

INTERGOVERNMENTAL AGREEMENT REGARDING JOINT FUNDING OF PARKER JORDAN CENTENNIAL OPEN SPACE IMPROVEMENTS

THIS INTERGOVERNMENTAL AGREEMENT REGARDING JOINT FUNDING OF PARKER JORDAN CENTENNIAL OPEN SPACE IMPROVEMENTS ("Agreement") is entered into by and between the **CITY OF CENTENNIAL, COLORADO ("City")**, a Colorado home rule municipality, and the **PARKER JORDAN METROPOLITAN DISTRICT ("PJMD")**, a quasi-municipal corporation and political subdivision of the State of Colorado, and is effective as of the last date of execution by the parties as set forth in the signature blocks below ("**Effective Date**"). The City and PJMD may each be referred to as a "**Party**" and collectively referred to as the "**Parties**."

RECITALS AND REPRESENTATIONS

WHEREAS, the Parties are each authorized to enter into this contract pursuant to C.R.S. §29-1-203; and

WHEREAS, the City owns and maintains the Parker Jordan Centennial Open Space within the boundaries of the City and PJMD (the "**Open Space**"); and

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

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

WHEREAS, completion of the Projects and the resulting enhancement of the Open Space will provide a general benefit to the users of this public site; 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 benefits and obligations of this Agreement, the Parties mutually agree as follows:

1. **Funding Commitments.**

- A. **Total Funding.** The total estimated cost to complete the Projects with contingency is \$120,000 ("**Total Funding Amount**") as estimated in **Exhibit A** to be split equally between the Parties as follows:

\$60,000.00 ("City Funding Amount")

\$60,000.00 ("PJMD Funding Amount")

- B. CTF Funds. The Parties understand the District 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 the District intends to fund the PJMD Funding Amount with CTF Funds. The City agrees the PJMD Funding Amount shall be used for the limited purpose of supporting the Projects, and the City 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 City 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 City will hold the PJMD Funding Amount funds in good faith to be used by the City for the sole limited purpose of funding the Projects as set forth in this Agreement. The City 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 City 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 City and PJMD by equally dividing such unspent funds.

2. Parties' Representatives.

For purposes of reporting and conferring, each Party each hereby designates as follows 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 parties of a change in the designated representative:

City Representative: Jonah Schneider uschneider@centennialco.gov)
PJMD Representative: Bob Blodgett (Bob.Blodgett@claconnect.com)

3. Project Completion.

- A. City Management of the Project and Costs. The City shall be responsible for completion of the Projects in compliance with all applicable laws, rules and regulations, and generally in conformance with the order of priority listed in **Exhibit A** 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 City Representative and PJMD Representative, may mutually decide to 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 City may package the Projects in one or more groups to obtain the most efficient result.
2. The City shall obtain bids or quotes for the Projects.
3. Upon receiving bids or quotes for the Projects, the City shall evaluate the same and recommend approval of a contractor(s).
4. The City 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 seven (7) days thereafter to review and either agree or disagree with the City's recommendation(s).
6. If the PJMD Representative agrees with the City, the City may proceed to award the Project(s) in accordance with its recommendation(s).
7. If the PJMD Representative does not respond to the City's electronic mail within seven (7) days, the City may treat such failure to respond as if the PJMD Representative agreed to the City's recommendation and the City may award the Projects accordingly.
8. If the PJMD Representative disagrees with the City's recommendation(s), the PJMD Representative and the City'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 City 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 City 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 City only, and shall not be considered or interpreted to be contractors or agents of PJMD.

D. Ongoing Reporting. The City 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 City shall maintain or cause to be maintained full and complete records of actual costs incurred and funds committed and expended by the City

for actual costs associated with the Projects in accordance with generally accepted accounting principles. The City will provide PJMD copies of all Project invoices received by the City from contractors engaged to complete the work.

4. Term and Termination.

- A. Term. This Agreement shall terminate one (1) year from the Effective Date or upon completion of the Projects, whichever occur first.

In either case, this Agreement is subject to extension agreed upon in writing by the Parties.

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

- 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 use of funds, such obligations being of a permanent nature that shall survive termination.

5. 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 others 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 must be in writing and be signed by all Parties.

The City Manager is authorized to approve any amendment of this Agreement on behalf of the City that does not amend the funding obligations of the City 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.

If to the City:

If to PJMD:

City Manager City of Centennial City of Centennial Civic Center 13133 E. Arapahoe Road Centennial, Colorado 80112	Parker Jordan Metropolitan District Attn: Bob Blodgett, District Manager 8390 East Crescent Parkway, Suite 300 Greenwood Village, CO 80111
With Copy to: City Attorney City of Centennial City of Centennial Civic Center 13133 E. Arapahoe Road Centennial, Colorado 80112	With Copy to: Spencer Fane LLP 1700 Lincoln Street Suite 2000 Denver, Colorado 80202

N. Authority. The City 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.

SIGNATURE PAGE FOLLOWS

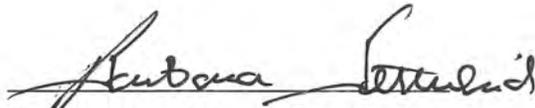
IN WITNESS WHEREOF, the parties to the Agreement have set their hands and seals the day and year first written above.

CITY OF CENTENNIAL, COLORADO

Date: June 3, 2019 By: 
Stephanie Piko, Mayor

ATTEST:

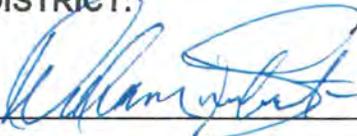
Approved as to Form:


City Clerk or Deputy City Clerk


By: City Attorney's Office

DEPARTMENT OF ORIGATION RESPONSIBLE FOR ADMINISTRATION OF CONTRACT:
City Manager's Office

PARKER JORDAN METROPOLITAN DISTRICT:

Date: 5/21/2019 By: 
Name: William Lamberton
Its: PRESIDENT

ATTEST:


Secretary

EXHIBIT A

PARKER JORDAN CENTENNIAL OPEN SPACE IMPROVEMENT PROJECTS

Project	Location	Estimated Cost
Picnic table and bike repair station	Kiosk shelter	\$8,000
Additional Pet Waste Stations (6)	Western and northern trails	\$3,000
Crusher fines pedestrian trail	Parallel to Happy Canyon Trail connection	\$30,000
Additional Benches (4)	Western and northern trails - various	\$6,000
Additional neighborhood trail connection	S. Kitteridge Cir.	\$30,000
Educational signage for varying landscapes/habitats	Various	\$10,000
Native tree diversity planting (5)	Throughout	\$10,000
Native grass seeding (2 acres)	Throughout	\$12,000
Native shrub diversity planting (5)	Throughout	\$2,000
Contingency		\$9,000
Total Estimated Cost		\$120,000