Facilities necessary to connect users in the District to the SVMD systems (the "**Assignee Constructed Facilities**"), which Assignee Constructed Facilities will be conveyed to SVMD for ongoing operation and maintenance.
3. The District may guarantee service with respect to all or any portion of the Assigned SFEs by prepaying or causing to be prepaid the System Access Fee to secure the use of such Assigned SFEs within the District.

Capital Cost Share and Capital Cost True-Up Payment

As previously noted, the SVMD Bonds are secured by SVMD's pledge of customer service charges and fees ("**Service Charges**"). The underlying premise in determining that amount of the Capital Cost Share payable in any year is to calculate the amount of Service Charges that would be payable if all of the CBCMD's Allocated SFEs were connected and in use. In this regard, the Capital Cost Share will decrease as more of the Allocated SFEs are placed into service, and when all of the Allocated SFEs are in service, the Capital Cost Share will be reduced to zero.

Calculation Methodology

The table below illustrates how the 2016 Capital Cost Share payment was calculated as illustrated in the definition of "Capital Cost True-Up Payment" on page 2 of the Amended RFA, based on the following assumptions:

- Step 1: Compark Portion of Capital Cost (i.e., annual debt service on the SVMD Bonds) is calculated by dividing the number of Allocated SFEs (1205 SFEs for wastewater and 1237 for water) by total system SFEs (5130 SFEs and 5321 SFEs, respectively) to arrive at the percentage system capacity represented by the Allocated SFEs. Note: The number of Allocated SFEs for water in use is higher than the number of Allocated SFEs for wastewater in use because irrigation taps are for water service only. Residential taps, by contrast, utilize equal numbers of water and wastewater SFEs.
- Step 2: Determine the annual debt service costs by adding principal and interest due on each series of SVMD Bonds for the applicable year.
- Step 3: Determine the Compark portion of annual debt service by multiplying the Compark Portion percentage by total debt service.
- Step 4: Deduct that amount of the Service Charges paid by Compark Service Area customers now receiving service from the SVMD systems (labeled "Compark Portion"):
 - 541 of the 1205 Allocated SFE for wastewater were in service or 44.9%
 - 575 of the 1237 Allocated SFEs for water were in service or 46.48%

	2014 Wastewater Revenue Bonds	2015 Water Revenue Bonds
Estimated System Capacity	5130	5321
Compark SFE Allocation	1205	1237
Compark Portion of Capital Costs	23.5%	23.25%
 <u>2016 Bond Costs</u>		
Principal	\$ 230,000.00	\$ 245,000.00
Interest	\$ 537,206.00	\$ 599,356.00
	\$ 767,206.00	\$ 844,356.00
	23.50%	23.25%
Compark Portion	\$ 180,293.41	\$ 196,312.77
Total Due from Compark Service Area*	\$ (80,951.74)	\$ (91,246.18)
Compark Capital Cost Share	\$ 99,341.67	\$ 105,066.59
* Wastewater 541/1205 = 44.9%		
* Water 575/1237 = 46.48%		

True-Up Payment

As set forth in Section 4.2 of the Amended RFA, SVMD and CBCMD agreed that based on (i) debt service payments for 2014, with respect to the Wastewater Bonds, and debt service payments for 2015, with respect to the Wastewater Bonds and the Water Bonds, and (ii) the number of Compark Service Area customers then receiving service, the aggregate Capital Cost Share True-Payment that CBCMD should have paid was \$180,890.74. When added with the 2016 Capital Cost Share, the total amount payable by CBCMD to SVMD on December 31, 2016, will be \$385,299.00.

Source of Payment

CBCMD has imposed and collected what are commonly referred to as "tap fees" in the amount of \$28,500 per residential unit, a portion of which has been reserved to pay the Capital Cost Share True-Up Payment for years 2014 and 2015 and the 2016 Capital Cost Share. As explained in our March 7, 2016 memo to you, it is intended that a portion of the District's Development Fee of \$25,000 per single-family residential unit and \$20,000 per multi-family residential unit will represent the "tap fee" for purposes of financing the capital costs of the Assignee Constructed Facilities (which includes the District's pro rata share of the Capital Cost Share) and other public improvements the District is authorized to construct under the Service Plan. The District "tap fee," with respect to irrigation taps, will be adjusted consistent with the SVMD SFE conversion methodology, depending upon the size of the tap.

District Fees

The District Board of Directors adopted Resolution No. 2016-06-09 Regarding the Imposition of Development Fees and Notice of System Access Fees, dated June 29, 2016 and recorded in the Douglas County, Colorado, real property records on October 21, 2016, at Reception No. 2016075677 (the "Fee Resolution"). A copy of the Fee Resolution is enclosed for your reference.

As set forth in the Fee Resolution, the Development Fee imposed by the District is compliant with the limitations set forth in V.I.E. of the Service Plan and additionally discloses to potential purchasers of property within the District that they will also be subject to the SVMD System Access Fee. The current rate of the System Access Fee as imposed by SVMD is \$2,907.96 per SFE combined water and sewer tap. Accordingly, as of the date of this Memorandum, the capital fee stack is \$27,907.96 per SFE, which is less than the \$28,500 anticipated by the Service Plan.

The District understands that it is not authorized to impose any fees other than the Development Fee without the consent of the Town and has no present intention to request such authorization. It is further noted that the Board of Directors of CBCMD adopted Resolution No. 2016-03-01 Regarding the Organization of Belford South Metropolitan District on March 16, 2016, which expressly provides that CBCMD "will not impose on Belford South Metropolitan District, or on the property, builders or residents within the boundaries of Belford South Metropolitan district, any fees or charges."

Commitment of Assigned SFEs

As previously noted, it is anticipated that CBCMD will enter into Assignment Agreements with the District and other Districts serving portions of the Compark Service Area, as needed, to accommodate the demands of development as it occurs. The Belford Assignment Agreement for which the District is seeking Town approval is intended to serve the Filing No. 2 property, which is being purchased by KB Home Colorado Inc. ("KB Home"). It is anticipated that the District and KB Home will enter into an agreement pursuant to which the District will agree to further assign the 204 Assigned SFEs to KB Home for exclusive use on the Filing No. 2 property, subject to KB Home's agreement to pay Development Fees on a schedule that will enable the District to pledge the revenue therefrom to pay or finance capital costs of the Assignee Constructed Facilities (including payment of its pro rata portion of the Capital Cost Share) and other public infrastructure necessary to develop the Filing No. 2 property. The intent of the agreement is to provide KB Home with certainty that water and wastewater service will be available to homebuyers when needed, and the District, with the ability to perform its obligations with respect to financing public improvements in the most cost-effective manner possible, which also benefits future residents.

We look forward to answering any questions you, the Town staff and the Town Council may have regarding these matters.

Very truly yours,

MCGEADY BECHER P.C.



Kathy Kanda

Encl: Assignment of Water and Wastewater Service SFE – Belford South 204
Amended and Restated Regional Water and Wastewater Service Agreement
Resolution No. 2016-06-09 of the Board of Directors of Belford South Metropolitan
District Regarding the Imposition of Development Fees and Notice of System Access
Fees

c: Board of Directors
District Manager

ATTACHMENT 2

RESOLUTION NO. _____ Series of 2017

TITLE: A RESOLUTION APPROVING THE FORM OF INTERGOVERNMENTAL AGREEMENT PROPOSED TO BE ENTERED BY BELFORD SOUTH METROPOLITAN DISTRICT REGARDING THE ASSIGNMENT TO THE DISTRICT OF WATER AND WASTEWATER SERVICE EQUIVALENTS BY STONEGATE VILLAGE METROPOLITAN DISTRICT

WHEREAS, THE TOWN COUNCIL OF PARKER FINDS:

A. By Resolution No. 16-022, the Town Council of the Town of Parker on March 21, 2016 approved a Service Plan ("Service Plan") for the organization of Belford South Metropolitan District ("District").

B. Section X of the Service Plan states in part that it is anticipated the District will become a party to an agreement with Compark Business Campus Metropolitan District ("CBCMD") and Stonegate Village Metropolitan District ("SVMD") relative to the allocation of capacity in SVMD's water and wastewater systems to serve the District with SVMD water and wastewater service, and addressing other matters including the construction of Public Improvements necessary to serve the District, and the funding of existing and future costs of improvements and/or expansions to the SVMD wastewater treatment plant, the SVMD water treatment plant, and the SVMD water supply system necessary to serve the build-out of the SVMD service area, including the Belford South Project within the District.

C. Pursuant to Section X of the Service Plan, any intergovernmental agreement with SVMD, and any other intergovernmental agreement proposed regarding the subject matter of the Service Plan, shall be subject to review and approval by the Town prior to execution thereof by the District, which Town review and approval shall be with reference to whether the intergovernmental agreement is in compliance with the Service Plan, the Intergovernmental Agreement between the Town and the District, and the terms of any Approved Development Plan or other instrument related to the Public Improvements.

D. The District has submitted to the Town a proposed "Assignment of Water and Wastewater SFE – Belford South 204" intergovernmental agreement by and among the District, SVMD and CBCMD ("District IGA"), which is attached hereto as Exhibit 1 and incorporated herein by this reference, and is subject to Town review pursuant to Section X of the Service Plan.

E. Pursuant to state statute, the Town of Parker Municipal Code, and the Service Plan, the Town Council has authority to review the proposed District IGA.

F. The Town Council has reviewed the proposed District IGA and the related information submitted by and on behalf of the District in connection therewith and, based upon the representations of the District set forth in the proposed District IGA and in such related information, the Town Council has determined to adopt this resolution approving the form of the proposed District IGA.

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

Section 1. The foregoing recitals are incorporated in and made a part of this Resolution.

Section 2. Based upon the representations of the District, including the representations set forth in the proposed District IGA and in the related information submitted by and on behalf of the District in connection therewith, the Town Council of the Town of Parker hereby approves the District IGA in the form accompanying this Resolution, subject to Section 3 hereof.

Section 3. Town approval herein of the form of the District IGA does not in any manner amend, effect, alter, change or constitute any waiver or release of any terms, conditions, provisions, or requirements of the Service Plan or any intergovernmental agreement between the Town and the District. Further, Town approval herein of the form of the District IGA does not in any manner amend, effect, alter, change or constitute any waiver or release of any terms, conditions, provisions, or requirements of any development plans, annexation agreement, subdivision agreement, and other agreement with the Town governing development and the completion of Public Improvements within the District, all of which plans and agreements, including without limitation the Approved Development Plan, as defined in the Service Plan, and the Compark Village South Annexation Agreement, remain in full force and effect in accordance with their terms. Town approval herein of the form of the District IGA shall not be construed as a waiver of any of the Town's rights or remedies under the Service Plan, any intergovernmental agreement between the Town and the District, or any plans and agreements.

RESOLVED AND PASSED effective as of the ____ day of _____, 2017.

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ATTACHMENT 3

**ASSIGNMENT OF WATER
AND WASTEWATER SERVICE SFE - BELFORD SOUTH 204**

THIS ASSIGNMENT OF WATER AND WASTEWATER SERVICE SFE – BELFORD SOUTH 204 (this “Assignment”) is entered into to be effective as of the ___ day of _____, 2016 (the “Effective Date”), by and among **STONEGATE VILLAGE METROPOLITAN DISTRICT**, acting by and through its Water and Sewer Enterprise Funds (“SVMD”), **COMPARK BUSINESS CAMPUS METROPOLITAN DISTRICT** f/k/a E-470 Business Metropolitan District, in a limited capacity (“CBCMD” or “Assignor”) and **BELFORD SOUTH METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Assignee”), each individually, a “Party,” and collectively, the “Parties.”

DEFINITIONS

1. **“1997 Regional Facilities Agreement”** – the December 4, 1997 Regional Facilities Agreement between SVMD and E-470 Business Metropolitan District as amended by that certain First Amendment to Regional Facilities Agreement dated August 31, 1998, by that certain Second Amendment to Regional Facilities Agreement dated March 15, 1999, by that certain Third Amendment to Regional Facilities Agreement dated August 15, 2001, and by that certain Fourth Amendment to Regional Facilities Agreement dated July 3, 2008.
2. **“Agreement”** – the Amended and Restated Regional Water and Wastewater Service Agreement between SVMD and CBCMD dated October 11, 2016, as amended from time to time.
3. **“Annual Update”** – the annual update, revision, supplement, or review of the SVMD Water and Wastewater Master Plan to reflect the best available information on the Water System and Wastewater System, including the basis and timing of anticipated Capital Costs, as determined appropriate or necessary at the sole discretion of SVMD.
4. **“Assigned SFEs”** – the Two Hundred Four (204) SFEs of CBCMD’s excess wastewater service capacity, defined as “CBCMD’s Excess Wastewater Service Capacity” in the Agreement, and water service capacity, defined as “CBCMD’s Excess Water Service Capacity” in the Agreement, transferred to Assignee pursuant to this Assignment.
5. **“Assignee” or “BSMD”** – Belford South Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services, whose jurisdictional boundaries are the same as “Assignee’s Service Area,” as shown on **Exhibit A** attached hereto and incorporated herein.
6. **“Assignee’s Constructed Facilities”** – water distribution and supply lines, pump stations, facilities, sewage collection lines, lift stations, irrigation lines, storage facilities, effluent land application facilities, storage or disposal areas and facilities, meters and data acquisition systems necessary for tele-monitoring, and any other facilities necessary, in the reasonable

opinion of the SVMD, to be constructed by Assignee and connected to the Wastewater System or Water System, Pursuant to Section 4.6 of this Assignment, to connect to the Water System and Wastewater System to provide service to Assignee's Service Area.

7. **"Assignee's Wastewater Service Ratio Portion"** – the 3.98% portion of the Wastewater Service Ratio assigned to Assignee based on the Assigned SFEs to the SVMD Service Area. The Wastewater Service Ratio is currently calculated as 23.5%, inclusive of such 3.98%.

8. **"Assignee's Water Service Ratio Portion"** – the 3.83% portion of the Water Service Ratio assigned to Assignee based on the Assigned SFEs to the SVMD Service Area. The Water Service Ratio is currently calculated as 23.25%, inclusive of such 3.83%.

9. **"Assignee's Service Area"** – the area that will receive water or wastewater service through the Water System or Wastewater System pursuant to this Assignment, as shown on Exhibit A attached hereto and incorporated herein.

10. **"Assignment"** – this Assignment of Water and Wastewater Service SFE – Belford South 204.

11. **"BNMD"** – Belford North Metropolitan District, a metropolitan district anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South.

12. **"Bonds"** – Collectively the Wastewater Bonds and the Water Bonds.

13. **"Capital Costs"** - Any costs incurred by SVMD necessary to meet requirements of state or federal laws and regulations, to acquire, develop or maintain a water supply, including costs associated with continued development of a renewable water supply, and for improvements, upgrades, or expansions to the Wastewater System and Water System necessary or appropriate to provide service within the SVMD Service Area. Capital Costs include previous and future payments on Debt or other financial obligations used for the same purposes. Capital Costs do not include the cost of Assignee's Constructed Facilities; which costs are the sole responsibility of Assignee. Capital Costs include, but are not limited to costs of materials, components, labor costs, change orders, design engineering, construction engineering, landscape architecture, soil testing and inspection, line and systems testing and inspection, site and right of way acquisition costs, and all legal, accounting, and other professional costs incurred in connection with the Capital Costs.

14. **"Capital Cost Share"** – Assignee's share of a Capital Cost, calculated as a Capital Cost associated with Wastewater System multiplied by Assignee's Wastewater Service Ratio Portion or a Capital Cost associated with the Water System multiplied by the Assignee's Water Service Ratio Portion.

15. **"Capital Cost True-Up Payment"** – A payment made by Assignee calculated by multiplying the Capital Costs by the difference between the Assignee's Wastewater Service Ratio Portion or the Assignee's Water Service Ratio Portion and ratio of the actual SFEs in

service, as illustrated in the chart on Exhibit C attached hereto and incorporated herein, as amended from time to time.

16. **"CBCMD"** - Compark Business Campus Metropolitan District f/k/a E- 470 Business Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, whose jurisdictional boundaries are shown on Exhibit A attached hereto and incorporated herein.

17. **"CHMD"** – Collectively, one or more metropolitan districts to be named the Chambers High Point Metropolitan District and anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services.

18. **"CBCMD's Excess Wastewater Service Capacity"** – a portion of the Wastewater System Capacity within the CBCMD Wastewater Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

19. **"CBCMD's Excess Water Service Capacity"** – a portion of the Water System Capacity within the CBCMD Water Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

20. **"Compark Service Area"** – an area previously described as the "Property" by the RFA, located in Douglas County, Colorado, and which includes Compark South, and is limited to the area described in Exhibit B, attached hereto and incorporated herein.

21. **"Compark South"** – A portion of the Compark Service Area as shown on the attached Exhibit B. Compark South includes the area within the District boundaries of BSMD, and the areas anticipated to be included within the District boundaries of BNMD and CHMD, when those Districts are organized.

22. **"Connection Charge"** – a rate, fee, toll, charge or combinations thereof, for a service user to have the right to make a physical connection between a service line and the Water System or Wastewater System. Connection Charges are imposed each time a connection is made to pay the cost associated with SVMD making, inspecting, or administering the physical connection. A connection charge is imposed in addition to usage fees or charges and System Access Fees.

23. **"Debt"** – the Bonds, future bonds or other debt obligations.

24. **"Effective Date"** – the effective date of this Assignment, _____, 2016.

25. **"Notice of Disagreement"** – a written notice given by one Party to another Party if a dispute arises under this Assignment, explaining the dispute and at least one alternative for a solution.

26. **“Party” and “Parties”** – individually or collectively the signatories to this Assignment.

27. **“PMD”** – E-470 Potomac Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, whose jurisdictional boundaries are shown on **Exhibit A** attached hereto and incorporated herein.

28. **“Projected Buildout”** – projected demand for service from the Water System or Wastewater System expressed in SFEs, determined from the land use approvals and existing planning and use data in effect from the applicable municipal or county government.

29. **“Resolution Committee”** – the President of the Board of Directors of SVMD, CBCMD and the authorized representative of the Assignee involved in a Notice of Disagreement, or designees thereof, and a Colorado registered professional engineer jointly appointed by agreement of the other members of the Board of Directors of SVMD and the appropriate persons of Assignee, which engineer shall have knowledge of the subject matter of the dispute (i.e., if a water facility is the subject of the dispute, the engineer shall have some knowledge of water systems engineering).

30. **“Rules and Regulations”** – the Rules and Regulations of SVMD adopted, amended and enforced pursuant to §32-1-1001(1)(m), C.R.S.

31. **“Service Area”** – An area provided water or wastewater service through the Water System or Wastewater System. As of the effective date of the Assignment, the SVMD Service Area comprises the property within the boundaries of SVMD, the boundaries of Lincoln Park Metropolitan District, and the Compark Service Area.

32. **“Service Charges”** – reoccurring periodic charges for service provided through the Water System and Wastewater System. Service charges currently are set by SVMD 2015 Resolution dated August 19, 2015 and include water and wastewater monthly usage fees and a WISE Renewable Water Fee, as may be amended from time to time.

33. **“SFE”** – the equivalent water or sewer service demand associated with a single family residential unit, as from time to time set forth and revised in the Rules and Regulations. As of the Effective Date, for purposes of planning and considering water treatment plant capacity and wastewater treatment plant capacity, one SFE of Water Service corresponds to approximately 1,053 gallons per day of treated water and one SFE of wastewater service corresponds to approximately 242.4 gallons per day of wastewater treatment. The number of SFEs associated with any specific use will be determined based on a standard conversion table or Rules and Regulations adopted by SVMD and amended from time to time.

34. **“SVMD”** – Stonegate Village Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, acting by and through its Water Utility Enterprise Fund and Sewer Utility Enterprise Fund, whose jurisdictional boundaries are shown on **Exhibit A**, attached hereto and incorporated herein.

35. **"SVMD Water and Wastewater Master Plan"** – a master plan of the Water System and the Wastewater System that is under development by SVMD at the time of the Effective Date and which is anticipated to be adopted by SVMD in 2016. The SVMD Water and Wastewater Master Plan will include, but not be limited to, a renewable water capital plan to identify infrastructure and water rights necessary to provide renewable water supplies within the Service Area.

36. **"System Access Fee"** – a fee imposed by SVMD on an individual service user within the Assignee's Service Area prior to connection to enable the service user to receive service from the Water System and Wastewater System. The System Access Fee as of the Effective Date is \$2,975.70 per SFE combined water and sewer tap. The System Access Fee shall be adjusted annually on September 1 of each year by the percentage increase or decrease in inflation as defined in Art. X, Sec. 20 of the Colorado Constitution, as determined by SVMD.

37. **"Termination Notice"** – written notice provided by SVMD to Assignee of SVMD's intent to terminate or suspend additional water and wastewater connections utilizing capacity in the Water System or Sewer System by Assignee, which shall contain at least:

a. the specific cause for the proposed termination or suspension, including a demonstrated justification therefor;

b. the duration of the proposed termination or suspension;

c. at least one reasonable cure that Assignee may implement that would be acceptable to SVMD to avoid the termination or suspension, if possible. SVMD shall use best efforts to suggest a cure that will allow continued availability of service and new taps to Assignee at all times, and shall, if not prohibited by law, continue to make continued service and taps available without interruption up to the Assigned SFEs if the suggested cure is actually implemented, and assuming compliance with the Rules and Regulations by the individual customer;

d. the method to be used by SVMD to continue service to taps within Assignee's Service Area previously connected to the Water System or Wastewater System, assuming continued adherence to the SVMD Rules and Regulations by the owners of such taps;

e. the name of a person who can provide more information; and

f. the effective date for commencement of the termination or suspension.

38. **"Unused Assigned SFEs"** – any Assigned SFE's not connected to and being served by the Water System and Wastewater System.

39. **"Wastewater Bonds"** – Wastewater Enterprise Revenue Bonds, Series 2014 issued by SVMD to improve and expand the Wastewater System.

40. **"Wastewater Service Capacity"** – the capacity of the Wastewater System, which may change from time to time, but which currently is estimated at 1,100,000 gallons per day (1.1 mgd).

41. **“Wastewater Service Ratio”** – the ratio of wastewater SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as 23.5% (1,205 SFEs Compark Service Area; 5,130 SFEs SVMD Service Area).

42. **“Wastewater System”** – the SVMD wastewater treatment plant, as well as related wastewater collection, conveyance, measurement, and discharge facilities, lift stations, force mains, meters, pipelines, manholes and other related appurtenances.

43. **“Water Bonds”** – Water Enterprise Revenue Bonds, Series 2015 issued by SVMD to improve or expand the Water System.

44. **“Water Service Capacity”** – the capacity of the Water System, which may change from time to time, but currently is estimated at 5,760,000 gallons per day (5.76 mgd).

45. **“Water Service Ratio”** – the ratio of water SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as 23.25% (1,237 SFEs Compark Service Area; 5,321 SFEs total SVMD Service Area).

46. **“Water System”** – the SVMD water treatment plant, as well as related water collection, storage, pipelines, conveyance and measurement facilities, meters, wells, and pump stations, storage and storage rights, ground and renewable water and water rights.

RECITALS

A. SVMD and CBCMD’s predecessor, E-470 Business Metropolitan District, entered into the 1997 Regional Facilities Agreement whereby SVMD allocated 1205 SFEs of capacity in its Wastewater System and Water System to CBCMD to serve portions of the Compark Service Area.

B. CBCMD and SVMD entered into the Amended and Restated Regional Water and Wastewater Service Agreement whereby CBCMD may assign a portion of CBCMD’s Excess Wastewater Service Capacity and CBCMD’s Excess Water Service Capacity.

C. CBCMD desires to assign certain rights, title, interests and obligations it may have under the Agreement, to Assignee, and Assignee desires to assume such rights, title, interests and obligations from CBCMD.

D. Specifically, CBCMD desires to transfer the Assigned SFEs in the SVMD Water and Wastewater System to Assignee and Assignee desires to assume the same.

E. Assignee agrees to construct the Assignee’s Constructed Facilities and pay the pro-rata share of the Capital Cost Share associated with the Assigned SFEs.

F. SVMD and Assignee desire to set forth the rights, obligations, and procedures for the assignment of the SFEs in the SVMD Water and Wastewater System from CBCMD’s Excess Wastewater Service Capacity and CBCMD’s Excess Water Service Capacity.

COVENANTS

NOW, THEREFORE, IN CONSIDERATION of the above recitals, the mutual covenants, considerations and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties Agree as follows:

ARTICLE I INCORPORATION

1.1 **Incorporation of Definitions and Recitals.** The definitions and recitals set forth above are incorporated into the terms of this Assignment.

1.2 **SVMD Rules and Regulations.** Assignee agrees to comply with SVMD's Rules and Regulations, as such is required by Section 1.2 of the Agreement.

ARTICLE II ASSIGNMENT AND TERM OF ASSIGNMENT

2.1 **Assignment; Assumption.** As of the Effective Date, CBCMD hereby transfers the Assigned SFEs to Assignee. As of the Effective Date, Assignee hereby accepts the Assigned SFEs and assumes and agrees to be bound by the terms of this Assignment and SVMD's Rules and Regulations related thereto.

2.1.1 **Restrictions on Assigned SFEs.** Assignee shall not sell, pledge, assign, encumber or alienate any Assigned SFEs for use outside of BSMD's boundaries without the prior consent of both SVMD and CBCMD.

2.2 **Unused Assigned SFEs.**

2.2.1 **Reverter of Unused Assigned SFEs.** Any Unused Assigned SFEs shall revert back to CBCMD pursuant to the terms of this Section 2.2. Upon the determination of the existence of any Unused Assigned SFEs, Assignee shall provide CBCMD notice of the number of Unused Assigned SFEs. Upon thirty (30) days of receipt of such notice, the unused SFEs shall revert back to CBCMD, unless either Assignee or CBCMD object to such reverter. If such objection exists, Assignee and CBCMD will resolve the dispute in accordance with Section 6.5 of this Assignment.

2.2.2 **Determination of Unused Assigned SFEs.** Unused Assigned SFEs shall be determined at the following time: (i) for residential property when the property is fully platted, and (ii) for commercial property when all the area within the property has been included in one or more site plans. Notwithstanding the above provision, if Assignee forfeits its Assigned SFEs under this Assignment pursuant to Section 5.8 or Section 6.4, any Unused Assigned SFEs shall be determined as of the date of dissolution or the date SVMD terminates service, respectively.

2.3 **Limited Party.** CBCMD is a limited party for the purpose of this Assignment. CBCMD agrees only to transfer the Assigned SFEs to Assignee and to accept any Unused

Assigned SFEs pursuant to Section 2.2, if applicable, and has no other responsibility or obligation under this Agreement to either Assignee or SVMD.

2.4 **Release.** The Parties agree that effective upon the transfer of the Assigned SFEs, CBCMD is released of any and all liability relating to Assignee's use of the Assigned SFEs and Assignee's compliance with SVMD's Rules and Regulations. In addition, CBCMD's Wastewater Service Ratio and Water Service Ratio are reduced as set forth in Section 3.1.4 hereof, and may be adjusted in the future as provided for in Section 3.1.4. Such release terminates either upon the connection of all the Assigned SFEs to the Water System and Wastewater System or upon any Unused Assigned SFEs reverting back to CBCMD pursuant to the terms of Section 2.2, at which time the rights and obligations of CBCMD and SVMD will be determined in accordance with the Agreement.

2.5 **Consent.** SVMD's execution of this Assignment shall constitute SVMD's consent to allow CBCMD to transfer the Assigned SFEs to Assignee.

2.6 **Term of Assignment.** This Assignment shall become effective upon execution and shall continue until all Assigned SFEs have been connected to and are being served by SVMD's Water System and Wastewater System or until all Unused Assigned SFEs revert back to CBCMD pursuant to the terms of Section 2.2.

ARTICLE III WATER AND WASTEWATER CAPACITY AND SERVICE

3.1 **Service Capacity Allocations.**

3.1.1 **Projected Service Needs.** Based on the Projected Buildout, SVMD is anticipated to provide wastewater service to 5130 SFEs and water service to 5321 SFEs. Of those totals, the Compark Service Area is projected to require 1205 SFEs of wastewater service and 1237 SFEs of water service, with 638 SFEs of wastewater service and 670 SFEs of water service projected to be served within the CBCMD and PMD boundaries, and Compark South requiring 567 SFEs of water and wastewater service. The area within Compark South is anticipated to be included within the district boundaries of BNMD, BSMD, and/or CHMD.

3.1.2 **Service Capacity.** The Water Service Capacity and Wastewater Service Capacity are currently limited primarily by the treatment capacity of the SVMD water treatment plant and wastewater treatment plant, though other portions of the Wastewater System and Water System may, from time to time, require upgrades, improvements, enlargements and other modifications to maintain or increase Water Service Capacity and Wastewater Service Capacity.

3.1.3 **Service Commitment.** Contingent on satisfaction of conditions and payments as provided in this Assignment, SVMD shall make available Wastewater System Capacity in the amount of the Assignee's Wastewater Service Ratio Proportion and Water System Capacity in the amount of the Assignee's Water Service Ratio Proportion, to provide wastewater and water service to Assignee's Service Area.

3.1.4 **Service Ratios.** CBCMD acknowledges that after the transfer of the Assigned SFEs to Assignee, the Wastewater Service Ratio and the Water Service Ratio for CBCMD will be adjusted to 19.51% and 19.41%, respectively, unless and until forfeiture and the Unused Assigned SFEs revert back to CBCMD pursuant to Section 2.2 of this Assignment, at which time the Wastewater Service Ratio and the Water Service Ratio for CBCMD shall be adjusted accordingly.

3.1.5 **Service Ratio Revisions.** The Wastewater Service Ratio and Water Service Ratio may be revised, resulting in a revision to the Assignee's Wastewater Service Ratio Proportion and Assignee's Water Service Ratio Proportion, in SVMD's reasonable discretion, without amendment of this Agreement in the event that the Projected Buildout or actual development changes. SVMD shall provide Assignee with written notice of and the opportunity to be heard prior to any changes to the Wastewater Service Ratio and Water Service Ratio.

3.2 **No Guarantee of Service, Limitations.**

3.2.1 **Service Capacity Uncertainties.** The Parties acknowledge that there is currently Water Service Capacity sufficient to serve the Projected Buildout of the SVMD Service Area, including all of the Compark Service Area, which includes Assignee's Service Area. Based on Projected Buildout, currently, there may not be sufficient Wastewater Service Capacity now existing to serve the Service Area. Historic development has generally been less than Projected Development, which may result in sufficient Wastewater Service Capacity to serve Compark South. Assignee also acknowledges that while the Compark Service Area Wastewater Service Ratio and Water Service Ratio are calculated from Projected Buildout expressed in terms of SFEs of wastewater or water service demand, until System Access Fees have been paid by Assignee and accepted by SVMD there is no guarantee that the Wastewater Service Capacity or Water Service Capacities can be converted to any specific number of SFEs. Further, Water Service Capacity or Wastewater Service Capacity may change based on the age of facilities, regulatory changes imposed by third parties, operational changes, facility upgrades, actual development and other factors. Therefore, there is no guarantee that SVMD will have at any point in time sufficient Wastewater Service Capacity or Water Service Capacity to provide service to the Compark Service Area, Compark South, or any other user with the SVMD Service Area when requested without system improvements or expansions as provided in the Agreement.

3.2.2 **Water Supply.** Water supply for the Water System is dependent upon natural resources and sources from which the quantity is variable and beyond the control of SVMD. Similarly, the provision of water and wastewater services is subject to various local, state and federal agencies. No liability shall attach to SVMD for any failure to accurately anticipate availability of the water supply, the availability of sewage treatment capacity, or the need to incur Capital Costs due to occurrences beyond the reasonable control of SVMD.

3.2.3 **Tap Curtailment.** If conditions develop such that it becomes apparent to SVMD that all areas outside SVMD's boundaries for which such services have been committed cannot be supplied adequately pursuant to this and similar agreements, SVMD reserves the right to discontinue the granting of additional taps; provided, however, SVMD shall be obligated to exercise this right of discontinuance uniformly outside and inside SVMD.

3.2.4 **Access to Service.** Access to wastewater and water service shall be on a first come first served basis, based on payment of all System Access Fees.

3.2.5 **Insufficient Capacity.** SVMD may deny connection to the Wastewater System or Water System if it determines, in its reasonable discretion, that Wastewater or Water Service Capacity are insufficient, until such time as additional Wastewater or Water Service Capacity is made available as provided in this Assignment.

3.2.6 **Shortages and Limitation on Service.** SVMD may, in order to comply with any applicable law, rule, directive, or order, and to enable it to provide adequate services to the SVMD Service Area, as well as other customers of SVMD in times of shortage or other practical or legal limitations on the ability of SVMD to provide the services contemplated under this Assignment, limit the delivery of water and sewer services, and/or restrict the use of water delivered under this Assignment. The extent to which limitation of services may be necessary to enable SVMD to provide adequately for all users of Water System and Wastewater System is a fact to be determined by SVMD as the occasion may require. The current determination by SVMD on this subject, which will not be changed without good reason, is as follows:

“The welfare of SVMD and its inhabitants requires stable water and sewer services not only for them but also that part of the adjacent area dependent on SVMD for the delivery of water and sewer services. While it is the purpose of SVMD to maintain systems and supplies adequate to meet the needs of all dependent upon SVMD for water and sewer services, there are many elements which make it uncertain whether such services can always be adequate for all, and therefore, in times of shortage or other practical or legal limitation, water use and use of SVMD's water and wastewater systems will be curtailed on the following basis, the first listed curtailment being adopted to meet the least serious situation and the succeeding curtailment being adopted in addition to prior listed curtailments, and the last curtailment to meet the gravest possible situation and one which every reasonable precaution must be taken to avoid, to-wit:

1. Restriction of uses (such as irrigation), which can be accomplished without serious injury to person or property and prohibition of non-essential uses.
2. Prohibition of irrigation except for commercial greenhouses.
3. Prohibition of every use except for domestic use and for essential commercial enterprises and industry.
4. Prohibition of all use except domestic uses.
5. In order to enable SVMD to provide an adequate supply of water to the people of SVMD without impairment of

essential deliveries of water under this and similar agreements, SVMD will impose any restrictions or prohibitions contemplated by Item 1. through 4., above, uniformly inside and outside SVMD."

3.3 **Nature of Water Use.** All water furnished by SVMD is on a leasehold basis for users within the Assignee's Service Area, which is within the Compark Service Area, for all the purposes for which SVMD has been decreed the right to appropriate water. Use of SVMD water does not include any right to make a succession of uses of such water. Upon completion of the primary use by a water user, all dominion over the water reverts completely to SVMD. All property rights to the water to be furnished by SVMD are reserved in SVMD. Nevertheless, there is no obligation on Assignee or on the water users within Assignee's Service Area to create any particular volume of return flow from water delivered pursuant to this Assignment.

ARTICLE IV CONSTRUCTION AND COSTS OF SYSTEM FACILITIES, AND SERVICE

4.1 **Capital Cost Share.** To provide its proportional funding of Capital Costs associated with the Water System and Wastewater System, Assignee shall pay SVMD Assignee's Capital Cost Share.

4.2 **Future Capital Costs.** Assignee is responsible for paying for future Capital Costs incurred by SVMD, including future payments on Debt or other financial obligations, in the amount of Assignee's Capital Cost Share. Future Capital Costs shall be paid by Assignee by one or a combination of the following methods, at the discretion of SVMD:

4.2.1 **Capital Costs Paid without Rate Funding.** If SVMD funds Capital Costs without including the Assignee's Capital Cost Share within its water and wastewater rates, fees, tolls, or charges applied within Assignee's Service Area, Assignee shall pay the full amount of Assignee's Capital Cost Share directly to SVMD. Subject to Section 5.4, Assignee shall pay its Capital Costs Share not less than thirty (30) days prior to SVMD incurring the obligation resulting in the Capital Cost, or if the Capital Cost is financed not less than thirty (30) days prior to the due date for SVMD to make its financing payment.

4.2.2 **Rate Refunding and True-Up Payment.** Assignee acknowledges that active service to SFEs may not be in proportion to projected SFEs at buildout, which is used to calculate the Wastewater Service or Water Service Ratios, and further calculate the Assignee's Wastewater Service Ratio Proportion and the Assignee's Water Service Ratio Proportion. Therefore, if SVMD includes a charge for Assignee's Capital Cost Share within its water and wastewater rates, fees, tolls and charges applied within the Assignee's Service Area, Assignee will also make a Capital Cost True-Up Payment to SVMD. The Capital Cost True-Up Payment shall be made not less than thirty (30) days prior to the due date for SVMD to make its Capital Cost payment, or annually by December 31, whichever occurs first.

4.3 **Capital Cost Share Funding.** Assignee shall have the discretion to fund its Capital Cost Share in any method determined by Assignee, including any legally available

revenue of the Assignee, within Assignee's Service Area. SVMD agrees to collect such fees, subject to an administrative fee reasonably designed to defray SVMD's actual collection and administrative costs related to said fees, to be deducted from the amounts remitted to Assignee.

4.4 **System Access Fee.** A System Access Fee shall be paid prior to connecting any service line to the Water System or Wastewater System. The System Access Fee shall be in lieu of a tap fee or system development charges and in recognition of Assignee's obligation to also pay Assignee's Capital Cost Share.

4.5 **No Offset.** No revenue received by SVMD from the assessment of service and/or Connection Charges for service within Assignee's Service Area or as allowed by the Rules and Regulations shall afford Assignee any right of offset, rebate or refund for or against any obligation created by this Assignment.

4.6 **Assignee's Constructed Facilities.**

4.6.1 **Responsibility.** At its sole cost and expense, Assignee shall be responsible for, or shall otherwise cause, the financing, design, development, construction and connection to the Wastewater System or Water System of all Assignee's Constructed Facilities that are necessary to extend service by the Wastewater System and Water System to serve customers within the Assignee's Service Area. Assignee may enter into agreements with other entities to fulfill its obligations regarding Assignee Constructed Facilities, but such delegation of responsibility shall not relieve Assignee of its obligations under this Article IV.

4.6.2 **Construction Obligations.** With respect to the construction of the Assignee's Constructed Facilities, Assignee agrees as follows:

4.6.2.1 To obtain approval of SVMD of all design and construction plans and specifications;

4.6.2.2 To design, construct, and inspect all Assignee's Constructed Facilities in accordance with the Rules and Regulations, approved plans and specifications, and standards of SVMD;

4.6.2.3 To the extent permitted by law, to hold harmless and indemnify SVMD for any and all losses or damages it may suffer or may be called upon to pay as a result of said construction;

4.6.2.4 To provide performance and payment bonds warranting the construction, installation, and operation of the Assignee's Constructed Facilities, and guaranteeing, at Assignee's sole cost and expense to make all needed and necessary repairs and replacements due to defective materials, design or workmanship, or failure to abide by approved design or construction plans, but not associated with ordinary and normal wear and tear. The performance and payment bonds will also hold SVMD harmless for payment to the contractor and any subcontractors, and guarantee one (1) year's maintenance on all Assignee's Constructed Facilities commencing on the date of transfer of the Assignee's Constructed Facilities to SVMD. If, within one (1) year from transfer the Assignee's Constructed Facilities appear to be defective or cease to operate as intended, then Assignee shall promptly replace the defective or improperly

operating portion or portions of such Assignee's Constructed Facilities at its cost and expense. If within ten (10) days after receipt of notice, Assignee has not undertaken repairs and/or replacement or if circumstances require immediate repairs, SVMD may, without further notice to Assignee, undertake the repairs and/or replacement at Assignee's expense;

4.6.2.5 To permit SVMD to observe and inspect any and all of the construction and notify Assignee's engineer of any improper construction;

4.6.2.6 To give SVMD reasonable notification (in any event not less than 24 hours including one business day) of the time proposed to make connections to the Water System or Wastewater System, and not connect the Assignee's Constructed Facilities to the Water System or Wastewater System until inspected and approved;

4.6.2.7 To acquire all necessary governmental approvals and contract for work and materials in accordance with Colorado and any other applicable laws, rules, regulations, and orders;

4.6.2.8 To make available to SVMD copies of any and all designs, plans, construction drawings, construction contracts, and related documents as SVMD may request from time to time;

4.6.2.9 To diligently and continuously prosecute to completion construction of the Assignee's Constructed Facilities in such manner as SVMD may reasonably determine to be in the best interests of both SVMD and Assignee; and

4.6.2.10 To reimburse SVMD for all engineering fees, inspection and approval fees, and other costs incurred by SVMD as a result of the construction of the Assignee's Constructed Facilities.

4.6.3 **Transfer of Facilities.** Within thirty (30) days after the date of completion of the construction of each phase of Assignee's Constructed Facilities, Assignee shall:

4.6.3.1 Deliver to SVMD a certificate from a registered professional engineer certifying that all Assignee's Constructed Facilities have been built for the phase and are operating in accordance with the plans and specifications approved by SVMD.

4.6.3.2 Execute and deliver to SVMD a good and sufficient bill of sale describing all of the components and personal property relating to such Assignee's Constructed Facilities, which bill of sale shall warrant that conveyance of the property described therein to SVMD is made free from any lien, claim, or demand.

4.6.3.3 Execute and deliver to SVMD a good and sufficient easement deed acceptable to SVMD conveying rights at least equal to rights it would enjoy in a dedicated street, including the right to ingress and egress necessary to operate and maintain the Assignee's Constructed Facilities.

4.6.3.4 Provide SVMD with surveyed, as-built drawings of the Assignee's Constructed Facilities, certified by a registered, professional engineer.

4.6.4 **Acceptance of Facilities.** In no event shall the SVMD be required to allow connection of the Assignee's Constructed Facilities to the Water System or Wastewater System or provide service to the Assignee's Constructed Facilities until such time as it, in its reasonable discretion, determines that the Assignee's Constructed Facilities have been properly completed and transferred to SVMD.

4.6.5 **Construction Claims.** Assignee agrees that it shall, to the extent practical and cost-effective as reasonably determined by Assignee, assert against any contractor involved in constructing any portion of the Assignee's Constructed Facilities which are contemplated by this Assignment, any claim that SVMD or Assignee may have against the contractor according to the terms of any construction contract and/or construction guarantee and/or warranty. SVMD specifically agrees that it will enforce such guarantees, promises, and warranties of a contractor whenever requested to do so by Assignee if (i) such request presents a plausible claim under the terms of the construction contract, construction guarantee, or warranty, and (ii) Assignee agrees in writing to individually bear any costs associated with such enforcement.

4.6.6 **Budget Report.** By October 15 of each year, Assignee shall provide to SVMD a report which shall include: (1) an itemized annual budget and schedule for construction of any Assignee's Constructed Facilities to be constructed in the upcoming year, (2) a summary description of development that occurred within Assignee's Service Area during the current year, and (3) a summary projection of development within Assignee's Service Area anticipated in the upcoming year. Any material change made to such budget by Assignee shall be provided to SVMD as soon as possible.

4.6.7 **Cost Recovery.** In the event Assignee is required by SVMD to oversize the Assignee's Constructed Facilities to allow SVMD to provide water or sewer service outside Assignee's Service Area, then the costs incurred by Assignee which are directly attributable to such over-sizing shall be reimbursed to Assignee prior to making any connections to the oversized Assignee's Constructed Facilities to provide service outside Assignee's Service Area. Provided, however, any cost recovery payments shall be paid only pursuant to a cost-recovery agreement to be entered into at the time of construction of the oversized Assignee's Constructed Facilities. Absent such a cost-recovery agreement, unless otherwise required by law, Assignee shall have no obligation to construct oversized Assignee's Constructed Facilities or receive reimbursement.

ARTICLE V OWNERSHIP AND OPERATION OF WATER AND WASTEWATER SYSTEM AND FACILITIES

5.1 **SVMD Ownership and Operation.** SVMD shall own the Water System and Wastewater System, and upon transfer to and acceptance by SVMD, the Assignee's Constructed Facilities, and shall be responsible for operating and maintaining the same.

5.2 **Service Obligation.** Contingent upon Assignee performing its obligations under this Assignment, SVMD shall incur Capital Costs as necessary to provide water and wastewater service to Assignee's Service Area. Except as specifically permitted by this Assignment, such service shall be of a quality and in quantity and pursuant to the same policies and standards as provided within the SVMD boundaries. SVMD shall maintain the Water System and Wastewater System with reasonable and normal care necessary to furnish the water and sewer service.

5.3 **Master Plan.** SVMD currently has under development the Water and Wastewater Master Plan. SVMD anticipates finalizing and adopting the Water and Wastewater Master Plan prior to 2017 and, upon adoption, shall provide a copy to Assignee. SVMD shall prepare and provide to Assignee the Annual Update no later than September 1 of each year, commencing in 2017. SVMD's manager and engineer shall meet with managers and engineers of Assignee semi-annually in the first quarter and third quarter of each year to review the Annual Update and Capital Costs assumptions. Assignee may submit comments on the Annual Update to SVMD by October 1 of the year of receipt, and shall consider the Annual Update in drafting its budget. SVMD shall consider Assignee's comments and make such modifications as it deems appropriate in its sole discretion, and report any modifications to the Annual Update to Assignee by November 15, to allow Assignee the opportunity to consider further adjustments to Assignee's budget. Additionally, with each Annual Update, SVMD shall provide Assignee with a list of Capital Costs anticipated to be incurred during the following year.

5.4 **Notice of Capital Costs.** Payment of Assignee's Capital Cost Share may require Assignee to issue bonds or obtain other financing that may need to meet certain statutory and constitutional requirements, including debt authorization elections. SVMD shall strive to give Assignee no less than 12 months' notice before incurring a Capital Cost that will require payment of Assignee's Capital Cost Share. Assignee recognizes that such notice may not be feasible. If such notice is not feasible, SVMD shall notify Assignee of the upcoming Capital Cost as soon as SVMD believes that the expenditure is likely to be made. In the event that Assignee cannot pay Assignee's Capital Cost Share when due, SVMD and Assignee will work together on interim funding solutions, or on Capital Cost revisions that recognize the funding limitations. To the extent SVMD and Assignee are not able to agree to solutions or modifications that allow Assignee to pay Assignee's Capital Cost Share when due, SVMD may incur the Capital Cost, and SVMD may impose a fee on all connected taps in Assignee's Service Area in an amount necessary to reasonably pay Assignee's Capital Cost Share. In that event, Assignee's Wastewater Service Ratio Proportion or Assignee's Water Service Ratio Proportion may be revised and Assignee's right to Wastewater or Water Service Capacity reduced until Assignee's Capital Cost Share has been paid; provided, however, that no connected tap shall be disconnected as a result.

5.5 **Wastewater Service Customers; Billing; Charges, Rate, Tolls and Other Fees.**

5.5.1 **SVMD Customers.** Properties provided water or wastewater service under this Assignment for which tap connections have been made shall become direct customers of SVMD. Billing for ongoing services will be performed by SVMD. SVMD shall have sole authority to read meters for the purpose of imposing and collecting Service Charges.

5.5.2 **Rates, Fees, Tolls, Penalties, and Charges.** SVMD may establish, revise, impose and collect Service Charges, Connection Charges, turn on fees, turn off fees, meter setting fees, penalties for damage to system components, bill collection fees, penalties, and similar rates, fees, tolls, and charges for individual customers receiving service from the Water System or Wastewater System. Such rates, fees, tolls and charges may be adopted and revised from time to time, and shall be applied uniformly among users similarly situated. With regard to any changes in fees, rates, tolls, penalties or charges, SVMD shall provide notice pursuant to Section 32-1-1001(2), C.R.S.

5.5.3 **Proportionality of Charges.** Rates, fees, tolls, penalties, and charges within Assignee's Service Area will be proportional to charges for similar uses within the SVMD boundaries; provided, however that SVMD may take into account differentials in the cost of providing services within Assignee's Service Area as compared to the cost of providing the same services within the SVMD boundaries, and as provided by Section 32-1-1006(1)(b), C.R.S. Where differential rates or charges are proposed for Assignee's Service Area, SVMD shall provide notice and an opportunity to be heard by Assignee prior to adoption of such rates or charges. SVMD may also take into account the fact that some portion of SVMD's cost of providing services within its own boundaries may be offset by ad valorem taxes. SVMD shall at all times have reasonable discretion to establish and apply criteria for determining, as to both without and within SVMD, appropriate fees, rates, tolls, penalties, and charges.

5.5.4 **Rate Studies.** To confirm that rates, tolls and charges for wastewater and water service, including any differential rates and charges established pursuant to Section 5.5.2, are reasonably related to SVMD's operation, maintenance, and Capital Costs, are uniform as applied to similarly situated users, SVMD shall annually review rates and periodically perform and update a rate study. Costs of such rate study shall be included in water and wastewater service fees and charges.

5.5.5 **Assignee Surcharges.** Upon adoption by Resolution of Assignee, if applicable, and at Assignee's request, SVMD shall impose and collect for Assignee's benefit reasonable surcharges for the purpose of supplementing Assignee's revenues for meeting covenants contained within, or payment of any general obligation bonds, or for the provision of capital reserves to fund Assignee's Constructed Facilities. SVMD may include a reasonable administrative fee for such collection service. Surcharges to fund Assignee's Constructed Facilities collected, less the additional administrative fee, shall be remitted to Assignee.

5.5.6 **Delinquent or Non Payment of Fees by Customers.** Properties provided water or wastewater service under this Agreement shall be subject to the powers of SVMD pursuant to Section 32-1-1006(1)(d), C.R.S., regarding delinquencies. Such customers shall also be subject to the lien power of SVMD pursuant to Section 32-1-1001(1)(j), C.R.S., and collection as provided by Section 32-1-1101(1)(e), C.R.S.

5.6 **Change of Method of Providing Service.** Notwithstanding the allocation of Wastewater Service Capacity and Water Service Capacity to Assignee and service by SVMD, nothing in this Assignment shall restrict SVMD from disposing of the Wastewater System or Water System, or changing its method by which it provides service to Assignee so long as SVMD continues to provide or arranges to provide Assignee with the services set forth in this

Assignment. If SVMD sells any of its Wastewater or Water System, SVMD shall still have the obligation to furnish substantially similar or better service to Assignee, but Assignee shall have no rights to the proceeds of the sale of such infrastructure; provided, however, that SVMD shall not sell a portion of the Wastewater System or Water System that necessitates additional funding from Assignee without SVMD's contribution of its proceeds from the sale of the Water System and/or the Wastewater System.

5.7 Service Provided by Assignee. Assignee will neither directly nor indirectly furnish, nor authorize the furnishing, of any water or sewer service within or without Assignee's Service Area through the Water System or Wastewater System. Nothing herein shall be construed as limiting Assignee's power to provide an independent source of water and sewer services not connected to the Water System or Wastewater System.

5.8 Assignee Dissolution. In the event Assignee seeks to dissolve pursuant to §32-1-701, *et. seq.*, C.R.S., if applicable, or pursuant to any other means, including, but not limited to bankruptcy, written notification of the filing or application for dissolution shall be provided to SVMD concurrently with any such filing, if applicable, or Assignee shall provide written notification to SVMD of its intention to dissolve as soon as possible. The plan for dissolution shall include provision for continuation of this Assignment, with a responsible entity acceptable to SVMD and CBCMD being substituted for Assignee as Party to this agreement. If no such provision is made for assumption of contractual obligation, then immediately upon dissolution of Assignee, this Assignment shall be null, void and of no further force or effect and any unused Assigned SFEs shall revert back to CBCMD pursuant to Section 2.2. Notwithstanding the foregoing, the dissolution of Assignee shall not affect the obligations of SVMD to continue to serve customers in Assignee's Service Area.

ARTICLE VI BREACH AND NON-BREACH

6.1 Non-Termination. Subject to SVMD's rights provided by law and its rules, regulations, policies, and procedures pertaining to violations or delinquent payments by individual service customers, the SVMD and Assignee agree that no breach of this Assignment shall justify or permit termination of the continuing obligations of this Assignment.

6.2 Breach, Remedies. In the event of breach of any provision of this Assignment, in addition to contractual remedies, either SVMD or Assignee may ask a court of competent jurisdiction for such legal and equitable remedies as may be available under the laws of Colorado, including entering a writ of mandamus to compel the Board of Directors of the defaulting Party to perform its duties under this Agreement, if applicable, and either Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Assignment including, without limitation, its obligations with respect to issuing bonds or otherwise incurring indebtedness or obtaining financing in order to raise funds required for payments hereunder.

6.3 Non-Breach, Non-Default. In the event that the trustee, identified in any trust indenture, trust agreement or similar instrument providing for the use of a trustee to enforce and

defend the rights of the holders of general obligation bonds or other bonds of Assignee, if applicable, has the authority, in the event of default in the debt service payments for such bonds, to direct the utilization of Assignee's funds in a manner that causes Assignee's obligations under this Assignment not to be paid in a timely manner, then such failure by Assignee to pay such amounts as they come due shall not be a default or breach of this Assignment. During such time as such trustee undertakes the foregoing actions, the operations of this Assignment shall be temporarily suspended, but all amounts otherwise payable by Assignee hereunder shall be deemed to be critical capital projects that the trustee shall pay in accordance with the priorities provided in the trust agreement or similar document. The Assignment shall continue in full force and effect immediately after the trustee ceases to perform such actions following default in the payment of Assignee's bonds.

6.4 Termination Notice, Opportunity for Cure. Notwithstanding any other provision of this Assignment to the contrary and except as may be required by law, if a dispute arises which would authorize or permit SVMD to terminate or suspend service to Assignee including termination of the right held by Assignee for continuing service or the connection of additional water and sewer taps utilizing capacity in the Water System or Wastewater System that has been assigned to Assignee pursuant to the Agreement, then SVMD shall provide a Termination Notice to Assignee and CBCMD. If Assignee does not comply with the suggested cure provided in the Termination Notice or an alternative cure reasonably acceptable to SVMD, or if Assignee commences a cure that will reasonably require more than thirty (30) days to complete but fails to diligently prosecute the cure to completion, then SVMD shall, after thirty (30) days following Assignee's receipt of such Termination Notice or cessation of diligent prosecution, terminate or suspend service as provided in the Termination Notice and all Unused Assigned SFEs shall revert back to CBCMD pursuant to Section 2.2 of this Assignment. No default by Assignee shall result in termination of service to a customer within Assignee's Service Area connected to the Water System or Wastewater System.

6.5 Dispute Resolution. Except as provided in Section 6.4 (Termination Notice, Opportunity for Cure), if a dispute arises under this Assignment, the complaining Party shall provide a written Notice of the Disagreement to the other Parties. If direct negotiation between the Parties fails to resolve the dispute within thirty (30) days of receipt of the Notice of Disagreement, and one Party requests the organization of a Resolution Committee, then:

6.5.1 Forthwith, the Resolution Committee shall meet to review such information as may be presented to the Resolution Committee, make such independent investigations, and decide the dispute by majority vote of the Resolution Committee at a meeting following reasonable notice at which all are present;

6.5.2 In its review of the dispute, the Resolution Committee shall review the facts, the technical objections, and any other materials deemed appropriate by the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute. The standards that the Resolution Committee shall use in the determination of any dispute shall include (1) whether the technical operation and maintenance characteristics of the Water System or Wastewater System or the Assignee's Constructed Facilities conform to this Assignment, (2) whether the Water System or Wastewater System or the Assignee's Constructed Facilities will overburden the Water or Wastewater Service Capacities or are likely to result in a

violation of any permit, water right, or law, (3) the reasonableness of the Party's position, and (4) the language of the Agreement and goals that the Parties sought to achieve in this Assignment;

6.5.3 The Resolution Committee shall, promptly upon making its decision, inform the Board of Directors or other authorized representative of the Parties in writing of such decision.

6.5.4 The decision of the Resolution Committee may be appealed to the Courts or, if the Resolution Committee fails to render a decision within thirty (30) days of its organization, then either Party may seek such other remedies as may be allowed by law. The Resolution Committee decision is not to be deemed a final, binding decision by arbitration.

ARTICLE VII MISCELLANEOUS

7.1 **Relationship of the Parties.** This Assignment does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

7.2 **Liability of Parties.** No provision, covenant or agreement contained in this Assignment, nor any obligations herein imposed upon each Party, nor the breach thereof, nor the issuance and sale of any bonds by a Party, shall constitute or create an indebtedness of the other Party within the meaning of any Colorado constitutional provision or statutory limitation. No Party shall have any obligation whatsoever to repay any debt or liability of the other Party.

7.3 **Assignment.** Neither this Assignment, nor any Party's rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment. A reversion pursuant to Section 2.2 is not deemed an assignment for purposes of this Section 7.3.

7.4 **Amendment and Modification.** This Assignment may not be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, except by an agreement in writing duly authorized and executed by all Parties. No consent of any non-Party shall be required for the negotiation and execution of any such agreement.

7.5 **Waiver.** No waiver or failure by any Party to insist upon the strict performance of any agreement, term, covenant or condition hereof, or failure to exercise of any right or remedy consequent upon any default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant or condition, or a waiver of any subsequent breach of the same or any other provision of this Assignment.

7.6 **Integration.** This Assignment contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Assignment shall be valid or binding.

7.7 **Severability.** Invalidation of any of the provisions of this Assignment or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Assignment.

7.8 **Survival of Obligations.** Unfulfilled obligations of any Assignee and SVMD arising under this Assignment shall be deemed to survive the expiration or termination of this Assignment and the completion of the Water System or Wastewater System and the Assignee's Constructed Facilities which are the subject of this Assignment, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Further, any obligations of Assignee and CBCMD arising under Section 2.2 of this Assignment shall survive the expiration or termination of this Assignment. In order to provide notice to all property owners of the rights and obligations under this Assignment, the Parties agree that upon execution this Assignment shall be recorded against all property described in **Exhibit A.**

7.9 **Fair Dealing.** In all cases where the consent or approval of one Party is required before the any other may act, or where the agreement or cooperation of one or more Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Assignment as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on either Party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable Parties contracting at arms-length.

7.10 **Force Majeure.** Any Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government except for the Party to be excused; national fuel shortage; when satisfactory evidence of such cause is presented to the other Parties, and provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the Party not performing.

7.11 **Notices.** All notices required or permitted to be given hereunder between the Parties shall be in writing and shall be effective upon personal delivery, e-mail, or three (3) business days following deposit of the notices in the United States Mail, postage prepaid and addressed as follows, or to such other address designated by a Party upon notice as hereinabove provided:

To SVMD:

Stonegate Village Metropolitan District
c/o District Manager
10252 Stonegate Parkway
Parker, CO 80134

With a Copy To

Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203-4358
Phone: 303-839-3800
Email: mdalton@spencerfane.com
Attn: **Matthew R. Dalton**

To CBCMD:

Compark Business Campus Metropolitan District
c/o CliftonLarsonAllen
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Phone: 303-779-5710
Email: bob.blodgett@claconnect.com
Attn: **Bob Blodgett**

With a Copy To:

Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203-4358
Phone: 303-839-3800
Email: rkron@spencerfane.com
Attn: **Rick Kron**

With a Copy To:

McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: mmcgeady@specialdistrictlaw.com
Attn: **MaryAnn M. McGeady**

To Developer:

470 Compark LLC
290 Fillmore St., Suite #2
Denver, CO 80206
Phone: 303-881-6292
Email: michaelvickers@mvpcompark.com
Attn: **Michael Vickers**

To Assignee:

Belford South Metropolitan District
c/o CliftonLarsonAllen
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Phone: 303-779-5710
Email: bob.blodgett@claconnect.com
Attn: **Bob Blodgett**

With a Copy To:

McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: mmcgeady@specialdistrictlaw.com
Attn: MaryAnn M. McGeady

7.12 **Applicable Law.** This Assignment shall be construed and interpreted in accordance with the laws of the State of Colorado.

7.13 **Governmental Immunity Applies.** Nothing contained in this Assignment shall serve as a waiver of the protections afforded the Parties pursuant to the Colorado Governmental Immunity Act.

7.14 **Annual Appropriations.** The obligations of certain Parties under this Assignment, to the extent they require expenditure of funds, are subject to the annual appropriations of such funds by their Boards of Directors, in their sole authority. Notwithstanding the foregoing, once such funds are appropriated, such obligations shall become binding for the year of appropriation and may be enforced for the year of appropriation at any time subsequent to such appropriation. Further, those Parties shall include within their proposed annual budget for consideration by each of their Board of Directors sufficient funds to fulfill all obligations under this Assignment.

7.15 **Venue.** Venue for any litigation brought under this Assignment shall be in Douglas County, Colorado District Court.

7.16 **Attorney Fees.** In the event of any dispute between the Parties arising out of this Assignment, each Party shall be responsible for its own attorney fees.

7.17 **No Third Party Beneficiaries.** None of the terms, conditions, or covenants in this Assignment shall give or allow any claim, benefit or right of action by any person or entity other than the signatory Parties hereto. Any other person or entity affected by this Assignment shall be deemed an incidental beneficiary with no rights under this Assignment.

7.18 **Counterpart Execution.** This Assignment may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single agreement.

Made and entered into the year and date first above written.

**STONEGATE VILLAGE
METROPOLITAN DISTRICT**

By: _____
President

Attest:

Secretary

**COMPARK BUSINESS CAMPUS
METROPOLITAN DISTRICT**

By: _____
President

Attest:

Secretary

**ASSIGNEE:
BELFORD SOUTH METROPOLITAN
DISTRICT**

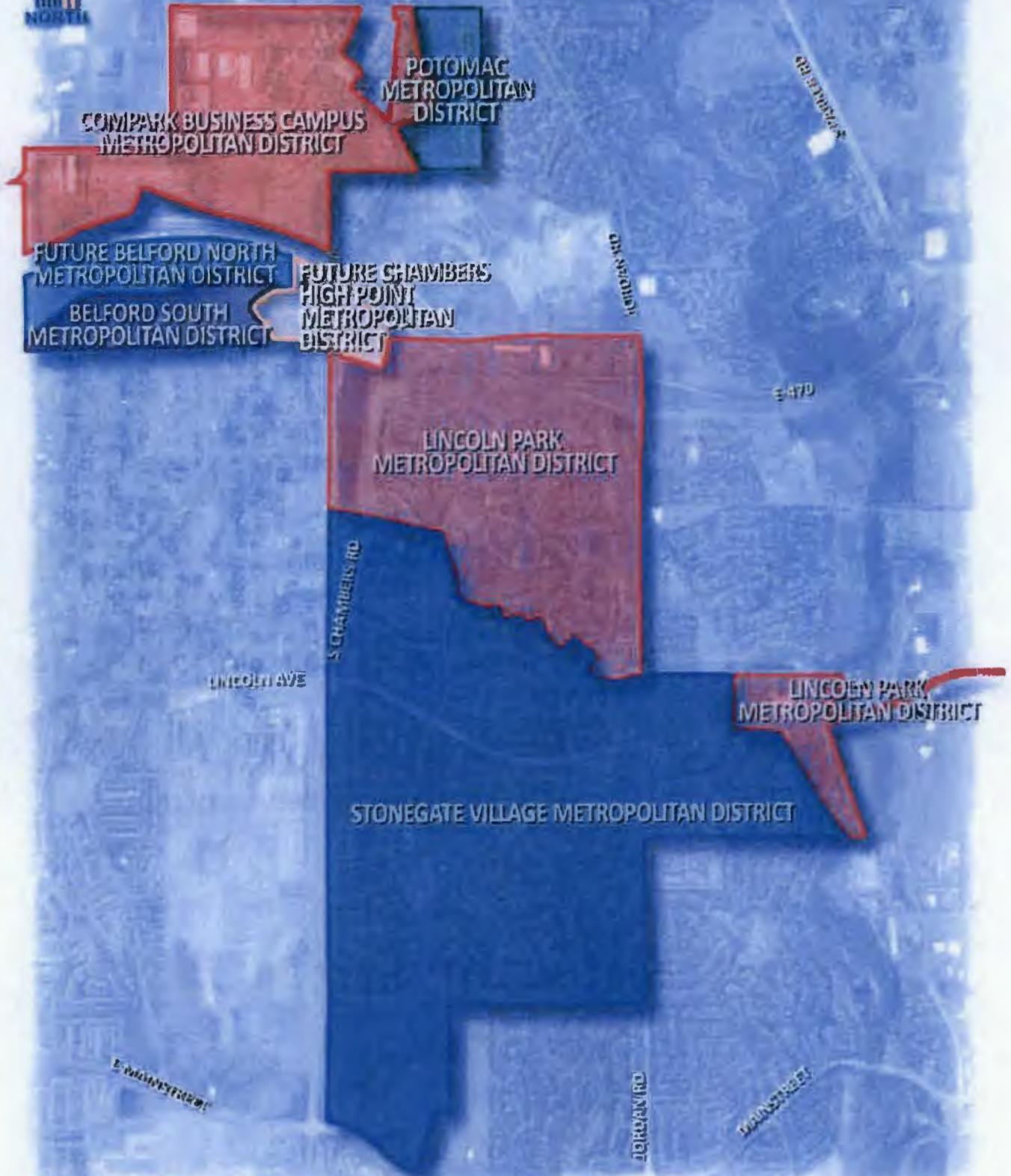
By: _____
President

Attest:

Secretary

EXHIBIT A

BSMD, CBCMD, PMD and SVMD Boundaries



**EXHIBIT A
METROPOLITAN DISTRICT LIMITS**





EXHIBIT B
Compark Service Area and Compark South

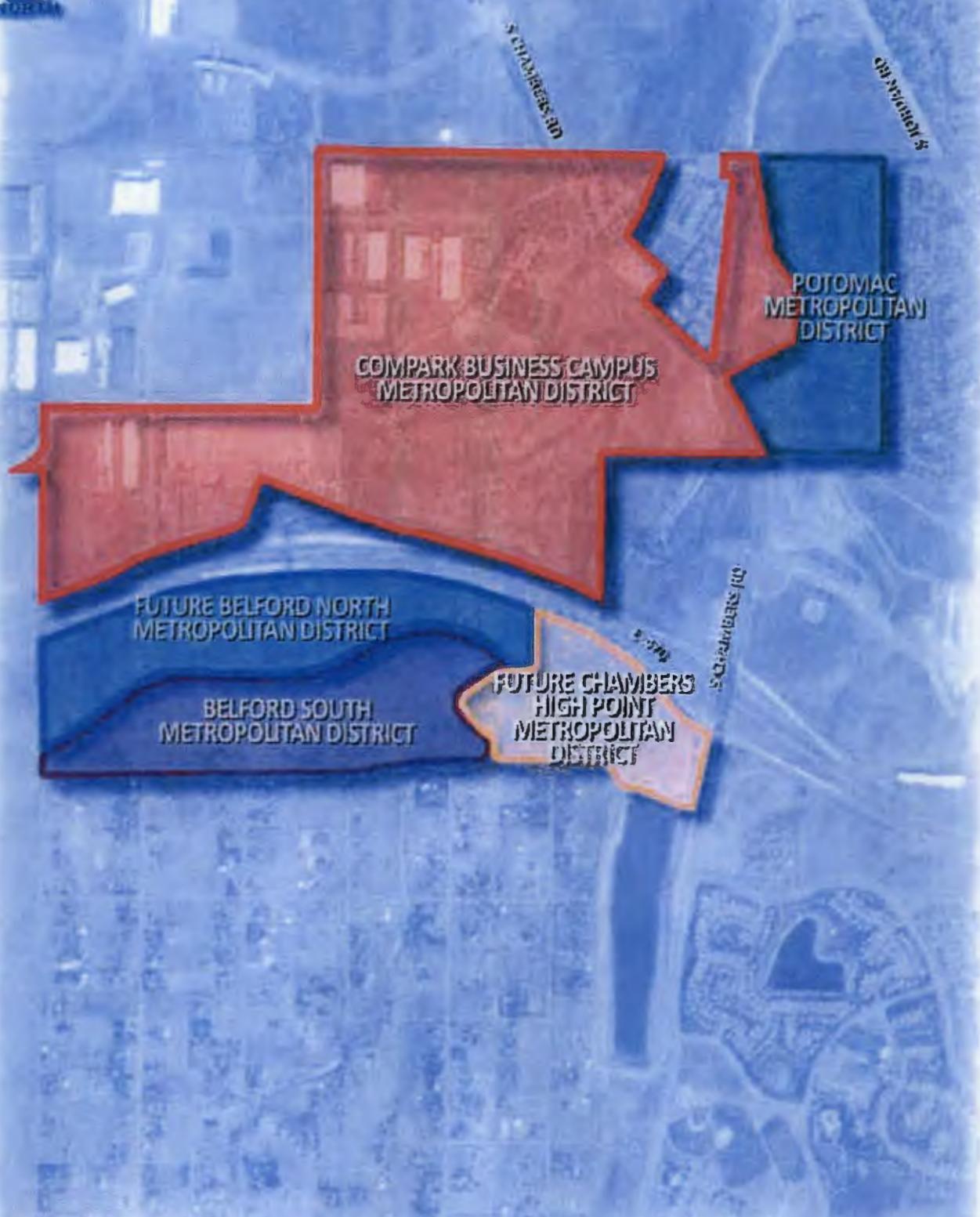


EXHIBIT B
METROPOLITAN DISTRICT LIMITS



EXHIBIT C

CAPITAL COST TRUE-UP PAYMENT

	2014 Wastewater Revenue Bonds	2015 Water Revenue Bonds
Estimated System Capacity	5130	5321
Assigned SFEs (Belford)	192	204
Belford Portion of Capital Costs	3.74%	3.83%
<u>2016 Bond Costs</u>		
Principal	\$ 230,000.00	\$ 245,000.00
Interest	\$ 537,206.00	\$ 599,356.00
	\$ 767,206.00	\$ 844,356.00
	3.74%	3.83%
Belford Portion	\$ 28,714.14	\$ 32,371.48

ATTACHMENT 4

**AMENDED AND RESTATED
REGIONAL WATER AND WASTEWATER SERVICE AGREEMENT**

This Amended and Restated Regional Water and Wastewater Service Agreement is made and entered into this 10th day of October, 2016, by and between Stonegate Village Metropolitan District, acting by and through its Water and Sewer Utility Enterprise Funds, and Compark Business Campus Metropolitan District f/k/a E- 470 Business Metropolitan District.

DEFINITIONS

1. **"1997 Regional Facilities Agreement"** - the December 4, 1997 Regional Facilities Agreement between SVMD and E-470 Business Metropolitan District.
2. **"Agreement"** – this Amended and Restated Regional Water and Wastewater Service Agreement.
3. **"Annual Update"** – the annual update, revision, supplement, or review of the SVMD Water and Wastewater Master Plan to reflect the best available information on the Water System and Wastewater System, including the basis and timing of anticipated Capital Costs, as determined appropriate or necessary at the sole discretion of SVMD.
4. **"BNMD"** – Belford North Metropolitan District, a metropolitan district anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services, as generally depicted on Exhibit A, attached hereto and incorporated herein.
5. **"Bonds"** – Collectively the Wastewater Bonds and the Water Bonds.
6. **"BSMD"** – Belford South Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services, within its jurisdictional boundaries as they exist on the Effective Date and as generally depicted on Exhibit A.
7. **"Capital Costs"** - Any costs incurred by SVMD necessary to meet requirements of state or federal laws and regulations, to acquire, develop or maintain a water supply, including costs associated with continued development of a renewable water supply, and for improvements, upgrades, or expansions to the Wastewater System and Water System necessary or appropriate to provide service within the SVMD Service Area. Capital Costs include previous and future payments on Debt or other financial obligations used for the same purposes. Capital Costs do not include the cost of CBCMD Constructed Facilities; which costs are the sole responsibility of CBCMD. Capital Costs include, but are not limited to costs of materials, components, labor costs, change orders, design engineering, construction engineering, landscape architecture, soil testing and inspection, line and systems testing and inspection, site and right of way acquisition costs, and all legal, accounting, and other professional costs incurred in connection with the Capital Costs.

8. **“Capital Cost Share”** – CBCMD’s share of a Capital Cost, calculated as a Capital Cost associated with Wastewater System multiplied by Wastewater Service Ratio or a Capital Cost associated with the Water System multiplied by the Water Service Ratio.

9. **“Capital Cost True-Up Payment”** – A payment made by CBCMD to make up for underpayment of Capital Costs resulting from payment through service charges for currently activated SFEs instead of projected SFEs. By way of illustration, based on SVMD's 2016 payments for Wastewater Bonds and the Water Bonds and 575 SFEs of water service and 541 SFEs of wastewater service being served within the Compark Service Area in 2016, and the projected service needs in the SVMD Service Area as currently estimated in Subsection 3.1.1 of this Agreement, the Capital Cost True-Up Payment would be calculated as follows:

	2014 Wastewater Revenue Bonds	2015 Water Revenue Bonds
Estimated System Capacity	5130	5321
Compark SFE Allocation	1205	1237
Compark Portion of Capital Costs	<u>23.5%</u>	<u>23.25%</u>
 <u>2016 Bond Costs</u>		
Principal	\$ 230,000.00	\$ 245,000.00
Interest	\$ 537,206.00	\$ 599,356.00
	<u>\$ 767,206.00</u>	<u>\$ 844,356.00</u>
Compark Portion	23.5%	23.25%
Total Due from Compark Service Area	<u>\$ 180,293.41</u>	<u>\$ 196,312.77</u>
Compark SFEs (Wastewater: 541/1205 = 44.90%) (Water: 575/1237 = 46.48%)	\$ (80,951.74)	\$ (91,246.18)
Capital Cost True-Up Payment	<u>\$ 99,341.67</u>	<u>\$ 105,066.59</u>

10. **“CBCMD”** - Compark Business Campus Metropolitan District f/k/a E- 470 Business Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, within its jurisdictional boundaries as they exist on the Effective Date and as generally depicted on Exhibit A.

11. **“CBCMD Constructed Facilities”** – water distribution and supply lines, pump stations, facilities, sewage collection lines, lift stations, irrigation lines, storage facilities, effluent land application facilities, storage or disposal areas and facilities, meters and data acquisition systems necessary for tele-monitoring, and any other facilities necessary, in the reasonable opinion of the SVMD, to be constructed by CBCMD and connected to the Wastewater System or Water System, pursuant to Section 4.7 of this Agreement, to connect to the Water System and Wastewater System to provide service to the Compark Service Area.

12. **“CBCMD’s Excess Wastewater Service Capacity”** – a portion of the Wastewater System Capacity within the CBCMD Wastewater Service Ratio that is in excess of

that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

13. **“CBCMD’s Excess Water Service Capacity”** – a portion of the Water System Capacity within the CBCMD Water Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

14. **“CHMD”** – Collectively, one or more metropolitan districts to be named the Chambers High Point Metropolitan District and anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services, within its jurisdictional boundaries as described in the approved Service Plan(s) for such district(s) and as generally depicted on Exhibit A.

15. **“Compark Service Area”** – an area previously described as the “Property” by the RFA, located in Douglas County, Colorado, and which includes Compark South, and is limited to the area generally depicted on Exhibit B, attached hereto and incorporated herein.

16. **“Compark South”** – A portion of the Compark Service Area as shown on the attached Exhibit B. Compark South includes the area within the District boundaries of BSMD, and the areas anticipated to be included within the District boundaries of BNMD and CHMD, when those Districts are organized.

17. **“Connection Charge”** – a rate, fee, toll, charge or combinations thereof, for a service user to have the right to make a physical connection between a service line and the Water System or Wastewater System. Connection Charges are imposed each time a connection is made to pay the cost associated with SVMD making, inspecting, or administering the physical connection. A connection charge is imposed in addition to usage fees or charges and System Access Fees.

18. **“Debt”** – the Bonds, future bonds or other debt obligations.

19. **“Effective Date”** – the effective date of this Agreement, October 10, 2016.

20. **“First Amendment to Regional Facilities Agreement”** – the August 31, 1998 First Amendment to the 1997 Regional Facilities Agreement.

21. **“Fourth Amendment to Regional Facilities Agreement”** – the July 3, 2008 Fourth Amendment to the Regional Facilities Agreement.

22. **“Notice of Disagreement”** – a written notice given by one Party to another Party if a dispute arises under this Agreement, explaining the dispute and at least one alternative for a solution.

23. **“Party” and “Parties”** – individually or collectively the signatories to this Agreement.

24. **"PMD"** – E-470 Potomac Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, within its jurisdictional boundaries as they exist on the Effective Date and as generally depicted on Exhibit A.

25. **"Projected Buildout"** – projected demand for service from the Water System or Wastewater System expressed in SFEs, determined from the land use approvals and existing planning and use data in effect from the applicable municipal or county government.

26. **"RFA"** – collectively the 1997 Regional Facilities Agreement, and the First, Second, Third and Fourth Amendments.

27. **"Resolution Committee"** – the Presidents of the Board of Directors of SVMD and CBCMD involved in a Notice of Disagreement, or designees thereof, and a Colorado registered professional engineer jointly appointed by agreement of the other members, which engineer shall have knowledge of the subject matter of the dispute (i.e., if a water facility is the subject of the dispute, the engineer shall have some knowledge of water systems engineering).

28. **"Rules and Regulations"** – the Rules and Regulations of SVMD adopted, amended and enforced pursuant to §32-1-1001(1)(m), C.R.S.

29. **"Second Amendment to Regional Facilities Agreement"** – the March 15, 1999 Second Amendment to 1997 Regional Facilities Agreement.

30. **"Service Area"** – An area provided water or wastewater service through the Water System or Wastewater System. As of the Effective Date, the SVMD Service Area comprises the property within the boundaries of SVMD, the boundaries of Lincoln Park Metropolitan District, as generally depicted on Exhibit A, and the Compark Service Area.

31. **"Service Charges"** – reoccurring periodic charges for service provided through the Water System and Wastewater System. Service charges currently are set by SVMD 2015 Resolution dated August 19, 2015 and include water and wastewater monthly usage fees and a WISE Renewable Water Fee.

32. **"SFE"** – the equivalent water or sewer service demand associated with a single family residential unit, as from time to time set forth and revised in the Rules and Regulations. As of the Effective Date, for purposes of planning and considering water treatment plant capacity and wastewater treatment plant capacity, one SFE of Water Service corresponds to approximately 1,053 gallons per day of treated water and one SFE of wastewater service corresponds to approximately 242.4 gallons per day of wastewater treatment. The number of SFEs associated with any specific use will be determined based on a standard conversion table or Rules and Regulations adopted by SVMD and amended from time to time.

33. **"SVMD"** – Stonegate Village Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, acting by and through its Water Utility Enterprise Fund and Sewer Utility Enterprise Fund, within its jurisdictional boundaries as they exist on the Effective Date and as generally depicted on Exhibit A.

34. **"SVMD Water and Wastewater Master Plan"** – a master plan of the Water System and the Wastewater System that is under development by SVMD at the time of the Effective Date and which is anticipated to be adopted by SVMD in 2016. The SVMD Water and Wastewater Master Plan will include, but not be limited to, a renewable water capital plan to identify infrastructure and water rights necessary to provide renewable water supplies within the Service Area.

35. **"System Access Fee"** – a fee imposed on an individual service user within the Compark Service Area prior to connection to enable the service user to receive service from the Water System and Wastewater System. The System Access Fee as of the Effective Date is \$2,975.70 per SFE combined water and sewer tap. The System Access Fee shall be adjusted annually on September 1 of each year by the percentage increase or decrease in inflation as defined in Art. X, Sec. 20 of the Colorado Constitution, as determined by SVMD.

36. **"Termination Notice"** – written notice provided by SVMD to CBCMD of SVMD's intent to terminate or suspend additional water and wastewater connections utilizing capacity in the Water System or Sewer System by CBCMD, which shall contain at least:

- a. the specific cause for the proposed termination or suspension, including a demonstrated justification therefor;
- b. the duration of the proposed termination or suspension;
- c. at least one reasonable cure that CBCMD may implement that would be acceptable to SVMD to avoid the termination or suspension, if possible. SVMD shall use best efforts to suggest a cure that will allow continued availability of service and new taps to CBCMD at all times, and shall, if not prohibited by law, continue to make continued service and taps available without interruption up to the capacity purchased by CBCMD if the suggested cure is actually implemented, and assuming compliance with the Rules and Regulations by the individual customer;
- d. the method to be used by SVMD to continue service to taps within CBCMD previously connected to the Water System or Wastewater System, assuming continued adherence to the SVMD Rules and Regulations by the owners of such taps;
- e. the name of a person who can provide more information; and
- f. the effective date for commencement of the termination or suspension.

37. **"Third Amendment to Regional Facilities Agreement"** – the August 15, 2001 Third Amendment to the 1997 Regional Facilities Agreement.

38. **"Wastewater Bonds"** – Wastewater Enterprise Revenue Bonds, Series 2014 issued by SVMD to improve and expand the Wastewater System.

39. **"Wastewater Service Capacity"** – the capacity of the Wastewater System, which may change from time to time, but which currently is estimated at 1,100,000 gallons per day (1.1 mgd).

40. **“Wastewater Service Ratio”** - the ratio of wastewater SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as 23.5 % (1,205 SFEs Compark Service Area; 5,130 SFEs SVMD Service Area).

41. **“Wastewater System”** – the SVMD wastewater treatment plant, as well as related wastewater collection, conveyance, measurement, and discharge facilities, lift stations, force mains, meters, pipelines, manholes and other related appurtenances.

42. **“Water Bonds”** – Water Enterprise Revenue Bonds, Series 2015 issued by SVMD to improve or expand the Water System.

43. **“Water Service Capacity”** – the capacity of the Water System, which may change from time to time, but currently is estimated at 5,760,000 gallons per day (5.76 mgd).

44. **“Water Service Ratio”** – the ratio of water SFEs based on the Projected Buildout of the Compark Service Area, currently calculated as 23.25% (1,237 SFEs Compark Service Area; 5,321 SFEs total SVMD Service Area).

45. **“Water System”** – the SVMD water treatment plant, as well as related water collection, storage, pipelines, conveyance and measurement facilities, meters, wells, and pump stations, storage and storage rights, ground and renewable water and water rights.

RECITALS

A. WHEREAS, pursuant to Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-203, Colorado Revised Statutes, the Parties may cooperate and contract with each other to provide any function, services, or facilities lawfully authorized to each, and any such contract may provide for the sharing of costs, the imposition of taxes, and the incurring of debt; and

B. WHEREAS, each Party and BSMD have has a Service Plan and have received all required governmental approvals therefore, and BNMD and CHMD are only contemplated and have yet to be organized; and

C. WHEREAS, each Service Plan discloses and establishes the necessity for and desirability of intergovernmental agreements concerning the construction, operation, and maintenance of certain regional facilities and the provision of services; and

D. WHEREAS, SVMD and CBCMD were organized with the approval of the County of Douglas, State of Colorado, and with the approval of their respective electors; and

E. WHEREAS, BSMD was, and BNMD and CHMD are anticipated to be, organized with the approval of the Town of Parker, State of Colorado, and with the approval of their respective electors; and

F. WHEREAS, to provide water and wastewater services, SVMD owns, operates and maintains the Water System and Wastewater System; and

G. WHEREAS, the Parties desire to provide for the continuing construction, operation and maintenance of the Water System and Wastewater System to serve the SVMD Service Area, including the Compark Service Area, and to allocate responsibility for the financing, ownership, construction and operation of the Water System and Wastewater System; and

H. WHEREAS, development within the Compark Service Area, including Compark South, will require CBCMD Constructed Facilities, the initial construction of which is to be financed entirely by CBCMD or private developers, and not SVMD; and

I. WHEREAS, the Parties agree that the Water System and Wastewater System and the CBCMD Constructed Facilities are needed by CBCMD and that the same will benefit the residents and property owners within the Service Area by improved utilization of the Water System and Wastewater System, economies of scale, and efficiency in terms of cost, quality and level of service; and

J. WHEREAS, SVMD and CBCMD's predecessor, E-470 Business Metropolitan District, entered into the 1997 Regional Facilities Agreement whereby SVMD allocated capacity in the Wastewater System and Water System to serve portions of the Compark Service Area. The 1997 Regional Facilities Agreement was modified by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment. The RFA contemplates the funding and allocation of capacity in the Wastewater System and Water System based on the demands for service within the Compark Service Area and SVMD. The First, Second and Third Amendments enlarged the service area subject to the RFA, with the Second and Third Amendments extending the service area to include Compark South. The Fourth Amendment clarified the procedures to fund and develop a renewable water capital plan, and allows CBCMD, with the approval of SVMD, to sell or assign CBCMD's excess Water Service Capacity and CBCMD's excess Wastewater Service Capacity to a third party; and

K. WHEREAS, SVMD has issued Bonds and incurred Capital Costs to improve and expand the Wastewater System and the Water System; and

L. WHEREAS, the Bonds are secured by SVMD's covenant to impose fees, rates and other charges against users of the Wastewater System and Water System adequate to pay SVMD's annual operation and maintenance expenses of such systems and annual debt service on the Bonds; and

M. WHEREAS, the Parties wish to update, amend, and restate the terms of the RFA to provide the basis for SVMD continuing to serve the Compark Service Area; and

N. WHEREAS, the Parties find and agree that the entry into and performance of this Agreement is in the best interests of each Party.

COVENANTS

NOW THEREFORE, IN CONSIDERATION of the above recitals, the mutual covenants, considerations and promises contained herein and other good and valuable

consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

ARTICLE I INCORPORATION

1.1 **Incorporation of Definitions and Recitals.** The definitions and recitals set forth above are incorporated into the terms of this Agreement.

1.2 **SVMD Rules and Regulations.** All activities under this Agreement, including the provisions of service to the Compark Service Area shall be subject to the Rules and Regulations. CBCMD shall exercise its rule making and enforcement power to assist SVMD in enforcing the Rules and Regulations, including those made to protect the purity and safety of the water supply and to prevent waste of water; and CBCMD's assignment of any of its rights hereunder, including without limitation, all or any portion of CBCMD's excess Wastewater Service Capacity and excess Water Service Capacity to other entities is expressly contingent upon such assignee's agreement to comply with SVMD's Rules and Regulations.

ARTICLE II PURPOSE AND TERM OF AGREEMENT

2.1 **Purpose.** The purpose of this Agreement is to amend and restate the RFA in full. Upon the Effective Date, the RFA will be of no further force and effect.

2.2 **Term of Agreement.** Except as otherwise provided herein, this Agreement shall become effective upon execution and shall continue until all Wastewater Service Capacity and Water Service Capacity allocated to CBCMD has been assigned, pursuant to Section 3.1.4 of this Agreement, or has been connected and is being served by SVMD.

ARTICLE III WATER AND WASTEWATER CAPACITY AND SERVICE

3.1 **Service Capacity Allocations.**

3.1.1 **Projected Service Needs.** Based on the current Projected Buildout, SVMD is anticipated to provide wastewater service to 5130 SFEs and water service to 5321 SFEs. Of those totals, the Compark Service Area is projected to require 1205 SFEs of wastewater service and 1237 SFEs of water service, with 638 SFEs of wastewater service and 670 SFEs of water service projected to be served within the CBCMD and PMD boundaries, and Compark South requiring 567 SFEs of water and wastewater service. The area within Compark South is anticipated be included within the district boundaries of BNMD, BSMD, and/or CHMD.

3.1.2 **Service Capacity.** The Water Service Capacity and Wastewater Service Capacity are currently limited primarily by the treatment capacity of the SVMD water treatment plant and wastewater treatment plant, though other portions of the Wastewater System and Water System may, from time to time, require upgrades, improvements, enlargements and other modifications to maintain or increase Water Service Capacity and Wastewater Service Capacity.

3.1.3 **Assignment of Excess Capacity.** The Parties may, by assignment in a form substantially as provided in Exhibit C, attached hereto and incorporated herein, effect an assignment of CBCMD's excess Wastewater Service Capacity and CBCMD's excess Water Service Capacity, in which case the Wastewater Service Ratio and Water Service Ratio shall be adjusted, and similar ratios will be calculated and attributed to assignees.

3.1.4 **Service Commitment.** Contingent on satisfaction of conditions and payments as provided in this Agreement, SVMD shall make available Wastewater System Capacity in the amount of the Wastewater Service Ratios and Water System Capacity in the amount of the Water Service Ratios, to provide wastewater and water service to the Compark Service Area.

3.1.5 **Service Ratio Revisions.** The Wastewater Service Ratio and Water Service Ratio may be revised, in SVMD's reasonable discretion, without amendment of this Agreement in the event that the Projected Buildout or actual development changes. SVMD shall provide CBCMD with written notice of and the opportunity to be heard prior to any changes to the Wastewater Service Ratio and Water Service Ratio.

3.2 **No Guarantee of Service, Limitations.**

3.2.1 **Service Capacity Uncertainties.** The Parties acknowledge that there is currently Water Service Capacity sufficient to serve the Projected Buildout of the SVMD Service Area, including all of the Compark Service Area. Based on Projected Buildout, currently there is not existing Wastewater Service Capacity to serve Compark South. Historic development has generally been less than Projected Development, which may result in sufficient Wastewater Service Capacity to serve Compark South. Also, while the Compark Service Area Wastewater Service Ratio and Water Service Ratio are calculated from Projected Buildout expressed in terms of SFEs of wastewater or water service demand, until System Access Fees have been paid by CBCMD and accepted by SVMD there is no guarantee that the Wastewater Service Capacity or Water Service Capacities can be converted to any specific number of SFEs. Further, Water Service Capacity or Wastewater Service Capacity may change based on the age of facilities, regulatory changes imposed by third parties, operational changes, facility upgrades, actual development and other factors. Therefore, there is no guarantee that SVMD will have at any point in time sufficient Wastewater Service Capacity or Water Service Capacity to provide service to the Compark Service Area, Compark South, or any other user with the SVMD Service Area when requested without system improvements or expansions as provided in the Agreement.

3.2.2 **Water Supply.** Water supply for the Water System is dependent upon natural resources and sources from which the quantity is variable and beyond the control of SVMD. Similarly, the provision water and wastewater services is subject to various local, state and federal agencies. No liability shall attach to SVMD for any failure to accurately anticipate availability of the water supply, the availability of sewage treatment capacity, or the need to incur Capital Costs due to occurrences beyond the reasonable control of SVMD.

3.2.3 **Tap Curtailment.** If conditions develop such that it becomes apparent to SVMD that all areas outside SVMD's boundaries for which such services have been committed cannot be supplied adequately pursuant to this and similar agreements, SVMD reserves the right

to discontinue the granting of additional taps; provided, however, SVMD shall be obligated to exercise this right of discontinuance uniformly outside and inside SVMD.

3.2.4 **Access to Service.** Access to wastewater and water service shall be on a first come first served basis, based on payment of all System Access Fees, subject to CBCMD's right of first refusal as set forth in Section 3.2.5.

3.2.5 **CBCMD Right of First Refusal.** SVMD agrees that it shall not guarantee or otherwise obligate SVMD to provide service to users in excess of 5130 SFEs with respect to the Wastewater System and 5321 SFEs with respect to the Water System prior to connecting 1205 SFEs of wastewater service or 1237 SFEs of water service within the Compark Service Area unless and until the following conditions have been satisfied:

a) Within ten (10) business days of receiving such request for service, SVMD shall provide written notice of same to CBCMD, which notice shall include the number of SFEs requested and the conditions of SVMD providing such service;

b) So long as CBCMD is not in default of its obligations under this Agreement, CBCMD shall have twenty (20) business days to provide its written intent to satisfy the same terms of service within the same time as noted in the notice provided by SVMD; and

c) In the event that CBCMD (1) does not provide written notice of its intent to pay such System Access Fees or meet such terms of service, or (2) provides notice of intent to pay System Access Fees and meet such terms of service but fails to comply with such terms, SVMD may proceed to provide service to such user under the terms of service contained in such notice.

3.2.6 **Insufficient Capacity.** SVMD may deny connection to the Wastewater System or Water System if it determines, in its reasonable discretion, that Wastewater or Water Service Capacity are insufficient, until such time as additional Wastewater or Water Service Capacity is made available as provided in this Agreement.

3.3 **Shortages and Limitations on Service.** SVMD may, in order to comply with any applicable law, rule, directive, or order, and to enable it to provide adequate services to the SVMD Service Area, as well as other customers of SVMD in times of shortage or other practical or legal limitations on the ability of SVMD to provide the services contemplated under this Agreement, limit the delivery of water and sewer services, and/or restrict the use of water delivered under this Agreement. The extent to which limitation of services may be necessary to enable SVMD to provide adequately for all users of Water System and Wastewater System is a fact to be determined by SVMD as the occasion may require. The current determination by SVMD on this subject, which will not be changed without good reason, is as follows:

"The welfare of SVMD and its inhabitants requires stable water and sewer services not only for them but also that part of the adjacent area dependent on SVMD for the delivery of water and sewer services. While it is the purpose of SVMD to maintain systems and supplies adequate to meet the needs of all dependent upon SVMD for water and sewer services, there are many elements which make it uncertain whether such services can

always be adequate for all, and therefore, in times of shortage or other practical or legal limitation, water use and use of SVMD's water and wastewater systems will be curtailed on the following basis, the first listed curtailment being adopted to meet the least serious situation and the succeeding curtailment being adopted in addition to prior listed curtailments, and the last curtailment to meet the gravest possible situation and one which every reasonable precaution must be taken to avoid, to-wit:

1. Restriction of uses (such as irrigation), which can be accomplished without serious injury to person or property and prohibition of non-essential uses.
2. Prohibition of irrigation except for commercial greenhouses.
3. Prohibition of every use except for domestic use and for essential commercial enterprises and industry.
4. Prohibition of all use except domestic uses.
5. In order to enable SVMD to provide an adequate supply of water to the people of SVMD without impairment of essential deliveries of water under this and similar agreements, SVMD will impose any restrictions or prohibitions contemplated by Item 1. through 4., above, uniformly inside and outside SVMD."

3.4 **Nature of Water Use.** All water furnished by SVMD is on a leasehold basis for users within the Compark Service Area for all the purposes for which SVMD has been decreed the right to appropriate water. Use of SVMD water does not include any right to make a succession of uses of such water. Upon completion of the primary use by a water user, all dominion over the water reverts completely to SVMD. All property rights to the water to be furnished by SVMD are reserved in SVMD. Nevertheless, there is no obligation on CBCMD or on the water users within the Compark Service Area to create any particular volume of return flow from water delivered pursuant to this Agreement.

ARTICLE IV CONSTRUCTION AND COSTS OF SYSTEM, FACILITIES, AND SERVICE

4.1 **Capital Cost Share.** To provide its proportional funding of Capital Costs associated with the Water System and Wastewater System, CBCMD shall pay SVMD CBCMD's Capital Cost Share.

4.2 **Prior Capital Costs.** CBCMD shall be responsible for paying its Capital Cost Share for Capital Costs previously paid by SVMD, including previous payments on the Bonds. Because CBCMD has paid a portion of such prior Capital Costs through Service Charges, which have been paid by connected SFEs, as opposed to Projected Buildout which is the basis for determining the Capital Cost Share, CBCMD has not paid SVMD its full Capital Costs Share for Capital Costs previously paid by SVMD. To make up for such underpayments, CBCMD shall pay SVMD a total of \$180,890.74 by December 31, 2016 for CBCMD's Capital Cost Share associated with payments on the Bonds. Upon payment of such amounts, all financial obligations of CBCMD incurred under the RFA shall be satisfied.

4.3 **Future Capital Costs.** CBCMD is responsible for paying for future Capital Costs incurred by SVMD, including future payments on Debt or other financial obligations, in the amount of its Capital Cost Share. Future Capital Costs shall be paid by CBCMD by one or a combination of the following methods, at the discretion of SVMD:

4.3.1 **Capital Costs Paid without Rate Funding.** If SVMD funds Capital Costs without including the CBCMD Capital Cost Share within its water and wastewater rates, fees, tolls, or charges applied within the Compark Service Area, CBCMD shall pay the full amount of CBCMD's Capital Cost share directly to SVMD. Subject to Section 5.4, CBCMD shall pay its Capital Costs Share not less than thirty (30) days prior to SVMD incurring the obligation resulting in the Capital Cost, or if the Capital Cost is financed not less than thirty (30) days prior to the due date for SVMD to make its financing payment.

4.3.2 **Rate Funding and True-Up Payment.** Active service to SFEs may not be in proportion to projected SFEs at buildout, which is used to calculate the Wastewater Service or Water Service Ratios. Therefore, if SVMD includes a charge for CBCMD's Capital Cost Share within its water and wastewater rates, fees, tolls and charges applied within the Compark Service Area, CBCMD will also make a Capital Cost True-Up Payment to SVMD. The Capital Cost True-Up Payment shall be made not less than thirty (30) days prior to the due date for SVMD to make its Capital Cost payment, or annually by December 31, whichever occurs first.

4.4 **Capital Cost Share Funding.** CBCMD shall have the discretion to fund its Capital Cost Share in any method determined by CBCMD, including a tap fee, development fee, sustainability fee, supplemental fee, or other similar fees within the Compark Service Area. SVMD agrees to collect such fees, subject to an administrative fee reasonably designed to defray SVMD's actual collection and administrative costs related to said fees, to be deducted from the amounts remitted to CBCMD.

4.5 **System Access Fees.** A System Access Fee shall be paid prior to connecting any service line to the Water System or Wastewater System. The System Access Fee shall be in lieu of a tap fee or system development charges and in recognition of CBCMD's obligation to also pay CBCMD's Capital Cost Share.

4.6 **No Offset.** No revenue received by SVMD from the assessment of service and/or Connection Charges for service within the Compark Service Area or as allowed by the Rules and Regulations shall afford CBCMD any right of offset, rebate or refund for or against any obligation created by this Agreement.

4.7 **CBCMD Constructed Facilities.**

4.7.1 **Responsibility.** At its sole cost and expense, CBCMD shall be responsible for, or shall otherwise cause, the financing, design, development, construction and connection to the Wastewater System or Water System of all CBCMD Constructed Facilities that are necessary to extend service by the Wastewater System and Water System to serve customers within the Compark Service Area. CBCMD may enter into agreements with other entities to fulfill its obligations regarding CBCMD Constructed Facilities, but such delegation of responsibility shall not relieve CBCMD of its obligations under this Agreement.

4.7.2 **Construction Obligations.** With respect to the construction of CBCMD Constructed Facilities, CBCMD agrees as follows:

- a) To obtain approval of SVMD of all design and construction plans and specification;
- b) To design, construct, and inspect all CBCMD Constructed Facilities in accordance with the Rules and Regulations, approved plans and specifications, and standards of SVMD;
- c) To the extent permitted by law, to hold harmless and indemnify SVMD for any and all losses or damages it may suffer or may be called upon to pay as a result of said construction;
- d) To provide performance and payment bonds warranting the construction, installation, and operation of CBCMD Constructed Facilities, and guaranteeing, at CBCMD's sole cost and expense, to make all needed and necessary repairs and replacements due to defective materials, design or workmanship, or failure to abide by approved design or construction plans, but not associated with ordinary and normal wear and tear. The performance and payment bonds will also hold SVMD harmless for payment to the contractor and any subcontractors, and guarantee one (1) year's maintenance on all CBCMD Constructed Facilities commencing on the date of transfer of the CBCMD Constructed Facilities to SVMD. If, within one (1) year from transfer the CBCMD Constructed Facilities appear to be defective or cease to operate as intended, then CBCMD shall promptly replace the defective or improperly operating portion or portions of such CBCMD Constructed Facilities at its cost and expense. If within ten (10) days after receipt of notice, CBCMD has not undertaken repairs and/or replacement or if circumstances require immediate repairs, SVMD may, without further notice to CBCMD, undertake the repairs and/or replacement at CBCMD's expense;
- e) To permit SVMD to observe and inspect any and all of the construction and notify CBCMD's engineer of any improper construction;
- f) To give SVMD reasonable notification (in any event not less than twenty-four (24) hours including one (1) business day) of the time proposed to make connections to the Water System or Wastewater System, and not connect the CBCMD Constructed Facilities to the Water System or Wastewater System until inspected and approved;
- g) To acquire all necessary governmental approvals, and contract for work and materials in accordance with Colorado and any other applicable laws, rules, regulations and orders;
- h) To make available to SVMD copies of any and all designs, plans, construction drawings, construction contracts and related documents as SVMD may request from time to time;
- i) To diligently and continuously prosecute to completion construction of the CBCMD Constructed Facilities in such manner as SVMD may reasonably determine to be in the best interests of both SVMD and CBCMD; and

j) To reimburse SVMD for all engineering fees, inspection and approval fees, and other costs incurred by SVMD as a result of the construction of the CBCMD Constructed Facilities.

4.7.3 **Transfer of Facilities.** Within thirty (30) days after the date of completion of the construction of each phase of CBCMD Constructed Facilities, CBCMD shall:

a) Deliver to SVMD a certificate from a registered professional engineer certifying that all CBCMD Constructed Facilities have been built for the phase, and are operating in accordance with the plans and specifications approved by SVMD.

b) Execute and deliver to SVMD a good and sufficient bill of sale describing all of the components and personal property relating to such CBCMD Constructed Facilities, which bill of sale shall warrant that conveyance of the property described therein to SVMD is made free from any lien, claim, or demand.

c) Execute and deliver to SVMD a good and sufficient easement deed acceptable to SVMD conveying rights at least equal to rights it would enjoy in a dedicated street, including the right to ingress and egress necessary to operate and maintain the CBCMD Constructed Facilities.

d) Provide SVMD with surveyed, as-built drawings of the CBCMD Constructed Facilities, certified by a registered, professional engineer.

4.7.4 **Acceptance of Facilities.** In no event shall the SVMD be required to allow connection of the CBCMD Constructed Facilities to the Water System or Wastewater System or provide service to the CBCMD Constructed Facilities until such time as it, in its reasonable discretion, determines that the CBCMD Constructed Facilities have been properly completed and transferred to SVMD.

4.7.5 **Construction Claims.** CBCMD agrees that it shall, to the extent practical and cost-effective as reasonably determined by CBCMD, assert against any contractor involved in constructing any portion of the CBCMD Constructed Facilities which are contemplated by this Agreement any claim that SVMD or CBCMD may have against the contractor according to the terms of any construction contract and/or construction guarantee and/or warranty. SVMD specifically agrees that it will enforce such guarantees, promises, and warranties of a contractor, whenever requested to do so by CBCMD, if: (1) such request presents a plausible claim under the terms of the construction contract, construction guarantee, or warranty, and (2) CBCMD agrees in writing to individually bear any costs associated with such enforcement.

4.7.6 **Budget Report.** By October 15 of each year, CBCMD shall provide to SVMD a report which shall include: (1) an itemized annual budget and schedule for construction of any CBCMD Constructed Facilities to be constructed in the upcoming year, (2) a summary description of development that occurred within the Compark Service Area during the current year, and (3) a summary projection of development within the Compark Service Area anticipated in the upcoming year. Any material change made to such budget by CBCMD shall be provided to SVMD as soon as possible.

4.7.7 **Cost Recovery.** In the event CBCMD is required by SVMD to oversize the CBCMD Constructed Facilities to allow SVMD to provide water or sewer service outside the Compark Service Area, then the costs incurred by CBCMD which are directly attributable to such over-sizing shall be reimbursed to CBCMD prior to making any connections to the oversized CBCMD Constructed Facilities to provide service outside the Compark Service Area. Provided, however, any cost recovery payments shall be paid only pursuant to a cost-recovery agreement to be entered into at the time of construction of the oversized CBCMD Constructed Facilities. Absent such a cost-recovery agreement, unless otherwise required by law, CBCMD shall have no obligation to construct oversized CBCMD Constructed Facilities or receive reimbursement.

**ARTICLE V
OWNERSHIP AND OPERATION OF
WATER AND WASTEWATER SYSTEM AND FACILITIES**

5.1 **SVMD Ownership and Operation.** SVMD shall own the Water System and Wastewater System, and upon transfer to and acceptance by SVMD, the CBCMD Constructed Facilities, and shall be responsible for operating and maintaining the same.

5.2 **Service Obligation.** Contingent upon CBCMD performing its obligations under this Agreement, SVMD shall incur Capital Costs as necessary to provide water and wastewater service to the Compark Service Area. Except as specifically permitted by this Agreement, such service shall be of a quality and in quantity and pursuant to the same policies and standards as provided within the SVMD boundaries. SVMD shall maintain the Water System and Wastewater System with reasonable and normal care necessary to furnish the water and sewer service.

5.3 **Master Plan.** SVMD currently has under development the Water and Wastewater Master Plan. SVMD anticipates finalizing and adopting the Water and Wastewater Master Plan prior to 2017 and, upon adoption, shall provide a copy to CBCMD. SVMD shall prepare and provide to CBCMD the Annual Update no later than September 1 of each year, commencing in 2017. SVMD's manager and engineer shall meet with managers and engineers of CBCMD semi-annually in the first quarter and third quarter of each year to review the Annual Update and Capital Costs assumptions. CBCMD may submit comments on the Annual Update to SVMD by October 1 of the year of receipt, and shall consider the Annual Update in drafting its budget. SVMD shall consider CBCMD's comments and make such modifications as it deems appropriate in its sole discretion, and report any modifications to the Annual Update to CBCMD by November 15 to allow CBCMD the opportunity to consider further adjustments to CBCMD's budget. Additionally, with each Annual Update, SVMD shall provide CBCMD with a list of Capital Costs anticipated to be incurred during the following year.

5.4 **Notice of Capital Costs.** Payment of CBCMD's Capital Cost Share may require CBCMD to issue bonds or obtain other financing that must meet certain statutory and constitutional requirements, including debt authorization elections. SVMD shall strive to give CBCMD no less than twelve (12) months' notice before incurring a Capital Cost that will require payment of a CBCMD Capital Cost Share. CBCMD recognizes that such notice may not be feasible. If such notice is not feasible, SVMD shall notify CBCMD of the upcoming Capital Cost

as soon as SVMD believes that the expenditure is likely to be made. In the event that CBCMD cannot pay CBCMD's Capital Cost Share when due, SVMD and CBCMD will work together on interim funding solutions, or on Capital Cost revisions that recognize the funding limitations. To the extent the Parties are not able to agree to solutions or modifications that allow CBCMD to pay the CBCMD Capital Cost Share when due, SVMD may incur the Capital Cost, and SVMD may impose a fee on all connected taps in the Compark Service Area in an amount necessary to reasonably pay the CBCMD Capital Cost Share. In that event, CBCMD's Wastewater or Water Service Ratios may be revised and CBCMD's right to Wastewater or Water Service Capacity reduced until CBCMD's Capital Cost Share has been paid; provided, however, that no connected tap shall be disconnected as a result.

5.5 Wastewater Service Customers; Billing; Charges, Rate, Tolls and Other Fees.

5.5.1 **SVMD Customers.** Properties provided water or wastewater service under this Agreement for which tap connections have been made shall become direct customers of SVMD. Billing for ongoing services will be performed by SVMD. SVMD shall have sole authority to read meters for the purpose of imposing and collecting Service Charges.

5.5.2 **Rates, Fees, Tolls, Penalties, and Charges.** SVMD may establish, revise, impose and collect Service Charges, Connection Charges, turn on fees, turn off fees, meter setting fees, penalties for damage to system components, bill collection fees, penalties, and similar rates, fees tolls, and charges for individual customers receiving service from the Water System or Wastewater System. Such rates, fees, tolls and charges may be adopted and revised from time to time, and shall be applied uniformly among users similarly situated. With regard to any changes in fees, rates, tolls, penalties, or charges, SVMD shall provide notice pursuant to Section 32-1-1001(2), C.R.S.

5.5.3 **Proportionality of Charges.** Rates, fees, tolls, penalties, and charges within the Compark Service Area will be proportional to charges for similar uses within the SVMD boundaries; provided, however that SVMD may take into account differentials in the cost of providing services within the Compark Service Area as compared to the cost of providing the same services within the SVMD boundaries, and as provided by Section 32-1-1006(1)(b), C.R.S. Where differential rates or charges are proposed for the Compark Service Area, SVMD shall provide notice and an opportunity to be heard by CBCMD prior to adoption of such rates or charges. SVMD may also take into account the fact that some portion of SVMD's cost of providing services within its own boundaries may be offset by ad valorem taxes. SVMD shall at all times have reasonable discretion to establish and apply criteria for determining, as to both without and within SVMD, appropriate fees, rates, tolls, penalties, and charges.

5.5.4 **Rate Studies.** To confirm that rates, tolls, and charges for wastewater and water service, including any differential rates and charges established pursuant to Section 5.5.2, are reasonably related to SVMD's operation, maintenance and Capital Costs, and uniform as applied to similarly situated users, SVMD shall annually review rates and periodically perform and update a rate study. Costs of such rate study shall be included in water and wastewater service fees and charges.

5.5.5 **CBCMD Surcharges.** Upon adoption by Resolution of CBCMD and at CBCMD's request, SVMD shall impose and collect for CBCMD's benefit reasonable surcharges for the purpose of supplementing CBCMD's revenues for meeting covenants contained within, or payment of any general obligation bonds, or for the provision of capital reserves to fund CBCMD Constructed Facilities. SVMD may include a reasonable administrative fee for such collection service. Surcharges to fund CBCMD Constructed Facilities collected, less the additional administrative fee, shall be remitted to CBCMD.

5.5.6 **Delinquent or Non Payment of Fees by Customers.** Properties provided water or wastewater service under this Agreement shall be subject to the powers of SVMD pursuant to Section 32-1-1006(1)(d), C.R.S., regarding delinquencies. Such customers shall also be subject to the lien power of SVMD pursuant to Section 32-1-1001(1)(j), C.R.S., and collection as provided by Section 32-1-1101(1)(e), C.R.S.

5.6 **Change of Method of Providing Service.** Notwithstanding the allocation of Wastewater Service Capacity and Water Service Capacity to CBCMD and service by SVMD, nothing in this Agreement shall restrict SVMD from disposing of the Wastewater System or Water System, or changing its method by which it provides service to CBCMD so long as SVMD continues to provide or arranges to provide CBCMD with the services set forth in this Agreement. If SVMD sells any of its Wastewater or Water System, SVMD shall still have the obligation to furnish substantially similar or better service to CBCMD, but CBCMD shall have no rights to the proceeds of the sale of such infrastructure; provided, however, that SVMD shall not sell a portion of the Wastewater System or Water System that necessitates additional funding from CBCMD without SVMD's contribution of its proceeds from the sale of the Water System and/or the Wastewater System.

5.7 **Service Provided by CBCMD.** CBCMD will neither directly nor indirectly furnish, nor authorize the furnishing, of any water or sewer service within or without the Compark Service Area through the Water System or Wastewater System. Nothing herein shall be construed as limiting CBCMD's power to provide an independent source of water and sewer services not connected to the Water System or Wastewater System.

5.8 **CBCMD Dissolution.** In the event CBCMD seeks to dissolve pursuant to §32-1-701, et. seq, C.R.S., written notification of the filing or application for dissolution shall be provided to SVMD concurrently with such filing. The plan for dissolution shall include provision for continuation of this Agreement, with a responsible entity acceptable to SVMD being substituted for CBCMD as Party to this Agreement. If no such provision is made for assumption of contractual obligation, then immediately upon dissolution of CBCMD, this Agreement shall be null, void, and of no further force or effect and SVMD shall have no further obligation to provide services pursuant to the terms hereof. Notwithstanding the foregoing, the dissolution of CBCMD shall not affect the obligations of SVMD to continue to serve customers in the Compark Service Area.

ARTICLE VI BREACH AND NON-BREACH

6.1 **Non-Termination.** Subject to SVMD's rights provided by law and its rules, regulations, policies, and procedures pertaining to violations or delinquent payments by individual service customers, the Parties agree that no breach of this Agreement shall justify or permit termination of the continuing obligations of this Agreement.

6.2 **Breach, Remedies.** In the event of breach of any provision of this Agreement, in addition to contractual remedies, either Party may ask a court of competent jurisdiction for such legal and equitable remedies as may be available under the laws of Colorado, including entering a writ of mandamus to compel the Board of Directors of the defaulting Party to perform its duties under this Agreement, and either Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Agreement including, without limitation, its obligations with respect to issuing bonds or otherwise incurring indebtedness or obtaining financing in order to raise funds required for payments hereunder. If at any time there shall cease to be electors in CBCMD, or if no electors of CBCMD are willing to act as Directors of CBCMD, SVMD may ask a court of competent jurisdiction to designate the proper persons to assume control of CBCMD for purposes of causing the performance of CBCMD's obligations under this Agreement.

6.3 **Non-Breach, Non-Default.** In the event that the trustee, identified in any trust indenture, trust agreement or similar instrument providing for the use of a trustee to enforce and defend the rights of the holders of general obligation bonds of CBCMD, has the authority, in the event of default in the debt service payments for such bonds, to direct the utilization of CBCMD's funds in a manner that causes CBCMD's obligations under this Agreement not to be paid in a timely manner, then such failure by CBCMD to pay such amounts as they come due shall not be a default or breach of this Agreement. During such time as such trustee undertakes the foregoing actions, the operations of this Agreement shall be temporarily suspended, but all amounts otherwise payable by CBCMD hereunder shall be deemed to be critical capital projects that the trustee shall pay in accordance with the priorities provided in the trust agreement or similar document. The Agreement shall continue in full force and effect immediately after the trustee ceases to perform such actions following default in the payment of CBCMD's bonds.

6.4 **Termination Notice, Opportunity for Cure.** Notwithstanding any other provision of this Agreement to the contrary and except as may be required by law, if a dispute arises which would authorize or permit SVMD to terminate or suspend service to CBCMD including termination of the right held by CBCMD for continuing service or the connection of additional water and sewer taps utilizing capacity in the Water System or Wastewater System that has been previously purchased by CBCMD, then SVMD shall provide a Termination Notice to CBCMD. If CBCMD does not comply with the suggested cure provided in the Termination Notice or an alternative cure reasonably acceptable to SVMD, or if CBCMD commences a cure that will reasonably require more than thirty (30) days to complete but fails to diligently prosecute the cure to completion, then SVMD shall, after thirty (30) days following CBCMD's receipt of such Termination Notice or cessation of diligent prosecution, terminate or suspend service as provided in the Termination Notice. No default by CBCMD shall result in termination of service to a customer within the Compark Service Area connected to the Water System or Wastewater System.

6.5 Dispute Resolution. Except as provided in Section 6.4 (Termination Notice, Opportunity for Cure), if a dispute arises under this Agreement the complaining Party shall provide a written Notice of the Disagreement. If direct negotiation between the Parties fails to resolve the dispute within thirty (30) days of receipt of the Notice of Disagreement, and one Party requests the organization of a Resolution Committee, then:

6.5.1 forthwith, the Resolution Committee shall meet to review such information as may be presented to the Resolution Committee, make such independent investigations, and decide the dispute by majority vote of the Resolution Committee at a meeting following reasonable notice at which all are present;

6.5.2 in its review of the dispute, the Resolution Committee shall review the facts, the technical objections, and any other materials deemed appropriate by the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute. The standards that the Resolution Committee shall use in the determination of any dispute shall include (1) whether the technical operation and maintenance characteristics of the Water System or Wastewater System or the CBCMD Constructed Facilities conform to this Agreement, (2) whether the Water System or Wastewater System or the CBCMD Constructed Facilities will overburden the Water or Wastewater Service Capacities or are likely to result in a violation of any permit, water right, or law, (3) the reasonableness of the Party's position, and (4) the language of the Agreement and goals that the Parties sought to achieve in this Agreement;

6.5.3 The Resolution Committee shall, promptly upon making its decision, inform the Boards of Directors of the Parties in writing of such decision.

6.5.4 The decision of the Resolution Committee may be appealed to the Courts or, if the Resolution Committee fails to render a decision within thirty (30) days of its organization, then either Party may seek such other remedies as may be allowed by law. The Resolution Committee decision is not to be deemed a final, binding decision by arbitration.

ARTICLE VII MISCELLANEOUS

7.1 **Relationship of Parties.** This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

7.2 **Liability of Parties.** No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon each Party, nor the breach thereof, nor the issuance and sale of any bonds by a Party, shall constitute or create an indebtedness of the other Party within the meaning of any Colorado constitutional provision or statutory limitation. No Party shall have any obligation whatsoever to repay any debt or liability of the other Party.

7.3 **Assignment.** Except as expressly authorized herein, neither this Agreement, nor any Party's rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

7.4 **Amendment and Modification.** This Agreement may not be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, except by an agreement in writing duly authorized and executed by all Parties. No consent of any non-Party shall be required for the negotiation and execution of any such agreement.

7.5 **Waiver.** No waiver or failure by any Party to insist upon the strict performance of any agreement, term, covenant or condition hereof, or failure to exercise of any right or remedy consequent upon any default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant or condition, or a waiver of any subsequent breach of the same or any other provision of this Agreement.

7.6 **Integration.** This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement shall be valid or binding.

7.7 **Severability.** Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

7.8 **Survival of Obligations.** Unfulfilled obligations of any Party arising under this Agreement shall be deemed to survive the expiration or termination of this Agreement and the completion of the Water System or Wastewater System and the CBCMD Constructed Facilities which are the subject of this Agreement, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. In order to provide notice to all property owners of the rights and obligations under this Agreement, the Parties agree that upon execution this Agreement shall be recorded against all property within CBCMD described in Exhibit A.

7.9 **Fair Dealing.** In all cases where the consent or approval of one Party is required before the any other may act, or where the agreement or cooperation of one or more Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on either Party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable Parties contracting at arms-length.

7.10 **Force Majeure.** Any Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government except for the Party to be excused; national fuel shortage; when satisfactory evidence of such cause is presented to the other Parties, and provided further that such

nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the Party not performing.

7.11 **Notices.** All notices required or permitted to be given hereunder between the Parties shall be in writing and shall be effective upon personal delivery, e-mail, or three (3) business days following deposit of the notices in the United States Mail, postage prepaid and addressed as follows, or to such other address designated by a Party upon notice as hereinabove provided:

To SVMD:

Stonegate Village Metropolitan District
c/o District Manager
10252 Stonegate Parkway
Parker, CO 80134

c/o Matthew R. Dalton
Spencer Fane, LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

To CBCMD:

Compark Business Campus Metropolitan
District
c/o Bob Blodgett
CliftonLarsonAllen
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111

c/o Rick Kron
Spencer Fane
1700 Lincoln Street, Suite 2000
Denver, CO 80203

c/o Michael Vickers
470 Compark
290 Fillmore Street, Suite 2
Denver, CO 80206

7.12 **Applicable Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Colorado.

7.13 **Governmental Immunity Applies.** Nothing contained in this Agreement shall serve as a waiver of the protections afforded the Parties pursuant to the Colorado Governmental Immunity Act.

7.14 **Annual Appropriations.** The obligations of the Parties under this Agreement, to the extent they require expenditure of funds, are subject to the annual appropriations of such funds by their Boards of Directors, in their sole authority. Notwithstanding the foregoing, once such funds are appropriated, such obligations shall become binding for the year of appropriation and may be enforced for the year of appropriation at any time subsequent to such appropriation. Further, each Party shall include within its proposed annual budget for consideration by its Board of Directors sufficient funds to fulfill all obligations under this Agreement.

7.15 **Venue.** Venue for any litigation brought under this Agreement shall be in Douglas County, Colorado District Court.

7.16 **Attorney Fees.** In the event of any dispute between the Parties arising out of this Agreement, each Party shall be responsible for its own attorney fees.

7.17 **No Third Party Beneficiaries.** None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit or right of action by any person or entity other than the signatory Parties hereto. Any other person or entity affected by this Agreement shall be deemed an incidental beneficiary with no rights under this Agreement. Incidental beneficiaries with no rights include BNMD and CHMD, until such time as they have become signatory Parties to the Agreement by assignment approved by SVMD and the other Parties to this Agreement.

7.18 **Counterpart Execution.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single agreement.

Made and entered into the year and date first above written.

STONEGATE VILLAGE METROPOLITAN
DISTRICT

By: _____
Lisa Hyvonen, President

Attest:

Roger Husbands, Secretary

COMPARK BUSINESS CAMPUS
METROPOLITAN DISTRICT

By: _____
Michael Vickers, President

Attest:

Thomas List, Secretary

EXHIBIT A
BSMD, CBCMD, PMD and SVMD Boundaries

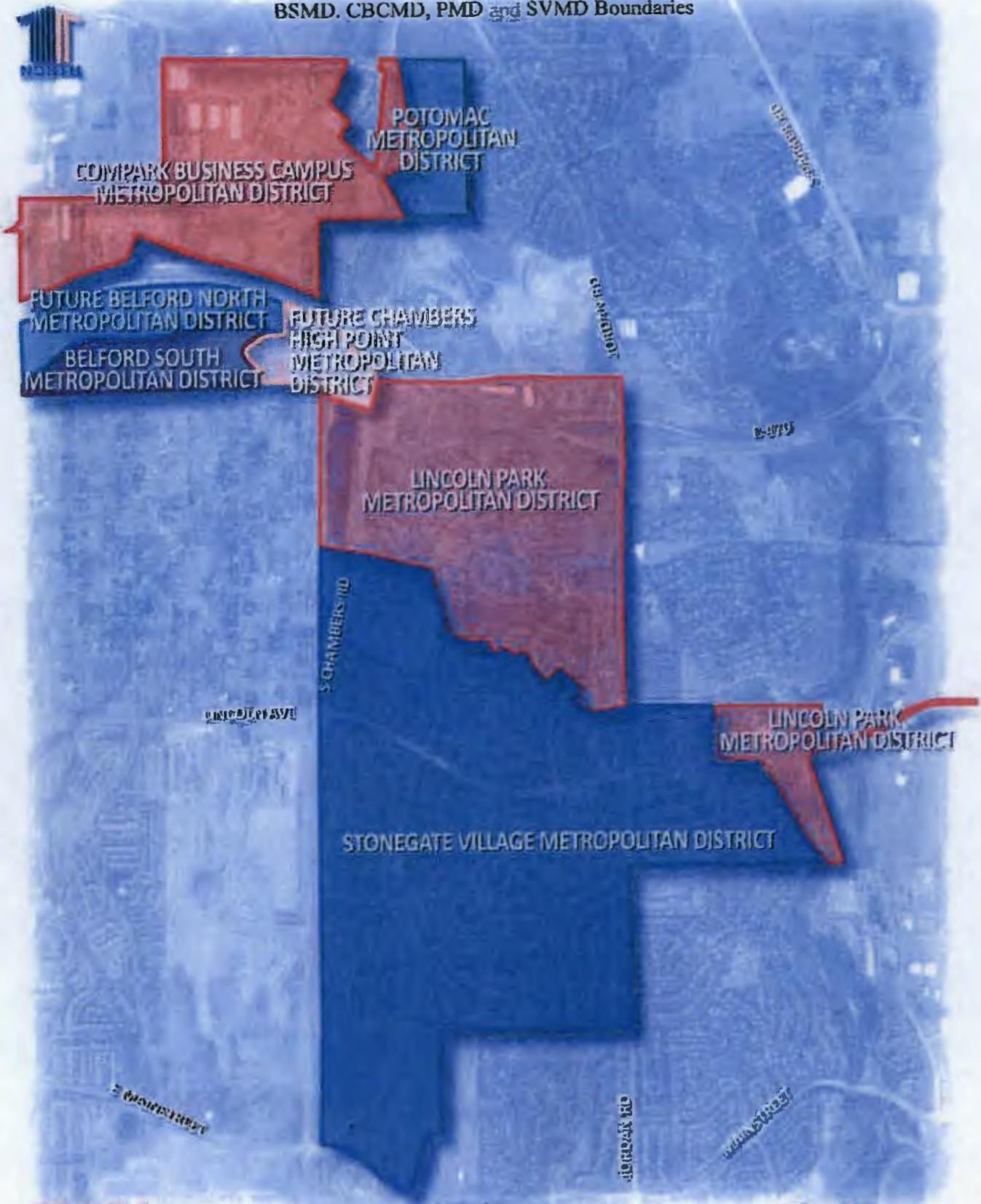
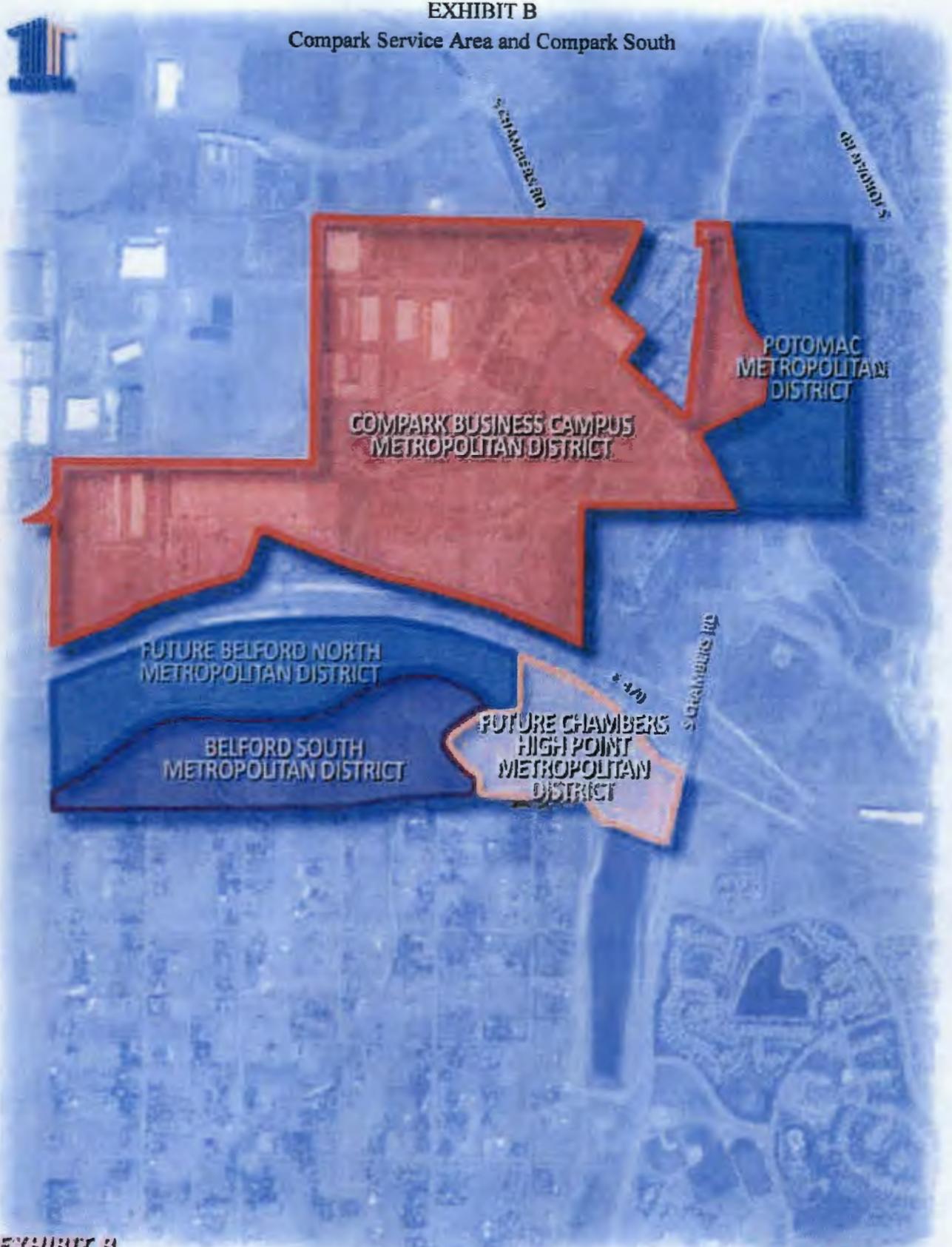


EXHIBIT A
METROPOLITAN DISTRICT LIMITS



EXHIBIT B

Compark Service Area and Compark South



**EXHIBIT B
METROPOLITAN DISTRICT LIMITS**

EXHIBIT C
Form of Assignment Agreement

**ASSIGNMENT OF WATER
AND WASTEWATER SERVICE SFE**

THIS ASSIGNMENT OF WATER AND WASTEWATER SERVICE SFE (this "Assignment") is entered into to be effective as of the ___ day of _____, 20__ (the "Effective Date"), by and among **STONEGATE VILLAGE METROPOLITAN DISTRICT**, acting by and through its Water and Sewer Enterprise Funds ("SVMD"), **COMPARK BUSINESS CAMPUS METROPOLITAN DISTRICT f/k/a E-470 Business Metropolitan District**, in a limited capacity ("CBCMD" or "Assignor") and _____, a _____ ("Assignee"), each individually, a "Party," and collectively, the "Parties."

DEFINITIONS

1. "1997 Regional Facilities Agreement" – the December 4, 1997 Regional Facilities Agreement between SVMD and E-470 Business Metropolitan District as amended by that certain First Amendment to Regional Facilities Agreement dated August 31, 1998, by that certain Second Amendment to Regional Facilities Agreement dated March 15, 1999, by that certain Third Amendment to Regional Facilities Agreement dated August 15, 2001, and by that certain Fourth Amendment to Regional Facilities Agreement dated July 3, 2008.
2. "Agreement" – the Amended and Restated Regional Water and Wastewater Service Agreement between SVMD and CBCMD dated _____, 2016.
3. "Annual Update" – the annual update, revision, supplement, or review of the SVMD Water and Wastewater Master Plan to reflect the best available information on the Water System and Wastewater System, including the basis and timing of anticipated Capital Costs, as determined appropriate or necessary at the sole discretion of SVMD.
4. "Assigned SFEs" – the _____ SFEs of CBCMD's excess wastewater service capacity, defined as "CBCMD's Excess Wastewater Service Capacity" in the Agreement, and water service capacity, defined as "CBCMD's Excess Water Service Capacity" in the Agreement, transferred to Assignee pursuant to this Assignment.
5. "Assignee" – _____, a _____.
6. "Assignee's Constructed Facilities" – water distribution and supply lines, pump stations, facilities, sewage collection lines, lift stations, irrigation lines, storage facilities, effluent land application facilities, storage or disposal areas and facilities, meters and data acquisition systems necessary for tele-monitoring, and any other facilities necessary, in the reasonable opinion of the SVMD, to be constructed by Assignee and connected to the Wastewater System or Water System, Pursuant to Section 4.6 of this Assignment, to connect to the Water System and Wastewater System to provide service to Assignee's Service Area.
7. "Assignee's Wastewater Service Ratio Portion" – the ___% of the Wastewater Service Ratio assigned to Assignee based on the Assigned SFEs to the SVMD Service Area. The Wastewater Service Ratio is currently calculated as ___%.

8. "Assignee's Water Service Ratio Portion" – the ___% of the Water Service Ratio assigned to Assignee based on the Assigned SFEs to the SVMD Service Area. The Water Service Ratio is currently calculated as ___%.

9. "Assignee's Service Area" – the area that will receive water or wastewater service through the Water System or Wastewater System pursuant to this Assignment, as shown on Exhibit ___ attached hereto and incorporated herein.

10. "Assignment" – this Assignment of Water and Wastewater Service SFE.

11. "BNMD" – Belford North Metropolitan District, a metropolitan district anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South.

12. "Bonds" – Collectively the Wastewater Bonds and the Water Bonds.

13. "BSMD" – Belford South Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services, whose jurisdictional boundaries are shown on Exhibit ___ attached hereto and incorporated herein.

14. "Capital Costs" - Any costs incurred by SVMD necessary to meet requirements of state or federal laws and regulations, to acquire, develop or maintain a water supply, including costs associated with continued development of a renewable water supply, and for improvements, upgrades, or expansions to the Wastewater System and Water System necessary or appropriate to provide service within the SVMD Service Area. Capital Costs include previous and future payments on Debt or other financial obligations used for the same purposes. Capital Costs do not include the cost of Assignee's Constructed Facilities; which costs are the sole responsibility of Assignee. Capital Costs include, but are not limited to costs of materials, components, labor costs, change orders, design engineering, construction engineering, landscape architecture, soil testing and inspection, line and systems testing and inspection, site and right of way acquisition costs, and all legal, accounting, and other professional costs incurred in connection with the Capital Costs.

15. "Capital Cost Share" – Assignee's share of a Capital Cost, calculated as a Capital Cost associated with Wastewater System multiplied by Assignee's Wastewater Service Ratio Portion or a Capital Cost associated with the Water System multiplied by the Assignee's Water Service Ratio Portion.

16. "Capital Cost True-Up Payment" – A payment made by Assignee calculated by multiplying the Capital Costs by the difference between the Assignee's Wastewater Service Ratio Portion or the Assignee's Water Service Ratio Portion and ratio of the actual SFEs in service, as illustrated in the chart on Exhibit ___ attached hereto and incorporated herein.

17. "CBCMD" - Compark Business Campus Metropolitan District f/k/a E- 470 Business Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater

services, whose jurisdictional boundaries are shown on Exhibit ____ attached hereto and incorporated herein.

18. "CHMD" – Collectively, one or more metropolitan districts to be named the Chambers High Point Metropolitan District and anticipated to be organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services to a portion of Compark South, including water and wastewater services.

19. "CBCMD's Excess Wastewater Service Capacity" – a portion of the Wastewater System Capacity within the CBCMD Wastewater Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

20. "CBCMD's Excess Water Service Capacity" – a portion of the Water System Capacity within the CBCMD Water Service Ratio that is in excess of that needed to provide service within the boundaries of CBCMD and PMD and available for assignment to serve Compark South under this Agreement.

21. "Compark Service Area" – an area previously described as the "Property" by the RFA, located in Douglas County, Colorado, and which includes Compark South, and is limited to the area described in Exhibit ____, attached hereto and incorporated herein.

22. "Compark South" – A portion of the Compark Service Area as shown on the attached Exhibit _____. Compark South includes the area within the District boundaries of BSMD, and the areas anticipated to be included within the District boundaries of BNMD and CHMD, when those Districts are organized.

23. "Connection Charge" – a rate, fee, toll, charge or combinations thereof, for a service user to have the right to make a physical connection between a service line and the Water System or Wastewater System. Connection Charges are imposed each time a connection is made to pay the cost associated with SVMD making, inspecting, or administering the physical connection. A connection charge is imposed in addition to usage fees or charges and System Access Fees.

24. "Debt" – the Bonds, future bonds or other debt obligations.

25. "Effective Date" – the effective date of this Assignment, _____, 2016.

26. "Notice of Disagreement" – a written notice given by one Party to another Party if a dispute arises under this Assignment, explaining the dispute and at least one alternative for a solution.

27. "Party" and "Parties" – individually or collectively the signatories to this Assignment.

28. "PMD" – E-470 Potomac Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services,

including water and wastewater services, whose jurisdictional boundaries are shown on Exhibit ____ attached hereto and incorporated herein.

29. "Projected Buildout" – projected demand for service from the Water System or Wastewater System expressed in SFEs, determined from the land use approvals and existing planning and use data in effect from the applicable municipal or county government.

30. "Resolution Committee" – the President of the Board of Directors of SVMD and the authorized representative of the Assignee involved in a Notice of Disagreement, or designees thereof, and a Colorado registered professional engineer jointly appointed by agreement of the other members of the Board of Directors of SVMD and the appropriate persons of Assignee, which engineer shall have knowledge of the subject matter of the dispute (i.e., if a water facility is the subject of the dispute, the engineer shall have some knowledge of water systems engineering).

31. "Rules and Regulations" – the Rules and Regulations of SVMD adopted, amended and enforced pursuant to §32-1-1001(1)(m), C.R.S.

32. "Service Area" – An area provided water or wastewater service through the Water System or Wastewater System. As of the effective date of the Assignment, the SVMD Service Area comprises the property within the boundaries of SVMD, the boundaries of Lincoln Park Metropolitan District, and the Compark Service Area.

33. "Service Charges" – reoccurring periodic charges for service provided through the Water System and Wastewater System. Service charges currently are set by SVMD 2015 Resolution dated August 19, 2015 and include water and wastewater monthly usage fees and a WISE Renewable Water Fee.

34. "SFE" – the equivalent water or sewer service demand associated with a single family residential unit, as from time to time set forth and revised in the Rules and Regulations. As of the Effective Date, for purposes of planning and considering water treatment plant capacity and wastewater treatment plant capacity, one SFE of Water Service corresponds to approximately 1,053 gallons per day of treated water and one SFE of wastewater service corresponds to approximately 242.4 gallons per day of wastewater treatment. The number of SFEs associated with any specific use will be determined based on a standard conversion table or Rules and Regulations adopted by SVMD and amended from time to time.

35. "SVMD" – Stonegate Village Metropolitan District, a metropolitan district organized and operated pursuant to the provisions of Article 1, Title 32, C.R.S., to provide services, including water and wastewater services, acting by and through its Water Utility Enterprise Fund and Sewer Utility Enterprise Fund, whose jurisdictional boundaries are shown on Exhibit ____, attached hereto and incorporated herein.

36. "SVMD Water and Wastewater Master Plan" – a master plan of the Water System and the Wastewater System that is under development by SVMD at the time of the Effective Date and which is anticipated to be adopted by SVMD in 2016. The SVMD Water and Wastewater Master Plan will include, but not be limited to, a renewable water capital plan to

identify infrastructure and water rights necessary to provide renewable water supplies within the Service Area.

37. "System Access Fee" – a fee imposed on an individual service user within the Assignee's Service Area prior to connection to enable the service user to receive service from the Water System and Wastewater System. The System Access Fee as of the Effective Date is \$_____ per SFE combined water and sewer tap. The System Access Fee shall be adjusted annually on September 1 of each year by the percentage increase or decrease in inflation as defined in Art. X, Sec. 20 of the Colorado Constitution, as determined by SVMD.

38. "Termination Notice" – written notice provided by SVMD to Assignee of SVMD's intent to terminate or suspend additional water and wastewater connections utilizing capacity in the Water System or Sewer System by Assignee, which shall contain at least:

- a. the specific cause for the proposed termination or suspension, including a demonstrated justification therefor;
- b. the duration of the proposed termination or suspension;
- c. at least one reasonable cure that Assignee may implement that would be acceptable to SVMD to avoid the termination or suspension, if possible. SVMD shall use best efforts to suggest a cure that will allow continued availability of service and new taps to Assignee at all times, and shall, if not prohibited by law, continue to make continued service and taps available without interruption up to the Assigned SFEs if the suggested cure is actually implemented, and assuming compliance with the Rules and Regulations by the individual customer;
- d. the method to be used by SVMD to continue service to taps within Assignee's Service Area previously connected to the Water System or Wastewater System, assuming continued adherence to the SVMD Rules and Regulations by the owners of such taps;
- e. the name of a person who can provide more information; and
- f. the effective date for commencement of the termination or suspension.

39. "Unused Assigned SFEs" – any Assigned SFE's not connected to and being served by the Water System and Wastewater System.

40. "Wastewater Bonds" – Wastewater Enterprise Revenue Bonds, Series 2014 issued by SVMD to improve and expand the Wastewater System.

41. "Wastewater Service Capacity" – the capacity of the Wastewater System, which may change from time to time, but which currently is estimated at 1,100,000 gallons per day (1.1 mgd).

42. "Wastewater Service Ratio" – the ratio of wastewater SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as ___ % (___ SFEs Compark Service Area; ___ SFEs SVMD Service Area).

43. "Wastewater System" – the SVMD wastewater treatment plant, as well as related wastewater collection, conveyance, measurement, and discharge facilities, lift stations, force mains, meters, pipelines, manholes and other related appurtenances.

44. "Water Bonds" – Water Enterprise Revenue Bonds, Series 2015 issued by SVMD to improve or expand the Water System.

45. "Water Service Capacity" – the capacity of the Water System, which may change from time to time, but currently is estimated at 5,760,000 gallons per day (5.76 mgd).

46. "Water Service Ratio" – the ratio of water SFEs based on the Projected Buildout of the Compark Service Area to the SVMD Service Area, currently calculated as ___% (___ SFEs Compark Service Area; ___ SFEs total SVMD Service Area).

47. "Water System" – the SVMD water treatment plant, as well as related water collection, storage, pipelines, conveyance and measurement facilities, meters, wells, and pump stations, storage and storage rights, ground and renewable water and water rights.

RECITALS

A. SVMD and CBCMD's predecessor, E-470 Business Metropolitan District, entered into the 1997 Regional Facilities Agreement whereby SVMD allocated 1205 SFEs of capacity in its Wastewater System and Water System to CBCMD to serve portions of the Compark Service Area.

B. CBCMD and SVMD entered into the Amended and Restated Regional Water and Wastewater Service Agreement whereby CBCMD may assign a portion of CBCMD's Excess Wastewater Service Capacity and CBCMD's Excess Water Service Capacity.

C. CBCMD desires to assign certain rights, title, interests and obligations it may have under the Agreement, to Assignee, and Assignee desires to assume such rights, title, interests and obligations from CBCMD.

D. Specifically, CBCMD desires to transfer the Assigned SFEs in the SVMD Water and Wastewater System to Assignee and Assignee desires to assume the same.

E. SVMD and Assignee desire to set forth the rights, obligations, and procedures for the assignment of the SFEs in the SVMD Water and Wastewater System from CBCMD's Excess Wastewater Service Capacity and CBCMD's Excess Water Service Capacity.

COVENANTS

NOW, THEREFORE, IN CONSIDERATION of the above recitals, the mutual covenants, considerations and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties Agree as follows:

**ARTICLE I
INCORPORATION**

1.1 **Incorporation of Definitions and Recitals.** The definitions and recitals set forth above are incorporated into the terms of this Assignment.

1.2 **SVMD Rules and Regulations.** Assignee agrees to comply with SVMD's Rules and Regulations, as such is required by Section 1.2 of the Agreement.

**ARTICLE II
ASSIGNMENT AND TERM OF ASSIGNMENT**

2.1 **Assignment; Assumption.** As of the Effective Date, CBCMD hereby transfers the Assigned SFEs to Assignee. As of the Effective Date, Assignee hereby accepts the Assigned SFEs and assumes and agrees to be bound by the terms of this Assignment and SVMD's Rules and Regulations.

2.1.1 **Restrictions on Assigned SFEs.** Assignee shall not sell, pledge, assign, encumber or alienate any Assigned SFEs.

2.2 **Unused Assigned SFEs.**

2.2.1 **Reverter of Unused Assigned SFEs.** Any Unused Assigned SFEs shall revert back to CBCMD pursuant to the terms of this Section 2.2. Upon the determination of the existence of any Unused Assigned SFEs, Assignee shall provide CBCMD notice of the number of Unused Assigned SFEs. Upon thirty (30) days of receipt of such notice, the unused SFEs shall revert back to CBCMD, unless either Assignee or CBCMD object to such reverter. If such objection exists, Assignee and CBCMD will resolve the dispute in accordance with Section 6.5 of this Assignment.

2.2.2 **Determination of Unused Assigned SFEs.** Unused Assigned SFEs shall be determined at the following time: (i) for residential property when the property is fully platted, and (ii) for commercial property when all the area within the property has been included in one or more site plans. Notwithstanding the above provision, if Assignee forfeits its Assigned SFEs under this Assignment pursuant to Section 5.8 or Section 6.4, any Unused Assigned SFEs shall be determined as of the date of dissolution or the date SVMD terminates service, respectively.

2.3 **Limited Party.** CBCMD is a limited party for the purpose of this Assignment. CBCMD agrees only to transfer the Assigned SFEs to Assignee and to accept any Unused Assigned SFEs pursuant to Section 2.2, if applicable, and has no other responsibility or obligation under this Agreement to either Assignee or SVMD.

2.4 **Release.** The Parties agree that effective upon the transfer of the Assigned SFEs, CBCMD is released of any and all liability relating to Assignee's use of the Assigned SFEs and Assignee's compliance with SVMD's Rules and Regulations. Such release terminates either upon the connection of all the Assigned SFEs to the Water System and Wastewater System or upon any Unused Assigned SFEs reverting back to CBCMD pursuant to the terms of Section 2.2,

at which time the rights and obligations of CBCMD and SVMD will be determined in accordance with the Agreement.

2.5 **Consent.** SVMD's execution of this Assignment shall constitute SVMD's consent to allow CBCMD to transfer the Assigned SFEs to Assignee.

2.6 **Term of Assignment.** This Assignment shall become effective upon execution and shall continue until all Assigned SFEs have been connected to and are being served by SVMD's Water System and Wastewater System or until all Unused Assigned SFEs revert back to CBCMD pursuant to the terms of Section 2.2.

ARTICLE III WATER AND WASTEWATER CAPACITY AND SERVICE

3.1 Service Capacity Allocations.

3.1.1 **Projected Service Needs.** Based on the Projected Buildout, SVMD is anticipated to provide wastewater service to 5130 SFEs and water service to 5321 SFEs. Of those totals, the Compark Service Area is projected to require 1205 SFEs of wastewater service and 1237 SFEs of water service, with 638 SFEs of wastewater service and 670 SFEs of water service projected to be served within the CBCMD and PMD boundaries, and Compark South requiring 567 SFEs of water and wastewater service. The area within Compark South is anticipated to be included within the district boundaries of BNMD, BSMD, and/or CHMD.

3.1.2 **Service Capacity.** The Water Service Capacity and Wastewater Service Capacity are currently limited primarily by the treatment capacity of the SVMD water treatment plant and wastewater treatment plant, though other portions of the Wastewater System and Water System may, from time to time, require upgrades, improvements, enlargements and other modifications to maintain or increase Water Service Capacity and Wastewater Service Capacity.

3.1.3 **Service Commitment.** Contingent on satisfaction of conditions and payments as provided in this Assignment, SVMD shall make available Wastewater System Capacity in the amount of the Assignee's Wastewater Service Ratio Proportion and Water System Capacity in the amount of the Assignee's Water Service Ratio Proportion, to provide wastewater and water service to Assignee's Service Area.

3.1.4 **Service Ratios.** CBCMD acknowledges that after the transfer of the Assigned SFEs to Assignee, the Wastewater Service Ratio and the Water Service Ratio for CBCMD will be adjusted to ___% and ___%, respectively, unless and until forfeiture and the Unused Assigned SFEs revert back to CBCMD pursuant to Section 2.2 of this Assignment, at which time the Wastewater Service Ratio and the Water Service Ratio for CBCMD shall be adjusted accordingly.

3.1.5 **Service Ratio Revisions.** The Wastewater Service Ratio and Water Service Ratio may be revised, resulting in a revision to the Assignee's Wastewater Service Ratio Proportion and Assignee's Water Service Ratio Proportion, in SVMD's reasonable discretion, without amendment of this Agreement in the event that the Projected Buildout or actual

development changes. SVMD shall provide Assignee with written notice of and the opportunity to be heard prior to any changes to the Wastewater Service Ratio and Water Service Ratio.

3.2 No Guarantee of Service, Limitations.

3.2.1 Service Capacity Uncertainties. The Parties acknowledge that there is currently Water Service Capacity sufficient to serve the Projected Buildout of the SVMD Service Area, including all of the Compark Service Area, which includes Assignee's Service Area. Based on Projected Buildout, currently, there may not be sufficient Wastewater Service Capacity now existing to serve the Service Area. Historic development has generally been less than Projected Development, which may result in sufficient Wastewater Service Capacity to serve Compark South. Assignee also acknowledges that while the Compark Service Area Wastewater Service Ratio and Water Service Ratio are calculated from Projected Buildout expressed in terms of SFEs of wastewater or water service demand, until System Access Fees have been paid by Assignee and accepted by SVMD there is no guarantee that the Wastewater Service Capacity or Water Service Capacities can be converted to any specific number of SFEs. Further, Water Service Capacity or Wastewater Service Capacity may change based on the age of facilities, regulatory changes imposed by third parties, operational changes, facility upgrades, actual development and other factors. Therefore, there is no guarantee that SVMD will have at any point in time sufficient Wastewater Service Capacity or Water Service Capacity to provide service to the Compark Service Area, Compark South, or any other user with the SVMD Service Area when requested without system improvements or expansions as provided in the Agreement.

3.2.2 Water Supply. Water supply for the Water System is dependent upon natural resources and sources from which the quantity is variable and beyond the control of SVMD. Similarly, the provision of water and wastewater services is subject to various local, state and federal agencies. No liability shall attach to SVMD for any failure to accurately anticipate availability of the water supply, the availability of sewage treatment capacity, or the need to incur Capital Costs due to occurrences beyond the reasonable control of SVMD.

3.2.3 Tap Curtailment. If conditions develop such that it becomes apparent to SVMD that all areas outside SVMD's boundaries for which such services have been committed cannot be supplied adequately pursuant to this and similar agreements, SVMD reserves the right to discontinue the granting of additional taps; provided, however, SVMD shall be obligated to exercise this right of discontinuance uniformly outside and inside SVMD.

3.2.4 Access to Service. Access to wastewater and water service shall be on a first come first served basis, based on payment of all System Access Fees.

3.2.5 Insufficient Capacity. SVMD may deny connection to the Wastewater System or Water System if it determines, in its reasonable discretion, that Wastewater or Water Service Capacity are insufficient, until such time as additional Wastewater or Water Service Capacity is made available as provided in this Assignment.

3.2.6 Shortages and Limitation on Service. SVMD may, in order to comply with any applicable law, rule, directive, or order, and to enable it to provide adequate services to the SVMD Service Area, as well as other customers of SVMD in times of shortage or other

practical or legal limitations on the ability of SVMD to provide the services contemplated under this Assignment, limit the delivery of water and sewer services, and/or restrict the use of water delivered under this Assignment. The extent to which limitation of services may be necessary to enable SVMD to provide adequately for all users of Water System and Wastewater System is a fact to be determined by SVMD as the occasion may require. The current determination by SVMD on this subject, which will not be changed without good reason, is as follows:

"The welfare of SVMD and its inhabitants requires stable water and sewer services not only for them but also that part of the adjacent area dependent on SVMD for the delivery of water and sewer services. While it is the purpose of SVMD to maintain systems and supplies adequate to meet the needs of all dependent upon SVMD for water and sewer services, there are many elements which make it uncertain whether such services can always be adequate for all, and therefore, in times of shortage or other practical or legal limitation, water use and use of SVMD's water and wastewater systems will be curtailed on the following basis, the first listed curtailment being adopted to meet the least serious situation and the succeeding curtailment being adopted in addition to prior listed curtailments, and the last curtailment to meet the gravest possible situation and one which every reasonable precaution must be taken to avoid, to-wit:

1. Restriction of uses (such as irrigation), which can be accomplished without serious injury to person or property and prohibition of non-essential uses.
2. Prohibition of irrigation except for commercial greenhouses.
3. Prohibition of every use except for domestic use and for essential commercial enterprises and industry.
4. Prohibition of all use except domestic uses.
5. In order to enable SVMD to provide an adequate supply of water to the people of SVMD without impairment of essential deliveries of water under this and similar agreements, SVMD will impose any restrictions or prohibitions contemplated by Item 1. through 4., above, uniformly inside and outside SVMD."

3.3 Nature of Water Use. All water furnished by SVMD is on a leasehold basis for users within the Assignee's Service Area, which is within the Compark Service Area, for all the purposes for which SVMD has been decreed the right to appropriate water. Use of SVMD water does not include any right to make a succession of uses of such water. Upon completion of the primary use by a water user, all dominion over the water reverts completely to SVMD. All

property rights to the water to be furnished by SVMD are reserved in SVMD. Nevertheless, there is no obligation on Assignee or on the water users within Assignee's Service Area to create any particular volume of return flow from water delivered pursuant to this Assignment.

ARTICLE IV CONSTRUCTION AND COSTS OF SYSTEM FACILITIES, AND SERVICE

4.1 **Capital Cost Share.** To provide its proportional funding of Capital Costs associated with the Water System and Wastewater System, Assignee shall pay SVMD Assignee's Capital Cost Share.

4.2 **Future Capital Costs.** Assignee is responsible for paying for future Capital Costs incurred by SVMD, including future payments on Debt or other financial obligations, in the amount of its Capital Cost Share. Future Capital Costs shall be paid by Assignee by one or a combination of the following methods, at the discretion of SVMD:

4.2.1 **Capital Costs Paid without Rate Funding.** If SVMD funds Capital Costs without including the Assignee's Capital Cost Share within its water and wastewater rates, fees, tolls, or charges applied within Assignee's Service Area, Assignee shall pay the full amount of Assignee's Capital Cost Share directly to SVMD. Subject to Section 5.4, Assignee shall pay its Capital Costs Share not less than thirty (30) days prior to SVMD incurring the obligation resulting in the Capital Cost, or if the Capital Cost is financed not less than thirty (30) days prior to the due date for SVMD to make its financing payment.

4.2.2 **Rate Refunding and True-Up Payment.** Assignee acknowledges that active service to SFEs may not be in proportion to projected SFEs at buildout, which is used to calculate the Wastewater Service or Water Service Ratios, and further calculate the Assignee's Wastewater Service Ratio Proportion and the Assignee's Water Service Ratio Proportion. Therefore, if SVMD includes a charge for Assignee's Capital Cost Share within its water and wastewater rates, fees, tolls and charges applied within the Assignee's Service Area, Assignee will also make a Capital Cost True-Up Payment to SVMD. The Capital Cost True-Up Payment shall be made not less than thirty (30) days prior to the due date for SVMD to make its Capital Cost payment, or annually by December 31, whichever occurs first.

4.3 **Capital Cost Share Funding.** Assignee shall have the discretion to fund its Capital Cost Share in any method determined by Assignee, including any legally available revenue of the Assignee, within Assignee's Service Area. SVMD agrees to collect such fees, subject to an administrative fee reasonably designed to defray SVMD's actual collection and administrative costs related to said fees, to be deducted from the amounts remitted to Assignee.

4.4 **System Access Fee.** A System Access Fee shall be paid prior to connecting any service line to the Water System or Wastewater System. The System Access Fee shall be in lieu of a tap fee or system development charges and in recognition of Assignee's obligation to also pay Assignee's Capital Cost Share.

4.5 **No Offset.** No revenue received by SVMD from the assessment of service and/or Connection Charges for service within Assignee's Service Area or as allowed by the Rules and

Regulations shall afford Assignee any right of offset, rebate or refund for or against any obligation created by this Assignment.

4.6 Assignee's Constructed Facilities.

4.6.1 Responsibility. At its sole cost and expense, Assignee shall be responsible for, or shall otherwise cause, the financing, design, development, construction and connection to the Wastewater System or Water System of all Assignee's Constructed Facilities that are necessary to extend service by the Wastewater System and Water System to serve customers within the Assignee's Service Area. Assignee may enter into agreements with other entities to fulfill its obligations regarding Assignee Constructed Facilities, but such delegation of responsibility shall not relieve Assignee of its obligations under this Article IV.

4.6.2 Construction Obligations. With respect to the construction of the Assignee's Constructed Facilities, Assignee agrees as follows:

4.6.2.1 To obtain approval of SVMD of all design and construction plans and specifications;

4.6.2.2 To design, construct, and inspect all Assignee's Constructed Facilities in accordance with the Rules and Regulations, approved plans and specifications, and standards of SVMD;

4.6.2.3 To the extent permitted by law, to hold harmless and indemnify SVMD for any and all losses or damages it may suffer or may be called upon to pay as a result of said construction;

4.6.2.4 To provide performance and payment bonds warranting the construction, installation, and operation of the Assignee's Constructed Facilities, and guaranteeing, at Assignee's sole cost and expense to make all needed and necessary repairs and replacements due to defective materials, design or workmanship, or failure to abide by approved design or construction plans, but not associated with ordinary and normal wear and tear. The performance and payment bonds will also hold SVMD harmless for payment to the contractor and any subcontractors, and guarantee one (1) year's maintenance on all Assignee's Constructed Facilities commencing on the date of transfer of the Assignee's Constructed Facilities to SVMD. If, within one (1) year from transfer the Assignee's Constructed Facilities appear to be defective or cease to operate as intended, then Assignee shall promptly replace the defective or improperly operating portion or portions of such Assignee's Constructed Facilities at its cost and expense. If within ten (10) days after receipt of notice, Assignee has not undertaken repairs and/or replacement or if circumstances require immediate repairs, SVMD may, without further notice to Assignee, undertake the repairs and/or replacement at Assignee's expense;

4.6.2.5 To permit SVMD to observe and inspect any and all of the construction and notify Assignee's engineer of any improper construction;

4.6.2.6 To give SVMD reasonable notification (in any event not less than 24 hours including one business day) of the time proposed to make connections to the Water

System or Wastewater System, and not connect the Assignee's Constructed Facilities to the Water System or Wastewater System until inspected and approved;

4.6.2.7 To acquire all necessary governmental approvals and contract for work and materials in accordance with Colorado and any other applicable laws, rules, regulations, and orders;

4.6.2.8 To make available to SVMD copies of any and all designs, plans, construction drawings, construction contracts, and related documents as SVMD may request from time to time;

4.6.2.9 To diligently and continuously prosecute to completion construction of the Assignee's Constructed Facilities in such manner as SVMD may reasonably determine to be in the best interests of both SVMD and Assignee; and

4.6.2.10 To reimburse SVMD for all engineering fees, inspection and approval fees, and other costs incurred by SVMD as a result of the construction of the Assignee's Constructed Facilities.

4.6.3 **Transfer of Facilities.** Within thirty (30) days after the date of completion of the construction of each phase of Assignee's Constructed Facilities, Assignee shall:

4.6.3.1 Deliver to SVMD a certificate from a registered professional engineer certifying that all Assignee's Constructed Facilities have been built for the phase and are operating in accordance with the plans and specifications approved by SVMD.

4.6.3.2 Execute and deliver to SVMD a good and sufficient bill of sale describing all of the components and personal property relating to such Assignee's Constructed Facilities, which bill of sale shall warrant that conveyance of the property described therein to SVMD is made free from any lien, claim, or demand.

4.6.3.3 Execute and deliver to SVMD a good and sufficient easement deed acceptable to SVMD conveying rights at least equal to rights it would enjoy in a dedicated street, including the right to ingress and egress necessary to operate and maintain the Assignee's Constructed Facilities.

4.6.3.4 Provide SVMD with surveyed, as-built drawings of the Assignee's Constructed Facilities, certified by a registered, professional engineer.

4.6.4 **Acceptance of Facilities.** In no event shall the SVMD be required to allow connection of the Assignee's Constructed Facilities to the Water System or Wastewater System or provide service to the Assignee's Constructed Facilities until such time as it, in its reasonable discretion, determines that the Assignee's Constructed Facilities have been properly completed and transferred to SVMD.

4.6.5 **Construction Claims.** Assignee agrees that it shall, to the extent practical and cost-effective as reasonably determined by Assignee, assert against any contractor involved

in constructing any portion of the Assignee's Constructed Facilities which are contemplated by this Assignment, any claim that SVMD or Assignee may have against the contractor according to the terms of any construction contract and/or construction guarantee and/or warranty. SVMD specifically agrees that it will enforce such guarantees, promises, and warranties of a contractor whenever requested to do so by Assignee if (i) such request presents a plausible claim under the terms of the construction contract, construction guarantee, or warranty, and (ii) Assignee agrees in writing to individually bear any costs associated with such enforcement.

4.6.6 **Budget Report.** By October 15 of each year, Assignee shall provide to SVMD a report which shall include: (1) an itemized annual budget and schedule for construction of any Assignee's Constructed Facilities to be constructed in the upcoming year, (2) a summary description of development that occurred within Assignee's Service Area during the current year, and (3) a summary projection of development within Assignee's Service Area anticipated in the upcoming year. Any material change made to such budget by Assignee shall be provided to SVMD as soon as possible.

4.6.7 **Cost Recovery.** In the event Assignee is required by SVMD to oversize the Assignee's Constructed Facilities to allow SVMD to provide water or sewer service outside Assignee's Service Area, then the costs incurred by Assignee which are directly attributable to such over-sizing shall be reimbursed to Assignee prior to making any connections to the oversized Assignee's Constructed Facilities to provide service outside Assignee's Service Area. Provided, however, any cost recovery payments shall be paid only pursuant to a cost-recovery agreement to be entered into at the time of construction of the oversized Assignee's Constructed Facilities. Absent such a cost-recovery agreement, unless otherwise required by law, Assignee shall have no obligation to construct oversized Assignee's Constructed Facilities or receive reimbursement.

ARTICLE V OWNERSHIP AND OPERATION OF WATER AND WASTEWATER SYSTEM AND FACILITIES

5.1 **SVMD Ownership and Operation.** SVMD shall own the Water System and Wastewater System, and upon transfer to and acceptance by SVMD, the Assignee's Constructed Facilities, and shall be responsible for operating and maintaining the same.

5.2 **Service Obligation.** Contingent upon Assignee performing its obligations under this Assignment, SVMD shall incur Capital Costs as necessary to provide water and wastewater service to Assignee's Service Area. Except as specifically permitted by this Assignment, such service shall be of a quality and in quantity and pursuant to the same policies and standards as provided within the SVMD boundaries. SVMD shall maintain the Water System and Wastewater System with reasonable and normal care necessary to furnish the water and sewer service.

5.3 **Master Plan.** SVMD currently has under development the Water and Wastewater Master Plan. SVMD anticipates finalizing and adopting the Water and Wastewater Master Plan prior to 2017 and, upon adoption, shall provide a copy to Assignee. SVMD shall prepare and provide to Assignee the Annual Update no later than September 1 of each year,

commencing in 2017. SVMD's manager and engineer shall meet with managers and engineers of Assignee semi-annually in the first quarter and third quarter of each year to review the Annual Update and Capital Costs assumptions. Assignee may submit comments on the Annual Update to SVMD by October 1 of the year of receipt, and shall consider the Annual Update in drafting its budget. SVMD shall consider Assignee's comments and make such modifications as it deems appropriate in its sole discretion, and report any modifications to the Annual Update to Assignee by November 15, to allow Assignee the opportunity to consider further adjustments to Assignee's budget. Additionally, with each Annual Update, SVMD shall provide Assignee with a list of Capital Costs anticipated to be incurred during the following year.

5.4 **Notice of Capital Costs.** Payment of Assignee's Capital Cost Share may require Assignee to issue bonds or obtain other financing that may need to meet certain statutory and constitutional requirements, including debt authorization elections. SVMD shall strive to give Assignee no less than 12 months' notice before incurring a Capital Cost that will require payment of Assignee's Capital Cost Share. Assignee recognizes that such notice may not be feasible. If such notice is not feasible, SVMD shall notify Assignee of the upcoming Capital Cost as soon as SVMD believes that the expenditure is likely to be made. In the event that Assignee cannot pay Assignee's Capital Cost Share when due, SVMD and Assignee will work together on interim funding solutions, or on Capital Cost revisions that recognize the funding limitations. To the extent SVMD and Assignee are not able to agree to solutions or modifications that allow Assignee to pay Assignee's Capital Cost Share when due, SVMD may incur the Capital Cost, and SVMD may impose a fee on all connected taps in Assignee's Service Area in an amount necessary to reasonably pay Assignee's Capital Cost Share. In that event, Assignee's Wastewater Service Ratio Proportion or Assignee's Water Service Ratio Proportion may be revised and Assignee's right to Wastewater or Water Service Capacity reduced until Assignee's Capital Cost Share has been paid; provided, however, that no connected tap shall be disconnected as a result.

5.5 **Wastewater Service Customers; Billing; Charges, Rate, Tolls and Other Fees.**

5.5.1 **SVMD Customers.** Properties provided water or wastewater service under this Assignment for which tap connections have been made shall become direct customers of SVMD. Billing for ongoing services will be performed by SVMD. SVMD shall have sole authority to read meters for the purpose of imposing and collecting Service Charges.

5.5.2 **Rates, Fees, Tolls, Penalties, and Charges.** SVMD may establish, revise, impose and collect Service Charges, Connection Charges, turn on fees, turn off fees, meter setting fees, penalties for damage to system components, bill collection fees, penalties, and similar rates, fees, tolls, and charges for individual customers receiving service from the Water System or Wastewater System. Such rates, fees, tolls and charges may be adopted and revised from time to time, and shall be applied uniformly among users similarly situated. With regard to any changes in fees, rates, tolls, penalties or charges, SVMD shall provide notice pursuant to Section 32-1-1001(2), C.R.S.

5.5.3 **Proportionality of Charges.** Rates, fees, tolls, penalties, and charges within Assignee's Service Area will be proportional to charges for similar uses within the SVMD

boundaries; provided, however that SVMD may take into account differentials in the cost of providing services within Assignee's Service Area as compared to the cost of providing the same services within the SVMD boundaries, and as provided by Section 32-1-1006(1)(b), C.R.S. Where differential rates or charges are proposed for Assignee's Service Area, SVMD shall provide notice and an opportunity to be heard by Assignee prior to adoption of such rates or charges. SVMD may also take into account the fact that some portion of SVMD's cost of providing services within its own boundaries may be offset by ad valorem taxes. SVMD shall at all times have reasonable discretion to establish and apply criteria for determining, as to both without and within SVMD, appropriate fees, rates, tolls, penalties, and charges.

5.5.4 Rate Studies. To confirm that rates, tolls and charges for wastewater and water service, including any differential rates and charges established pursuant to Section 5.5.2, are reasonably related to SVMD's operation, maintenance, and Capital Costs, are uniform as applied to similarly situated users, SVMD shall annually review rates and periodically perform and update a rate study. Costs of such rate study shall be included in water and wastewater service fees and charges.

5.5.5 Assignee Surcharges. Upon adoption by Resolution of Assignee, if applicable, and at Assignee's request, SVMD shall impose and collect for Assignee's benefit reasonable surcharges for the purpose of supplementing Assignee's revenues for meeting covenants contained within, or payment of any general obligation bonds, or for the provision of capital reserves to fund Assignee's Constructed Facilities. SVMD may include a reasonable administrative fee for such collection service. Surcharges to fund Assignee's Constructed Facilities collected, less the additional administrative fee, shall be remitted to Assignee.

5.5.6 Delinquent or Non Payment of Fees by Customers. Properties provided water or wastewater service under this Agreement shall be subject to the powers of SVMD pursuant to Section 32-1-1006(1)(d), C.R.S., regarding delinquencies. Such customers shall also be subject to the lien power of SVMD pursuant to Section 32-1-1001(1)(j), C.R.S., and collection as provided by Section 32-1-1101(1)(e), C.R.S.

5.6 Change of Method of Providing Service. Notwithstanding the allocation of Wastewater Service Capacity and Water Service Capacity to Assignee and service by SVMD, nothing in this Assignment shall restrict SVMD from disposing of the Wastewater System or Water System, or changing its method by which it provides service to Assignee so long as SVMD continues to provide or arranges to provide Assignee with the services set forth in this Assignment. If SVMD sells any of its Wastewater or Water System, SVMD shall still have the obligation to furnish substantially similar or better service to Assignee, but Assignee shall have no rights to the proceeds of the sale of such infrastructure; provided, however, that SVMD shall not sell a portion of the Wastewater System or Water System that necessitates additional funding from Assignee without SVMD's contribution of its proceeds from the sale of the Water System and/or the Wastewater System.

5.7 Service Provided by Assignee. Assignee will neither directly nor indirectly furnish, nor authorize the furnishing, of any water or sewer service within or without Assignee's Service Area through the Water System or Wastewater System. Nothing herein shall be

construed as limiting Assignee's power to provide an independent source of water and sewer services not connected to the Water System or Wastewater System.

5.8 **Assignee Dissolution.** In the event Assignee seeks to dissolve pursuant to §32-1-701, *et. seq.*, C.R.S., if applicable, or pursuant to any other means, including, but not limited to bankruptcy, written notification of the filing or application for dissolution shall be provided to SVMD concurrently with any such filing, if applicable, or Assignee shall provide written notification to SVMD of its intention to dissolve as soon as possible. The plan for dissolution shall include provision for continuation of this Assignment, with a responsible entity acceptable to SVMD and CBCMD being substituted for Assignee as Party to this agreement. If no such provision is made for assumption of contractual obligation, then immediately upon dissolution of Assignee, this Assignment shall be null, void and of no further force or effect and any unused Assigned SFEs shall revert back to CBCMD pursuant to Section _____. Notwithstanding the foregoing, the dissolution of Assignee shall not affect the obligations of SVMD to continue to serve customers in Assignee's Service Area.

ARTICLE VI BREACH AND NON-BREACH

6.1 **Non-Termination.** Subject to SVMD's rights provided by law and its rules, regulations, policies, and procedures pertaining to violations or delinquent payments by individual service customers, the SVMD and Assignee agree that no breach of this Assignment shall justify or permit termination of the continuing obligations of this Assignment.

6.2 **Breach, Remedies.** In the event of breach of any provision of this Assignment, in addition to contractual remedies, either SVMD or Assignee may ask a court of competent jurisdiction for such legal and equitable remedies as may be available under the laws of Colorado, including entering a writ of mandamus to compel the Board of Directors of the defaulting Party to perform its duties under this Agreement, if applicable, and either Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other to perform in accordance with the obligations set forth under this Assignment including, without limitation, its obligations with respect to issuing bonds or otherwise incurring indebtedness or obtaining financing in order to raise funds required for payments hereunder.

6.3 **Non-Breach, Non-Default.** In the event that the trustee, identified in any trust indenture, trust agreement or similar instrument providing for the use of a trustee to enforce and defend the rights of the holders of general obligation bonds or other bonds of Assignee, if applicable, has the authority, in the event of default in the debt service payments for such bonds, to direct the utilization of Assignee's funds in a manner that causes Assignee's obligations under this Assignment not to be paid in a timely manner, then such failure by Assignee to pay such amounts as they come due shall not be a default or breach of this Assignment. During such time as such trustee undertakes the foregoing actions, the operations of this Assignment shall be temporarily suspended, but all amounts otherwise payable by Assignee hereunder shall be deemed to be critical capital projects that the trustee shall pay in accordance with the priorities provided in the trust agreement or similar document. The Assignment shall continue in full

force and effect immediately after the trustee ceases to perform such actions following default in the payment of Assignee's bonds.

6.4 Termination Notice, Opportunity for Cure. Notwithstanding any other provision of this Assignment to the contrary and except as may be required by law, if a dispute arises which would authorize or permit SVMD to terminate or suspend service to Assignee including termination of the right held by Assignee for continuing service or the connection of additional water and sewer taps utilizing capacity in the Water System or Wastewater System that has been assigned to Assignee pursuant to the Agreement, then SVMD shall provide a Termination Notice to Assignee and CBCMD. If Assignee does not comply with the suggested cure provided in the Termination Notice or an alternative cure reasonably acceptable to SVMD, or if Assignee commences a cure that will reasonably require more than thirty (30) days to complete but fails to diligently prosecute the cure to completion, then SVMD shall, after thirty (30) days following Assignee's receipt of such Termination Notice or cessation of diligent prosecution, terminate or suspend service as provided in the Termination Notice and all Unused Assigned SFEs shall revert back to CBCMD pursuant to Section 2.2 of this Assignment. No default by Assignee shall result in termination of service to a customer within Assignee's Service Area connected to the Water System or Wastewater System.

6.5 Dispute Resolution. Except as provided in Section 6.4 (Termination Notice, Opportunity for Cure), if a dispute arises under this Assignment the complaining Party shall provide a written Notice of the Disagreement to the other Parties. If direct negotiation between the Parties fails to resolve the dispute within thirty (30) days of receipt of the Notice of Disagreement, and one Party requests the organization of a Resolution Committee, then:

6.5.1 Forthwith, the Resolution Committee shall meet to review such information as may be presented to the Resolution Committee, make such independent investigations, and decide the dispute by majority vote of the Resolution Committee at a meeting following reasonable notice at which all are present;

6.5.2 In its review of the dispute, the Resolution Committee shall review the facts, the technical objections, and any other materials deemed appropriate by the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute. The standards that the Resolution Committee shall use in the determination of any dispute shall include (1) whether the technical operation and maintenance characteristics of the Water System or Wastewater System or the Assignee's Constructed Facilities conform to this Assignment, (2) whether the Water System or Wastewater System or the Assignee's Constructed Facilities will overburden the Water or Wastewater Service Capacities or are likely to result in a violation of any permit, water right, or law, (3) the reasonableness of the Party's position, and (4) the language of the Agreement and goals that the Parties sought to achieve in this Assignment;

6.5.3 The Resolution Committee shall, promptly upon making its decision, inform the Board of Directors or other authorized representative of the Parties in writing of such decision.

6.5.4 The decision of the Resolution Committee may be appealed to the Courts or, if the Resolution Committee fails to render a decision within thirty (30) days of its

organization, then either Party may seek such other remedies as may be allowed by law. The Resolution Committee decision is not to be deemed a final, binding decision by arbitration.

ARTICLE VII MISCELLANEOUS

7.1 **Relationship of the Parties.** This Assignment does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

7.2 **Liability of Parties.** No provision, covenant or agreement contained in this Assignment, nor any obligations herein imposed upon each Party, nor the breach thereof, nor the issuance and sale of any bonds by a Party, shall constitute or create an indebtedness of the other Party within the meaning of any Colorado constitutional provision or statutory limitation. No Party shall have any obligation whatsoever to repay any debt or liability of the other Party.

7.3 **Assignment.** Neither this Assignment, nor any Party's rights, obligations, duties, or authority hereunder may be assigned in whole or in part by either Party without the prior written consent of the other Party. Any such attempt of assignment shall be deemed void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

7.4 **Amendment and Modification.** This Assignment may not be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, except by an agreement in writing duly authorized and executed by all Parties. No consent of any non-Party shall be required for the negotiation and execution of any such agreement.

7.5 **Waiver.** No waiver or failure by any Party to insist upon the strict performance of any agreement, term, covenant or condition hereof, or failure to exercise of any right or remedy consequent upon any default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant or condition, or a waiver of any subsequent breach of the same or any other provision of this Assignment.

7.6 **Integration.** This Assignment contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Assignment shall be valid or binding.

7.7 **Severability.** Invalidation of any of the provisions of this Assignment or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Assignment.

7.8 **Survival of Obligations.** Unfulfilled obligations of any Assignee and SVMD arising under this Assignment shall be deemed to survive the expiration or termination of this Assignment and the completion of the Water System or Wastewater System and the Assignee's Constructed Facilities which are the subject of this Assignment, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Further, any obligations of Assignee and CBCMD arising under Section 2.2 of this Assignment shall

survive the expiration or termination of this Assignment. In order to provide notice to all property owners of the rights and obligations under this Assignment, the Parties agree that upon execution this Assignment shall be recorded against all property described in Exhibit

7.9 **Fair Dealing.** In all cases where the consent or approval of one Party is required before the any other may act, or where the agreement or cooperation of one or more Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Assignment as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on either Party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable Parties contracting at arms-length.

7.10 **Force Majeure.** Any Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government except for the Party to be excused; national fuel shortage; when satisfactory evidence of such cause is presented to the other Parties, and provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the Party not performing.

7.11 **Notices.** All notices required or permitted to be given hereunder between the Parties shall be in writing and shall be effective upon personal delivery, e-mail, or three (3) business days following deposit of the notices in the United States Mail, postage prepaid and addressed as follows, or to such other address designated by a Party upon notice as hereinabove provided:

To SVMD: Stonegate Village Metropolitan District
c/o District Manager
10252 Stonegate Parkway
Parker, CO 80134

With a Copy To Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203-4358
Phone: 303-839-3800
Email: mdalton@spencerfane.com
Attn: Matthew R. Dalton

To CBCMD: Compark Business Campus Metropolitan
District
CliftonLarsonAllen
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Phone: 303-779-5710
Email: bob.blodgett@claconnect.com
Attn: Bob Blodgett

With a Copy To: Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203-4358
Phone: 303-839-3800
Email: rkron@spencerfane.com
Attn: Rick Kron

With a Copy To: McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203-1254
Phone: 303-592-4380
Email: mmcgeady@specialdistrictlaw.com
Attn: MaryAnn M. McGeady

To Developer: 470 Compark LLC
290 Fillmore St., Suite #2
Denver, CO 80206
Phone: 303-881-6292
Email: michaelvickers@mvpcompark.com
Attn: Michael Vickers

To Assignee:

7.12 **Applicable Law.** This Assignment shall be construed and interpreted in accordance with the laws of the State of Colorado.

7.13 **Governmental Immunity Applies.** Nothing contained in this Assignment shall serve as a waiver of the protections afforded the Parties pursuant to the Colorado Governmental Immunity Act.

7.14 **Annual Appropriations.** The obligations of certain Parties under this Assignment, to the extent they require expenditure of funds, are subject to the annual appropriations of such funds by their Boards of Directors, in their sole authority. Notwithstanding the foregoing, once such funds are appropriated, such obligations shall become binding for the year of appropriation and may be enforced for the year of appropriation at any time subsequent to such appropriation. Further, those Parties shall include within their proposed annual budget for consideration by each of their Board of Directors sufficient funds to fulfill all obligations under this Assignment.

7.14 Annual Appropriations. The obligations of the Parties under this Agreement, to the extent they require expenditure of funds, are subject to the annual appropriations of such funds by their Boards of Directors, in their sole authority. Notwithstanding the foregoing, once such funds are appropriated, such obligations shall become binding for the year of appropriation and may be enforced for the year of appropriation at any time subsequent to such appropriation. Further, each Party shall include within its proposed annual budget for consideration by its Board of Directors sufficient funds to fulfill all obligations under this Agreement.

7.15 Venue. Venue for any litigation brought under this Agreement shall be in Douglas County, Colorado District Court.

7.16 Attorney Fees. In the event of any dispute between the Parties arising out of this Agreement, each Party shall be responsible for its own attorney fees.

7.17 No Third Party Beneficiaries. None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit or right of action by any person or entity other than the signatory Parties hereto. Any other person or entity affected by this Agreement shall be deemed an incidental beneficiary with no rights under this Agreement. Incidental beneficiaries with no rights include BNMD and CHMD, until such time as they have become signatory Parties to the Agreement by assignment approved by SVMD and the other Parties to this Agreement.

7.18 Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which, when taken together shall constitute a single agreement.

Made and entered into the year and date first above written.

STONEGATE VILLAGE METROPOLITAN DISTRICT

By: Lisa Hyvonen
Lisa Hyvonen, President

Attest:

Roger Husbands
Roger Husbands, Secretary

COMPARK BUSINESS CAMPUS METROPOLITAN DISTRICT

By: Michael Vickers
Michael Vickers, President

Attest:


~~Thomas List, Secretary~~

ATTACHMENT 5

1287

RESOLUTION NO. 2016-06-09

**RESOLUTION OF THE BOARD OF DIRECTORS OF
BELFORD SOUTH METROPOLITAN DISTRICT
REGARDING THE IMPOSITION OF DEVELOPMENT FEES AND NOTICE OF
SYSTEM ACCESS FEES**

- A. Belford South Metropolitan District (the "District") is a quasi-municipal corporation and political subdivision of the State of Colorado.
- B. Pursuant to its Service Plan, the District is empowered to plan, design, acquire, construct, install, relocate, redevelop and finance certain public improvements within and without the boundaries of the District (the "Improvements"), subject to the limitations set forth in the Service Plan.
- C. The District is authorized pursuant to Section 32-1-1001(1)(j)(I), C.R.S., to fix fees and charges for services or facilities provided by the District.
- D. Pursuant to its Service Plan, the District is authorized to collect a one-time development or system fee imposed by the District on each residential unit at or prior to the issuance of a certificate of occupancy for the residential unit (the "Development Fee").
- E. The District is authorized to utilize revenue from the Development Fees for costs associated with capital improvement costs and/or to pledge the same for the repayment of principal and interest on bonds.
- F. The property currently within the boundaries of the District's Service Area is described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"), which legal description may be amended from time to time, pursuant to the inclusion and/or exclusion of property into or from the District.
- G. As set forth in the Service Plan, it is anticipated that property within the District will receive water and wastewater service from Stonegate Village Metropolitan District ("SVMD") and will be subject to a System Access Fee per residential unit ("System Access Fee"), which System Access Fee has been established by and is payable to SVMD for water and wastewater system capital improvement costs.
- H. This Resolution will be recorded on the Property to put property owners on notice of this imposition of Development Fees by the District and System Access Fees payable to SVMD.
- NOW, THEREFORE, be it resolved by the Board of Directors of the Belford South Metropolitan District (the "Board"), as follows:

1. The Board hereby finds, determines and declares that it is in the best interest of the District, its inhabitants and taxpayers to exercise its power to impose a Development Fee on the Property.
2. The District hereby imposes the Development Fee on the Property for provision of the Improvements.
3. The Development Fee shall not be imposed on real property conveyed to and/or owned by governmental entities or homeowners' associations.
4. The rate of the Development Fee shall be:
 - (a) For each single-family detached or attached residential unit, the Development Fee shall not exceed Twenty-Five Thousand Dollars (\$25,000); or
 - (b) For each multi-family residential unit, the Development Fee shall not exceed Twenty Thousand Dollars (\$20,000).
5. The Development Fee, with respect to any portion of the Property, shall be due and payable prior to issuance of a certificate of occupancy.
6. The District can, in its discretion, increase the Development Fee by up to the consumer Price Index for Denver-Boulder, all items, all urban consumers (or its successor index for any years for which the Consumer Price Index is not available) each year thereafter commencing on January 1, 2017.
7. Any unpaid Development Fee(s) shall constitute a statutory and perpetual charge and lien upon the residential unit pursuant to Section 32-1-1001(1)(J), C.R.S., from the date the same becomes due and payable until the date the Development Fee(s) is/are paid. The lien shall be perpetual in nature on the residential unit and shall run with the land, as defined by the laws of the State of Colorado. Such lien may be foreclosed by the District in the same manner as provided by the laws of the State of Colorado for the foreclosure of mechanics' liens. This Resolution shall be recorded in the real property records of the Clerk and Recorder of the Town of Parker, Colorado.
8. Failure to make payment of the Development Fee(s) in the amount and at the time due hereunder shall constitute a default in the payment of such Development Fee(s). Upon a default, interest shall accrue on the delinquent Development Fee(s) from the date due at the rate of eighteen percent (18%) per annum until paid. The District shall be entitled to enforce such remedies and collection proceedings as may be authorized under Colorado Law including, but not limited to, foreclosure of its perpetual lien. The defaulting property owner shall pay all costs, including attorneys' fees, incurred by the District in connection with the foregoing. In foreclosing its lien, the District will enforce the lien only to the extent necessary to collect the delinquent Development Fee(s) and costs.

9. Judicial invalidation of any provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstances shall not affect the validity of the remainder of the Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

10. The Development Fee set forth herein are hereby approved and adopted by the Resolution of the Belford South Metropolitan District effective as of the 29th day of June, 2016.

APPROVED AND ADOPTED THIS 29TH DAY OF JUNE, 2016.

**BELFORD SOUTH METROPOLITAN
DISTRICT**

By: *Michael P. Vickers*
Michael P. Vickers, President

Attest:

Secretary

EXHIBIT A

BELFORD SOUTH METROPOLITAN DISTRICT
 LGID NO. _____

LEGAL DESCRIPTION - BOUNDARY PARCEL

PART OF THE SOUTH HALF OF SECTION 6, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 6 AND CONSIDERING THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 6 TO BEAR NORTH 00°30'14" WEST, AND MONUMENTED AS SHOWN HEREON, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO;

THENCE NORTH 00°30'14" WEST, A DISTANCE OF 295.45 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER TO A NON-TANGENT CURVE;

THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 10°46'25", A RADIUS OF 1445.00 FEET, AN ARC LENGTH OF 271.71 FEET, THE CHORD OF WHICH BEARS NORTH 66°02'54" EAST, A DISTANCE OF 271.31 FEET TO A POINT OF TANGENCY;

THENCE NORTH 52°39'42" EAST, A DISTANCE OF 347.52 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 37°49'41", A RADIUS OF 1555.00 FEET, AN ARC LENGTH OF 1028.65 FEET, THE CHORD OF WHICH BEARS NORTH 71°34'32" EAST, A DISTANCE OF 1008.11 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 88°30'37" EAST, A DISTANCE OF 1248.68 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 40°40'50", A RADIUS OF 945.00 FEET, AN ARC LENGTH OF 670.96 FEET, THE CHORD OF WHICH BEARS NORTH 70°06'56" EAST, A DISTANCE OF 656.99 FEET TO POINT OF TANGENCY;

THENCE NORTH 46°48'33" EAST, A DISTANCE OF 161.42 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF A TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 100°04'20", A RADIUS OF 625.00 FEET, AN ARC LENGTH OF 1440.84 FEET, THE CHORD OF WHICH BEARS SOUTH 80°09'16" EAST, A DISTANCE OF 1284.84 FEET TO A NON-TANGENT CURVE;

THENCE ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 3°52'15", A RADIUS OF 200.00 FEET, AN ARC LENGTH OF 13.51 FEET, THE CHORD OF WHICH BEARS SOUTH 79°27'14" WEST, A DISTANCE OF 13.51 FEET TO A POINT OF TANGENCY;

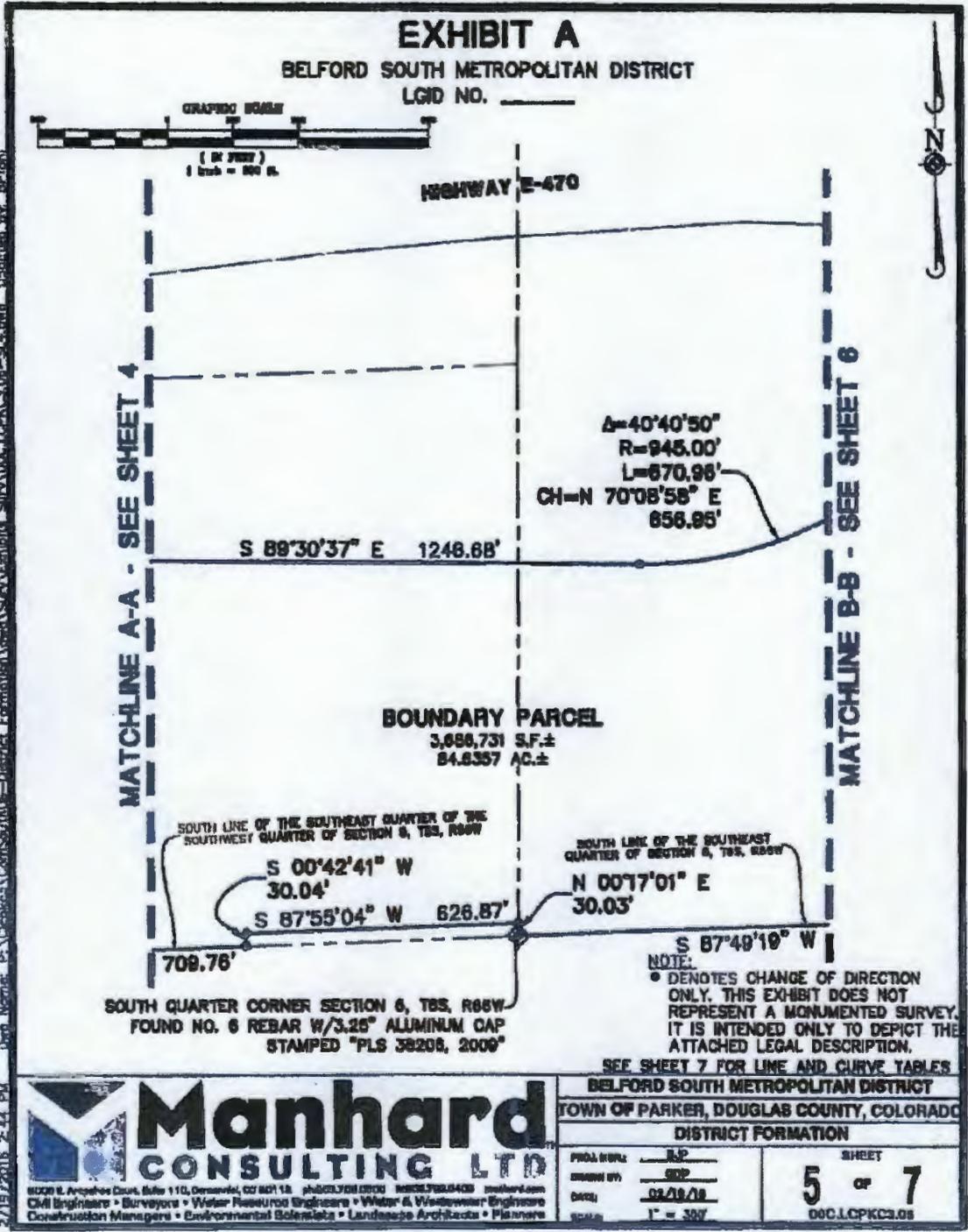
THENCE SOUTH 77°31'06" WEST, A DISTANCE OF 135.70 FEET TO A POINT OF CURVATURE;

SEE SHEET 2 OF 7

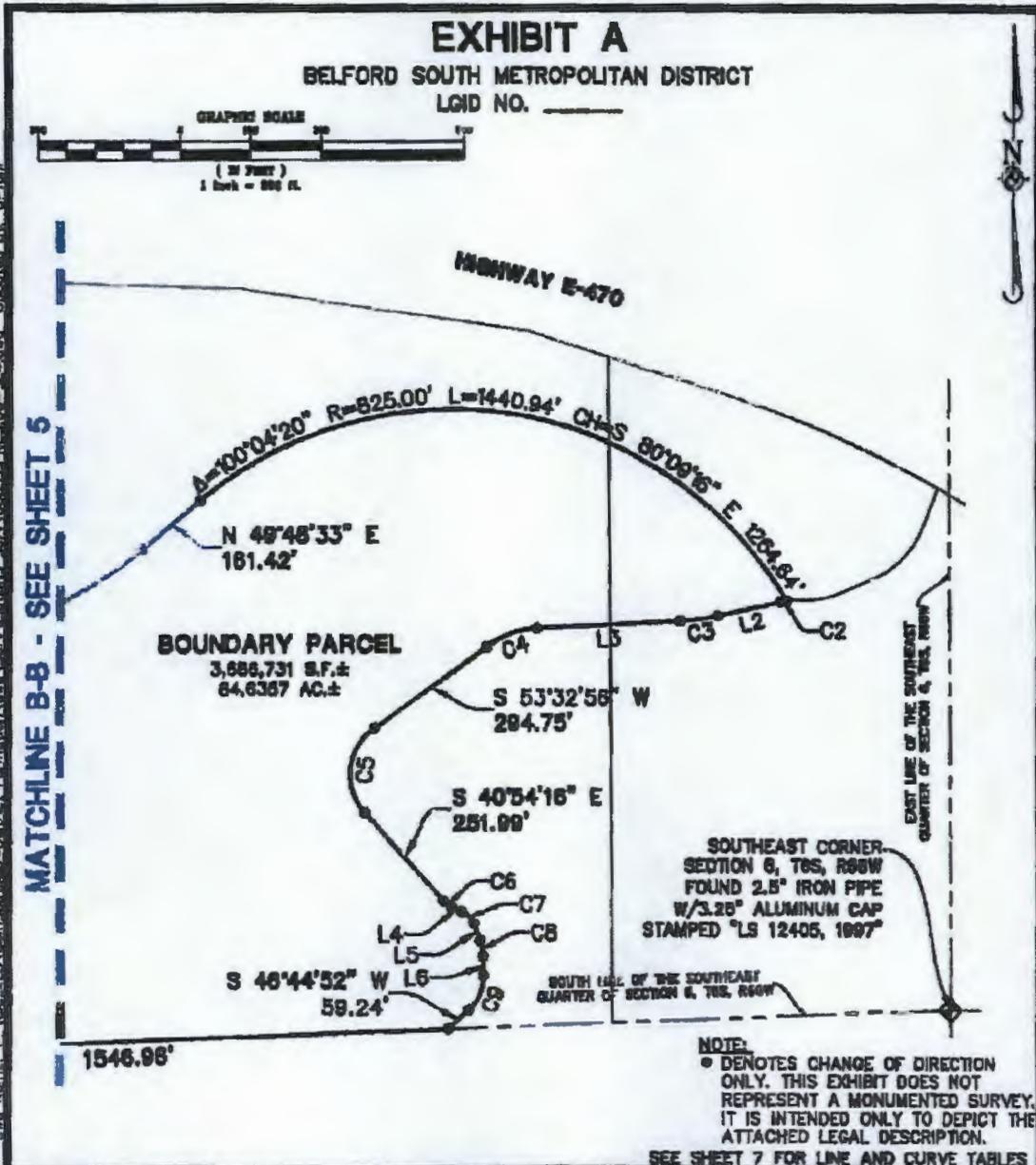
2/9/2016 2:37 PM D:\North\2016\2016075677\District Formation\Manhard\Survey\00C.LCPKCS.06-51.dwg Modified By: RB/terl

	BELFORD SOUTH METROPOLITAN DISTRICT TOWN OF PARKER, DOUGLAS COUNTY, COLORADO DISTRICT FORMATION	
	PROJ. NO.: B/P DRAWN BY: GPP DATE: 08/18/16 SCALE: N/A	SHEET 1 OF 7 00C.LCPKCS.06

3000 E. Arapahoe Court, Suite 110, Denver, CO 80118 phone: 720.762.0000 fax: 720.762.0000
 Civil Engineers • Surveyors • Water Resources Engineers • Water & Wastewater Engineers
 Construction Managers • Environmental Scientists • Landscape Architects • Planners



7/19/2018 2:44 PM Don Warner P:\Client\1\Com\South05-District_Formation\Draw\Survey\Exhibits_Survey\DOC\CPK3.08-5.dwg - Manhard_Br_821081



2/19/2016 2:44 PM Dave Nearing, E. L. C. Engineering, Inc. 5000 S. Parker Road, Suite 110, Greenwood, CO 80411 (303) 752-2000 (303) 752-2025

Manhard CONSULTING LTD

2020 S. Appleton Road, Suite 110, Greenwood, CO 80411 (303) 752-2000 (303) 752-2025
 Civil Engineers • Surveyors • Water Resources Engineers • Water & Wastewater Engineers
 Construction Managers • Environmental Scientists • Landscape Architects • Planners

BELFORD SOUTH METROPOLITAN DISTRICT	
TOWN OF PARKER, DOUGLAS COUNTY, COLORADO	
DISTRICT FORMATION	
PROJECT NO.	82
DRAWN BY	SP
DATE	02/19/16
SCALE	1" = 300'
SHEET	6 OF 7
80C.LCPK03.06	

Date: 7/19/2018 2:37 PM Path: P:\Projects\2018\Belford South Metropolitan District Formation\Sheet\Belford South Metropolitan District Formation.dwg User: JLD User: JLD

EXHIBIT A

BELFORD SOUTH METROPOLITAN DISTRICT
 LGID NO. _____

LINE TABLE		
LINE	BEARING	LENGTH
L1	N 00°30'14" W	296.48'
L2	S 77°31'06" W	136.78'
L3	S 88°58'10" W	308.09'
L4	S 84°10'58" E	23.43'
L5	S 20°41'38" E	38.38'
L6	S 00°32'10" E	40.81'

CURVE TABLE					
CURVE	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	10°46'25"	1448.00'	271.71'	N 66°02'54" E	271.31'
C2	3°52'18"	200.00'	13.51'	S 79°27'14" W	13.51'
C3	8°27'04"	500.00'	82.45'	S 82°14'38" W	82.38'
C4	33°25'14"	200.00'	118.88'	S 70°15'33" W	118.01'
C5	84°27'12"	125.00'	208.07'	S 08°19'20" W	183.51'
C6	23°16'42"	50.00'	20.31'	S 82°32'37" E	20.17'
C7	43°29'20"	50.00'	37.89'	S 42°26'18" E	37.05'
C8	20°08'03"	100.00'	38.17'	S 10°38'24" E	34.98'
C9	47°17'03"	100.00'	82.53'	S 23°06'21" W	80.20'



8000 S. Arroyo Creek Blvd Suite 110, Centennial, CO 80115 phone: 720.820.8800 fax: 720.820.4400 manhard.com
 Civil Engineers • Surveyors • Water Resources Engineers • Water & Wastewater Engineers
 Construction Managers • Environmental Scientists • Landscape Architects • Planners

BELFORD SOUTH METROPOLITAN DISTRICT TOWN OF PARKER, DOUGLAS COUNTY, COLORADO DISTRICT FORMATION	
PROJ. NO.: <u>R/P</u> DRAWING NO.: <u>02/09/18</u> DATE: <u>02/09/18</u> SCALE: <u>N/A</u>	SHEET 7 of 7 DPC.LC.PKC3.06

ATTACHMENT 6

to the District's certification of the formation of the District to the Colorado Division of Local Government as required by Section 32-1-306, C.R.S.

There is attached hereto as **Exhibit G** the Project Developer's Indemnification Letter, which is submitted to the Town by the Developer as part of this Service Plan. There is also attached hereto as **Exhibit G** the form of a District Indemnification Letter. The District shall approve and execute the Indemnification Letter at its first Board meeting after its organizational election, in the same form as the Indemnification Letter set forth in **Exhibit G** and shall promptly deliver an executed original to the Town.

X. INTERGOVERNMENTAL AGREEMENTS

The form of the intergovernmental agreement required by Town Code section 10.11.140(a), relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit H**. The District shall approve and execute the Intergovernmental Agreement at its first Board meeting after its organizational election, in the same form as the Intergovernmental Agreement approved by Town Council, and shall promptly deliver an executed original to the Town. Failure of the District to execute the Intergovernmental Agreement as required herein shall constitute a material modification and shall require a Service Plan Amendment. The Town Council may approve the Intergovernmental Agreement at the public hearing approving the Service Plan.

It is anticipated that the District will also enter into an amendment, and be added as a third party, to the existing Regional Facilities Agreement by and between Compark Business Campus Metropolitan District ("CBCMD") and Stonegate Village Metropolitan District ("SVMD") relative to the allocation of capacity in SVMD's water and wastewater systems, the construction of Public Improvements necessary to serve the District with SVMD water and wastewater service, and the funding of existing and future costs of improvements and/or expansions to the SVMD wastewater treatment plant, the SVMD water treatment plant, and the SVMD water supply system necessary to serve the build-out of the SVMD service area, including the Project. Property owners within the District will pay a System Access Fee of approximately \$3,500 per residential unit to SVMD because the developer of the area within CBCMD has already advanced funding toward the completion of the SVMD infrastructure. The financing and construction of this infrastructure allowed SVMD to issue an unconditional can and will serve letter to the Project. Because significant SVMD water and wastewater infrastructure serving the Project has already been financed by the Developer, the District can impose the Development Fee to finance the improvements shown on the Capital Plan without imposing an unreasonable fee burden on property owners within the District. Further, it is also anticipated that the District may enter into cost sharing and reimbursement agreements with the metropolitan districts anticipated to be organized to the east, north, and west of the Project related to the financing of Belford Road.

Except for the Intergovernmental Agreement with the Town, any intergovernmental agreement with SVMD any other intergovernmental agreement proposed regarding the subject matter of this Service Plan shall be subject to Town review and approval prior to its execution by the District. Such Town review and approval shall be with reference to whether the intergovernmental agreement(s) are in compliance with this Service Plan, the Intergovernmental

Agreement, and the terms of any Approved Development Plan or other instrument related to the Public Improvements.

XI. NON-COMPLIANCE WITH SERVICE PLAN

In the event it is determined that the District has undertaken any act or omission which violates the Service Plan or constitutes a material departure from the Service Plan, the Town may impose any of the sanctions set forth in Section 10.11.220 of the Town Code, including, but not to, affirmative injunctive relief to require the District to act in accordance with the provisions of this Service Plan. To the extent permitted by law, the District hereby waives the provisions of Section 32-1-207(3)(b), C.R.S., and agrees it will not rely on such provisions as a bar to the enforcement by the Town of any provisions of this Service Plan.

XII. CONCLUSION

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S., and Section 10.11.180 of the Town Code, establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;
2. The existing service in the area to be served by the District is inadequate for present and projected needs;
3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries;
4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis;
5. Adequate service is not, and will not be, available to the area through the Town or County or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;
6. The facility and service standards of the District are compatible with the facility and service standards of the Town;
7. The proposal is in substantial compliance the Town's Master Plan;
8. The proposal is in compliance with any duly adopted Town, regional or state long-range water quality management plan for the area;
9. The creation of the District is in the best interests of the area proposed to be served;
10. The creation of the District is in the best interests of the residents and future residents of the area proposed to be served;

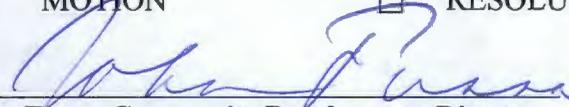


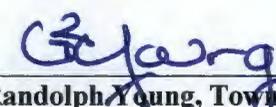
ITEM NO: 8L
DATE: 01/03/2017

REQUEST FOR TOWN COUNCIL ACTION

TITLE: ORDINANCE NO. 3.326 - A Bill for an Ordinance to Amend Sections 13.04.200, 13.06.020, 13.06.070 and 13.10.200, and to Add a New Section 13.04.207 of the Parker Municipal Code, to Address Development Impacts and Development Standards as They Relate to Multiple-Family Uses Within the Town of Parker

- | | |
|---|---|
| <input type="checkbox"/> PUBLIC HEARING | <input checked="" type="checkbox"/> ORDINANCE FOR 1 ST READING (1/03/2017) |
| <input type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING (1/17/2017) |
| <input type="checkbox"/> MOTION | <input type="checkbox"/> RESOLUTION |


John Fussa, Community Development Director


G. Randolph Young, Town Administrator

ISSUE:

Parker has experienced a substantial increase in multi-family residential development in the past few years. The Town's Commercial, Industrial and Multi-Family Residential Design Standards (Design Standards) were adopted on November 1, 1999. There is an urgent need to update the Design Standards to ensure that all development including multi-family residential housing is of high-quality, maintains community character and preserves Parker's hometown feel. The Town issued a Request for Proposals (RFP) on December 15, 2016 to update the Design Standards and the project will take eight months to complete. Staff would like Town Council to consider interim revisions to the Design Standards and the Land Development Ordinance to ensure that new multi-family residential development is contextual and reconciles with existing neighborhood characteristics, incorporates high quality design/materials and promotes the public health, safety and welfare through attractive, safe and well-designed development.

PRIOR ACTION:

Town Council adopted the Commercial, Industrial and Multi-family Residential Design Standards on November 1, 1999, and made minor updates to the Design Standards on September 22, 2003, June 16, 2008 and April 17, 2015.

FUNDING/BUDGET IMPACT:

None

BACKGROUND:

Parker has experienced increased growth and development arising from the strong regional economy, population growth and an improved housing market since the great recession ended in 2009-10. As part of this trend, the Town has undergone a significant increase in multi-family residential development activity since 2014.

For example, there are currently an estimated 1,998 multi-family residential units in the development pipeline under active construction or with a pending land use application. This represents the majority of current residential development activity in the Town and the trend raises concerns about appropriate architecture/urban design, maintaining community character and the promotion of high quality development.

For 2016, the Town has issued building permits for 390 multi-family residential units, grading permit(s) for 294 multi-family residential units and has 444 multi-family residential units in site plan review through December 1, 2016. The trend of strong multi-family residential growth is expected to continue in 2017 and the Town desires to ensure that future multi-family residential development is of a high quality and maintains community character without suspending the construction of such uses within the community.

The proposed amendments include:

1. Amend Section 13.06.070 to increase the required landscaping from 35% to 45%
2. Update Section 13.06.020 to require a Condominium Unit Map for all multi-family residential development. This does not require the owner to sell the units
3. Update the Design Standards for multi-family residential development
4. Update the Design Standards regarding neighborhood centers, community centers and highway commercial centers to reflect the Parker 2035 Master Plan
5. Establish Section 13.04.207 to require a Use by Special Review approval for multi-family residential development that meets certain criteria.

RECOMMENDATION:

Staff recommends that the Town Council approve Ordinance No. 3.326.

PREPARED/REVIEWED BY:

James S. Maloney, Town Attorney; Bryce Matthews, Planning Manager; Jason Rogers, Deputy Community Development Director; John Fussa, Community Development Director

ATTACHMENTS:

1. Ordinance No. 3.326
2. Blackline of proposed amendments to the Commercial, Industrial and Multi-family Residential Design Standards

RECOMMENDED MOTION:

"I move to approve Ordinance No 3.326 on first reading and schedule second reading for January 17, 2017, as a part of the consent agenda."

ORDINANCE NO. 3.326, Series of 2017

TITLE: A BILL FOR AN ORDINANCE TO AMEND SECTIONS 13.04.200, 13.06.020, 13.06.070 AND 13.10.200, AND TO ADD A NEW SECTION 13.04.207 OF THE PARKER MUNICIPAL CODE, TO ADDRESS DEVELOPMENT IMPACTS AND DEVELOPMENT STANDARDS AS THEY RELATE TO MULTIPLE-FAMILY USES WITHIN THE TOWN OF PARKER

WHEREAS, the Town Council of the Town of Parker approved Resolution No. 12-106, Series of 2012, to adopt the Town of Parker 2035 Master Plan (the "Master Plan");

WHEREAS, the Master Plan, Chapter 7: Community Appearance and Design, establishes the following goals:

1. Preserve and protect the quality of life within our existing residential neighborhoods.

1.A. When reviewing development proposals adjacent to and within existing neighborhoods, ensure that the development demonstrates compatibility with, and sensitivity to, existing neighborhood characteristics in terms of housing, quality, density, building height, placement, scale and architectural character.

2. Housing in all forms will be constructed of high quality materials and designed to create safe and attractive neighborhoods. Special attention shall be given to building massing, form and variation to prevent the repetition of similar homes or building complexes.

WHEREAS, the Master Plan, Chapter 8: Housing and Neighborhoods, establishes the following goal:

5. Increase the homeownership rate with an emphasis on creating opportunities for all income levels.

WHEREAS, the Town Council adopted the Town of Parker Architectural and Design Standards for Commercial, Industrial and Multi-Family Projects (the "Design Standards") on November 1, 1999;

WHEREAS, the Town Council adopted minor updates to the Design Standards on September, 22, 2003, June 16, 2008, and April 17, 2015;

WHEREAS, the Town of Parker has more than doubled in population and has changed significantly since 1999, when the Commercial, Industrial and Multifamily Residential Design Standards were originally adopted;

WHEREAS, the Town has currently seen a significant increase in multifamily construction with building permits for 390 multifamily units, a grading permit for 294 multifamily units, and 444 multifamily dwelling units in site plan review through December 1, 2016. This rate of multifamily construction is outpacing the number of single-family units being constructed;

WHEREAS, the Town has received multiple inquiries related to the development of multifamily uses;

WHEREAS, the current and foreseeable development trend recognizes a shift in the market for new houses, and multifamily development in the Town is targeting significant build out to attract the socio-economic demographic once typical of traditional housing with value and lifestyle choices to provide an unmet housing need;

WHEREAS, the Town, in response to development trends, has planned for approximately 3,000 additional multifamily units over a 20-year period; however, the Town lacks zoning regulations and design standards to manage sustainable and quality growth;

WHEREAS, infill multifamily development has the opportunity to leverage existing public infrastructure, as this cost does not need to be underwritten; therefore, making it a major infill growth driver for future development cycles;

WHEREAS, multifamily development, in regard to design and amenities in the Town, is not comparable to multifamily products within the surrounding jurisdictions;

WHEREAS, the Town has received significant public input regarding recently completed multifamily projects through public outreach for planning projects, social media, and direct contact, in which the public has noted the following concerns:

- Parking
- Architectural design
- Open space/landscaping
- Building location and massing on the site
- Impacts on existing infrastructure

WHEREAS, building architecture, building technology and materials have changed significantly since 1999;

WHEREAS, one of Town Council's highest priorities is to complete and update the Design Standards;

WHEREAS, the Town released a Request for Proposals (RFP) on December 15, 2016, to hire a consultant to rewrite the Design Standards during 2017, and the Town desires to ensure that multifamily development approved during the 2017 rewrite of the Design Standards is of a high quality, without suspending the construction of multifamily within the Town;

WHEREAS, the Town adopted Ordinance No. 3.231.2 on June 2, 2014, amending Section 13.06.070 to reduce required landscaping for multifamily developments from 45% of the project area to 35% of the project area. The Town has determined that 35% is not an adequate amount of landscaping for multifamily developments;

WHEREAS, the Planning Commission reviewed the proposed amendments to the Land Development Ordinance contained herein on _____, and recommended approval to the Town Council; and

WHEREAS, the Town Council finds and determines such legislation is immediately necessary for the reasons contained within these Recitals.

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

Section 1. Subsections 13.04.200(c) and (d) of the Parker Municipal Code are amended to read as follows:

13.04.200 Uses permitted by special review.

* * *

(c) Transfer of an approved use by special review. **Other than a use described in Section 13.04.207, which is not transferrable, The the** Planning Director may approve a transfer of an approved use by special review to a new location that is wholly contained within the boundaries of the same zone district boundaries as the approved use by special review, subject to reasonable conditions which include, but are not limited to, the criteria for approval contained in Subsection (b) above and the limitations contained in Subsection (d) below, and provided further that:

(d) Limitations. Uses by special review, other than a use described in Section 13.04.205 **and Section 13.04.207 below**, shall be permitted for a duration of time specified by the Town Council or until the land use changes or is terminated, whichever occurs first. Each use is subject to yearly review by the Planning Department or as often as the Town Council deems appropriate to ensure compliance with the nine (9) criteria in Subsection (b) above and any stated conditions of approval.

Section 2. The Parker Municipal Code is amended by the addition thereto of a new Section 13.04.207 to read as follows:

13.04.207 Use by special review multiple-family dwelling uses.

(a) Intent. Applications for multiple-family dwelling uses, including applications for multiple-family dwelling uses that are part of a planned development under Section 13.04.150, that are subject to Subsection (c) below, are considered uses by special review, which may be permitted upon

approval by the Town Council following public notice and hearing as described in Section 13.04.200, subject to such reasonable conditions and safeguards as may be imposed by the Town Council.

(b) Any potential applicant that was qualified to submit an application as provided by Emergency Ordinance No. 3.326, Series of 2017, for a multiple-family dwelling use, and submitted a site plan application that was deemed complete by the Town prior to December 13, 2016, shall be allowed to continue through the application process as nonconforming situations to the extent provided by Section 13.04.230. Any potential applicant that was qualified to submit an application for a multiple-family dwelling use, that either (i) did not submit a site plan application prior to December 13, 2016, or (ii) submitted a site plan application that was not deemed complete by the Town prior to December 13, 2016, shall be subject to the terms and conditions of this Section. This Section shall not apply to applications to rezone real property to multiple-family dwelling uses under Subsection 13.04.240(b) or applications for concurrent annexation and zoning of real property for multiple-family dwelling uses as provided by Section 13.04.250, after December 13, 2016.

(c) All multiple-family dwelling uses that are permitted uses under current zoning shall remain a permitted use, unless the application includes one or more of the following:

(1) The multiple-family dwelling use application is seeking an exemption or variance from the current zone district's bulk standards and height and setback requirements for real property that is the subject of the application;

(2) The multiple-family dwelling use proposed in the application is located adjacent to one-family dwelling subdivision(s) within the Town's incorporated boundary. Adjacency shall not be affected by a street or alley, a public or private right-of-way, public or private parks and open space, and any natural or artificial waterway or drainage way;

(3) The multiple-family dwelling use proposed in the application does not comply with all standards of the Commercial Industrial Multi-Family Residential Design Standards, including Section V.1.A Adjacent Sensitivity standards, Section V.2.B Architectural Elements and Articulation, and Section V.2.C Building Materials, as described in Section 13.10.200;

(4) Parking for the multiple-family dwelling use proposed in the application is located between the building and right-of-way;

(5) The multiple-family dwelling use proposed in the application is proposing to count the required landscaping towards the park dedication requirements as described in Paragraph 13.07.140 (c)(6); and

(6) The multiple-family dwelling units proposed in the application are considered R2 use group classification under the Parker Building Code, as amended.

(d) Any application, which is subject to a use by special review as described in this Section, shall be submitted and reviewed concurrently with a complete site plan application as described in Chapter 13.06.

(e) Criteria for approval. The Town Council may approve a use by special review for a multiple-family dwelling use as described in this Section, subject to reasonable conditions, as provided by Subsection 13.04.200(b).

Section 3. Section 13.06.020 of the Parker Municipal Code is amended thereto by the addition of a new Subsection (c), which is to read as provided below, and existing Subsection (c) is re-lettered Subsection (d), existing Subsection (d) is re-lettered Subsection (e), existing Subsection (e) is re-lettered Subsection (f), existing Subsection (f) is re-lettered Subsection (g), existing Subsection (g) is re-lettered Subsection (h), and existing Subsection (h) is re-lettered Subsection (i):

13.06.020 General requirements.

* * *

(c) All site plans for multiple-family development will require an approved Condominium Unit Map as described in Section 13.10.230. A Condominium Unit Map may be submitted simultaneously with the proposed site plan upon approval of the Planning Director. In such cases, approval of the site plan application may be made conditional upon the final approval of the Condominium Unit Map. The Condominium Unit Map shall not be interpreted as a requirement to sell units individually.

Section 4. Paragraph 13.06.070(1)(3) of the Parker Municipal Code is amended to read as follows:

13.06.070 Landscape regulations

* * *

(1) Minimum site landscaping standards.

* * *

(3) No multiple-family development shall allocate less than ~~thirty~~ **forty-five percent (~~45~~**35**%) of the developed area for landscaping, except for**

development in the Historic Center and Pikes Peak Center, which are subject to the provisions contained within the Greater Downtown District standards and guidelines. Development within the Town Center and Twenty Mile Center may count public plazas in the calculation.

Section 5. Subsection 13.10.200(a) of the Parker Municipal Code is amended to read as follows:

13.10.200 Town of Parker Architectural and Design Standards for Commercial, Industrial and Multiple-Family Projects.

(a) Adoption of Design Standards by reference. The Town of Parker Architectural and Design Standards for Commercial, Industrial and Multiple-Family Projects, dated October 8, 1999, and ~~last~~ amended on ~~July 21, 2008~~ **January 17, 2017** ("Design Standards"), and prepared by the Town, are hereby adopted by reference as if set forth herein. Copies of the Design Standards are on file with the Planning Department, may be inspected by any person and are available for sale between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, holidays excepted.

Section 6. Applicability. Any potential applicant that was qualified to submit an application for a multiple-family dwelling use, and submitted a Site Plan application that was deemed complete by the Town prior to December 13, 2016, shall be allowed to continue through the application process as nonconforming situations as provided by Section 13.04.230 of the Parker Municipal Code. Any potential applicant that was qualified to submit an application for a multiple-family dwelling use, that either (i) did not submit a Site Plan application prior to December 13, 2016, or (ii) submitted a Site Plan application that was not deemed complete by the Town prior to December 13, 2016, shall be subject to the terms and conditions of this Ordinance.

Section 7. Safety Clause. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Parker, that it is promulgated for the health, safety and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The Town Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be obtained. The Town Council further finds that the 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. Severability. If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 9. This Ordinance shall become effective ten (10) days after final publication, provided, however, that the Section 6 of this Ordinance, which concerns the applicability of this Ordinance, is subject to the "pending ordinance doctrine" as applied in

Crittenden v. Hasser, 585 P.2d 928 (Colo.App.1978), Gramiger v. County of Pitkin, 794 P.2d 1045 (Colo.App. 1989) and National Advertising Co. v. City and County of Denver, 912 F.2d 405 (10th Cir. 1990). The Town Council specifically finds that the Town Attorney and the Community Development Department were actively pursuing this Ordinance as of December 13, 2016, and as such is deemed pending as of December 13, 2016.

INTRODUCED AND PASSED ON FIRST READING this _____ day of _____, 2017.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

ADOPTED ON SECOND AND FINAL READING this _____ day of _____, 2017.

Mike Waid, Mayor

ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

**PROPOSED CHANGES TO
COMMERCIAL, INDUSTRIAL AND MULTIFAMILY RESIDENTIAL DESIGN STANDARDS
JANUARY 3, 2016**

I. INTRODUCTION

Relationship of the Design Standards to Other Planning Documents

These Design Standards are in addition to the standards and requirements identified in the Land Development Code **except for those properties located within the Greater Downtown District Historic Center and Pikes Peak Center as described in Section 13.04.110**. New developments, alterations to existing structures and changes of use shall require that the properties be in compliance with the Land Development Code and the Commercial, Industrial and Multifamily Design Standards. Modification of an existing building or change of use in an existing building shall be reviewed in accordance with section 13.04.230 Nonconforming Situations as stated in the Land Development Code or as may be amended from time to time. While these standards are intended to be consistent with the Land Development Code there may be occurrences where there is a conflict between the two documents. In the event that a conflict is discovered, the stricter of the two standards shall apply.

V. MULTI-FAMILY RESIDENTIAL

V.1.A. Adjacent Sensitivity

- 1) New multifamily buildings adjacent to existing single-family residential uses shall not exceed 30 feet in height and 2 ½ stories. The height of a multifamily building may exceed 30 feet and 2 ½ stories in the event at least one foot of setback for every foot of building height from the shared property line, with a minimum setback of 50 feet.**
- 1)2) Buildings on sites adjacent to stream corridors and wetland areas shall be set back a minimum of 20 feet from the edge of the 100 year floodplain as shown on the most current FEMA map or from the edge of wetlands as shown on the most current Corps of Engineers map.**
- 2)3) The design of site improvements shall minimize cut-and-fill in order to preserve the general character of the existing terrain and to minimize drastic differences between adjacent developed and undeveloped sites.**
- 3)4) Development sites adjacent to open space and/or recreational areas shall limit the height of retaining walls to 4'-0". Terraced walls landscaped with live plantings between walls shall be permitted.**
- 4)5) Development sites that include visually significant ridgelines shall limit the extent of building on top of the ridgeline, or rooflines that protrude above the ridgeline to 20 percent of the total length of the ridgeline within the property boundaries. Visually significant ridgelines are the top 25% of a natural topographic ridge that rises at least 50' above the adjacent land over a distance of 150' or less.**
- 6) Where the development seeks to deviate from the standards above, the development shall comply with the use by special review process outlined in Title 13 of the Municipal Code.**

~~V.1.B. Site Development~~

~~Intent: Organize multifamily residential developments to create a sense of place and neighborhood.~~

- ~~1) Structures, open space, and parking areas shall be grouped or clustered to avoid the monotony of continuous rows of building walls, and to allow visual access into the development~~

V.1.CB. Building Location and Orientation Site Planning

Intent: Orientation of buildings in multifamily developments shall reduce and minimize their apparent visual mass from adjacent single-family neighborhoods and minimize exposure to adjacent commercial or industrial areas.

- 1) Development shall provide walkable block lengths that range from 400 feet to 660 feet.**
- 2) Development shall connect streets, pathways, and trails to the larger public street network and Town open space system.**
- 3) Structures, open space, and parking areas shall be grouped or clustered to avoid the monotony of continuous rows of building walls, and to allow visual access into the development.**
- 4) In order to provide visual interest within projects, buildings shall be sited at slightly varying angles, and not lined up on minimum setbacks and/or parallel to one another or to roadways or parcel boundaries. Nor shall they be sited end-to-end, creating visual "alleys" within a project. See Figure 5.1.**
- 5) Standards V1.B.1 and through V.1.CB.14 can be waived if a project demonstrates the key principles of a new urbanist development, including a compact, pedestrian-oriented neighborhood, with clearly defined and centrally located useable public spaces, a grid or modified grid street pattern, and building entrances fronting streets. See Figure 5.2.**
- 6) Buildings shall be oriented in a more perpendicular than parallel fashion to adjacent single family homes and commercial or industrial areas.**
- 7) Where parallel orientation is necessary, building setbacks shall be increased one foot for every foot of building height.**

V.1.DC Pedestrian Access

(No change to text)

V.1.ED Vehicular Access and Parking Layout

Intent: Create an automobile circulation system that provides for safe and efficient movement within and between multifamily properties. See Figure 5.4.

- 1) Surface parking lots shall be located internal to the site and to the side and/or to the rear of buildings with appropriate landscaping and screening in the perimeter setback. The Planning Director may approve parking adjacent to the public right of way (between the building and the public right of way) where a minimum of the following are met:**

- a. **The site shape, topography or existing easements create a hardship upon the ability to locate parking to the side or rear**
 - b. **The site design includes enhanced landscaping and screening between the parking lot and the public street**
 - c. **The site design includes improved pedestrian access across the parking lot connecting the street with the buildings**
- 2) **Parking shall not be located adjacent to open space unless it is public parking intended to provide access for residents and non-residents to the facility. The Planning Director may approve parking adjacent to open space and parks where there is an identified public benefit or it improves site plan design including but not limited to:**
- a. **The site shape, topography or existing easements foreclose upon the ability to locate parking to the side or rear**
 - b. **The site design includes enhanced landscaping and screening between the parking lot and the public street**
 - c. **The site design includes improved pedestrian access across the parking lot connecting the street with the buildings**
- 1)3) All multifamily development shall provide internal automobile connections to adjoining local or collector streets.
- 2)4) Multifamily development sites between 5 and 15 acres shall include a minimum of one public street or private drive, with detached sidewalks and tree lawns, that is continuous through the site, and connects to a public street on both ends (referred to as a through-access drive).
- 3)5) Multifamily development sites greater than 15 acres shall include a minimum of two through-access drives.
- 4)6) Through access drives shall be consistent with, and aligned with, local streets in adjacent existing development areas.
- 5)7) Landscaped parking courts, loop streets, and innovative street designs shall be encouraged to ensure privacy, safety, and visual diversity

V.2.A Mass and Scale

Intent: Multifamily buildings shall maintain a scale appropriate to surroundings. See Figure 5.7.

- 1) **If a building is three-stories or more, it shall incorporate a base, middle, and cap to further articulate mass and scale. Building materials from V.2.B.2.a through i shall be applied to distinctly distinguish the base, middle, and cap.**
- 1)2) Building mass shall be suitable relative to both lot size and setbacks, and may require "stepped-back" designs that place greater height and mass away from the street. Height may also be stepped down adjacent to single-family homes to provide a visual transition.
- 2)3) The mass of buildings shall be broken down up to reduce the apparent scale, provide visual interest and depth, and achieve a more articulated form.
- 3)4) Building designs should incorporate visually heavier and more massive elements at their base, and lighter elements above these components. A second story, for example, ~~should~~ **shall** not appear heavier or demonstrate greater mass than that portion of the building supporting it.

V.2.B Architectural Elements and Articulation

Intent: Create an image of high quality multifamily residential development with a sense of neighborhood.

- 1) Multifamily development shall incorporate building variations to create distinct buildings and/or enhance architectural designs. Based on the number of buildings in the development, sites shall be in accordance with the table below. Distinct building design shall be defined as incorporating the mandatory treatments and a minimum of 5 different treatments from V.2.B.2.a through i, for each building. Similar buildings of the same design in different configurations does not meet the definition.

Building Design Variations	
Number of Buildings in Development	Minimum number of Building Variations
1	1
2-4	2
5-8	3
9 or more	1 per every 3 buildings

- ~~1)2) Building fronts façades are encouraged to include articulation such as bays, insets, or porches or stoops related to entrances and windows shall incorporate the following to distinctly articulate elevations: See Figure 5.8~~
 - a. Balconies
 - b. Bay or box windows with a minimum 12-inch projection from the façade plane
 - c. Porches or covered entries or ground-level arcades
 - d. Dormers
 - e. Variation in materials (mandatory)(see V.2.C. for more information)
 - f. Variation in colors (mandatory)(see V.2.D. for more information)
 - g. Variation in roof forms (mandatory)(see V.2.E. for more information)
 - h. Variation in window size and shapes (mandatory)
 - i. Window and door trim and moldings
 - j. Architectural lighting
 - k. Three-dimensional cornice treatments or Eaves with exposed rafter or a minimum six-inch projection from the façade plane (mandatory)
 - l. Reveals
 - m. Architectural banding
 - n. Vertical architectural treatment (a minimum of 6 inches in width)
 - o. Art work or bas relief
 - p. Other facade treatments as agreed to by the Community Development Director.
 - 3) Where the development seeks an innovative or iconic design that deviates from the standards above, the development shall comply with the use by special review process outlined in Title 13 of the Municipal Code.
- 2)4) Encourage façade articulation and articulation elements through changes in building volume, recesses, building breaks, changes in wall planes horizontally and vertically to

avoid long, monotonous walls. For structures 3 floors or less, facades greater than 25 feet in length, measured horizontally, shall incorporate projections or recesses a depth of x feet for at least 20 percent of the façade length. For structures 4 floors or greater, facades greater than 50 feet in length, measured horizontally, shall incorporate projections or recesses a depth of x feet for at least 20 percent of the façade length.

V.2.C Building Materials

Intent: Building materials shall present an image of high quality and permanence.

- 1) All multifamily developments shall be constructed with exterior building materials and finishes that are of high quality, permanence and durability, such as, but not limited to: natural wood, Masonite and shingle siding, other types of wood siding, stucco, brick, stone, and water managed EIFS.
- 2) **Masonry**
 - a. **Three-stories and less:**
 - i. A minimum of 75% of the first floor siding must be masonry on the first floor
 - ii. Upper floors shall have a minimum of 50% the siding be masonry
 - b. **Four-stories and more**
 - i. A minimum of 50% of the siding must be masonry on the first floor
 - ii. Upper floors shall include masonry elements, columns or features that extend the full height of the building.
- 3) **Stucco or water managed EIFS:**
 - a. Shall not be visible on elevations that front a public street.
 - b. Shall not exceed 25 percent of the exterior buildings materials on buildings three-stories or less.
 - c. Shall not be located on the ground floor facades.
 - d. If the development is three-stories or less, stucco or water managed EIFS shall not be located on the first two floor facades.
 - e. If the development is three stories or more, stucco or water managed EIFS may be applied to second floor or above in combination with a masonry material.
- 2)4) Exterior building materials shall not include the following: rough sawn or board and batten wood, smooth-faced or gray concrete block, painted concrete block, tilt-up concrete panels, field painted or pre-finished standard corrugated metal siding, or standard single or double tee concrete systems.
- 3)5) Predominant roof materials shall be high quality, durable materials such as, but not limited to: wood shake shingles and clay or concrete tiles. Other materials, such as composition wood and asphalt shingles and standing-seam metal roofs, will be considered on a case-by-case basis.
- 4)6) Applicants are required to submit a sample material board.
- 7) Where the development seeks to deviate from the standards outlined in V.2.C.1 through V2.C.3, the development shall comply with the entitlement process outlined in Title 13 of the Municipal Code.

V.2.D Colors Intent: Exterior colors shall be aesthetically pleasing and compatible colors with nearby structures

- 1) The applicant shall apply a minimum of 3 colors to each building elevation.
- 1)2) Intense, bright, black, or fluorescent colors shall not be used as the predominate color on any wall or roof of any primary or accessory structure.
- 3) Colors shall be used to create a visually interesting and creative façade that serves as a focal feature for the building. Colors found in the natural terrestrial environment (beige, brown, tan, etc.) are encouraged to be used as an accent color to highlight main architectural features or the predominant color scheme on the building.
- 2)4) Applicants are required to submit a sample color palette board.

VI. NEIGHBORHOOD CENTERS

A Neighborhood Center is described in the Parker 2035 Master Plan as follows:

Neighborhood Centers should be planned to serve the basic needs of the surrounding residents. Typical uses within Neighborhood Centers include convenient retail and personal/business services, generally anchored by a grocery store.

Other compatible uses such as small offices, recreational uses and restaurants are also permitted.

Generally, the total Gross Leasable Area (GLA) for the commercial/office components within an entire Neighborhood Center should range from 50,000 to 250,000 square feet combined.

Higher density residential is appropriate in these Centers as a transition between less intense residential areas and non-residential areas when developed as part of a mixed-use development and when the design encourages residents to walk or bicycle to obtain goods and services. Massing and scale of higher density residential development shall respect the scale and massing of adjoining land uses and shall reflect an integrated neighborhood feel. Typical garden style apartment designs are not appropriate.

~~is a concentration of commercial and service uses that serve adjacent neighborhoods. Neighborhood Centers are located at key intersections throughout Town and are conveniently located to serve pedestrians and bicyclists, as shown in Figure 6.1. Therefore, the Neighborhood Center standards have more stringent pedestrian requirements, with more street-oriented building provisions than the auto-oriented Community and Regional Centers. These sites are not appropriate for businesses serving regional users. Neighborhood Centers are located at the following intersections:~~

- Mainstreet at Jordan Road
- Mainstreet at Dransfeldt Mainstreet and Chambers Road
- Lincoln Avenue at Jordan Road
- Lincoln Avenue and Pine Drive
- Hess Road at Parker Road
- Hess Road and Motsenbocker
- Pine Drive and Lincoln Avenue

- Hess Road at Jordan Road
- Heirloom Parkway and Chambers Road
- Stroh Road and Motsenbocker Road
- Stroh Road and Chambers Road
- North Pinery Parkway and Bayou Gulch Boulevard

Goals and Objectives

The primary goals for these areas are to:

- Encourage the concentration of appropriately pedestrian-scaled developments that conveniently serve shopping and service needs for adjacent neighborhoods.
- ~~Discourage regionally scaled developments whose traffic volumes and services will not fit well in these locales.~~
- Promote safe and efficient pedestrian access for surrounding neighbors to and between sites.
- ~~Encourage a lower density and building height than is allowed in Community Centers.~~

General Provisions

- 1) Convenient pedestrian and bicycle access shall be provided to all Neighborhood Centers.
- 2) A maximum of 25 percent of parking shall be located between the primary structure and the primary access road to create a pedestrian oriented environment.
- 3) Developments shall be encouraged to provide a patio or seating area, or a pedestrian plaza with benches and flowerbeds. All developments are required to provide trash receptacles and bicycle racks.
- 4) Significant entry features shall be provided, including but not limited to, landscaping, **public art, notable architectural features and distinctive signage.**
- 5) All internal pedestrian walkways shall be distinguished from driving surfaces through the use of durable, low maintenance surface materials such as pavers, bricks, or scored, colored concrete to enhance pedestrian safety and comfort, as well as the attractiveness of the walkways.
- 6) Each point at which the system of sidewalks crosses a parking lot or street shall be clearly marked through a change in paving materials, height, texture, or distinctive colors.
- 7) Each site shall provide at least two of the following: a water feature, clock tower, public art, natural feature or other deliberately shaped focal point

VII. COMMUNITY CENTERS

A Community Center is described in the Parker 2035 Master Plan as follows:

Community Centers are areas that are larger than Neighborhood Centers and have a larger market area, serving multiple neighborhoods. Typical uses within Community Centers include retail and personal/business services. Other compatible uses such as small offices, recreational and restaurants are also permitted. Generally, the total Gross Leasable Area (GLA) for the commercial/office

components within an entire Community Center should range from 250,000 to 500,000 square feet combined.

is a concentration of multi-neighborhood scale commercial uses that serves the needs of several neighborhoods. The intensity of uses are generally higher than those found in a Neighborhood Center. Community Centers are located at major crossroads within Town and are visual focal points which provide ties between various distinct districts within Town, as shown in Figure 7.1. Community Centers are located at the following intersections:

- ~~Mainstreet at Parker Road~~ **Hess Road and Chambers Road**
- ~~Lincoln Avenue at Parker Road~~ **North Pinery Parkway and J. Morgan Boulevard**
- Stroh Road at Parker Road
- ~~Hilltop at Parker Road~~

Goals and Objectives

The primary goals for these areas are to:

- Emphasize important focal points between neighborhoods.
- Encourage the concentration of appropriately scaled developments that serve multiple neighborhoods while avoiding strip development patterns.
- Encourage the development of businesses that provide a variety of products and services that will benefit the local community and neighborhoods.
- Promote safe and efficient pedestrian and bicycle access for surrounding neighbors to and between sites.
- ~~Encourage a lower density and building height than is allowed in~~
- ~~Regional Centers, but a greater density and building height than is allowed in Neighborhood Centers~~

General Provisions

- 1) Building heights shall relate to preserving views of the mountains to the west.
- 2) Significant entry features shall be provided, including but not limited to, landscaping, **public art, notable architectural features** and **distinctive** signage.
- 3) Distinctive landscaped areas **and gateway features** shall be provided at project entries and at intersections of public streets adjacent to the project. Landscaping in these areas shall consist of plant specimens having a high degree of visual interest during all seasons. A mixture of shrubs, ornamental trees, flowers, and/or ground cover around sign bases, and at curb returns near site entrances shall be planted.
- 4) Each site shall provide at least two of the following: a water feature, clock tower, public art, natural feature or other deliberately shaped focal point.

VIII. REGIONAL HIGHWAY COMMERCIAL CENTERS

A ~~Regional Center Highway Commercial Center~~ is described in the Parker 2035 Master Plan as follows:

Located at major intersections along E-470 these Centers overlay other Character Areas and the land uses may also focus on the demands of the traveling public and the needs of residents returning to or leaving Parker. Appropriate uses in these areas include those of the underlying Character Areas, but also contemplate uses such as convenience retail with gas stations and hotels.

~~is a concentration of commercial uses that serve the wider regional community and attracts regional interest to Parker.~~ Regional **Highway Commercial** Centers are located at key entryways into the Town and are visual focal points which provide ties between the Town and the surrounding region, as shown in Figure 8.1. Regional Centers are located at the following intersections:

- E-470 at Parker Road **Chambers Road**
- E-470 at Jordan Road

Goals and Objectives

The primary goals for these areas are to:

- Encourage development of businesses, **including highway oriented businesses** that provide a variety of products and services that will benefit the local community, **travelers** and surrounding region.
- ~~• Create a visible skyline to differentiate Regional Centers as more significant activity areas than surrounding areas.~~
- Preserve views to and from **Regional Highway Commercial** Centers and major thoroughfares.
- Promote safe and efficient vehicular access within and between sites.
- ~~• Encourage greater density and building height than is allowed in Community Centers.~~

General Provisions

~~1) Building height or density on the fringe of the Center shall step down in order to create transitions to surrounding areas.~~

2) Buildings taller than four stories located within 100 feet of the E-470 multi-use easement and visible from E-470 shall have their tallest portion oriented so that the long axis is perpendicular to E-470.

3) A higher intensity of landscaping shall be provided than is required for other Centers.

4) Pedestrian and bicycle access to adjacent public right-of-way shall be provided to connect pedestrians and cyclists to the regional trail corridor within the E-470 multi-use easement.

5) Significant entry features shall be included. Examples include but are not limited to, **distinctive** landscaping and signage, fountains, decorative walls, public art, etc.

6) Set-aside areas for public use or public amenities shall be provided to create a central focal point **where appropriate**.

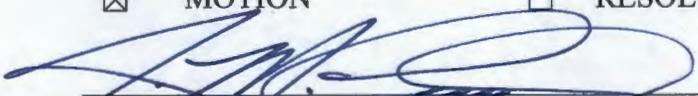
7) Each site shall provide at least two of the following: a water feature, clock tower, public art, natural feature or other deliberately shaped focal point.



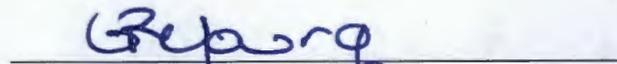
REQUEST FOR TOWN COUNCIL ACTION

**TITLE: TAX AND FEE ASSISTANCE PROGRAM AGREEMENT -
ALL FIRED UP! LLC**

- | | |
|--|--|
| <input checked="" type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCE FOR 1 ST READING |
| <input checked="" type="checkbox"/> CONTRACT | <input type="checkbox"/> ORDINANCE FOR 2 ND READING |
| <input checked="" type="checkbox"/> MOTION | <input type="checkbox"/> RESOLUTION |



Matt Carlson, Business Recruitment Manager



G. Randolph Young, Town Administrator

ISSUE:

All Fired Up! LLC has filed an application with the Town to participate in the Town of Parker Tax and Fee Assistance Program (the "TAP Program"). Reference Parker Municipal Code 4.02.

PRIOR ACTION:

None

FUNDING/BUDGET IMPACT:

The proposed TAP agreement with All Fired Up LLC will include:

- 1) a rebate of 50% of sales tax for a period not to exceed 3 years and:
- 2) a maximum rebate of taxes that shall not exceed \$25,000.

BACKGROUND:

All Fired Up! LLC, is a family style casual dining establishment serving high-quality Neapolitan-style pizza. The owner has an extensive 20 year background in the restaurant industry and during that time has opened 13 restaurants for a national chain.

All Fired Up! is entering into a five-year lease on space at the Robinson Ranch strip center and anticipates making tenant improvements of approximately \$75,000 (excluding furniture, fixtures and equipment). The organization will create approximately 20 jobs at move-in.

The All Fired Up! project meets the following goals of the Town's Tax and Fee Assistance Program (TAP):

- Creates new jobs (employment)
- Creates new sales tax
- Contributes to the diversity of jobs and employment opportunities
- Represents retail diversity

RECOMMENDATION:

Staff recommends approval of the All Fired Up! TAP agreement as attached.

PREPARED/REVIEWED BY:

J. Matt Carlson / Business Recruitment Manager

ATTACHMENTS:

TAP Agreement

RECOMMENDED MOTION:

"I move to approve the Tax and Fee Program Assistance Agreement for All Fired Up!"

TAX AND FEE ASSISTANCE PROGRAM AGREEMENT FOR ALL FIRED UP! LLC

THIS AGREEMENT, made and entered into this 22nd day of November, 2016, by and between All Fired Up! LLC, a Colorado limited liability corporation (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 retail sales tax-generating 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, thus 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 new business described in **Exhibit A**, which is attached hereto and incorporated by this reference (the "New Business"), to be located at 12311 Pine Bluffs Way, #107, Parker, Colorado, 80134, which is generally located at the southeast corner of Hess Road and Parker Road, 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 record 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 June 30, 2017 (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 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 One Thousand Eight Hundred Fifty Dollars (\$1,850.00) in the first year and One Thousand Nine Hundred Dollars (\$1,900.00) in the second and third years for the three (3) one-year terms (excluding 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, subject to the maximum amount 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 Twenty-Five Thousand Dollars (\$25,000.00) derived from Enhanced Sales Taxes 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 June 30, 2017. 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 of Parker
 Attn: Town Administrator
 20120 E. Mainstreet
 Parker, Colorado 80138

Notice to the Owner: All Fired Up! LLC
Attn: Jon Liberati, Manager
12311 Pine Bluffs Way, #107
Parker, Colorado 80134

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

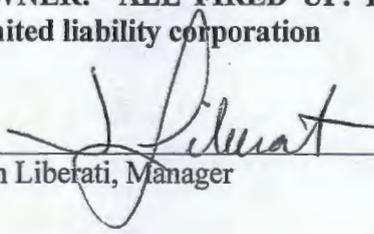
ATTEST:

Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

**OWNER: ALL FIRED UP! LLC, a Colorado
limited liability corporation**



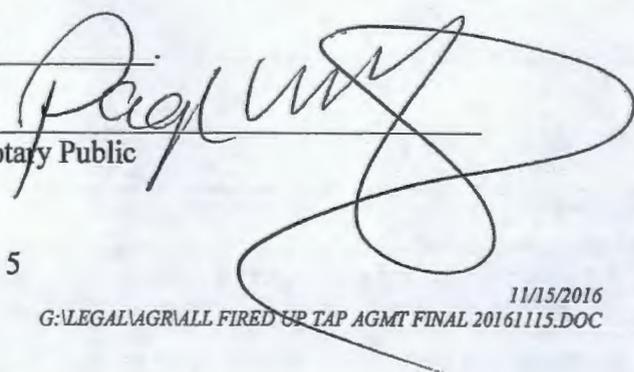
Jon Liberati, Manager

STATE OF COLORADO)
)ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 22 day of November, 2016, by Jon Liberati, as Manager, of All Fired Up! LLC, a Colorado limited liability corporation.

My commission expires: 8/1/20

SEAL



Notary Public

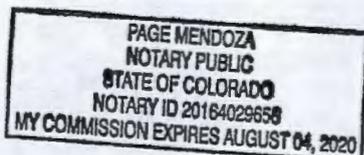


EXHIBIT LIST

- Exhibit A All Fired Up! LLC – Business Defined
- Exhibit B Legal Description of the Property
- Exhibit C Improvements
- Exhibit D Certificate of Compliance
- Exhibit E Base Amount

EXHIBIT A

DESCRIPTION OF ALL FIRED UP! LLC'S BUSINESS

All Fired Up! LLC, is a family-style casual dining establishment serving high-quality Neapolitan-style pizza. The owner has an extensive 20-year background in the restaurant industry and during that time has opened 13 restaurants for a national chain.

All Fired Up! is entering into a five-year lease on space at the Robinson Ranch strip center and will make tenant improvements of approximately \$75,000 (excluding furniture, fixtures and equipment). The organization will create approximately 20 jobs at move-in and is scheduled to open in early 2017.

EXHIBIT B

LEGAL DESCRIPTION

UNIT 107, LOT 3, ROBINSON RANCH FILING NO. 2, 1ST AMENDMENT, BEING PART OF THE NE ¼ OF SECTION 34, TOWNSHIP 6 SOUTH, RANGE 66 WEST, OF THE 6TH P.M., 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 approximately 1,700 square feet of an existing property in the Town of Parker which will equal or exceed the Seventy-Five Thousand Dollars (\$75,000). The new business will create approximately 20 jobs and will result in diversity of retail opportunities for Town residents.

EXHIBIT E

BASE AMOUNT

YEAR 1

Month #1	\$ 154.00
Month #2	\$ 154.00
Month #3	\$ 154.00
Month #4	\$ 154.00
Month #5	\$ 154.00
Month #6	\$ 154.00
Month #7	\$ 154.00
Month #8	\$ 154.00
Month #9	\$ 154.00
Month #10	\$ 154.00
Month #11	\$ 155.00
Month #12	\$ 155.00
Total Annual Base	\$ 1,850.00

YEAR 2 & 3

Month #1	\$ 158.00
Month #2	\$ 158.00
Month #3	\$ 158.00
Month #4	\$ 158.00
Month #5	\$ 158.00
Month #6	\$ 158.00
Month #7	\$ 158.00
Month #8	\$ 158.00
Month #9	\$ 159.00
Month #10	\$ 159.00
Month #11	\$ 159.00
Month #12	\$ 159.00
Total Annual Base	\$ 1,900.00