

**AGREEMENT REGARDING DESIGN AND PERMITTING
FOR GREEN ACRES TRIBUTARY IMPROVEMENTS**

THIS AGREEMENT REGARDING DESIGN AND PERMITTING FOR GREEN ACRES TRIBUTARY IMPROVEMENTS (this “**Agreement**”) is made as of June 17, 2019 (the “**Effective Date**”), by and between 470 COMPARK LLC, a Colorado limited liability company (“**Applicant**”), and the TOWN OF PARKER, a Colorado home rule municipal corporation (the “**Town**”). The Applicant and the Town are collectively referred to herein as the “**Parties**.”

Recitals

A. The Applicant is the owner of certain real property consisting of 150.119 acres, located outside of the Town, described on **Exhibit A** attached hereto and incorporated by this reference (the “**Property**”).

B. The Property contains a portion of a watercourse commonly known as “Green Acres Tributary.” Stormwater from the Property currently sheet flows from the Property into Green Acres Tributary. This Agreement is for that portion of Green Acres Tributary located on the Property.

C. The Applicant has applied to the Town for approval of a minor development plat for the Property (the “**Application**”) in order to allow the Applicant to develop infrastructure and nonbuildable tracts for a future commercial and residential development in accordance with the approved zoning for the Property (the “**Project**”).

D. In accordance with the Parker Municipal Code, the Town will require the Applicant to participate in the design, permitting and construction of certain improvements to Green Acres Tributary, including, but not limited to, widening the existing floodplain, installing grade control structures, bioengineering bankfull channel stabilization with void-filled rip-rap, erosion control measures, including blankets, and revegetation of all disturbances caused by construction of improvements to Green Acres Tributary.

E. The Applicant completed the concept design phase of the Project and the purpose of this Agreement is to complete the final design.

F. It is anticipated that the Urban Drainage and Flood Control District (the “**District**”) will design, permit, and construct the Green Acres Tributary Improvements concurrently with the processing of the Application and development of the Project; however, the Town will require the Applicant to pay or cause to be paid the costs for the Green Acres Tributary Improvements. In order to ascertain the scope of, and to estimate the total cost of construction of the Green Acres Tributary Improvements, which information is necessary in order for the Town, in cooperation with the District, to determine the scope of improvements that will be required in connection with the Application, the Town, in cooperation with the District, will be required to undertake certain design work in connection with the Green Acres Tributary Improvements prior to the approval of the Applications.

G. In order that the Town, in cooperation with the District, may commence design and permitting of the Green Acres Tributary Improvements, the Applicant has agreed to make or cause to be made a one-time payment to the Town in the amount set forth herein, on the terms and conditions more fully set forth herein.

Agreement

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

1. Green Acres Tributary Improvements Payment. The Applicant hereby agrees to make a one-time payment in the amount of Four Hundred Seventy-Eight Thousand Seven Hundred Forty-Seven Dollars (\$478,747.00) (the “**Green Acres Tributary Payment**”), on or before 5:00 p.m. Mountain Time on June 27, 2019. In the event the Green Acres Tributary Payment is not timely made pursuant to this Section 1, this Agreement will be void and of no further force and effect. The Parties agree that, except as expressly provided herein, the Green Acres Tributary Payment is a nonrefundable payment, and the Town’s failure to approve the Application will not constitute a default by the Town in its performance of this Agreement.

2. Town Agreement with the District. Following the delivery of the Green Acres Tributary Payment, the Town will enter into an agreement with the District in the form of **Exhibit B**, which is attached hereto and incorporated by this reference (the “**District Agreement**”), and the Green Acres Tributary Payment shall be deposited with the District to design the Green Acres Tributary Improvements. To the extent the District has not disbursed the entirety of the Green Acres Tributary Payment for the Project as described in the District Agreement, the Town shall return such amount to Applicant or such entity as is designated by Applicant, as provided by Paragraph 5 of the District Agreement.

3. Town’s Use of Payment. The Town’s use of the Green Acres Tributary Design and Payment shall be limited to reimbursing the Town for engineering work completed by the Town related to the survey and preparatory work and engaging the District to conduct such survey and preparatory work as is required in order to fully design and engineer the Green Acres Tributary Improvements, as described in the District Agreement (the “**Work**”). The Town, in cooperation with the District, shall prepare a schedule for completion of the Work, and provide the Applicant with the opportunity to review and comment prior to commencement of the Work. The Town, in cooperation with the District, shall provide the Applicant with routine updates regarding the status of the Work, including an opportunity to review and comment on any written or graphic materials associated with the Work, and shall also provide the Applicant with copies of any invoices associated with the Work, as such invoices become available. Notwithstanding the foregoing, the Applicant acknowledges that the District will have primary responsibility over the Work, and that the Town’s ability to conduct the Work and provide information to the Applicant will be premised upon the District’s ability to do the same.

4. No Further Payment Required. The Green Acres Tributary Payment referenced in Paragraph 1 shall constitute the Applicant’s sole monetary responsibility for the design and engineering of the Green Acres Tributary Improvements, and the Town shall not require the

Applicant to pay any additional amounts in connection with the Work. To the extent that the Applicant would be required to furnish design and engineering in connection with the Green Acres Tributary Improvements as a condition of approval of one or more application for the Project, the Applicant's performance of its obligations under this Agreement shall be deemed to satisfy such obligations. Notwithstanding the foregoing, the Applicant acknowledges that the Town will require, as a condition of approval of one or more application for the Project, one or more payments in the amount of the total cost of construction of the Green Acres Tributary Improvements, which amount will be ascertained as a result of the District's completion of the Work. After executing this Agreement, the Town and the Applicant shall work together in good faith as work progresses under the District Agreement to agree on the final projected cost of constructing the Work.

5. Legislative Authority. Nothing contained in this Agreement shall constitute or be interpreted as a waiver or abrogation of the Town's legislative, governmental or police powers to promote and protect the health, safety, or general welfare of the Town or its inhabitants. This Agreement does not constitute a delegation or waiver of the legislative or quasi-judicial authority of the Town Council to approve or deny the Applications. The Town's entry into this Agreement should not be construed so as to imply any forthcoming approval of the Applications or that either the Town or the Town Council has taken any position with respect to the Applications.

6. Counterparts. This Agreement may be executed in counterparts, all such counterparts will constitute the same agreement and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. The Agreement with the original signature of the Applicant shall be delivered to the Town.

7. Binding Effect. This Agreement, when executed, shall inure to the benefit of and be binding upon the successors or assigns in interest or the legal representatives of the Parties hereto. This Agreement does not run with the land and shall not be recorded in the real property records of Douglas County.

8. Waiver of Breach. The waiver by any Party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party.

9. Entire Agreement. This Agreement represents the entire agreement between the Parties and supersedes any prior oral or collateral agreements or understandings.

10. Amendment. This Agreement may be amended only by an instrument in writing signed by the Parties.

11. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Applicant and the Town, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person on such Agreement. It is the express intention of the Town and the Applicant that any person other than the Town or the Applicant and their successors and assigns receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12. Governing Law, Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising from this Agreement shall lie with the Douglas County District Court.


13. Authorization of Parties' Representative. The undersigned hereby represent that they serve as representatives of the Party for which they have executed this Agreement and are fully authorized to execute this Agreement on behalf of such party.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

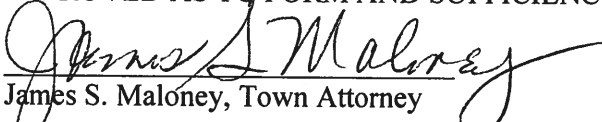
TOWN OF PARKER, COLORADO


Mike Waid, Mayor

ATTEST:


Carol Baumgartner, Town Clerk

APPROVED AS TO FORM AND SUFFICIENCY:


James S. Maloney, Town Attorney

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

EXHIBIT A

Legal Description of the Property

PART OF LOTS 19, AND 20, ALL OF LOTS 21, 22, AND 23, AND THAT 40-FOOT RIGHT OF WAY, GREEN ACRES SUBDIVISION RECORDED IN BOOK 1152 AT PAGE 883, AT RECEPTION NO. 105760 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER TOGETHER WITH 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 SAID SOUTHWEST QUARTER OF 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 ALONG SAID WEST LINE OF THE SOUTHWEST QUARTER A DISTANCE 1216.44 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 AS DESCRIBED IN BOOK 902 AT PAGE 573 AND AT BOOK 902 AT PAGE 576 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING TEN (10) COURSES:

- 1) NORTH 72°48'01" EAST A DISTANCE OF 328.41 FEET;
- 2) NORTH 73°02'20" EAST A DISTANCE OF 596.76 FEET;
- 3) NORTH 77°03'02" EAST A DISTANCE OF 576.89 FEET;
- 4) NORTH 83°04'45" EAST A DISTANCE OF 573.61 FEET;
- 5) NORTH 85°05'07" EAST A DISTANCE OF 380.93 FEET;
- 6) NORTH 86°06'18" EAST A DISTANCE OF 574.74 FEET;
- 7) SOUTH 87°52'51" EAST A DISTANCE OF 578.89 FEET;
- 8) SOUTH 81°41'15" EAST A DISTANCE OF 612.23 FEET;
- 9) SOUTH 72°31'23" EAST A DISTANCE OF 371.41 FEET TO A POINT ON A CURVE;
- 10) ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 10°57'27", A RADIUS OF 3005.03 FEET, AN ARC LENGTH OF 574.70 FEET, THE CHORD OF WHICH BEARS SOUTH 67°01'44" EAST, A DISTANCE OF 573.82 FEET TO A POINT BEING THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND AS DESCRIBED IN DEED RECORDED UNDER RECEPTION NO. 2010056842 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE ALONG THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING NINE (9) COURSES:

- 1) SOUTH 21°56'14" WEST, A DISTANCE OF 91.83 FEET TO A POINT OF CURVATURE;
- 2) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 43°58'01", A RADIUS OF 200.00 FEET AND AN ARC LENGTH OF 153.47 FEET, THE

- CHORD OF WHICH BEARS SOUTH 43°55'15" WEST, A DISTANCE OF 149.74 FEET;
- 3) SOUTH 65°54'15" WEST, A DISTANCE OF 75.57 FEET TO A POINT OF CURVATURE;
 - 4) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 24°33'38", A RADIUS OF 200.00 FEET AND AN ARC LENGTH OF 85.73 FEET, THE CHORD OF WHICH BEARS SOUTH 78°11'04" WEST, A DISTANCE OF 85.08 FEET;
 - 5) NORTH 89°32'07" WEST, A DISTANCE OF 9.07 FEET TO A POINT OF CURVATURE;
 - 6) ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 12°56'47", A RADIUS OF 200.00 FEET AND AN ARC LENGTH OF 45.19 FEET, THE CHORD OF WHICH BEARS SOUTH 83°59'30" WEST, A DISTANCE OF 45.10 FEET;
 - 7) SOUTH 77°31'06" WEST, A DISTANCE OF 135.79 FEET TO A POINT OF CURVATURE;
 - 8) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 09°27'04", A RADIUS OF 500.00 FEET AND AN ARC LENGTH OF 82.48 FEET, THE CHORD OF WHICH BEARS SOUTH 82°14'38" WEST, A DISTANCE OF 82.38 FEET;
 - 9) SOUTH 86°58'10" WEST, A DISTANCE OF 149.52 FEET TO A POINT BEING THE NORTHEASTERLY CORNER OF THAT PARCEL OF LAND AS DESCRIBED IN DEED RECORDED UNDER RECEPTION NO. 2010056677 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE ALONG THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND THE FOLLOWING THIRTEEN (13) COURSES:

- 1) SOUTH 86°58'10" WEST, A DISTANCE OF 158.57 FEET TO A POINT OF CURVATURE;
- 2) ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 33°25'14", A RADIUS OF 200.00 FEET AND AN ARC LENGTH OF 116.66 FEET THE CHORD OF WHICH BEARS SOUTH 70°15'33" WEST, A DISTANCE OF 115.01 FEET;
- 3) SOUTH 53°32'56" WEST, A DISTANCE OF 294.75 FEET TO A POINT OF CURVATURE;
- 4) ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 94°27'12", A RADIUS OF 125.00 FEET AND AN ARC LENGTH OF 206.07 FEET, THE CHORD OF WHICH BEARS SOUTH 06°19'20" WEST, A DISTANCE OF 183.51 FEET;
- 5) SOUTH 40°54'16" EAST, A DISTANCE OF 251.99 FEET TO A POINT OF CURVATURE;
- 6) ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 23°16'42", A RADIUS OF 50.00 FEET AND AN ARC LENGTH OF 20.31 FEET, THE CHORD OF WHICH BEARS SOUTH 52°32'37" EAST, A DISTANCE OF 20.17 FEET;
- 7) SOUTH 64°10'58" EAST, A DISTANCE OF 23.43 FEET TO A POINT OF CURVATURE;
- 8) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 43°29'20", A RADIUS OF 50.00 FEET AND AN ARC LENGTH OF 37.95 FEET, THE CHORD OF WHICH BEARS SOUTH 42°26'18" EAST, A DISTANCE OF 37.05 FEET;
- 9) SOUTH 20°41'38" EAST, A DISTANCE OF 39.38 FEET TO A POINT OF CURVATURE;
- 10) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 20°09'03", A RADIUS OF 100.00 FEET AND AN ARC LENGTH OF 35.17 FEET, THE

CHORD OF WHICH BEARS SOUTH 10°38'24" EAST, A DISTANCE OF 34.99 FEET;
11) SOUTH 00°32'10" EAST, A DISTANCE OF 40.51 FEET TO A POINT OF CURVATURE;
12) ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 47°17'03", A RADIUS OF 100.00 FEET AND AN ARC LENGTH OF 82.53 FEET, THE CHORD OF WHICH BEARS SOUTH 23°06'21" WEST, A DISTANCE OF 80.20 FEET;
13) SOUTH 46°44'52" WEST, A DISTANCE OF 59.24 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 6;

THENCE SOUTH 87°49'19" WEST, ALONG SAID SOUTH LINE, A DISTANCE OF 1546.96 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6, SAID POINT ALSO BEING THE SOUTHEASTERLY CORNER OF THAT RIGHT-OF-WAY PARCEL DESCRIBED IN BOOK 195 AT PAGE 510 OF THE RECORDS OF THE DOUGLAS COUNTY CLERK AND RECORDER;

THENCE ALONG THE BOUNDARY OF SAID PARCEL THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 00°17'01" EAST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER OF SECTION 6, A DISTANCE OF 30.03 FEET;
- 2) SOUTH 87°55'04" WEST ALONG A LINE THIRTY FEET NORTHERLY DISTANT, WHEN MEASURED AT RIGHT ANGLES, AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SOUTHWEST QUARTER OF SECTION 6, A DISTANCE OF 626.87 FEET;
- 3) SOUTH 00°42'41" WEST A DISTANCE OF 30.04 FEET TO A POINT ON SAID SOUTH LINE OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6;

THENCE SOUTH 87°55'04" WEST, ALONG SAID SOUTH LINE A DISTANCE OF 709.76 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6;

THENCE SOUTH 87°55'04" WEST, ALONG THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SOUTHWEST QUARTER OF SECTION 6, A DISTANCE OF 1085.67 FEET TO THE POINT OF BEGINNING,

CONTAINING A CALCULATED AREA OF 6,539,184 SQUARE FEET OR 150.119 ACRES, MORE OR LESS.

EXHIBIT B
District Agreement

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

Agreement No. 19-06.01
Project No. 107382

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

WITNESSETH:

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

WHEREAS, PARTIES participated in a joint planning study titled "Happy Canyon Creek Major Drainageway Plan" by Muller Engineering Company, Inc. dated March 2014 (hereinafter called "PLAN"); and

WHEREAS, PARTIES now desire to proceed with the design and construction of drainage and flood control improvements for Green Acres Tributary and the E-470 Pond (hereinafter called "PROJECT"); and

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

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

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

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

1. **SCOPE OF THIS AGREEMENT**

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

2. **SCOPE OF PROJECT**

- A. **Final Design.** PROJECT shall include the final design of improvements in accordance with the engineer's scope, fee, and schedule, as shown on Exhibit B. Specifically, the final design of facilities shall extend from approximately E-470 to 4,000 feet upstream, as shown on Exhibit A
- B. **Construction.** PROJECT shall include construction, establishment of vegetation, and permit monitoring by DISTRICT of the drainage and flood control improvements as set forth in the design and through final acceptance of permitting and vegetation establishment obligations.

Establishment and permit monitoring includes stream management and revegetation for establishment and weed management to comply with all federal, state, and local stormwater management permits and mitigation requirements under Section 404 of the Federal Clean Water Act and project goals.

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

3. PUBLIC NECESSITY

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

4. PROJECT COSTS AND ALLOCATION OF COSTS

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

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

B. It is understood that PROJECT costs as defined above are not to exceed \$478,747 without amendment to this Agreement.

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

<u>PROJECT ITEM</u>	<u>AMOUNT</u>
1. Final design	\$ 456,897
2. Right of way	\$ -0-
3. Construction	\$ -0-
4. Contingencies	\$ -0-
Sub Total	\$ 456,897
 <u>ADMINISTRATIVE ITEM</u>	
5. Final Design Administrative Fee	\$ 21,850
6. Construction Administrative Fee	\$ -0-
Sub Total	\$ 21,850
Grand Total	\$ 478,747

This breakdown of conceptual design, final design, construction, and contingency costs is for estimating purposes only. Costs may vary between the various elements of the effort without amendment to this Agreement provided the total expenditures do not exceed the maximum contribution by all PARTIES plus accrued interest, if applicable.

5. MANAGEMENT OF FINANCES

A. Project Costs. As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval.

Project Payment by TOWN of \$478,747 shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. PROJECT payment shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to TOWN of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

B. Administrative Costs. As set forth in DISTRICT policy (Resolution No. 38, Series of 2017), DISTRICT shall collect administrative fees for Fee-In-Lieu projects to offset DISTRICT staff time required to manage the Final Design and Construction of PROJECT. The administrative fee is nonrefundable and to be held in the Development Service Enterprise Fund.

1. Final Design. The administrative fee is based on a standard one-time charge for final design start-up and close-out cost, plus a monthly final design management cost. The monthly final design management cost will be the rate below per months PROJECT is in design.

Final Design Start-up Cost	\$2,400
Monthly Final Design Management	\$1,645 per month
Final Design Close-out Cost	\$3,000

2. Construction. The administrative fee is based percentage of the estimated construction costs. The percentage charged is as shown in the following table.

Under \$500,000	8%
\$1,000,000 - \$1,500,000	4%
\$1,500,000 - \$2,000,000	3%
\$2,000,000 - \$3,500,000	2.0%
\$3,500,000 - \$5,000,000	1.5%

\$5,000,000 - \$10,000,000	1.0%
\$10,000,000 - \$15,500,000	0.7%
\$15,500,000 - \$20,000,000	0.6%

6. CONCEPTUAL AND FINAL DESIGN

The contracting officers for PARTIES, as defined under Paragraph 13 of this Agreement, shall select an engineer mutually agreeable to both PARTIES. DISTRICT shall contract with selected engineer and shall supervise and coordinate the final design including right-of-way delineation subject to approval of the contracting officer for TOWN. Payment for final design services shall be made by DISTRICT as the work progresses from the PROJECT fund established as set forth above.

Final design services shall consist of, but not be limited to, the following:

- A. Preparation of a work plan schedule identifying the timing of major elements in the design;
- B. Preparation of detailed construction plans and specifications;
- C. Preparation of an estimate of probable construction costs of the work covered by the plans and specifications;
- D. Preparation of an appropriate construction schedule.
- E. If the engineer that prepared the field-ready construction documents is selected to perform construction observation, and the contractor to construct the improvements is selected using DISTRICT's Best Value Selection process the engineer shall seal the construction documents, otherwise the construction documents shall be provided to TOWN unsealed.

7. RIGHT OF WAY OR NON-REVOCABLE EASEMENT

Right of Way or a non-revocable easement shall be acquired through a subdivision plat at no cost to TOWN and DISTRICT, subject to approval of DISTRICT, for land or interests in land needed to implement construction of the drainage and flood control improvements, as defined herein. The right-of-way or non-revocable easement acquired shall be in the name of TOWN and the conveyancing document shall be promptly recorded in the records of the Clerk and Recorder of TOWN.

- A. Coordination of Right-of-Way or Non-revocable Easement Acquisition. TOWN shall acquire the right-of-way or non-revocable easement only after receiving prior approval of DISTRICT.
- B. Ownership of Property and Limitation of Use. TOWN shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, TOWN disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the

properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at TOWN's sole expense.

8. MANAGEMENT OF CONSTRUCTION

- A. Costs. Construction costs shall consist of those costs as incurred by the most qualified contractor(s) including detour costs, licenses and permits, utility relocations, and construction related engineering services as defined in Paragraph 4 of this Agreement.
- B. Construction Management and Payment
1. DISTRICT, with the concurrence of TOWN, shall administer and coordinate the construction-related work as provided herein.
 2. DISTRICT, with concurrence of TOWN, shall select and award construction contract(s).
 3. DISTRICT shall require the contractor to provide adequate liability insurance that includes TOWN. The contractor shall be required to indemnify TOWN. Copies of the insurance coverage shall be provided to TOWN.
 4. DISTRICT, with assistance of TOWN, shall coordinate field surveying; staking; inspection; testing; acquisition of right-of-way; and engineering as required to construct PROJECT. DISTRICT, with assistance of TOWN, shall assure that construction is performed in accordance with the construction contract documents including approved plans and specifications and shall accurately record the quantities and costs relative thereto. Copies of all inspection reports shall be furnished to TOWN on a weekly basis. DISTRICT shall retain an engineer to perform all or a part of these duties.
 5. DISTRICT, with concurrence of TOWN, shall contract with and provide the services of the design engineer for basic engineering construction services to include addendum preparation; survey control points; explanatory sketches; revisions of contract plans; shop drawing review; as-built plans; weekly inspection of work; and final inspection.
 6. PARTIES shall have access to the site during construction at all times to observe the progress of work and conformance to construction contract documents including plans and specifications.
 7. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.

8. DISTRICT, with concurrence of TOWN, shall prepare and issue all written change or work orders to the contract documents.
 9. PARTIES shall jointly conduct a final inspection and accept or reject the completed PROJECT in accordance with the contract documents.
 10. DISTRICT shall provide TOWN a set of reproducible "as-built" plans.
- C. Construction Change Orders. In the event that it becomes necessary and advisable to change the scope or detail of the work to be performed under the contract(s), such changes shall be rejected or approved in writing by the contracting officers. No change orders shall be approved that increase the costs beyond the funds available in PROJECT fund, including interest earned on those funds, unless and until the additional funds needed to pay for the added costs are committed by all PARTIES.
9. MAINTENANCE
- PARTIES agree that TOWN shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at TOWN's request, shall assist TOWN with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to TOWN, upon acceptance of DISTRICT's annual Maintenance Work Program.
- DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.
10. FLOODPLAIN REGULATION
- TOWN agrees to regulate and control the floodplain of Green Acres Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.
- PARTIES understand and agree, however, that TOWN cannot obligate itself by contract to exercise its police powers. If TOWN fails to regulate the floodplain of Green Acres Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and TOWN shall cooperate fully.
11. TERM OF AGREEMENT
- Despite the date that this Agreement is signed by PARTIES, the term of this Agreement shall commence upon the earlier of the date of final execution by all PARTIES or December 31 of the year that it is tendered to TOWN for execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at

DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 10. FLOODPLAIN REGULATION, Paragraph 7.B. Ownership of Property and Limitation of Use, and Paragraph 9. MAINTENANCE, which shall run in perpetuity.

12. LIABILITY

Each party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

13. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be the Public Works and Engineering, 20120 East Mainstreet, Parker, Colorado 80138.
- B. The contracting officer for DISTRICT shall be the Executive Director, 2480 West 26th Avenue, Suite 156B, Denver, Colorado 80211.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or TOWN. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

14. RESPONSIBILITIES OF PARTIES

DISTRICT shall be responsible for coordinating with TOWN the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from TOWN needed to complete PROJECT in a timely manner. TOWN agrees to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to TOWN.

15. AMENDMENTS

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

16. SEVERABILITY

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

17. APPLICABLE LAWS

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the TOWN where PROJECT is located.

18. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

19. BINDING EFFECT

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

20. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

21. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

22. PUBLIC RELATIONS

It shall be at TOWN's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

23. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

24. APPROPRIATIONS

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of TOWN and/or DISTRICT.

25. NO THIRD PARTY BENEFICIARIES

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that

any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

26. ILLEGAL ALIENS

PARTIES agree that any public contract for services executed as a result of this intergovernmental agreement shall prohibit the employment of illegal aliens in compliance with §8-17.5-101 C.R.S. *et seq.* The following language shall be included in any contract for public services:

- A. At the time of execution of this Agreement, CONTRACTOR does not knowingly employ or contract with an illegal alien who will perform work under this Agreement.
- B. CONTRACTOR shall participate in the E-Verify Program, as defined in § 8 17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- C. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- D. CONTRACTOR shall not enter into a contractor with a subconsultant or subcontractor that fails to certify to CONTRACTOR that it shall not knowingly employ or contact with an illegal alien to perform work under this Agreement.
- E. CONTRACTOR shall confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in the E-Verify Program.
- F. CONTRACTOR is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligation under this Agreement, and that otherwise requires CONTRACTOR to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.
- G. If CONTRACTOR obtains actual knowledge that a subconsultant or subcontractor performing work under this Agreement knowingly employs or contract with an illegal alien, it will notify such subconsultant or subcontractor and PARTIES within three (3) days. CONTRACTOR shall also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three (3) day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.
- H. CONTRACTOR shall comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.
- I. CONTRACTOR shall, within twenty days after hiring an employee who is newly hired for employment to perform work under this Agreement, affirms that it has examined the legal work status of such employees, retained file copies of the documents required by 8 U.S.C.

Section 1324a, and not altered or falsified the identification documents for such employees.
CONTRACTOR shall provide a written, notarized copy of the affirmation to PARTIES.

27. GOVERNMENTAL IMMUNITIES

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

28. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of TOWN, DISTRICT or any other entity not a party hereto.

29. EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
 - B. The image of the signature of an authorized signer inserted onto PDF format documents.
- Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

URBAN DRAINAGE AND
FLOOD CONTROL DISTRICT

By _____

Name Ken A. MacKenzie

Title Executive Director

Date _____

Checked By

TOWN OF PARKER

(SEAL)

By _____
Mike Waid

ATTEST:

Title Mayor

Carol Baumgartner, Town Clerk

Date _____

APPROVED AS TO FORM:

James S. Maloney, Town Attorney

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

Agreement No. 18-10.14
Project No. 107382

Exhibit A

