

Intergovernmental Agreement
Among El Paso County, Colorado,
The City of Colorado Springs, The City of Manitou Springs,
The City of Fountain, The Town of Green Mountain Falls,
The Town of Monument, The Town of Palmer Lake
For the Creation of the Pikes Peak Regional Drainage Authority

Recitals

WHEREAS, El Paso County, Colorado (“County”) is a duly-organized county and political subdivision of the State of Colorado; and

WHEREAS, the City of Colorado Springs (“Colorado Springs.”) is a home-rule city and municipal corporation organized under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City of Manitou Springs (“Manitou”) is a home-rule city and municipal corporation organized under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the City of Fountain (“Fountain”) is a home-rule city and municipal corporation organized under Article XX, Section 6 of the Colorado Constitution; and

WHEREAS, the Town of Green Mountain Falls (“GMF”) is a municipal corporation organized under C.R.S. § 31-1-101, *et seq.*; and

WHEREAS, the Town of Monument (“Monument”) is a municipal corporation organized under C.R.S. § 31-1-101, *et seq.*; and

WHEREAS, the Town of Palmer Lake (“Palmer Lake”) is a municipal corporation organized under C.R.S. § 31-1-101, *et seq.*; and

WHEREAS, County, Colorado Springs, Manitou, Fountain, Green Mountain Falls, Monument, and Palmer Lake may be referred to collectively in this Agreement as “Parties” or individually as a “Party”; and

WHEREAS, the Parties are individually responsible under the Federal Clean Water Act (33 U.S.C. 1342(p)) for the management of stormwater quality and, in some instances, compliance with requirements of National Pollutant Discharge Elimination System Permits for stormwater control (hereinafter “MS4 Permits”); and

WHEREAS, the Parties desire to improve coordination and funding for planning,

constructing, and operating and maintaining, regional drainage and stormwater control systems within their jurisdictions, and desire to engage in these activities in a cooperative and comprehensive manner; and

WHEREAS, the Board of County Commissioners of El Paso County, Colorado (hereinafter “BoCC”), the Cities of Colorado Springs, Manitou Springs, and Fountain, and the Towns of Green Mountain Falls, Monument, and Palmer Lake, have mutually determined that the creation of a Regional Drainage Authority, authorized pursuant to C.R.S. § 29-1-204.2, would be the most effective method of accomplishing the desires of the Parties as reflected in this agreement.

NOW, THEREFORE, the BoCC, Colorado Springs, Manitou Springs, Fountain, Green Mountain Falls, Monument, and Palmer Lake (individually, “Party” and collectively, “Parties”), based on the mutual promises and considerations below, agree as follows:

Section 1: Creation and Name of Authority.

- A. Authority to Enter Agreement.** The Parties hereby enter into this Agreement to establish a separate governmental entity to develop drainage facilities pursuant to C.R.S. § 29-1-204.2, which authority shall also function as a water activity enterprise as described in C.R.S. § 37-45.1-101, *et seq.*
- B. Name of the Authority.** The name of the Authority shall be the Pikes Peak Regional Drainage Authority (hereinafter “Authority” or “PPRDA”).
- C. Purpose of the Authority.** The purpose of the PPRDA is to effect the efficient and effective development of drainage and flood control facilities, including drainage and flood control capital improvements, maintenance and operations, master planning, and flood-related emergency needs within the Authority in whole or in part for the benefit of the Parties or others at the discretion of the Board of Directors of the Authority.
- D. Political Subdivision.** The PPRDA shall be a separate political subdivision and body corporate of the State of Colorado, and shall possess all the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate, as restricted by this Agreement.

Section 2: Definitions.

For purposes of this Agreement, the following definitions shall apply:

- A. Administrative Expenses.** Expenses incurred by the PPRDA directly related to the day-to-day operations of the Authority as a governmental entity, including but not limited to, office administration and overhead, and supervising projects. Administrative Expenses shall not include costs which

are directly tied to the procurement, design, or construction of capital improvements, the operation and maintenance of infrastructure, long or short term drainage or flood control, planning, responses to flood-related emergencies or any costs of fee collection, including but not limited to costs imposed by El Paso County Treasurer.

- B. Drainage and Flood Control Capital Improvements.** Addition of new drainage and/or flood control facilities, addition of permanent structural improvements to drainage and/or flood control facilities, or restoration of existing drainage, flood control facilities.
- C. Drainage and Flood Control Operation and Maintenance.** Costs associated with flood control capital improvement operation and maintenance, including but not limited to the cost of (i) the ongoing maintenance of individual capital improvements; (ii) determining the amount of impervious surface and making adjustments thereto (iii) addressing any property owner challenges to impervious surface calculations, and (iv) managing and ensuring compliance with MS4 permits.
- D. Flood Related Emergency Events.** An event involving flooding determined to be a Flood Related Emergency Event by Supermajority vote of the PPRDA Board of Directors.
- E. Fountain Creek Watershed.** The 927 square mile watershed that drains south into the Arkansas River at Pueblo, bordered by the Palmer Divide to the north, Pikes Peak to the west, and a minor divide 20 miles east of Colorado Springs. Legal and pictorial descriptions are attached and incorporated by reference in *Exhibits 1 and 2* to this Agreement.
- F. Master Plan.** The plan developed to provide necessary information to facilitate efficient and effective use of existing drainage and flood control facilities; the development, maintenance and operation of existing and future drainage and flood control facilities, the development of appropriate rates, and the identification and prioritization of capital project needs.
- G. Net Revenue.** All funds generated by the PPRDA which are not Administrative Expenses, including but not limited to earnings generated by such funds.
- H. Planning.** Activities involving planning for drainage and flood control, including but not limited to developing the Master Plan, updating the Master Plan, sub-basin studies, and developing regional drainage and flood control plans.
- I. Project List.** The list of drainage and flood control projects categorized by

priority. The Project List is attached hereto as *Exhibit 3*.

- J. Regional Project.** A project identified by the Authority Board as regional in nature and which has drainage or flood control benefits that accrue to, and fee revenue dedicated to the completion thereof by, two or more members of the Authority.
- K. Supermajority.** When required for purposes of this Agreement, a supermajority vote of PPRDA Directors shall require a simple majority of a quorum of the PPRDA Board and shall also require at least four (4) votes of Directors appointed by the City of Colorado Springs, at least one (1) vote from a Director appointed by the BoCC, and at least one (1) vote from a Director appointed by another of the parties. The requirement for representatives from Colorado Springs, BoCC, and one other Party to constitute a Supermajority shall remain in place unless Colorado Springs or the BoCC withdraws from the PPRDA, in which case a Supermajority shall require a two-thirds (2/3) vote of the PPRDA Directors, subject to the requirements of this paragraph, with the withdrawing Party removed from the Supermajority requirement.

A Supermajority vote shall be required for the following acts:

1. Actions regarding the establishment or modification of the Authority's annual budget, including the fee rate structure;
2. Actions to adjust the percentage of net revenue allocated to and distributed for Drainage and Flood Control Capital Improvements, Drainage and Flood Control Maintenance and Operations and Flood Related Emergency Events, as provided in this Agreement;
3. The identification of Regional Projects;
4. The identification of Flood Related Emergency Events;
5. The identification of Emergency Needs referenced in Section 6J, below; and
6. Changes to the PPRDA Board Rules, Regulations, and/or Bylaws.

Section 3: Establishment and Organization of the Governing Body of the Pikes Peak Regional Drainage Authority.

A. Board of Directors. There is hereby established a Board of Directors of the PPRDA (hereinafter "PPRDA Board"), in which all legislative and management power of the Authority shall be vested.

B. Number and Appointment of Directors. The initial PPRDA Board shall

consist of thirteen (13) Directors, all of which shall be elected officials from the Parties' respective jurisdictions. The PPRDA Board shall consist of two (2) Directors appointed by the BoCC; six (6) Directors appointed by the Colorado Springs City Council; one (1) Director who shall be the Mayor of the City of Colorado Springs; one (1) Director appointed by Manitou; one (1) Director appointed by Fountain; one (1) Director appointed by Monument; and one (1) Director jointly appointed by GMF and Palmer Lake. The Director jointly appointed by GMF and Palmer Lake shall alternate between elected officials from GMF and Palmer Lake each year, unless agreed otherwise by GMF and Palmer Lake. When a GMF elected official serves as a PPRDA Director, a Palmer Lake elected official shall serve on the PPRDA Board as an *ex officio* Director. When a Palmer Lake elected official serves as a PPRDA Director, a GMF elected official shall serve on the PPRDA Board as an *ex officio* Director.

The PPRDA Board shall continue to consist of the number of Directors from each of the Parties as described herein unless a new Party is added, in which case the provisions of Section 8F shall govern modification of Board representation.

In the event a Party withdraws from this Agreement, the PPRDA Board of Directors shall be reduced to exclude representation of the withdrawing Party. Such a reduction in Directors shall take place automatically upon withdrawal and shall not constitute an amendment of this Agreement.

In the event a Party is added to this Agreement, the PPRDA Board of Directors shall be increased to provide representation of the included Party, based upon impervious surface added by the inclusion of the new Party's jurisdiction. Inclusion of Parties is discussed in Section 8, below.

- C. Term(s) of Directors.** Directors shall not be subject to term limits, but under no circumstances shall an individual who is not an elected official serve as a voting Director.
- D. Voting.** Each Director shall be allowed one (1) vote. In the event an appointed Director designates someone who is not an elected official to attend on their behalf, such designee shall participate only as an *ex officio* Director. *Ex officio* Directors shall not be entitled to vote.
- E. Compensation.** All PPRDA Board Directors shall serve without compensation.
- F. Removal of Director.** Any Director may be removed from the PPRDA Board by the governing body appointing such Director to the PPRDA Board. Any Director may voluntarily resign from the PPRDA Board.
- G. Vacancies.** Any vacancies on the PPRDA Board shall be filled by the appointing body within thirty (30) days of the vacancy.

H. Conflict of Interest. Directors shall disqualify themselves from voting on any issue with respect to which the director has a conflict of interest, unless the director has disclosed the conflict of interest in compliance with C.R.S. § 18-8-308. Any signatory to this Agreement may name an alternate Director who may vote in place of any disqualified Director.

I. Officers of the Authority. The PPRDA Board shall elect the following officers upon its formation, and thereafter at its first meeting of each calendar year:

1. **Chairperson**, a Director who shall preside over all meetings of the PPRDA Board, may sign all contracts and agreements of the Authority, and in general shall perform all duties incident to the office of Chairperson and such other duties as may be prescribed by the Bylaws of the Authority or by the PPRDA Board. No Director may serve more than two consecutive one-year terms as Chairperson.
2. **Vice-Chairperson**, a Director who shall serve as Chairperson, in his or her absence or during his or her inability to act. The Vice-Chairperson shall have such other duties as may be defined by the Bylaws of the Authority or by the PPRDA Board.
3. **Secretary**, a Director who shall serve as Secretary who shall cause to be kept a written record of the minutes of all meetings, shall ensure all notices required by law are duly given, shall serve as the custodian of Authority records, shall attest to documents as the need arises, and shall perform such other functions as may be prescribed by the Bylaws of the Authority or by the PPRDA Board. The same individual may serve as both Secretary and Treasurer.
4. **Treasurer**, a Director who shall cause to be kept and maintained the financial books and records of the Authority and shall sign routine purchase orders which need no attestation; and shall perform such other duties and functions as may be prescribed by the Bylaws of the Authority or by the PPRDA Board. The same individual may serve as both Secretary and Treasurer.

J. Chairperson and Vice Chairperson Additional Requirements. The Chairperson and Vice-Chairperson positions shall not be held by Directors appointed by the same governmental body.

K. PPRDA Board Executive Committee. The PPRDA Board shall appoint an Executive Committee made up of five (5) Directors, two of which shall be the Board Chair and Vice Chair. The Executive Committee shall have general responsibility for the affairs of the Board between its regular meetings, make recommendations to the Board of Directors, and shall perform other duties as

are authorized by the Board of Directors. The Executive Committee shall be subject to the direction of the Board of Directors and none of its decisions shall conflict with actions taken by the Board of Directors.

L. Meetings. The PPRDA Board shall meet no less than twice per calendar year, at such times and at such a location as may be designated by the PPRDA Board. Notice of meetings shall be posted in such place and manner as determined by the Bylaws of the Authority, in accordance with the Colorado Open Meetings Law, C.R.S. § 24-6-401, *et seq.*

M. Quorum. A majority of the Board, which must include at least two representatives from Colorado Springs, one from the BoCC, and one of the other parties, shall constitute a quorum. No official action shall be taken by the PPRDA Board unless a quorum is present at a meeting. Any action taken by the PPRDA Board shall be approved by a simple majority of those Directors present and voting, except for matters requiring a Supermajority as provided in Section 2 of this Agreement.

The requirement for representatives from Colorado Springs, BoCC, and one other Party to constitute a quorum shall remain in place unless Colorado Springs or the BoCC withdraws from the PPRDA, in which case the withdrawing Party shall be automatically removed from the quorum requirement.

N. Bylaws and Procedures. The PPRDA Board may promulgate bylaws, policies and/or procedures that govern its conduct. The PPRDA Board's initial Bylaws, Policies, and Procedures are attached hereto as *Exhibit 4*.

O. Open and Public Meetings. The proceedings of the PPRDA Board shall comply with all provisions of the Colorado Open Meetings Law, C.R.S. § 24-6-401, *et seq.*, and shall provide opportunities for public input by, at minimum, permitting the public to address the PPRDA Board in open meetings. The Board shall adopt procedures for calling emergency meetings.

P. Committee(s). The PPRDA Board shall appoint a Citizens Review Board (hereinafter "CRB") comprised of citizens residing within the PPRDA boundaries. The PPRDA Board shall also appoint a Technical Advisory Committee (hereinafter "TAC") comprised of individuals with technical expertise in drainage and/or flood control. The Board may, by majority vote, establish more specific criteria governing the selection procedures, number and qualifications of the CRB and TAC members. The chairpersons of these committees shall also serve as ex officio Directors. The PPRDA Board may also form other advisory committees as may be reasonable and necessary to perform its mission. Recommendations of the CRB and TAC shall be made following the procedures described in *Exhibit 4*.

The CRB shall, by majority vote of CRB members, make recommendations to the PPRDA Board regarding (1) any changes to the master plan, and (2) the PPRDA's annual budget. The CRB may also make other recommendations on matters within the purview of the PPRDA Board as the CRB deems fit.

Q. Annual Audit. The PPRDA Board shall provide for an annual financial audit.

R. Additional Board Powers and Duties. The PPRDA Board may exercise the following additional powers and exercise the following duties:

1. Fixing the time and place of meetings and the method of providing notice of such meetings;
2. Making and passing such orders and resolutions necessary for the government and management of the affairs of the authority and the execution of the authority's powers;
3. Maintaining offices at such place or places as the PPRDA Board may designate;
4. Contracting for professional services, including legal services, as deemed necessary to administer and implement the purposes of this Agreement;
5. Prescribing methods for auditing and allowing or rejecting claims and demands; and
6. Exercising all rights and powers necessary or incidental to or implied from the specific powers granted by this Agreement.

Section 4: Powers of Authority. The PPRDA, acting through its Board of Directors, shall have powers, including but not limited to the following:

- A. To develop, in its discretion, drainage facilities, in whole or in part for the benefit of the inhabitants of the Parties or others, subject to fulfilling any conditions or requirements set forth in this Agreement.
- B. To fund drainage and flood control capital improvements, operation and maintenance, and master planning and flood-related emergency needs using funds obtained pursuant to Section 6, below, based on annual recommendations from members of each Party to this Agreement, and consistent with the Project List and Section 6 of this Agreement.
- C. To fix and maintain a fee for service on all properties within the boundaries of the Authority based upon the amount or percentage of impervious surface located on each individual property. The fee shall be based upon a calculation methodology determined by the PPRDA Board, with such methodology to be of a type

employed by other similarly situated stormwater enterprises or authorities. The methodology shall allow for different fee categories based upon different types of properties, such as residential, commercial/industrial, non-profit and government owned facilities so as to not unrealistically burden such individuals or entities while ensuring an equitable payment of fees for services rendered from all properties contributing to stormwater discharges.

- D.** The following reflects the maximum amount of the fee per square foot of impervious surface and per single property to be paid by each identified category; provided, however, that there may be imposed by the Board, annual adjustments for inflation based upon the U.S. Department of Labor “Consumer Price Index”. The annual fee shall be capped at \$___ per square foot for residential property, \$___ per square foot for commercial property, \$___ per square foot for property owned by non-profit organizations, and \$___ per square foot for government property¹. Determination of whether property is residential or commercial shall be based on definitions provided in Colorado Revised Statutes. Following the sunset of the drainage and flood control capital improvements portion of the PPRDA revenue, the PPRDA fee shall be reduced by 55%, with fees used for the purposes of operation and maintenance, master planning, and flood-related emergency needs. Further, the fee charged to the Parties shall be set at a **minimum** of \$___ per square foot. Collection of fees shall begin in 2016.
- E.** To re-assess the amount and type of impervious surface within any one or all of the Parties’ territory at any time. The PPRDA shall, however, re-assess impervious surface for each Party at least once every five (5) years.
- F.** To ensure that any property owner shall, upon written request, have access to the information and data utilized in the impervious surface calculation for his/her property, to promptly establish a process pursuant to which such property owner can appeal the accuracy of such calculation, and to hear appeals of property owners regarding the accuracy of such calculation. To the extent that any errors in the calculation are found to exist, they shall be immediately corrected and any past overpayment shall be refunded or credited, within 30 days, to the property owner.
- G.** To establish criteria for the grant of fee credits for any property owner who invests, after the creation of the Authority, in drainage control activities beyond those which are required by law, thereby reducing the amount of potential stormwater run-off from his/her property. Such owner may petition the Authority Board for a credit against current or future fees due hereunder. The Board shall seek public input in the development of such criteria.
- H.** To enter into contracts and agreements affecting the affairs of the Authority.

¹ The fee on government property will be used for operation and maintenance of capital improvements. See Section 7A.

- I.** To employ agents and employees, in addition to persons referenced in (J) directly below and subject to the financial limitations of Section 6, as may be found by the Authority Board as necessary to carry out the following limited duties, for the following purposes:
 - 1. To handle day-to-day administrative and oversight responsibilities and ensure the fulfillment of the objectives identified herein;
 - 2. To retain legal counsel;
 - 3. To perform engineering oversight or related technical activities as necessary to ensure that planning, capital projects, operations and maintenance and permit compliance responsibilities are appropriately and efficiently accomplished; and
 - 4. To perform the necessary financial tasks of the Authority.
- J.** To contract with a person or persons to assist the PPRDA Board with administrative, accounting, and financial or other services which may be required to carry out the duties enumerated in this Agreement. The Parties intend for PPRDA to contract with the Pikes Peak Area Council of Governments to provide necessary administrative and accounting services until such time as the PPRDA has retained the staff necessary to do so.
- K.** To fund, acquire, construct, manage, maintain, repair, improve, or operate drainage and flood control systems or any interest therein within the Authority's boundaries.
- L.** To acquire, hold, lease (as lessor or lessee), sell or otherwise dispose of any real or personal property utilized only for the purposes of water treatment distribution and wastewater disposal and drainage.
- M.** To incur debts, liabilities or obligations at the most economical rates.
- N.** To sue and to be sued.
- O.** To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose.
- P.** To exercise any other powers which are essential to the provision of functions, services or facilities by the entity or which may be specified by this Agreement.
- Q.** To do and perform any acts and things authorized by this section under, through or by means of an agent or by contracts with any person, firm or corporation.
- R.** To permit other municipalities, special districts or political subdivisions of the

state, that are authorized to supply water or to provide drainage facilities, to contract for services provided by the PPRDA, subject to fulfilling all of the conditions herein with the understanding that rates do not need to be uniform between the authority and the contracting parties.

- S. To provide for the rehabilitation of any surfaces adversely affected by the construction of facilities or systems of drainage facilities through the rehabilitation of plant cover, soil stability and other measures appropriate to the subsequent beneficial use of such lands.
- T. To justly indemnify property owners or others affected for any losses or damages incurred.
- U. To invest or deposit revenues consistent with the terms of this Agreement and applicable law.
- V. To accept real or personal property for the use of the Authority and to accept gifts and conveyances upon the terms and conditions as the Board of Directors may approve.
- W. Budget.** No later than October 1 of each year, the PPRDA Board shall consider its annual budget for the next fiscal year, the review and approval of which shall occur no later than December 15 of the relevant year for the following fiscal year. The proposed annual budget shall be balanced, shall conform to the requirements of the Local Government Budget Law of Colorado, C.R.S. § 29-1-101, *et seq.*, and shall include, at a minimum, a detailed estimate of all proposed expenditures and anticipated revenues. Actions regarding the Authority's annual budget shall be approved by a Supermajority.

In the event the PPRDA Board does not reach a Supermajority decision regarding its annual budget for a given year, the budget shall consist of the previous year's revenue adjusted for inflation based upon the U.S. Department of Labor "Consumer Price Index," and the revenue shall be allocated as follows: Administrative Expenses shall not exceed one percent (1%) of the gross revenue generated; fifty five percent (55%) of net revenue shall be allocated to drainage and flood control capital improvements²; thirty five percent (35%) of net revenue shall be allocated to drainage and flood control operation and maintenance; and ten percent (10%) of net revenue shall be allocated to drainage and flood control planning and flood-related emergency needs.

Section 5: Boundaries of the Authority. The legal boundaries of the Authority shall be established as follows:

- A. All unincorporated areas within El Paso County included within the 2010 Census

² The total fee will reduce by fifty five percent (55%) upon sunset of the capital improvements, and no net revenue will be allocated to capital improvements beyond the sunset date.

Urbanized Area for the United States Census Bureau, which is also utilized as the urbanizing area for purposes of water quality permitting through CDPHE, and all unincorporated areas within the existing Fountain Creek Watershed and Greenway District in El Paso County, Colorado (See *Exhibits 1 and 2*); and

- B. The corporate limits of the City of Colorado Springs, as comprised on January 1, 2015, and as may be comprised in the future; and
- C. The corporate limits of the City of Manitou Springs, as comprised on January 1, 2015, and as may be comprised in the future; and
- D. The corporate limits of the City of Fountain, as comprised on January 1, 2015, and as may be comprised in the future; and
- E. The corporate limits of the Town of Green Mountain Falls, as comprised on January 1, 2015, and as may be comprised in the future; and
- F. The corporate limits of the Town of Monument, as comprised on January 1, 2015, and as may be comprised in the future; and
- G. The corporate limits of the Town of Palmer Lake, as comprised on January 1, 2015, and as may be comprised in the future.
- H. Additional territory shall be included in, or excluded from, the Authority boundaries by following the procedures in Section 8 of this Agreement.
- I. In the event that a Party does not initially enter this Agreement, or subsequently withdraws from this Agreement pursuant to Section 8, below, the legal boundaries of the Authority shall be redrawn to exclude that jurisdiction, and the PPRDA Board shall automatically be decreased by the Directors from that jurisdiction.

Section 6: Functions of Authority and Services to be Provided.

- A. **Functions and Services.** The functions of the PPRDA and services provided shall include the funding of drainage and flood control capital improvements, maintenance and operations, master planning, and flood-related emergency needs within the Authority boundaries and outside the boundaries of the Authority as may be provided by law or this Agreement. Such capital improvements, maintenance and operations, and planning shall be compatible with established state and local drainage criteria and flood control requirements, as determined by the PPRDA Board.
- B. **Management and Disbursement of Funds.** The Parties agree that the PPRDA Board of Directors' primary responsibility will be the management and disbursement of funds generated by the Authority in order to accomplish the

projects and goals of the Authority and its members and the activities that support those functions. The PPRDA Board will determine annual appropriations for planning, flood-related emergency needs, and drainage and flood control capital improvements, and the order in which projects shall be funded, in accordance with this Agreement and based on recommendations from the Parties. Each of the Parties shall determine its own annual operation and maintenance needs to be funded as provided in this Agreement, which may be within or outside the Authority as allowed by law. The PPRDA shall implement the Authority's identified drainage and flood control capital improvements, operation and maintenance, master planning and flood-related emergency need projects and activities. This may be accomplished through subsequent intergovernmental agreements or other suitable arrangements between the PPRDA and the various Parties for the expenditure of Authority funds on behalf of PPRDA. The Parties, in carrying out these intergovernmental agreements, may contract on PPRDA's behalf with other governments or private businesses to expend Authority funds for the purpose of implementing those projects or activities.

C. Allocation and Expenditure of Revenues. The PPRDA shall pay its administrative expenses from the gross revenue generated by the fee authorized under Section 4D of the Agreement. Administrative Expenses shall not exceed one percent (1%) of the gross revenue generated. The Net Revenue shall be allocated in a proportional manner, on a five year running average, based upon priority of projects in the Project List, to areas within the geographic jurisdiction of each of the Parties so as to ensure the equitable use of funds in those areas from which the fees have been collected. Any individual Party may expend a portion of its allocated maintenance and operations revenue and maintenance of effort revenue for use anywhere within or outside the Authority boundaries in order to effectively and efficiently address the impact of stormwater flows and as provided by law. Subject to these requirements, net revenue generated by the PPRDA shall be allocated, **generally**, in the following percentages:

D. Allocation of Drainage and Flood Control Capital Improvements. Fifty five percent (55%) of net revenue shall be placed in a special fund dedicated to drainage and flood control capital improvements. The initial list of such projects shall be as specified in a capital project master plan paid for, in a pro-rata manner based on population, by the members of the Authority in the first year after the establishment thereof. The PPRDA, subject to the proportional allocation requirements referenced above, shall not expend capital improvement funds on any other drainage and flood control projects until the high priority projects identified in the master plan have been funded; provided, however, that additional projects may be identified by the PPRDA Board of Directors as high priority in response to flood related emergency events. This component shall sunset twenty years after the effective date of this Agreement.

Upon a Supermajority vote of the PPRDA Board, this percentage allocation

may be adjusted to more accurately reflect the priorities identified by the Master Plan and rate studies, changes to the amounts of impervious surface, to account for necessary percentage allocation changes to Drainage and Flood Control Maintenance and Operations and/or to account for necessary Flood Planning and Flood Related Emergency needs.

If a new party is accepted into the PPRDA, the PPRDA Board shall adjust funding within this category to be proportional to the amount of impervious surface, and fee revenue generated, of the various members of the Authority, using the most recent data available. Such adjustment must be completed prior to January 1 of the year following addition of a new party to this Agreement.

Upon sunset of the capital improvements component, fee will be reduced by fifty-five percent (55%) for all categories of property against which the fee is imposed.

E. Distribution of Drainage and Flood Control Capital Improvements.

Drainage and flood control capital improvement funds shall be distributed for specific projects, at such time and in such manner as shall be determined by the Board of Directors of the PPRDA. The Parties shall submit, in a timely manner, capital project invoices to the PPRDA for payment. In the case of a Party which utilizes its own staff or other resources to complete capital project activities, such Party shall file with the Authority, on an annual basis, a report detailing all costs associated with such work and requesting reimbursement, under its allocation therefore.

F. Distribution of Remainder. Any funds remaining in the capital improvement fund following the sunset referenced above may be used to complete remaining listed drainage and flood control capital improvement projects or those identified as high priority through subsequent planning, or determined to be a flood-related emergency need until such funds are depleted or until the Authority is terminated, whichever occurs first.

G. Allocation of Operation and Maintenance Funds. Thirty five percent (35%) of net revenue shall be placed in a special fund dedicated to drainage and flood control operation and maintenance. Within this category, the funds will be allocated to each of the Parties' maintenance activities pro rata based upon the revenue collected from their respective jurisdictions. PPRDA shall not expend operation and maintenance funds for any purpose other than operation and maintenance. The Parties shall submit, in a timely manner, operations and maintenance invoices to the PPRDA for payment.

Upon a Supermajority vote of the PPRDA Board, this percentage allocation may be adjusted to more accurately reflect the priorities identified by the Master Plan and rate studies, changes to the amounts of impervious surface, to account for necessary percentage allocation changes to Drainage and Flood Control

Maintenance and Operations and/or to account for necessary Flood Planning and Flood Related Emergency needs.

The first allocation of funds for maintenance and operations activities shall occur on or after April 1, 2016.

If a new party is accepted into the PPRDA, the PPRDA Board shall adjust funding within this category to be proportional to the amount of impervious surface, and fee revenue generated, of the various members of the Authority, using the most recent data available. Such adjustment must be completed prior to January 1 of the year following addition of a new party to this Agreement.

H. Allocation of Funds for Flood Planning and Flood Related Emergency Needs. Ten percent (10%) of net revenue shall be placed in a special fund dedicated to drainage and flood control planning and flood-related emergency needs. These funds shall be used only for Planning and annual contributions to an emergency contingency fund for flood-related emergency needs, as determined by the PPRDA Board of Directors. The PPRDA shall not expend planning and flood-related emergency needs funds for any other purpose unless the PPRDA Board re-allocates pursuant to the terms of this Agreement.

Planning and flood-related emergency needs funding shall be available for use on or after April 1, 2016.

Any party joining this Agreement after January 1, 2015, is ineligible for planning and flood-related emergency needs funding until January 1 of the year following the new Party's inclusion in the PPRDA.

Upon a Supermajority vote of the PPRDA Board, more than 10% of the net revenue may be used in a given year to address flood related emergency needs. The PPRDA Board shall have performed an annual audit of the financial condition of the Authority, with a copy of such audit results to be provided to each member entity and made available for public review.

Upon the flood control planning and flood related emergency needs fund balance reaching a balance of twenty-five-million dollars (\$25,000,000), the fee will be reduced by ten percent (10%) for all categories of property against which the fee is imposed. Should the balance fall below twenty million dollars (\$20,000,000), the fee will again be increased by ten percent (10%) for all categories of property until the fund is replenished to twenty-five million dollars (\$25,000,000). The PPRDA Board may impose annual adjustments to these amounts for inflation based upon the U.S. Department of Labor "Consumer Price Index".

I. Fee Revenue After Sunset of Drainage and Flood Control Capital Improvements Component. Beginning on the calendar year following the sunset of the drainage and flood control capital improvements portion of the

PPRDA revenue, fee revenue will be reduced as described in Section 6D. After such reduction, the PPRDA Board shall allocate funds among operation and maintenance, master planning, and flood related emergency needs. This allocation shall be made in the PPRDA Board's discretion and shall not require a Supermajority vote.

Section 7: Parties' Duties and Responsibilities.

- A. Maintenance of Effort.** In order to ensure that the goals of the PPRDA are accomplished in a timely manner, the financial burden on ratepayers is minimized, and the public benefits of drainage control are maximized, each of the Parties will be required to pay a fee based upon impervious surface, as described in Sections 4C and D, above
- B. Implementation of Projects, Operations and Maintenance.** Each of the Parties can determine, in its sole discretion, whether to utilize internal resources, such as personnel and equipment, to implement the capital projects, operations and maintenance, billing and permit compliance activities referenced herein within their individual jurisdictions, utilizing the revenues provided hereunder, or to contract, with the PPRDA, or another Party or appropriate entity, for the performance of such tasks; provided, however, that such tasks shall be accomplished in a manner consistent with the terms of this agreement, the master plan developed by the PPRDA, or additional planning performed pursuant to this Agreement.
- C. MS4 Permits.** The Parties are individually responsible under the Federal Clean Water Act (40 C.F.R. 122.26) for the management of stormwater quality and, in some instances, compliance with requirements of National Pollutant Discharge Elimination System Permits for stormwater control ("MS4 Permits"). The PPRDA may hold and administer such permits upon a request from a Party's governing body, a majority vote of the PPRDA Board, and the concurrence of the Colorado Department of Public Health and Environment.

Section 8: Effective Date; Changes to Parties and Authority Boundaries.

- A. Effective Date.** The effective date of this Agreement is the date on which results of the November, 2014 election are certified.
- B. Dissolution of the Authority.** The Agreement may be terminated and the Authority dissolved upon the decision of each of the Parties' governing bodies, or in the event withdrawal of Parties leaves only one Party remaining in the PPRDA. In the event of dissolution, the State of Colorado is ineligible for any distribution of property under this Section. Upon termination of the Authority, the following method shall be used to distribute, dispose of, or divide the assets of the Authority:
- C. Distribution of Property Upon Dissolution.** Any real property interest or

fixtures to real property resulting from this Agreement shall become the property of the Party in whose jurisdiction such real estate or fixture is located. For purposes of this Section, the County's jurisdiction shall be unincorporated areas within the PPRDA Boundaries. The jurisdiction receiving ownership of such property shall be responsible for that property's ongoing maintenance. Any personal property shall be liquidated at auction, and the proceeds from such sale divided among the Parties in proportion to the previous calendar year's income attributable to the parties. Such funds may only be expended in compliance with applicable law. Any other property not addressed above shall be distributed to one or more Parties, as determined by the PPRDA Board of Directors prior to termination of the Authority.

- D. Withdrawal of Parties.** Any Party may withdraw from this Agreement by official action of its governing body, and such withdrawal shall not constitute termination of this Intergovernmental Agreement. In order to withdraw, however, a Party must give at least one-hundred-eighty (180) days' written notice to the PPRDA Board. A withdrawing party shall retain ownership of, and ongoing maintenance responsibility for, any real property interest or fixtures to real property resulting from this Agreement.

Further, the Parties will consider the results of the November 4, 2014 election, at which the voters will be asked whether they favor imposition of the fee on impervious surface discussed in Section 4D. In the event a party decides to withdraw from the PPRDA based upon results of the election, only thirty (30) days' written notice to the PPRDA Board shall be required.

If a Party withdraws, special fees charged to citizens within that Party's jurisdiction will cease upon the effective date of the withdrawal. Further, any unexpended funds which were obtained through special fees charged to citizens within that jurisdiction will be deposited into a special fund in the name of the withdrawing jurisdiction and shall be used in a manner which maintains their status as special fees.

A withdrawing party shall retain ownership of, and operation/maintenance responsibility for any capital improvements placed in its jurisdiction through PPRDA funds.

- E. Amendment of Agreement.** This Intergovernmental Agreement may be amended upon the consent of all Parties. This section is inapplicable to additions or deletions of Parties under Subsection F, immediately below.

- F. Addition of Parties and Territory to this Intergovernmental Agreement.** The PPRDA Board shall take the following actions to include parties within the PPRDA, or prior to deleting any party from the PPRDA:

1. Additional Parties. Any political subdivision of the State of Colorado may request to be added as a Party to this Agreement and to be a member of the Authority with its jurisdictional boundaries or any portion thereof to be added to the territory of the PPRDA. Addition of a Party shall be at the discretion of the PPRDA Board and shall require Supermajority approval. If a new Party is approved by the PPRDA Board, the new Party's representation on the PPRDA Board will be based on the new Party's proportional impervious surface. However, any additional party will receive no greater than one Board vote unless such Party has an equal or greater amount of impervious surface than is found within the unincorporated boundaries of the County. In the event a new Party joins the PPRDA, the PPRDA and the new Party shall enter an intergovernmental agreement describing the terms under which the new Party joins the PPRDA. The addition of a Party and inclusion of its territory shall be effective upon the later of execution of the intergovernmental agreement or the PPRDA passing a resolution pursuant to Section 8(F)(3), below. The PPRDA's approval of the resolution and intergovernmental agreement shall both require a Supermajority vote of Directors.

WITNESS the signatures of the authorized representatives to the Parties to this Agreement, as set forth below: