

**AGREEMENT BETWEEN THE TOWN
OF PARKER AND THE COMMISSIONERS OF THE COUNTY
OF DOUGLAS REGARDING A JOINT USE FACILITY FOR
THE STORAGE OF DEICING MATERIALS**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made and entered into this 10th day of December, 2013, by and between the Town of Parker, a Colorado home rule municipality (the "Town"), and the Board of County Commissioners of Douglas County, Colorado (the "County"), hereinafter collectively referred to as the "Parties."

WITNESSETH:

WHEREAS, the County and the Town entered into an Agreement on January 24, 2012, regarding, in part, the transfer of land title from the County to the Town for the building of a Town maintenance facility and a deicer product storage facility to be shared by the Town and the County (the "2012 Agreement");

WHEREAS, the County and the Town amended the 2012 Agreement on November 18, 2013, (the "2013 Amendment") to release and modify certain deed restrictions associated with the transfer of land title from the County to the Town and to describe the location for the construction of the deicer product storage facility to be shared by the Town and the County as "Lot 2," which is described in Exhibit D of the 2013 Amendment;

WHEREAS, consistent with the 2012 Agreement, the Parties have jointly determined to participate in the design and construction of a new joint use facility for the storage of liquid and solid deicing materials (hereinafter referred to as the "Facility") to be constructed on Lot 2;

WHEREAS, the Parties desire to equally share the cost of the design and construction of the Facility (the "Project"), with the understanding that the cost to either party for the Project will not exceed One Million Dollars (\$1,000,000);

WHEREAS, the funding from the County is made available solely to reimburse the Town for a portion of the actual design and construction costs incurred by the Town for the Project and as otherwise may be authorized; and

WHEREAS, the Parties further desire to memorialize their understanding regarding the cost sharing for the Project.

NOW, THEREFORE, IT IS MUTUALLY UNDERSTOOD by and between each of the Parties that the cost sharing arrangement for completion of the Project shall be as follows:

1. Design and Construction of the Project.

(a) The Town shall design and construct the Project pursuant to a design acceptable to the County, with the understanding that the design shall include mutually acceptable design standards for a Facility of this type, including, but not limited to, environmental compliance, tank design standards, spill containment, traffic flow, shed design for capacity of material, safety, and function for each Party. At a minimum, the

Facility shall have the capacity to store approximately seven thousand eight hundred ninety-three (7,893) square feet of County solid deicer in a configuration suitable to the County's needs and shall contain six (6) storage tanks with each tank having the capacity to hold twenty thousand (20,000) gallons of liquid deicer, together with a pumping system for loading and unloading corrosive materials from these tanks.

(b) The Town is responsible for the management and completion of the Project, subject to the County's participation in the review and approval of both design and construction. The Notice to Proceed shall be in accordance with the final, approved construction contract documents (plans and specifications) for the Project. The Town will maintain a separate concurrent accounting of County funds used on the Project and will provide that accounting to the County's authorized representative as requested.

(c) The Town agrees to bid the construction of the Project according to the Town's bid procedures on or before June 1, 2014 ("Bid Deadline"). In the event that the requirements of this subparagraph are not satisfied by the Bid Deadline, then this Agreement shall automatically terminate and any funds paid by the County to the Town shall immediately be returned to the County. Once final bids are received, the Town shall diligently pursue completion of the Project. If the Town terminates the Project because of lack of funding after opening bids or for any other reason, the County shall be reimbursed its full contribution within sixty (60) days.

2. Financial Participation of the Parties. The Town and County have estimated the total cost for the Project to be no more than \$2,000,000, which is to be funded as follows:

(a) County Contribution. The County contribution shall be, but may not exceed, \$1,000,000 which is fifty percent (50%) of the estimated cost of the Project; provided, however, that the County may use other funds in excess of the County contribution to pay for enhancements to the Project that benefit only the County.

(b) Town Contribution. The Town contribution shall be, but may not exceed, \$1,000,000 which is fifty percent (50%) of the estimated cost of the Project; provided, however, that the Town may use other funds in excess of the Town contribution to pay for enhancements to the Project that benefit only the Town.

(c) Rent. The Town will not charge the County rent or request any other fees, charges or compensation in return for performance under this Agreement, other than participation in actual maintenance costs for County property and equipment at the Facility.

In the event that the actual cost of the Project is less than the estimate of \$2,000,000, then the County contribution (\$1,000,000) will be reduced to be equal to no more than fifty percent (50%) of the actual cost of the Project unless otherwise agreed to by the Parties. The agreement of the Town and County as to the distribution of the excess funds, if not reduced as stated above, shall be reflected in a written modification to this Agreement. It is understood and agreed by the Parties that the total cost of the Project stated is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost estimate for the Project is subject to revisions (in accord with the procedure previously stated).

3. Payment Provisions. The Parties agree to pay into a fund maintained by the Town \$1,000,000 each, within ten (10) days of the date that the Town notifies the County in writing that the Town has selected a bidder for the Project, as described in Paragraph 1(c) herein. The Town agrees to invoice the County for the \$1,000,000 at the time that the Town has selected a bidder for the Project.

4. Time for Performance. The Parties acknowledge and agree that the final design of the Facility will be completed no later than April 30, 2014, with construction to begin on or before June 1, 2014, and the Project will be substantially completed on or before June 1, 2015.

5. Access to Lot 2. The County agrees to provide to the Town temporary construction access to Lot 2, through real property that is owned by the County and located immediately adjacent and north of Lot 2. The County further agrees to provide permanent access to Lot 2, through real property that is owned by the County and located immediately adjacent and north of Lot 2, if the Town and the County determine that such access is necessary for the delivery of materials to be stored on Lot 2.

6. Operation, Management and Control of the Facility.

(a) Control. The Town will manage and control the Facility, but both the County and the Town will have separate storage for their materials co-located on Lot 2.

(b) Access. The County will be allowed access to its stored materials on Lot 2 twenty-four hours a day, seven days a week. The County and the Town agree to cooperate to avoid conflicts associated with access to Lot 2.

(c) Maintenance. The Town will, at its own discretion and cost, maintain the Facility and ensure adequate care of those parts of the Facility that store County materials. In the event that repairs are needed to portions of the Facility that store or protect County materials, the County will cooperate with the Town to pay the costs to make those repairs. The proportion of County participation in costs will depend on the circumstances surrounding the repairs.

(d) Utilities. The Town will pay the cost of electric service to the Facility.

(e) Administration. It is the overriding and critical desire of both the County and the Town to ensure that the working relationship of the Parties remain strong and united in the maintenance and operation of the Facility. To that end, there is hereby created a "Joint Working Group" to be comprised of the Town Public Works Director and the Douglas County Director of Public Works Operations, or their designees. The Joint Working Group shall meet periodically, but not less than two (2) times per year. Joint Working Group meetings may be called at any time by any member of the Joint Working Group, upon seventy-two (72) hours' advance notice to the other members. The Joint Working Group may consider the following matters:

i. Operating Procedures. Develop and establish operating procedures for the Facility to the extent necessary to address matters that are not contained or adequately described in this Agreement.

ii. Purchasing Procedures. Establish purchasing procedures for materials, equipment, maintenance and repairs necessary for the Facility.

iii. Budget. Establish a budget for the maintenance and operation of the Facility contingent on future annual appropriation of funds, subject to approval by the Douglas County Board of County Commissioners and the Parker Town Council respectively.

iv. Dispute Resolution. Address disputes between the Parties related to the maintenance and operation of the Facility.

7. Record Keeping. The Town shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this Agreement. The Town shall maintain such records for a period of six (6) years after the date of final payment for the project as provided by the Town of Parker Records Retention Schedule. The Town shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the County to inspect the project and to inspect, review and audit the project records.

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

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

Douglas County: Director of Public Works Operations
 Director of Facilities Management
 100 Third Street
 Castle Rock, Colorado 80104

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

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

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

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

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

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

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

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

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

TOWN OF PARKER, COLORADO

Mike Waid, Mayor

ATTEST:

Carol Baumgartner
Carol Baumgartner, Town Clerk

APPROVED AS TO FORM:

James S. Maloney
James S. Maloney, Town Attorney

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

Jill E. Repella 11/10/13
Jill E. Repella, Chair

APPROVED AS TO FORM:

Assistant County Attorney
Assistant County Attorney

APPROVED AS TO CONTENT:

Douglas J. DeBord
Douglas J. DeBord, County Manager
ATTEST:
Melissa Pelletier
Melissa Pelletier, Deputy Clerk
The seal of Douglas County, Colorado, featuring a circular design with the text "DOUGLAS COUNTY COLORADO" and "EST. 1874" around the perimeter, and the words "CLERK'S OFFICE" in the center.

APPROVED AS TO FISCAL CONTENT:

Andrew Copland
Andrew Copland, Director of Finance