

**SECOND AMENDMENT  
TO  
INTERGOVERNMENTAL AGREEMENT  
BETWEEN  
COUNTY OF ARAPAHOE  
AND  
PARKER JORDAN METROPOLITAN DISTRICT**

**THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT** is entered into effective this 22nd day of December, 1994, by and between the COUNTY OF ARAPAHOE (the "County"), and PARKER JORDAN METROPOLITAN DISTRICT (the "District").

**RECITALS**

WHEREAS, on December 13, 1988, the County and the District entered into an Intergovernmental Agreement ("Agreement") relating to the installation and development of park improvements associated with the proposed Arapahoe County Regional Park and the proposed Cherry Creek Regional Park; and

WHEREAS, on September 17, 1990, the County and the District entered into an Amendment to the Agreement ("First Amendment"), to reflect a change in the economic conditions which occurred since the execution of the Agreement; and

WHEREAS, pursuant to the First Amendment, the County has deposited the amount of \$500,000 into an escrow account (the "Account"), to make such funds available for expenditure for parks and recreational facilities and programs at the Cherry Creek Regional Park, which amount has been reduced to \$480,000 following mutually-agreed upon withdrawals (the "Principal Balance"); and

WHEREAS, the First Amendment provides that the parties to the Agreement shall meet by January 1, 1995, to determine the specific recreational facilities or other public projects on which the parties shall expend the escrowed funds; and

WHEREAS, since the execution of the First Amendment, development within the District has not progressed to a point where a determination regarding particular projects can be clearly made, and the parties do not believe that these circumstances will materially change before the January 1, 1995 deadline; and

WHEREFORE, the County and the District desire to postpone the deadline for decision regarding the specific recreational facilities or other public projects to be built;

NOW, THEREFORE, it is agreed by the County and the District to amend the Agreement as follows:

#### COVENANTS AND AGREEMENTS

1. AMENDMENT OF AGREEMENT. Paragraph 3 of the Agreement, as modified by the First Amendment, is hereby amended in the following respects:

a. The following sentence in Paragraph 3 of the Agreement, as modified by the First Amendment:

"On or before January 1, 1995, the District and the County shall meet to determine the specific Recreational Facilities or other Public Projects for which the said escrowed funds shall be expended."

shall be amended to read as follows:

"On or before January 1, 2000, the District and the County shall meet to determine the specific Recreational Facilities or other Public Projects for which the said escrowed funds shall be expended."

b. The following sentence in Paragraph 3 of the Agreement, as modified by the First Amendment:

"Construction of the project(s) to be built with the escrowed funds shall commence on or before June 1, 1995."

shall be amended to read as follows:

"Construction of the project(s) to be built with the escrowed funds shall commence on or before June 1, 2000."

c. The following sentence in Paragraph 3 of the Agreement, as modified by the First Amendment:

"All interest earned shall be paid to the County."

shall be amended to read as follows:

"Interest earned and posted to the Account shall be paid as follows:

- a) Interest earned on amounts deposited in the Account through and including December 31, 1994 ("Pre-Interest"), shall be the sole property of the County and shall earn interest and such Pre-Interest and interest thereon shall be payable to the County upon written request as provided in the Escrow Agreement dated

April 13, 1995, incorporated herein by this reference (the "Escrow Agreement"). Interest earned on the Principal Balance from January 1, 1995 to April 12, 1995 (the "Post Interest"), and interest earned on the Principal Balance on and after April 13, 1995 shall be payable to the District and the County in the manner described below.

b) One-half of the Post Interest and interest thereon, and interest earned on one-half of the Principal Balance on and after April 12, 1995, shall accrue in favor of the District, to be disbursed as set forth below. The District shall have the right to direct in writing the investment by the Escrow Agent of one-half of the Principal Balance, one-half of the Post Interest, and interest thereon, subject to restrictions and limitations of the Public Depository Protection Act of Colorado ("PDPA").

c) One-half of the Post Interest and interest thereon, and interest earned on one-half of the Principal Balance on and after April 12, 1995, shall accrue in favor of the County, to be disbursed as set forth below. The County shall have the right to direct in writing the investment by the Escrow Agent of the Pre-Interest, one-half of the Principal Balance, one-half of the Post Interest, and interest thereon, subject to restrictions and limitations of the PDPA.

d) The District and the County shall have the option either to let their portion of the earned interest remain in their respective Escrow Account or withdraw their portion of the interest from the Escrow Account. If this latter option is selected the interest shall be paid upon receipt of a sight draft, in the form of Exhibit "A," signed only by the Authorized Representative of the County or the District, as appropriate.

e) The Escrow Agent shall separately account for interest earnings on amounts accruing to the benefit of the County and the District in the Escrow Account, such that interest earned is allocated to the benefit of the County and the District according to the investment instruments selected by each entity respectively. Notwithstanding anything herein to the contrary, neither the County nor the District shall have rights in the interest earnings allocable to the other or interest accrued on such interest.

d. The following sentence in Paragraph 3 of the Agreement, as modified by the First Amendment:

"If the parties cannot agree on the Recreational Facilities, then one half of the remaining principal balance shall be returned to the County to fund (or partially fund) its recommended Recreational Facilities and the other one-half of the

remaining principal balance shall be paid to the District to fund (or partially fund) its recommended Recreational Facilities."

shall be amended to read as follows:

"If the parties cannot agree on the Recreational Facilities, then one-half of the remaining balance plus interest accruals shall be returned to the County to fund (or partially fund) its recommended Recreational Facilities and the other one-half of the remaining balance plus interest accruals shall be paid to the District to fund (or partially fund) its recommended Recreational Facilities."

e. The following sentence in Paragraph 3 of the Agreement, as modified by the First Amendment:

"This joint account will require the signatures of both an authorized representative of the County and an authorized representative of Parker Jordan before funds are released, except for a release of earned interest."

shall be amended to read as follows:

"This joint account will require the signatures of both an authorized representative of the County and an authorized representative of the District before funds are released, except for the following circumstances: a) a release of earned interest; or b) a release of the funds in the event that by January 1, 2000, the parties have not reached agreement on the application of the escrowed funds for specific Recreational Facilities, as described in

the paragraph below in which case the party requesting release of funds from the Escrow Agent shall provide written notice of such request to the other party at the time of such request."

f. Paragraph 4 of the Agreement is amended by the deletion of the following last paragraph:

"Until such time as the escrowed funds (noted-above in paragraph 3) have been expended as provided for herein, the District shall accumulate the monies collected pursuant to this paragraph 4 from the 2 mill levy. The District shall be entitled to interest on the funds accumulated from the mill levy. The accumulated mill levy monies shall be paid to the County in the calendar year that at least sixty percent (60%) of the escrowed funds have been expended, or, in the event the parties do not agree on the projects to be built with the escrowed funds and the County has been allocated its portion of such funds hereunder, then upon expenditure of 100% of such allocated funds by the County, whichever first occurs."

g. Paragraph 4 of the Agreement is amended by the addition of the following paragraph at the end:

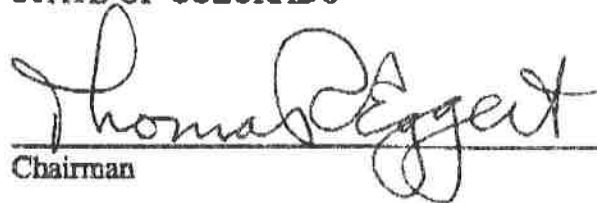
"The District, by December 31, 1994, or upon expiration of the Certificate of Deposit holding such funds, whichever occurs last, shall pay to the County the amount of funds, less interest, which

it has accumulated from a 2 mill levy collected in accordance with the Agreement prior to this Second Amendment."

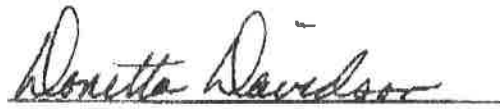
2. **PRIOR PROVISIONS EFFECTIVE**, Except as amended hereby, all the terms and provisions of the Agreement shall remain in full force and effect.

In witness whereof, the parties have executed this Second Amendment to Agreement as of the date first above written.

BOARD OF COUNTY COMMISSIONERS  
COUNTY OF ARAPAHOE,  
STATE OF COLORADO

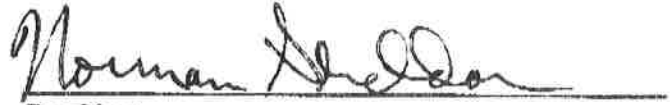
  
Chairman

ATTEST

  
Donetta Davidson  
Clerk to the Board



**PARKER JORDAN METROPOLITAN DISTRICT**

  
\_\_\_\_\_  
President

**ATTEST**

  
\_\_\_\_\_  
Secretary

**EXHIBIT A  
SIGHT DRAFTS:  
ACCRUED INTEREST PAYABLE TO THE COUNTY  
AND  
ACCRUED INTEREST PAYABLE TO THE DISTRICT**

**SIGHT DRAFT  
ACCRUED INTEREST PAYABLE TO THE DISTRICT**

Pursuant to that Escrow Agreement dated March 1, 1995, among Arapahoe County, Colorado, Parker Jordan Metropolitan District and Key Bank of Colorado, as Escrow Agent, please pay to the order of Parker Jordan Metropolitan District, one-half of all interest that has accrued on the principal balance of \$480,000.00 (existing as of January 1, 1995) deposited in Account No. \_\_\_\_\_ to the date of this sight draft. Payment should be forwarded to the attention of the Authorized Representative of the District as set forth in the Escrow Agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

**PARKER JORDAN METROPOLITAN DISTRICT**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SIGHT DRAFT  
ACCRUED INTEREST PAYABLE TO COUNTY**

Pursuant to that Escrow Agreement dated March 1, 1995, among Arapahoe County, Colorado, Parker Jordan Metropolitan District and Key Bank of Colorado, as Escrow Agent, please pay to the order of Arapahoe County, one-half of all interest that has accrued on the principal balance of \$480,000.00 (existing as of January 1, 1995) deposited in Account No. \_\_\_\_\_ to the date of this sight draft. Payment should be forwarded to the attention of the Authorized Representative of the County as set forth in the Escrow Agreement.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

\_\_\_\_\_  
Chairman  
Board of County Commissioners of  
Arapahoe County, Colorado