

FIRST AMENDMENT TO AGREEMENT

THIS FIRST AMENDMENT TO AGREEMENT ("Amendment") is made and entered into this 15th day of July 2003, by and among the **COUNTY OF ARAPAHOE, COLORADO**, a body corporate and politic of the State of Colorado (the "County"), **DOVE VALLEY METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("Dove Valley") and **PARKER JORDAN METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("Parker Jordan"), individually referred to herein as a "Party" and collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the Parties made and entered into an Agreement, dated May 16, 2002 (the "Agreement") in part to identify certain public infrastructure improvements to be funded by the Parties and the allocation of costs thereof between the Parties, to establish dates regarding the construction thereof, and to establish the process by which such public infrastructure improvements will be designed and constructed; and

WHEREAS, Paragraph 2 of the Agreement describes the Parties' agreement to cooperate in the funding and construction of Improvements to Jordan Road, sets forth the total estimated costs of the Improvements and sets forth each Parties' share of the costs associated with construction of the Improvements; and

WHEREAS, the actual total costs associated with construction of the Improvements have been confirmed and verified; and

WHEREAS, the Parties acknowledge that some of the Improvements are currently under construction and the contract is therefore subject to change orders that may affect the confirmed and verified actual totals costs referenced herein; and

WHEREAS, Paragraph 2 of the Agreement also sets forth provisions regarding payment for certain signalization costs; and

WHEREAS, the Parties desire to clarify their obligations with respect to payment of such signalization costs; and

WHEREAS, Paragraph 3 of the Agreement sets forth provisions regarding the maintenance of an Escrow Account for payment of costs associated with the construction of the Improvements and the signalization costs; and

WHEREAS, the Parties desire to amend the Agreement to reflect the actual total costs associated with construction of the Improvements, to re-allocate each Party's share of the actual

costs of the Improvements, to clarify each Party's obligation with respect to payment of the signalization costs and to address a refund of the excess funds in the Escrow Account held pursuant that certain Escrow Agreement by and among the Parties, dated May 16, 2002.

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

COVENANTS AND AGREEMENTS

1. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Agreement.

2. Paragraph 2 entitled "General Description of the Improvements" is hereby replaced in its entirety with the following:

"2. General Description of the Improvements and Allocation of Costs.

(a). Costs and Allocation. The Parties hereby agree to cooperate in the funding and construction of five lanes of Jordan Road for a length of approximately 2.2 miles, beginning at the Arapahoe/Douglas County border and extending north to north of the intersection of Arapahoe Road plus acceleration/deceleration lanes, drainage facilities, raised median, and sidewalk adjacent to the travel lanes (the "Improvements"). These Improvements are being constructed in the year 2002. Further description of, and the costs of, the Improvements is set forth below and in Exhibit A.

The original total estimated costs for the Improvements (including design costs) for each of the Parties were as follows ("Original Anticipated Contribution"):

	<u>Each Party's Share of Cost of Improvements</u>	<u>% of Total Costs</u>
Dove Valley:	\$ 3,975,978.49	35.39%
Parker Jordan:	\$ 3,975,978.49	35.39%
County:	<u>\$ 3,282,794.34</u>	<u>29.22%</u>
	<u>\$11,234,751.00</u>	100.00%

The original actual amount of monies deposited into the Escrow Account by each Party is as follows ("Original Escrow Deposits"):

Dove Valley:	\$ 3,975,988.49
Parker Jordan:	\$ 2,805,771.67
County:	<u>\$ 4,524,643.11</u>
	\$11,306,403.27

The allocation of total actual costs for the Improvements (including design costs) for each Party is set forth below (“Actual Contract Costs”):

	<u>Each Party’s Share of Actual Contract Costs</u>	<u>% of Actual Contract Costs</u>
Dove Valley	\$ 2,871,641.95	35.39%
Parker Jordan	\$ 2,871,641.95	35.39%
County	<u>\$ 2,370,991.18</u>	<u>29.22%</u>
	\$ 8,114,275.09	100%

The Parties acknowledge that all change orders have not been submitted and further funding from the contingency may be required by the Parties.

(b). Signalization Costs. The Parties acknowledge that the costs associated with the right-of-way acquisition and the majority of the design costs for the Improvements were paid for as a part of the Happy Canyon Agreement. Dove Valley and Parker Jordan shall each be obligated to pay \$374,000 for the signalization costs (“Signalization Payment”). The Signalization Payment includes Dove Valley’s and Parker Jordan’s 50% share of the \$31,000 costs associated with the Felsburg, Holt & Ullevig (the “FHU”) fee for designing the signalization.

Parker Jordan fully paid the Signalization Payment and deposited its portion of the Signalization Payment into the Escrow Account on or before May 23, 2003. Parker Jordan is, therefore, deemed to have fulfilled its obligation to contribute its portion of the Signalization Payment. With respect to Dove Valley’s portion of the Signalization Payment, upon reimbursement of the Refund Amount to Dove Valley pursuant to Section 3(h), below, the sum of \$374,000 shall be retained in the Escrow Account to be used for costs associated with signalization improvements and Dove Valley shall be deemed to have fulfilled its obligation to contribute its portion of the Signalization Payment.

In addition to the Signalization Payment, Dove Valley and Parker Jordan each agree to pay 50% of the \$21,210.60 cost for the installation of taps in the six medians within Jordan Road which

are anticipated to be landscaped ("Landscape Contribution", Change Order No. 1). Parker Jordan has deposited its portion of the Landscape Contribution into the Escrow Account. Upon Parker Jordan's deposit of its portion of the Landscape Contribution, Parker Jordan was deemed to have fulfilled its obligation to contribute its portion of the Landscape Contribution. With respect to Dove Valley's portion of the Landscape Contribution, upon reimbursement of the Refund Amount to Dove Valley pursuant to Section 3(h), below, the sum of \$10,605.30 shall be retained in the Escrow Account to be used for costs associated with landscape improvements and Dove Valley shall be deemed to have fulfilled its obligation to contribute its portion of the Landscape Contribution."

3. Paragraph 3 entitled "Improvements, Design and Construction Detail" is hereby revised with the addition of subparagraph (h), as follows:

"(h). Refund of Excess Escrow Amounts.

(i) Jordan Road Drainage Upgrade. Pursuant to the terms of Paragraph 3(c) of this Agreement, Parker Jordan constructed the Jordan Road Drainage Upgrade, which improvements were an integral and necessary part of the project. The costs associated with the Jordan Road Drainage Upgrade were \$101,950.59, which amount was acknowledged by the County. Pursuant to Paragraph 3(c) of this Agreement, Parker Jordan is to receive a credit in the amount of \$65,870.28 for the Jordan Road Drainage Upgrade. The Parties acknowledge that the actual costs of the Jordan Road Drainage Upgrade exceeded the estimated amount by \$19,042.32 and now desire to allocate such amount among the Parties at the percentages set forth in Paragraph 2(a) of this Agreement. The Parties further acknowledge that because Parker Jordan funded the excess costs in their entirety, Parker Jordan is entitled to a credit in the amount of \$12,303.25 (the "Drainage Credit"). The amount of the Drainage Credit shall be allocated to Dove Valley and the County in the percentages set forth in Paragraph 2(a) of this Agreement (the "Drainage Payment").

(ii) Median Upgrades. Pursuant to the terms of Paragraph 3(d) of this Agreement, Parker Jordan and Dove Valley constructed and funded the Median Upgrades in the amount of \$201,788.50, Change Order No. 2, which

amount was borne equally by Parker Jordan and Dove Valley (the "Median Upgrades Softscape Improvements"). In addition, Parker Jordan, Dove Valley and the County constructed and funded patterned concrete medians with native seed landscaping in the amount of \$168,160.00, Change Order No. 3, which amount was allocated among the Parties in the percentages set forth in Paragraph 2(a) of this Agreement (the "Median Upgrades Hardscape Improvements").

(iii) Briarwood Intersection Tie-In. Dove Valley constructed the Briarwood Intersection Tie-In, which improvements were an integral and necessary part of the project. The costs associated with the Briarwood Intersection Tie-In are estimated to be \$23,070.01. Pursuant to the terms hereof, Dove Valley is to receive a credit of \$14,905.53 for the Briarwood Intersection Tie-In (the "Briarwood Credit"). The amount of the Briarwood Credit shall be allocated to Parker Jordan and the County in the percentages set forth in Paragraph 2(a) of this Agreement (the "Briarwood Payment").

(iv) Each of the Parties shall be entitled to a refund of the difference between the Original Escrow Deposit and the Actual Contract Costs, less any Signalization Payment, any Landscape Contribution, any Drainage Payment, any Median Upgrades Softscape Improvements, any Median Upgrades Hardscape Improvements, any Briarwood Payment, less the total contingency amount of \$649,697.09, each as applicable, in the amounts and as set forth in Exhibit F, attached hereto and incorporated herein by this reference (the "Refund Amount"). The Escrow Agent shall deposit the Refund Amount with the appropriate Party within ten (10) days of the dated date of the First Amendment to this Agreement.

The total amount to be funded by/(refunded to) each Party, if the contingency is required, is:

Arapahoe County	(\$1,862,393.99)
Dove Valley	(\$274,188.30)
Parker Jordan	\$185,469.59"

4. Ratification. Except as expressly set forth in this Amendment, the Parties hereby ratify and reaffirm each of the terms, covenants and conditions of the Agreement.

5. Conflicts; Incorporation of Agreement Terms. In the event of any express conflict or inconsistency between the terms of the Agreement and this Amendment, this Amendment shall control and govern. In all other respects, except to the extent expressly modified herein, the covenants and conditions of the Agreement are hereby ratified, reaffirmed and republished in their entirety.

6. Counterpart Execution. This Amendment may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

[Remainder of page intentionally left blank].

Made and entered into as of the date and year first above written.

DOVE VALLEY METROPOLITAN DISTRICT

By: Glenn Sandler
Glenn Sandler, President

ATTEST

By: Deborah D. McCoy
Secretary

PARKER JORDAN METROPOLITAN DISTRICT

By: _____

ATTEST

By: _____
Secretary

COUNTY OF ARAPAHOE, COLORADO

By: _____

ATTEST

By: _____
County Clerk

ACKNOWLEDGMENT OF ESCROW AGENT

The undersigned Escrow Agent acknowledges receipt of a fully executed copy of this Amendment and agrees to comply with and be bound by the requirements of this Amendment as they amend the provisions of Paragraph 2 of the Agreement.

THE BANK OF CHERRY CREEK, N.A., Escrow Agent

By: J. B. G.
Its: TRWA OFFICER

Made and entered into as of the date and year first above written.

DOVE VALLEY METROPOLITAN DISTRICT

By: _____

ATTEST

By: _____
Secretary

PARKER JORDAN METROPOLITAN DISTRICT

By: Norman Sheldon

ATTEST

By: John R. Little
Secretary

COUNTY OF ARAPAHOE, COLORADO

By: _____

ATTEST

By: _____
County Clerk

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THE BANK OF CHERRY CREEK, N.A., Escrow Agent

By: _____
Its: _____

Made and entered into as of the date and year first above written.

DOVE VALLEY METROPOLITAN DISTRICT

By: _____

ATTEST

By: _____
Secretary

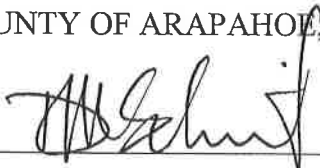
PARKER JORDAN METROPOLITAN DISTRICT

By: _____

ATTEST

By: _____
Secretary

COUNTY OF ARAPAHOE, COLORADO

By:  _____

Authority granted by Comissioner Resolution No. 03-0121

ATTEST

By: _____
County Clerk

ACKNOWLEDGMENT OF ESCROW AGENT

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THE BANK OF CHERRY CREEK, N.A., Escrow Agent

By: _____
Its: _____

EXHIBIT A

Contract Amounts and Amounts for Reimbursement to Parties
(Exhibit F to Agreement)

**PARKER JORDAN METROPOLITAN DISTRICT
PHASE II RECONCILIATION**

	Dove Valley 35.39%	Parker Jordan 35.39%	Arapahoe County 29.22%	Contributed Total
Actual costs of improvements (1):				
Interstate Highway Construction	2,722,794.96	2,722,794.96	2,248,094.63	7,693,684.55
Felsburg, Holt & Ullevig	148,846.99	148,846.99	122,896.56	420,590.54
Contract total	2,871,641.95	2,871,641.95	2,370,991.18	8,114,275.09
Credit on Jordan Road drainage upgrades (2)	36,080.31	(65,870.28)	29,789.97	-
Signalization payments - 50% each DVMD and PJMD (3)	373,551.38	373,551.38		747,102.76
Landscape contribution (taps) - 50% each DVMD and PJMD	10,605.30	10,605.30		21,210.60
Add'l cost of Jordan Road drainage upgrades (2)	6,739.08	6,739.08	5,564.17	19,042.32
Median upgrades - hardscape	59,511.82	59,511.82	49,136.35	168,160.00
Median upgrades - softscape - 50% each DVMD and PJMD	100,894.25	100,894.25		201,788.50
Briarwood intersection tie-in - funded by DVMD	(14,905.53)	8,164.48	6,741.05	-
FHU change order	70,072.20	70,072.20	57,855.60	198,000.00
Total to be funded	3,514,190.77	3,435,310.19	2,520,078.32	9,469,579.27
Balance funded as of 6/30/03 (4)	(3,975,988.49)	(3,430,529.36)	(4,524,643.11)	(11,931,160.96)
Jordan Road drainage upgrades paid by PJMD (2)		(19,042.32)		(19,042.32)
Allocated interest income thru 4/03	(42,318.38)	(30,196.72)	(47,670.69)	(120,185.79)
Balance to be funded/(refunded) if no contingency is required	(504,116.10)	(44,458.21)	(2,052,235.48)	(2,600,809.80)
County requested contingency of \$847,697.09 less the \$198,000 FHU change order per above	229,927.80	229,927.80	189,841.49	649,697.09
Balance to be funded/(refunded) if contingency is required	(274,188.30)	185,469.59	(1,862,393.99)	(1,951,112.71)

- (1) - Accepted bid amounts - contract is currently in process and is subject to change orders
(2) - Jordan Road Line B installation. The above additional costs includes the \$3,691.07 of invoices paid by the District in April 2003.
(3) - Accepted bid amount - contract total includes \$31,000 for Felsburg, Holt & Ullevig fee
(4) - Funded as follows:

May-03	\$ 3,975,988.49	\$ 2,800,000.00	\$ 2,805,686.00
Jun-03			1,718,957.11
Aug-03		5,771.67	
Jan-03		171,605.30	
May-03		374,000.00	
Jun-03		70,072.20	
Traffic Signalization-FHU-Jan & June		9,080.19	
	\$ 3,975,988.49	\$ 3,430,529.36	\$ 4,524,643.11

PARKER JORDAN METROPOLITAN DISTRICT
Jordan Road Phase II - Traffic Signal

2002

Expense 826-3-01 Jordan Road Phase II Traffic Signal

Felsburg Holt & Ullevig	1925	01/13/03	<u>3,827.28</u>
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Balance @ 12/31/02			<u><u>3,827.28</u></u>
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2002

Expense 826-3-01 Jordan Road Phase II Traffic Signal

Felsburg Holt & Ullevig	1970	05/12/03	<u>5,252.91</u>
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Balance @ 6/09/03			<u><u>5,252.91</u></u>
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Project-to-date			<u><u>9,080.19</u></u>
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