

**INTERGOVERNMENTAL AGREEMENT REGARDING  
CONSTRUCTION AND COST SHARING OF TRAFFIC CONTROLS AND  
TERMINATION OF PRIOR INTERGOVERNMENTAL AGREEMENT REGARDING  
CONSTRUCTION AND COST SHARING OF TRAFFIC SIGNALS**

This INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION AND COST SHARING OF TRAFFIC CONTROLS AND TERMINATION OF PRIOR INTERGOVERNMENTAL AGREEMENT REGARDING CONSTRUCTION AND COST SHARING OF TRAFFIC SIGNALS (the "Agreement") is made and entered into as of this 4th day of October, 2010 by and between the CITY OF CENTENNIAL, a home rule municipal corporation of the State of Colorado (the "City") and DOVE VALLEY METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") (collectively, the "Parties," and each individually a "Party").

**RECITALS**

WHEREAS, the City is authorized to coordinate and participate in the provisions of certain public infrastructure improvements within its boundaries in the State of Colorado, including, among other things, street and signalization improvements; and

WHEREAS, the District was organized for the purpose of providing certain public infrastructure improvements within and without its boundaries in the City, including, among other things, street and signalization improvements; and

WHEREAS, the District and the City previously entered into an Intergovernmental Agreement Regarding Construction and Cost Sharing of Traffic Signals, dated April 17, 2006, as amended by letter agreements dated April 9, 2009, August 11, 2009, and December 8, 2009 (the "Traffic Signal IGA"), which Traffic Signal IGA is terminated upon execution of this Agreement in accordance with Paragraph 12(a) hereof; and

WHEREAS, pursuant to the Traffic Signal IGA, the District currently has the sum of Two Hundred Eighty-Five Thousand Dollars (\$285,000) on deposit with the City (the "Signal Account Funds") in the Signal Account (as defined in the Traffic Signal IGA) which the City desires to refund to the District; and

WHEREAS, pursuant to the Traffic Signal IGA, the City agreed to refund, or to direct Arapahoe County (the "County") to refund, certain payments previously collected from property owners within the City (the "Prior Payments"), and as of the date of this Agreement two of the Prior Payments, as more specifically described on Exhibit A, have not yet been refunded (the "Remaining Deposits"); and

WHEREAS, the District has agreed to refund the Remaining Deposits and to accept reimbursement for the same from the County, and the City agrees to waive all rights to receipt of the funds associated with the Remaining Deposits; and

WHEREAS, the District and the City wish to provide for cost sharing related to the construction of certain signalization, roundabout improvements, or other traffic control improvements as may be deemed appropriate by the City (the "Traffic Controls"); and

WHEREAS, the City is authorized to design, construct and install Traffic Controls at intersections that meet the appropriate warrant criteria published in the Manual on Uniform Traffic Control Devices ("Traffic Control Warrants"), or at such earlier time as may be determined by the City; and

WHEREAS, the Traffic Controls discussed in this Agreement shall meet all City standards applicable at the time of design and construction and shall be owned and maintained by the City; and

WHEREAS, the District and the City desire to cooperate in the cost sharing and construction of the Traffic Controls as set forth herein.

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. Purpose. The purpose of this Agreement is to provide for the refund of the Remaining Deposits, to allocate between the Parties the costs of the Traffic Controls located within the boundaries of the District and within the City, and to establish the process by which such Traffic Controls will be designed and constructed. Except as hereinafter provided, the Traffic Controls designated to be funded and constructed under this Agreement have been designated, pursuant to the City's Traffic Master Plan, due to their location where streets classified as Major Collectors, or above, intersect with Major or Minor Arterials ("Intersection Classifications"). The District and the City agree to share in the costs of Traffic Controls for certain intersections as more particularly described on **Exhibit C**, and based upon the Intersection Classifications and participation levels outlined on **Exhibit B**, both exhibits are attached hereto and incorporated herein by this reference. In the event the City annexes any additional property within the District boundaries, the Parties agree to establish participation levels for any additional intersections and amend **Exhibit B** and **Exhibit C** accordingly.

2. Refund of Signal Account Funds. Immediately upon the execution of this Agreement, the full amount of the Signal Account Funds shall be refunded to the District, which amounts shall not include accrual of any interest.

3. Refund of Remaining Deposits. As of the date of this Agreement, the City has not yet received the funds from the County to refund the Remaining Deposits and hereby authorizes the County to release the Remaining Deposit amounts to the District. Pursuant to a Letter of Agreement between the County and the District, dated of even date herewith, the District has agreed to use its own funds to repay the Remaining Deposits, and the County has agreed to release the Remaining Deposits to reimburse the District for this expense. Upon the District's payment of the Remaining Deposit amounts to the appropriate property owners, the District shall provide the City with evidence of the same. The City hereby acknowledges the Letter of Agreement and agrees that, upon receipt of evidence of the District's payment of the Remaining Deposits, the City shall waive any and all rights related to the funds associated with the Remaining Deposits.

4. Timing of Traffic Control Improvements. It is anticipated the City will design, construct and install the Traffic Controls at each identified intersection no later than the next fiscal year after the intersection meets the Traffic Control Warrants, or within a reasonable amount of time as determined at the discretion of the City. The City may also elect to design, construct and install Traffic Controls at such earlier times as may be deemed appropriate by the City. The District shall not be liable for any decision by the City with regard to the priorities for, or timing of, installation of Traffic Controls.

5. Selection of Traffic Control Type. The City shall have the discretion to determine the appropriate type of Traffic Control for each intersection, which Traffic Control types may include signalization, roundabout improvements, or other traffic control improvements ("Traffic Control Selection"). The City's anticipated Traffic Control Selection for each intersection is indicated on **Exhibit C**. If the City later determines to change its Traffic Control Selection for a particular intersection, the City shall be responsible for paying the full amount of any cost increase that arises as a result of the change from the Traffic Control Selection listed on **Exhibit C**.

6. Annual Notice and Budgeting. Beginning on or before September 20, 2010, and on or before each September 20th thereafter until all of the Traffic Controls anticipated on **Exhibit C** have been financed and constructed, the City shall provide the District with written notice that identifies the Traffic Controls that are anticipated to be constructed within the following fiscal year, together with a cost estimate for the design and construction of such Traffic Controls prepared by an engineer (the "Annual Notice"). If the cost of a Traffic Control increases by more than ten percent (10%) over the amount estimated in **Exhibit C**, and if such cost increase is not the result of a change in Traffic Control Selection pursuant to Section 4, the City shall provide the District with written documentation explaining the increase in cost. Representatives of the City and the District shall meet to determine whether to: (i) rebid the project; (ii) reduce the scope of the project or otherwise reduce costs without adversely effecting the safety of that intersection; or (iii) proceed with the project and share the increased cost in accordance with the cost-sharing criteria set forth on **Exhibit C**.

For each fiscal year, the Parties shall budget and appropriate, in accordance with statutory requirements, the necessary funds for the Traffic Controls based on the cost-sharing criteria set forth on **Exhibit C** and the costs estimated in the Annual Notice, or in such other amounts as may be determined by the Parties in accordance with this Section and Section 7. The funding obligations of the Parties hereunder are expressly conditioned upon such annual budgeting and appropriation. No contract award shall be given by the City to its contractor until and unless the Parties have budgeted and appropriated the funds necessary for that contract.

7. Traffic Control Funding. The City shall provide the District notice of its intent to begin construction on any Traffic Control identified in the prior Annual Notice (a "Notice of Intent"). The District shall, within forty-five (45) days following receipt of a Notice of Intent, deposit with the City its full pro-rata share of the funds for that Traffic Control. The City shall not provide its contractor with a notice to proceed until the District has deposited the necessary funds.

Upon receipt of the funding, the City shall proceed to construct and install the Traffic Control in accordance with the relevant plans and specifications and in accordance with all City standards applicable at the time of design and construction. All payments to contractors shall be subject to withholding for retention in accordance with law, and subject to the City's construction administrator's recommendation that such payments be made in accordance with work performed to the satisfaction of the City. Field orders not resulting in an increase in the contract price, time or scope of work may be processed by the City with reasonable notice to the District but without prior approval by the District. Except for field order changes up to the total of the "force account" line item or to handle emergency situations, the District must approve in writing any change orders which increase the contract price or time. Final payment shall be made in accordance with Colorado law. Concurrently with the written approval of any change order which increases the project costs, the District shall immediately deposit with the City its pro-rata share of the cost increase (based on each Party's percentage share for the particular Traffic Control as set forth in Exhibit C).

8. City's Obligation to Fund. In the event that the District has provided funds to the City, and the City has issued its contractor a notice to proceed pursuant to Section 7 herein, the City's obligation to fund its pro-rata share of the cost for the completion of applicable Traffic Control(s), as set forth on Exhibit C, shall be enforceable by the District in accordance with any legal remedies available at law or in equity.

9. Construction Claims. The City shall give written notice to the District of each and every material breach of any construction contract, guaranty or warranty executed or issued in accordance with this Agreement. The City, after notice to and consultation with the District, may assert against any contractor constructing the Traffic Control(s) any claim that the City may have against the contractor under any construction contract and/or guarantee and/or warranty. In the event any contractor asserts any claims against the City, the City will give the District written notice of each and every claim. The City shall bear all costs to resolve such claims and any litigation costs related thereto, which shall include, but not be limited to, related consultant costs and attorneys' fees.

10. Indemnification.

(a) To the extent permitted by law, the City shall defend, indemnify, and hold the District and its officers and agents harmless, including, without limitation, for attorney's fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by the construction, installation, or operation of the Traffic Control(s), or by any other of the City's activities undertaken pursuant to this Agreement.

(b) No term or condition of this Agreement shall be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits or protection provided to the City and the District under the Colorado Governmental Immunity Act.

11. Term and Termination. The "Term" of this Agreement shall be for five (5) years from the date hereof. Upon mutual written consent of the Parties, the Agreement may be extended for additional five (5) year periods. The Agreement shall terminate upon the expiration

of the Term, or at such earlier time as all of the Traffic Controls anticipated on **Exhibit C** have been financed and constructed.

12. Miscellaneous.

(a) Termination of Prior Agreement. The City and the District acknowledge that their continuing rights and obligations with respect to the cost sharing and funding of certain traffic signals are set forth in this Agreement and the City and the District agree that the Traffic Signal IGA is terminated and of no further force or effect as of the date of this Agreement.

(b) Governing Law and Venue. The Parties agree this Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement shall be in the appropriate court for Arapahoe County, Colorado.

(c) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties in their successors, assigns, and legal representatives.

(d) Third Party Beneficiaries. It is specifically agreed among the Parties executing this Agreement that it is not intended by any of the provisions of any part of this Agreement to create a third party beneficiary hereunder, or to authorize anyone not a party to this Agreement to maintain any claim under this Agreement. The duties, obligations and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed by law.

(e) Entire Agreement; Amendments. This Agreement, including any exhibits attached hereto and incorporated herein by reference, contains the entire understanding of the Parties with respect to this subject matter. This Agreement supersedes all prior agreements and understandings between the Parties with respect to its subject matter. This Agreement may be amended only by a written instrument duly executed by the Parties or their respective successors or assigns.

(f) Notice and Communications. Any notice pursuant to the terms and conditions of this Agreement shall be in writing and delivered personally, or sent by certified mail, return receipt requested, or sent by a recognized overnight mail or courier service, with delivery receipt requested, to the following addresses (or to such other address as may from time to time be specified in writing by the Parties):

If to the City:

Jacque Wedding Scott, City Manager  
City of Centennial  
13133 E. Arapahoe Road  
Centennial, CO 80112

With a copy to:

Robert Widner, City Attorney  
Widner Michow & Cox LLP  
13133 E. Arapahoe Road  
Centennial, CO 80112

If to the District:

Lisa Jacoby, District Manager  
Dove Valley Metropolitan District  
141 Union Blvd., Suite 150  
Lakewood, CO 80228

With a copy to:

Mary Jo Dougherty  
McGeady Sisneros, P.C.  
450 E. 17<sup>th</sup> Avenue, Suite 400  
Denver, CO 80203

Notices shall be effective when received by the party to whom addressed.

(g) Binding Representatives. In regard to change orders, the City designates its City manager and/or his/her designee as its representative with power to bind the City.

(h) Acceptance of the Traffic Controls. Forthwith upon construction contract final acceptance of the Traffic Controls, the City shall, upon occurrence of typical prerequisites therefore, accept title to and ownership of the Traffic Controls.

(i) Default/Remedies. In the event of a breach or default of this Agreement by either party, the non-defaulting party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any litigation, arbitration or other proceeding to enforce the terms, covenants or conditions hereof, the prevailing party in such litigation, arbitration or other proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

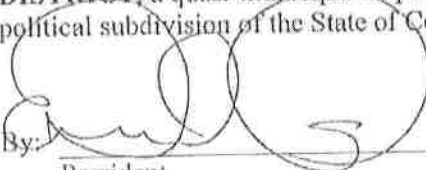
(j) Force Majeure. Wherever there is provided in this Agreement a time limitation for performance by either Party for any obligations related to construction, the time provided for shall be extended for as long as and to the extent that the delay in compliance with such limitation is due to an act of God, strikes, labor disputes, inability to obtain labor or materials or reasonable substitutes therefore, fire or other casualty and other causes beyond the control of such Party.

(k) Counterpart Execution. This Agreement 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.

**[Signature Pages Follow]**

**[Signature Page to Intergovernmental Agreement Regarding Construction and Cost Sharing Of Traffic Controls and Termination of Prior Intergovernmental Agreement Regarding Construction and Cost Sharing of Traffic Signals]**

**DOVE VALLEY METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado

By:   
\_\_\_\_\_  
President

Attest:

  
\_\_\_\_\_  
Secretary



[Signature page to Intergovernmental Agreement Regarding Construction and Cost Sharing Of Traffic Controls and Termination of Prior Intergovernmental Agreement Regarding Construction and Cost Sharing Of Traffic Controls]

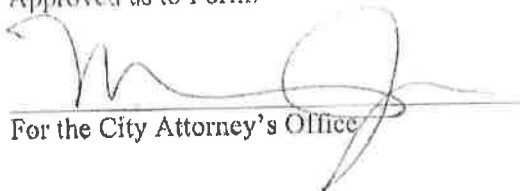
CITY OF CENTENNIAL, COLORADO

By:   
Its: 9.10.10

Attest:

  
City Clerk

Approved as to Form:


  
For the City Attorney's Office

DEPARTMENT OF ORIGINATION: PUBLIC WORKS

**FINANCE DEPARTMENT REVIEW:**

*Finance has reviewed this agreement and the funds:*

- are appropriated and available for this agreement.
- are not available for this agreement.
- Other: N/A

By: 

Budgeted Item/Account: N/A

DEPARTMENT/POSITION RESPONSIBLE FOR ADMINISTRATION OF CONTRACT:

PUBLIC WORKS / DEPUTY DIRECTOR

EXHIBIT A

Remaining Deposits

<u>Case #</u>	<u>Intersection</u>	<u>Case Name</u>	<u>Held By</u>	<u>Instrument</u>	<u>Total Amount Deposited and to be Repaid</u>
P98-119	S. Revere/E. Easter	Koll Centennial Center	Arapahoe County	Cash Deposit	\$12,500
P97-001	S. Revere/E. Briarwood	Arapahoe Airport Center JV #16	Arapahoe County	Cash Deposit	\$25,000

## EXHIBIT B

### Intersection Classifications & Participation Levels

For purposes of the Agreement, the following roadways are classified as follows:

<u>Roadway Name</u>	<u>Classification</u>
S. Peoria Street	Major Arterial
S. Tucson Street	Major Collector
S. Potomac Street	Minor Arterial
E. Easter Avenue	Major Collector <sup>1</sup>
E. Fremont Avenue	Major Collector
E. Briarwood Avenue	Major Collector
S. Revere Street	Major Collector

Pursuant to this Agreement, the District and the City agree to the following participation levels:

<u>Intersection Classifications</u>	<u>Participation Level</u>	
	<u>District</u>	<u>City</u>
Major Arterial/Major Arterial	25%	75%
Major Arterial/Minor Arterial	50%	50%
Major Collector/Major or Minor Arterial	75%	25%
Major Collector/Major Collector	100%	0%
Major Collector/Other Roadways	100%	0%

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<sup>1</sup> E. Easter Avenue is a major collector west of Peoria Street and a minor arterial east of Peoria Street.

**EXHIBIT C**

Pursuant to this Agreement, the District and the City agree to share in the costs of Traffic Controls for the following intersections:

<u>Intersection</u>	<u>Classification</u>	<u>Traffic Control Selection</u>	<u>Estimated Cost</u>	<u>District Share</u>		<u>City Share</u>	
				<u>%</u>	<u>\$</u>	<u>%</u>	<u>\$</u>
S. Potomac/E. Briarwood	Minor arterial/Major collector	Signalization	\$250,000	75%	\$187,500	25%	\$62,500
S. Peoria/E. Briarwood	Major arterial/Major collector	Signalization	\$250,000	75%	\$187,500	25%	\$62,500
S. Revere/E. Briarwood	Major collector/Major collector	Signalization	\$250,000	100%	\$250,000	0%	\$0
S. Tucson/E. Briarwood	Major collector/Major collector	Signalization	\$250,000	100%	\$250,000	0%	\$0
S. Revere/E. Easter	Major collector/Major collector	Signalization	\$250,000	100%	\$250,000	0%	\$0