

AGREEMENT REGARDING
VEGETATION ESTABLISHMENT
OF DEVELOPMENT IMPROVEMENT PROJECT DRAINAGE AND FLOOD CONTROL
IMPROVEMENTS FOR
PRINCE LAKE NO. 2 DRAINAGE AT FLATIRON MEADOWS

Agreement No. 25-05.06
Project No. 110474

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and TOWN OF ERIE (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 desire to participate in a joint effort to establish vegetation from the drainage improvements associated with the civil plan set titled " Flatiron Meadows-Phase II Regional Drainage Improvements" by Calibre Engineering Inc, dated August 8, 2016 (hereinafter called "PLAN"); and

WHEREAS, TOWN (is the owner of certain real property consisting of 14 acres, as shown on Exhibit A (hereinafter called "PROPERTY")

WHEREAS, Hines has applied to TOWN for approval of Residential; and

WHEREAS, as a condition of DEVELOPMENT, TOWN required Hines to implement drainage improvements identified in PLAN as shown in Exhibit A. Hines has implemented drainage improvements.

WHEREAS, TOWN now desire the DISTRICT to manage vegetation establishment of drainage and flood control improvements constructed by Hines as shown in Exhibit A (hereinafter called "PROJECT"); and

WHEREAS, TOWN and DISTRICT agree to a Development Improvement Project improvements options whereas DISTRICT shall manage vegetation establishment of PROJECT and Hines shall pay for the services.

WHEREAS, the TOWN Council by appropriation or resolution, have authorized all of PROJECT costs from DEVELOPER. Hines has conveyed the funding for the PROJECT to the TOWN.

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. Project Limits. PROJECT limits are approximately Prince Lake No. 2 Drainage of Prince Lake Tributary at Flatiron Meadows, as shown on Exhibit A.

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. Vegetation Establishment

B. It is understood that PROJECT costs as defined above are not to exceed \$90,000 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. Vegetation Establishment	\$ 90,000
Grand Total	\$ 90,000

5. MANAGEMENT OF FINANCES

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 \$90,000 shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The 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).

6. MANAGEMENT OF WORK

Vegetation Establishment. Vegetation establishment services shall consist of, but not be limited to, the following:

1. Costs. Vegetation establishment costs shall consist of those costs as incurred by the most qualified contractor(s) including licenses and permits.

2. Management and Payment

a. DISTRICT, with the concurrence of TOWN, shall administer and coordinate the related work.

b. DISTRICT, with concurrence of TOWN, shall select and award contract(s).

- c. 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 upon request.
- d. PARTIES shall have access to the site during at all times to observe the progress of work and conformance to workplan.
- g. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.

7. RIGHT OF WAY OR NON-REVOCABLE EASEMENT

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 within their legal authority 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 no expense to DISTRICT.

8. 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.

9. FLOODPLAIN REGULATION

TOWN agrees to regulate and control the floodplain of Prince Lake 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 Prince Lake 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.

10. TERM OF AGREEMENT

The term of this Agreement shall commence upon 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 9. FLOODPLAIN REGULATION, Paragraph 7.B. Ownership of Property and Limitation of Use, and Paragraph 8. MAINTENANCE, which shall run in perpetuity.

11. 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.

12. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be Town Administrator, 645 Holbrook Street, Erie, Colorado 80516.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 West Bayaud Avenue Lakewood, CO 80228.
- 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

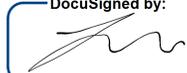
- A. Electronic or facsimile delivery of a fully executed copy of a signature page; or
 - B. The image of the signature of an authorized signer inserted onto PDF format documents.
- Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic 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 D/B/A
MILE HIGH FLOOD DISTRICT

DS
BC

Checked By

DocuSigned by:

By _____
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Name Laura A. Kroeger

Title Executive Director

Date 18 June 2025

TOWN

By _____

Name _____

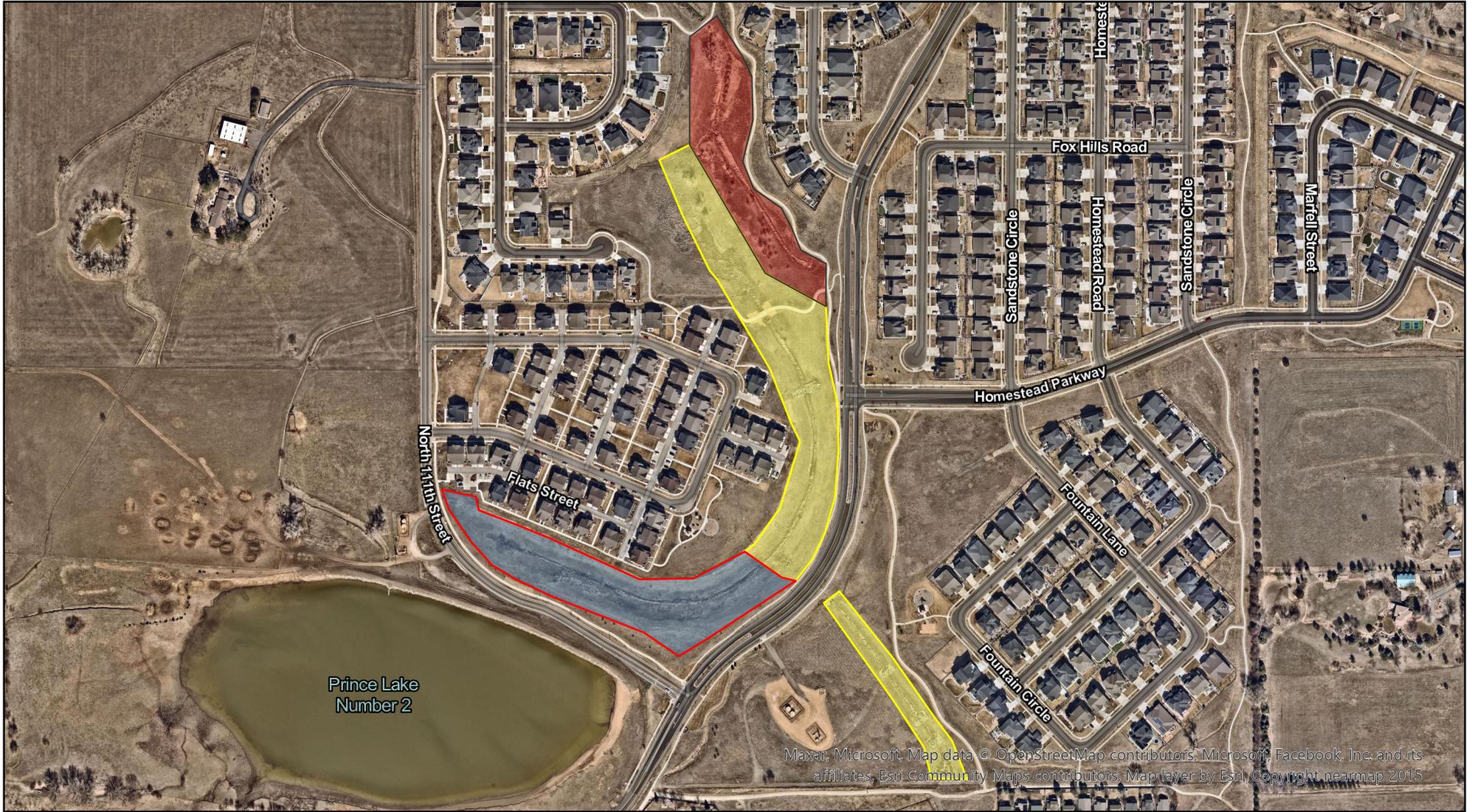
Title _____

Date _____

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Exhibit A



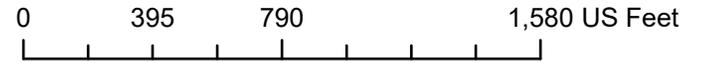
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Flatiron Meadows Phase II

Erie, Prince Tributary

Center: 105°5'23"W 40°1'31"N

Acres: 14



- Noxious Weed and Vegetation
- Management Area not MEP Eligible
- Russian Olive Removal Area
- Vegetation & Noxious Weed Management Area MEP Eligible

