



STEVE BACH  
MAYOR

August 10, 2014

Colorado Springs City Council  
107 N. Nevada Avenue, Suite 300  
Colorado Springs, CO 80903

**Re: Stormwater IGA**

President King and Members of City Council:

This letter is in response to Councilmember Snider's request for identification of specific issues and concerns I have with the latest draft intergovernmental agreement (IGA) creating a Pikes Peak Regional Drainage Authority (PPRDA) prior to your meeting with the Board of County Commissioners tomorrow at 4:00 p.m, which I will be attending. In fulfilling my Charter responsibility to manage the operations of the City, I have expressed my concerns with the proposed PPRDA approach to regional stormwater planning, operations and flood emergency mitigation and its impact on our local stormwater needs several times over the last few months.

My primary concerns are two-fold and were clearly addressed in my letter to you of July 31. First, any stormwater funding arrangement must secure to the people of Colorado Springs the full benefit of the fees that they are being asked to pay. Second, decision-making regarding City stormwater projects and emergency repairs must remain with the elected and appointed representatives of Colorado Springs, and should not be delegated to others whose interests may not be identical. Since my letter of July 31, the County has revised the IGA to restore the language which treated federally certificated airports the same as roads and highways, and recognized that airports should not be subject to PPRDA fees. I support this change. However, on balance, the proposed IGA draft still does not adequately protect the citizens' and the City's investment in the PPRDA in the following areas.

1. **Governance**

The latest draft IGA proposes a PPRDA Board of 11 representatives, of which 6 will represent Colorado Springs: 3 Councilmembers, the Mayor and 2 Board members who must be elected officials within the PPRDA area appointed by the Mayor. While this is a step in the right direction, and appears to provide our City with majority control, such control exists only if all 6 City representatives actually attend Board meetings and are **voting** members. To fulfill its intended purposes in a manner that proportionately benefits the residents of the City of Colorado Springs, the PPRDA board must have equal voting representation from the Legislative and Executive branches of our City. This goal will not be met if the Mayor's appointed Board members must be elected officials or will be prohibited from counting toward a quorum or voting. In addition to eliminating non-voting

members of the PPRDA Board, I recommend the IGA be revised to require a quorum of the PPRDA Board and the votes of at least 2 Councilmembers, 2 Board members appointed by the Mayor, and 1 County Commissioner for any supermajority vote required by the IGA.

As outlined in the July 31 letter, the Board members appointed by the Mayor (not including the Mayor's designee) should be residents of our City with professional expertise in stormwater related matters. To ensure that the Legislative and Executive branches are represented fairly, the distinction between voting and non-voting members of the Board should be eliminated. I remain in support of Council approval of Mayor appointments to the PPRDA board in the same manner as occurs for CSURA and Housing Authority appointments.

## **2. Prioritization and Timing of City Projects**

The PPRDA proposal is intended to provide a funding mechanism for regional stormwater planning, capital projects, operations and maintenance, and flood related emergencies. On this basis, it is appropriate for the PPRDA Board to facilitate regional cooperation by recommending the selection, prioritization and timing for those projects. The IGA, however, reserves to the Board complete authority to determine which Colorado Springs capital improvement projects and flood related emergency needs will be funded, and what priority that funding will have.

As I expressed in the July 31 letter, it is the Council and the Mayor that should be deciding how PPRDA funds should be spent within the City through the annual budget and appropriation process. The City's stormwater needs should be reflected in the annual budget the Mayor submits to Council, and upon adoption of the budget and appropriation, carried out as the executive determines. The PPRDA Board should be responsible for suggesting or recommending capital projects within the City based on its identified regional needs. The PPRDA Board should not be making local and municipal decisions for the Council and Mayor. The IGA should be revised to recognize the City's decision-making authority over its own stormwater projects and activities.

## **3. Flood Emergencies**

With respect to funding of flood related emergency needs, the IGA presents two problems. First, there is no provision allocating back to each party a proportionate amount of the funds received from within that party's jurisdiction, as there is with capital improvements and operation and maintenance funds. Rather, the sole decision on expenditure of such funds, including at least \$2.7 million annually from Colorado Springs (10% of net revenues derived from within the City of Colorado Springs), rests with the PPRDA Board. See IGA § 6 C.5. This is not in keeping with the avowed "bedrock" principle of the task force: that the return of funds for use in the City be proportionate to revenues collected from within the City.

Second, there is no debating the need for immediate action during flood emergencies. However, the procedure for responding to a flood emergency within the PPRDA area is unnecessarily bureaucratic and does not provide funding flexibility to the affected jurisdictions. I suggest that the IGA be revised to provide that use of funds reserved under the IGA for flood emergencies within Colorado Springs should not be controlled by the entire Board, but rather by the City.

#### 4. Establishment of Fees/Rates

I have previously expressed to you that the specific fees or rates (or calculation methodologies) must be submitted to the voters in the ballot question, and should clearly state that future rate increases shall not be effective until and unless approved by majority vote of the electorate. I also believe that since the fees will be collected through the County Treasurer on the annual tax bills, the specific fee or rate presented to the voters in the ballot question should be reflected as an annual fee, not as a monthly fee. Transparency in the PPRDA's financial plan is critically important to the voters.

#### 5. Special Reduced Fees for Non-Profits

City staff has previously addressed this concern with Council in the several iterations of the issues memo issued by the City Attorney's Office. Absent a rational basis for treating non-profits, including religious institutions, as a separate rate category with lower rates than similarly situated properties based upon impervious surface area and other objective criteria, the proposal cannot withstand judicial scrutiny. If the participating jurisdictions approving the IGA choose to ignore the case law in this area, the IGA should state the rational basis for providing special treatment to the owners of these types of properties.

#### 6. Dilution of City Representatives

Finally, the IGA has provisions for adding additional jurisdictions that allows expansion of the Board and affords the new parties a Director representative. With each new Board position, Colorado Springs slight majority will quickly become a minority. This was one of the problems with the former ESA board. Consequently, I propose changes to the provisions for adding parties, quorum and supermajority so that Colorado Springs representation is not diluted with the addition of other partner jurisdictions in the future.

The attached redlined draft IGA is based on the version prepared by the County on August 1 and provided to the City on August 4, and incorporates the changes I have recommended above. Thank you for your consideration of these revisions, and I look forward to a thoughtful and productive meeting on Monday.

Sincerely,



Steve Bach  
Mayor