

**INTERGOVERNMENTAL AGREEMENT REGARDING JOINT FUNDING OF
PUBLIC IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING JOINT FUNDING OF PUBLIC IMPROVEMENTS (“**Agreement**”) is entered into by and between **ARAPAHOE COUNTY**, a body corporate and political subdivision of the State of Colorado (the “**County**”), and the **PARKER JORDAN METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“**PJMD**”), and is effective as of the last date of execution by the parties as set forth in the signature blocks below (“**Effective Date**”). The County and PJMD may each be referred to as a “**Party**” and collectively referred to as the “**Parties.**”

RECITALS

WHEREAS, the Parties, as Colorado governmental entities, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18, and Sections 29-1-201, *et seq.*, C.R.S., to cooperate or contract via intergovernmental agreement with one another to provide functions, services, or facilities authorized to each cooperating government; and

WHEREAS, the County owns and maintains open space areas and related public improvements within the boundaries of the County and PJMD (the “**Open Space**”); and

WHEREAS, there are specific projects that the County and PJMD have jointly identified to improve the Open Space as shown in **Exhibit A**, attached hereto and incorporated herein by this reference (each specific project is referred to as a “**Project**” and all projects are referred to collectively as the “**Projects**”); and

WHEREAS, the Parties desire to cooperatively fund the Projects with the County managing the work and each Party contributing an equal funding amount as set forth herein; and

WHEREAS, the Parties, their respective residents, constituents, and taxpayers, and the public will jointly benefit from the completion of the Projects and the resulting enhancement to the Open Space; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth their mutual understanding regarding their joint funding and completion of the Projects.

AGREEMENT

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

1. **Funding Commitments.**

A. **Total Funding.** The total estimated cost to complete the Projects with contingency is \$42,000 (“**Total Funding Amount**”) as estimated in **Exhibit A** to be split equally between the Parties as follows:

\$21,000.00 (“**County Funding Amount**”)

\$21,000.00 (“**PJMD Funding Amount**”)

B. **CTF Funds.** The Parties understand PJMD is eligible to receive, and does from time to time receive, funds from the Colorado Department of Local Affairs Conservation Trust Fund (“CTF Funds”), and that PJMD intends to fund the PJMD Funding Amount with CTF Funds. The County agrees the PJMD Funding Amount shall be used for the limited purpose of supporting the Projects, and the County will not intentionally utilize any funds contributed by PJMD as part of the PJMD Funding Amount in violation of the applicable laws, rules and regulations controlling the use of such funds.

C. **Timing of PJMD Funding.** The PJMD Funding Amount will be transferred to the County in a lump sum within seven (7) days of the Effective Date, and may be transferred by any means mutually agreeable to the Parties. The County will hold the PJMD Funding Amount funds in good faith to be used by the County for the sole limited purpose of funding the Projects as set forth in this Agreement. The County will not commence work on the Projects until it has received the PJMD Funding Amount and as further set forth herein.

D. **Reimbursement of Unspent Amounts.** The Parties agree the PJMD Funding Amount and the County Funding Amount shall be utilized to fund the Projects on an equal, dollar-for-dollar basis. Any unspent funds from the Total Funding Amount remaining after the termination of this Agreement shall be returned to the County and PJMD by equally dividing such unspent funds.

2. **Parties’ Representatives.** For purposes of reporting and conferring, each Party hereby designates the following individual to serve as such Party’s representative (jointly, the “**Parties’ Representatives**”) unless and until the Party designating the individual provides notice to the other Party of a change in the designated representative:

County Representative: Glen Poole (gpooole@arapahoegov.com)
PJMD Representative: Bob Blodgett (Bob.Blodgett@claconnect.com)

3. **Project Completion.**

A. **County Management of the Project and Costs.** The County shall be responsible for completion of the Projects in compliance with all applicable laws, rules and regulations, with

payments to be made from the Total Funding Amount and only so long as sufficient money is available. If the Total Funding Amount is exhausted or insufficient to cover the costs of a Project, that Project will not be completed. The Parties, through the County Representative and PJMD Representative, may mutually decide to prioritize or reprioritize the Projects and shall do so in writing.

B. Awarding Projects to Contractors. The contractors for the Projects shall be selected as follows:

1. For the purpose of obtaining bids or quotes, the County may package the Projects in one or more groups to obtain the most efficient result.
2. The County shall obtain bids or quotes for the Projects.
3. Upon receiving bids or quotes for the Projects, the County shall evaluate the same and recommend approval of a contractor(s).
4. The County shall send a copy of the bids or quotes for the Projects to the PJMD Representative by electronic mail identifying the recommended contract(s) and/or contractor(s).
5. The PJMD Representative shall have fourteen (14) days thereafter to review and either agree or disagree with the County's recommendation(s).
6. If the PJMD Representative agrees with the County, the County may proceed to award the Project(s) in accordance with its recommendation(s).
7. If the PJMD Representative does not respond to the County's electronic mail within fourteen (14) days, the County may treat such failure to respond as if the PJMD Representative agreed to the County's recommendation and the County may award the Projects accordingly.
8. If the PJMD Representative disagrees with the County's recommendation(s), the PJMD Representative and the County's Representative shall meet and confer to determine and agree which and how contractor(s) should be awarded the Project(s). Such agreement shall be memorialized in writing. Thereafter, the County may award the Projects according to that mutual agreement. If the Parties' Representatives are unable to reach an agreement on any Project or Projects, the County agrees it will not award a contract or contractor for such Project(s) pursuant to this Agreement unless and until the Parties have reached a mutual agreement regarding the Project(s).

C. Contractors. Any and all contractors contracted to complete the Projects shall be the contractors and/or agents of the County only, and shall not be considered or interpreted to be contractors or agents of PJMD.

D. Ongoing Reporting. The County shall provide to the PJMD Representative periodic reports upon completion of each Project or component of the Projects which shall describe, at a minimum, how the Total Funding Amount has been used to the date of the report.

E. Accounting. The County shall maintain or cause to be maintained full and complete records of actual costs incurred and funds committed and expended by the County for actual costs associated with the Projects in accordance with generally accepted accounting principles. PJMD shall have the right to audit the County's financial records related to the Projects during the term of this Agreement and up to three (3) years thereafter.

5. Term and Termination.

A. Term. This Agreement shall terminate one (1) year from the Effective Date or upon completion of the Projects and reimbursement of any unspent amounts to the Parties, as appropriate, whichever occur first. This Agreement may be extended upon mutual written agreement of the Parties.

B. Effect of Termination; Survival. Termination of this Agreement shall not relieve any Party from any ongoing obligations such as recognition and maintenance obligations, if any, and compliance with obligations herein regarding the use of funds, such obligations being of a permanent nature that shall survive termination.

6. Miscellaneous Provisions.

A. No Waiver of Rights. A waiver by any Party to this Agreement of the 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. No covenant or term of this Agreement shall be deemed to be waived by a Party except in writing signed by the governing body of the Party or by a person expressly authorized to sign such waiver by written authorization of a Party, and any written waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver unless specifically stated.

B. Relationship of the Parties. The Parties shall not be deemed by virtue of this Agreement to have entered into any partnership, joint venture, employer/employee or other relationship with each other than as contracting parties.

C. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to any of the Parties, their officials, officers, employees, contractors, or agents, or any other person acting on behalf of a Party and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

D. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this section shall not

authorize assignment.

E. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, sub-consultant or sub-contractor of a Party. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

F. Article X, Section 20/TABOR. The Parties understand and acknowledge that the Parties are each subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties each represent to the other that they have budgeted and appropriated sufficient funding to meet their obligations provided in this Agreement. Therefore, the Parties acknowledge that the provisions of Article X, Section 20 of the Colorado Constitution are met. For any amounts not fully appropriated, the Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, all payment obligations of the Parties, if any, which are subject to TABOR, are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Party’s current fiscal period.

G. Governing Law, Venue, and Enforcement. This Agreement shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado.

H. Survival of Terms and Conditions. The Parties understand and agree that all terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply.

I. Assignment and Release. All or part of the rights, duties, obligations, responsibilities, or benefits set forth in this Agreement shall not be assigned by a Party without the express written consent of the other Parties, which consent may be withheld for any or no reason.

J. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

K. Integration and Amendment. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and be signed by all Parties.

The Open Spaces Director is authorized to approve any amendment of this Agreement on behalf of the County that does not amend the funding obligations of the County hereunder, such as an extension of the term.

L. Severability. Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof in any given circumstance shall not affect the validity of any other provision of this Agreement.

M. Notices. Unless otherwise specifically required by this Agreement, 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 properly addressed to the intended recipient.

<u>If to the County:</u>	<u>If to PJMD:</u>
	Parker Jordan Metropolitan District Attn: Bob Blodgett, District Manager 8390 East Crescent Parkway, Suite 300 Greenwood Village, CO 80111
With Copy to: Arapahoe County Attorney's Office 5334 S. Prince Street Littleton, CO 80120 Attn: Ron Carl	With Copy to: Parker Jordan Metropolitan District c/o Spencer Fane LLP Attn: Tom George 1700 Lincoln Street Suite 2000 Denver, Colorado 80202

N. Authority. The County and PJMD represent that they are expressly authorized to enter into this Agreement on behalf of the Party they represent and to bind their respective entities.

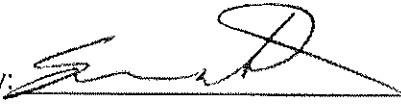
O. Counterpart Execution. This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

P. No Personal Liability. No elected official, director, officer, agent or employee of the Parties, as applicable, shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates written below.

[signature pages follow]

ARAPAHOE COUNTY

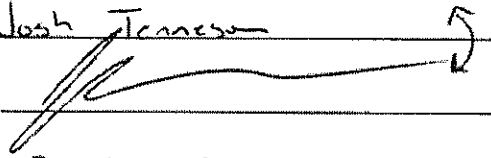
By: 

Name: SHANNON CARTER

Its: Open Spaces Director

Date: 7-12-19

ATTEST:

By: Josh Tennessee 

Name: Josh Tennessee

Its: Deputy Clerk

PARKER JORDAN METROPOLITAN
DISTRICT:

By: 

Name: William Lamsett

Its: PRESIDENT

Date: 7/16/2019

ATTEST:

By: 

Name: KEVIN A. PETTWAY

Its: SECRETARY

**EXHIBIT A
PUBLIC IMPROVEMENT PROJECTS**

Project	Location	Estimated Cost
Western Boundary Fence Replacement	Cherry Creek Valley Ecological Park	\$22,000
Picnic Shelter Concrete Re-Sealing	Arapahoe Road Trailhead	\$12,000
Restore Live Roof or Replace Live Roof with Traditional Roof	Broncos Parkway Trailhead	\$8,000
Contingency		
Total Estimated Cost		\$42,000