

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE PARKER JORDAN METROPOLITAN DISTRICT
REIMBURSEMENT POLICY

WHEREAS, the Parker Jordan Metropolitan District (the "District") was organized for the purpose of providing certain public improvements within its boundaries, as authorized by its Service Plan; and

WHEREAS, the District anticipated that certain property owners within the District would desire to undertake funding and construction of these capital improvements before the District determines to fund and construct them; and

WHEREAS, the District by Resolution Number 95-001 adopted a reimbursement policy (the "Policy") governing future commitments by the District to reimburse the property owners who fund and construct the capital improvements authorized by the District's Service Plan; and

WHEREAS, in 1997 the District, by resolution, revised the Policy set forth in Resolution Number 95-001; and

WHEREAS, in 1999 the District, by resolution, adopted a provision to provide that the person or entity requesting reimbursement shall bear the cost of processing such reimbursement request; and

WHEREAS, in 2001, the District, by resolution, revised the policy to provide for guidelines to aid the Board in reasonably and equitably apportioning District funds among requests for reimbursement, at the sole discretion of the Board, when such funds do not allow for funding of all reimbursement requests in full; and

WHEREAS, on September 5, 2003, the District, by resolution, revised the policy to provide for reimbursement of actual costs prior to the award of a contract for public

improvements where one hundred percent (100%) of the funds are required prior to the award of the contract for a multi-jurisdictional project; and

WHEREAS, on January 12, 2004, the District, by resolution, revised the policy to address situations in which developers contract with third parties to provide services for the construction of public improvements for which the developer subsequently seeks reimbursement from the District; and

WHEREAS, on April 11, 2005, the District, by resolution, revised the policy to provide for no reimbursement for landscaping in public rights-of-way, except for medians and except for restoration and rehabilitation purposes. To provide for no reimbursement of sidewalks on private property and to require the developer's cooperation in locating bus benches and/or shelters on private property adjacent to public rights-of-way; and

WHEREAS, on April 19, 2007, the District, by resolution, revised the policy to provide that reimbursements for any public improvements will be withheld pending preliminary acceptance of said improvements by an Approving Entity, to clarify the responsibility of all developers seeking reimbursement from funds generated by the issuance of bonds to pay a pro rata share of cost of issuance of such bonds, and to provide for the possible reimbursement for some or all of the costs associated with street landscaping and fencing; and

WHEREAS, on November 16, 2007, the District revised the policy to further clarify those instances under which the District may provide for possible developer reimbursement, under certain circumstances, for some or all of the costs associated with street landscaping; and

WHEREAS, the District desires to further revise the policy to require that Developers furnish certain certifications to the District from the Developer's design engineer and to limit certain multiple reimbursements; and

WHEREAS, this Resolution is intended to include the entire Reimbursement Policy as it exists on the date hereof.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE PARKER JORDAN METROPOLITAN DISTRICT AS FOLLOWS:

REIMBURSEMENT POLICY

1. PURPOSE. The District shall be authorized, but shall not be obligated to, reimburse private persons or entities (“Developers”) for the actual costs of design and construction of public improvements which are authorized by the District's Service Plan. No reimbursement shall be made, except in compliance with this Policy. This Policy is intended only to establish the guidelines to be followed by the District Board of Directors in evaluating any reimbursement request, and the existence of circumstances falling within the guidelines hereinafter set forth shall not establish any obligation of the District to make reimbursement.

2. EFFECTIVE DATE. This Policy shall apply only to distribution of District funds for public improvements following the date of its adoption. This Policy shall apply to all Requests for Reimbursement whether the public improvements have been constructed prior to the date hereof, or otherwise.

3. AMENDMENT OF POLICY. This Policy may be amended from time to time by the Board of Directors of the District.

4. DEFINITIONS. As used herein, the following terms shall have the following meanings:

a. Approving Entity means Arapahoe County, the City of Centennial, Colorado, the City of Aurora, Colorado, the State of Colorado, the Federal Government, the District or other governmental entity with lawful jurisdiction to approve the design of public improvement(s) and, if appropriate under the circumstances, to own and maintain the public improvement(s) for which reimbursement is requested.

b. Hard Construction Costs means those direct costs associated with providing labor and/or materials for the construction and/or installation of potentially reimbursable public infrastructure for the District; such a definition explicitly excludes those “soft” construction costs associated with design, engineering, or construction management fees or costs. Such Hard Construction Costs shall include:

1. The costs of labor and materials, of machinery, furnishings, and equipment, and of the restoration of property damaged or destroyed in connection with construction work; and

2. The costs of demolition, removal and relocation of eligible public improvements.

Any questions concerning items to be included in this definition shall be resolved by the Board in its absolute discretion.

c. Soft Construction Costs means design, engineering and construction management fees or costs related to the Hard Construction Costs for an eligible project. Legal fees, general overhead costs and the cost of permits and fines are specifically excluded from this definition. Such Soft Construction Costs shall include:

1. The costs of surveys, appraisals, plans, designs, specifications and estimates;
2. The costs, fees and expenses of printers, engineers, architects, construction managers and construction administrators; and
3. The costs of publishing, reproducing, posting, mailing or recording documents.

Any questions concerning items to be included in this definition shall be resolved by the Board in its absolute discretion.

d. *[reserved]*

5. CRITERIA FOR ELIGIBILITY. The actual costs of design and construction of public improvements within the District's boundaries furnished by private persons or entities (“Developers”) are eligible for reimbursement by the District, if the Board determines, in its sole discretion, that the public improvements meet the following criteria:

a. The District has the constitutional and statutory power to provide the improvement for which reimbursement is to be made and the proposed improvements are authorized by the District's Service Plan; AND

b. The District has the financial capability to fund the proposed reimbursement, through the issuance of bonds or other funding mechanisms selected in the sole discretion of the Board of Directors, taking into account any relevant factors, including, without limitation, the effect of the proposed debt service upon the marketability of properties located within the District; AND

c. The improvements are determined to be District-wide or regional in nature, specifically including, but not limited to: street improvements that would be classified as arterial or collector streets under the applicable Approving Entity planning and engineering standards, together with appurtenant grading, paving, landscaping, curbs, gutters, culverts, and other drainage facilities, sidewalks, parking facilities, and related facilities; safety protection facilities through traffic and safety controls, signage and devices; park and recreation improvements which are open to the general public, and otherwise of character that permits their use for active and passive recreational activities; storm drainage facilities and improvements, including, but not limited to, detention and retention ponds, and other surface water controls; and any other public improvement or facility which, in the sole discretion of the Board, provides a District-wide or regional benefit based on all of the facts and circumstances of which the Board has knowledge at the time the determination is made; OR

The improvements, whether or not District-wide or regional in nature, are determined by the Board to provide a benefit to the District as a whole, and the existing or projected development of the property associated with the improvements has or will have, in the Board's sole discretion, the ability to generate substantial revenues for the funding of any reimbursement obligation of the District; and provided further that the other properties within the District will not be burdened unduly thereby. In the event a reimbursement agreement is approved under this subsection "c," the agreement shall contain such terms and conditions as the Board may deem necessary to ensure the financial burden of such reimbursement is allocated consistent with the above principles; AND

d. The improvements are completed and have resulted in an increase in assessed valuation; OR

Prior to the award of a construction contract where one hundred percent (100%) of the funds are required prior to the award of a construction contract for a multi-jurisdictional project to which the District is a party; AND

e. The District has received notice, (in a form reasonably satisfactory to the Board), that an Approving Entity which will own and/or maintain such public improvements has provided preliminary acceptance of such public improvements. The Board may waive this criterion, in whole or in part, in its sole discretion upon a showing of cause; AND

f. The submitted reimbursement request for constructing and/or installing potentially reimbursable public improvements for the District consists of only those Hard Construction Costs approved by the Board in its sole discretion, as well as those related Soft Construction Costs capped to an amount not to exceed fifteen percent (15%) of the Hard Construction Costs of otherwise reimbursable public improvements or such lesser amount as the Board determines to be appropriate in its sole discretion.

The above determinations shall be made following a written request for reimbursement from the person or entity which will incur the cost of design and construction of the public improvements, as hereinafter set forth.

6. SPECIAL CRITERIA FOR CERTAIN PUBLIC IMPROVEMENTS. The actual costs of design and construction of the following types of public improvements are, subject to the terms and conditions of this Policy herein, specifically eligible for possible reimbursement by the District:

a. The actual costs of design and construction of those public improvements solely concerning such back of curb landscaping along Urban Principle Arterials, as defined in Arapahoe County's 2002 Transportation Plan, as amended, located wholly within the District's boundaries may be eligible for reimbursement by the District. The Board may limit such reimbursement to that amount of monies expended on design and construction only of such landscaping that, in the reasonable estimation of the Board, correlates with the overall consistent street landscaping design within the District. The Board may refer to its engineer to assist it in such determination. Any Developers seeking reimbursement under this Section shall acknowledge that any design or construction costs for back of curb landscaping otherwise eligible, but that which does not conform to the overall consistent street landscaping design within the District, as it may be determined by the Board, shall not be reimbursable by the District. Such determination by the Board shall be made on a case-by-case basis. Under all circumstances, however, there shall be a cap on the District reimbursing a Developer for those Soft Construction Costs to an amount not to exceed fifteen percent (15%) of the Hard Construction Costs of otherwise reimbursable public improvement(s) or such lesser amount as the Board determines to be appropriate in its sole discretion. The Board shall not be favorably disposed to granting reimbursement requests wherein the Developer has designed or constructed improvements in a public right-of-way or into a public easement for the sole purpose of obtaining reimbursement for the design or construction of said improvements;

b. The actual costs of design and construction of fencing, the purpose of which is as retaining walls, sound attenuation walls or other similar barricades which provide a tangible benefit to other public improvements located within the District's boundaries, may be eligible for reimbursement by the District. The Board shall refer to its engineer to determine

whether such fencing, walls or barricades actually provide said benefit and the Board shall render such determination on a case-by-case basis. Any Developers seeking reimbursement under this Section 6 acknowledge that no reimbursement shall be given by the District for the design or construction of such fencing, walls or other barricades which the Board establishes, in its sole discretion, do not adequately serve or benefit those public improvements located within the boundaries of the District. Under all circumstances, however, there shall be a cap on the District reimbursing a Developer for those Soft Construction Costs to an amount not to exceed fifteen percent (15%) of the Hard Construction Costs of otherwise reimbursable public improvement(s) or such lesser amount as the Board determines to be appropriate in its sole discretion. The Board shall not be favorably disposed to granting reimbursement requests wherein the Developer has designed or constructed improvements in a public right-of-way or into a public easement for the sole purpose of obtaining reimbursement for the design or construction of said improvements.

7. IMPROVEMENTS NOT ELIGIBLE FOR REIMBURSEMENT. Public improvements not eligible for reimbursement by the District shall include, but are not limited to: i) sidewalks located on private property; ii) subject to the terms of Paragraph 6 above, landscaping in public rights-of-way, except medians and except for restoration and rehabilitation purposes; and iii) any public improvements constructed, installed and/or acquired under which reimbursement by the District would be prohibited by applicable law.

8. CRITERIA FOR REIMBURSEMENT REQUEST. Reimbursement requests for public improvements which have not been constructed as of the date upon which this Policy first

became effective shall be made prior to construction of the public improvement, and shall contain the following (or, to the extent a waiver or modification of one or more conditions is sought, a request for the desired waiver or modification and the reason therefor):

- a. Description and map of the proposed improvements;
- b. Engineer's estimate of costs;
- c. Evidence to the satisfaction of the Board and/or its engineer that the improvements as designed meet all applicable Approving Entity standards for the type of improvement, including but not limited to approvals of plans for the proposed improvements by any and jurisdictions having approval rights;
- d. Evidence to the satisfaction of the Board that the public improvements will be constructed upon right-of-way, and that such right-of-way is sufficient for the operation and maintenance of the public improvements;
- e. Evidence to the satisfaction of the Board that the entity seeking the reimbursement is the party which is entitled to the reimbursement and has the authority to enter into an agreement providing for the reimbursement thereof. The Board may require appropriate indemnity and/or security from the party seeking the reimbursement;
- f. A statement as to why the reimbursement meets the criteria set out in paragraph 4 of this Resolution;
- g. Evidence that construction of the proposed improvements has been or will be submitted for public bid consistent with the procedures of § 32-1-1001 (d)(1), C.R.S as it may from time to time be amended;
- h. The Developer shall provide the District a list of all local governments that overlap the project. In addition, the Developer shall provide the District a list of all local

governments with agreements with the Developer and the Developer's affiliates concerning the public improvements for which reimbursements from the District are sought and explaining any reimbursements that are or may be available from such other local governments. In the event reimbursement of the Developer or an affiliate is available from another local government or private entity, reimbursement from the District shall not be available. The purpose of this provision is to allow the Developer to be reimbursed once for an improvement, and that the Developer does not receive multiple reimbursements that are in excess of the value of a public improvement;

i. The Developer shall agree to perform and to pay all costs associated with compliance with the requirements of Section 11a and 11b hereof, including any related District costs;

j. Evidence satisfactory to the Board that the unit of government that the Developer anticipates will accept the public improvement for ownership has or will accept such ownership;

k. Such other documentation or evidence as the Board may require in its sole discretion as a condition to entering into a reimbursement agreement. The Board shall have the power to waive or modify any of the above requirements according to the facts and circumstances known to the Board at the time such determination is made. Where the Board has determined that information not submitted in the application for reimbursement must be supplied, the applicant shall comply with such additional requests as shall be made by the Board within such time periods as the Board may require. Failure of the applicant to comply with the requirements stated herein within any period specified shall result in a termination of the

reimbursement application. Nothing shall prohibit the submission of a new reimbursement application in compliance with the provisions hereof.

9. THIRD PARTY CONTRACTS FOR PUBLIC IMPROVEMENTS. In the event the Developer engages the services of a third party or enters into a contract with a third party for the construction of public improvements, the District will need information from that third party in order to verify the costs eligible for reimbursement. The Developer shall include the following language into its contract with the third party:

‘Upon notice from the Parker Jordan Metropolitan District (the “District”), the [third party] will provide all documents that are reasonably necessary, in the District's discretion, for the District to determine the cost of the public infrastructure installed or constructed by the [third party], including, but not limited to, bid documents; bid tabulations; contract documents; subcontract documents; [third party]and subcontractor pay requests, invoices, change directives and change orders; copies of checks, and any other documents the District may request. Additionally, the [third party]will provide, on a semi-annual basis upon notice from the District or at such time as required for the issuance of bonds by the District, sales and price projections and any other information reasonably necessary in the District's discretion to enable the District to issue bonds.

The [third party] understands that all the material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-201, *et seq.*, C.R.S.. In the event of a request to the District for disclosure of financial information, the District shall assert that the District deems the financial information to be confidential and proprietary business information and not subject to disclosure under the Colorado Open Records Act or any similar laws. The District also shall advise the [third party] of such request in order to give the [third party] the opportunity to object to the disclosure of any of its proprietary or confidential material. In the event of the filing of a lawsuit to compel such disclosure, the District will tender all such material to the court for judicial determination of the issue of disclosure and the [third party] agrees to intervene in such lawsuit to protect and assert its claims of privilege and against disclosure of such material or waive the same. The [third party] further agrees to defend, indemnify and save and hold harmless the District, its officers, agents and employees, from any claim, damages, expense, loss or costs arising out of the [third party's] intervention to protect and assert its claim of privilege against disclosure under this section including, but not limited to, prompt reimbursement to the District of all reasonable attorney fees, costs and damages that the District may incur directly or may be ordered to pay by such court.'

If the Developer fails to include such language and/or fails to obtain such information from the third party, the District shall not consider reimbursement for those improvements.

10. REVIEW COSTS OF DISTRICT. If a reimbursement request is made to the District, the person or entity making the request shall pay for all the review services, including without limitation, management, accounting, engineering, legal and all other consultant fees, and other direct expenses incurred on behalf of the District and made necessary as a result of said request. The person or entity shall submit an initial payment to the District at the time the request is filed with the District. The amount of this initial payment shall be Five Thousand Dollars (\$5,000.00). The District shall have the right and authority to use this payment, in its sole discretion, to cover the District's cost for all review services, and other costs and expenses incurred with regard to said request. Any amount remaining from the initial payment or any required supplemental payment, following approval, denial or withdrawal of said request, shall be returned to the person or entity, without interest. In the event said funds are exhausted before final disposition of said request, the person or entity shall make another Five Thousand Dollars (\$5,000.00) payment to cover future costs and expenses. Failure to make a necessary supplemental payment shall cause the request process to cease until the required payment is made.

If the District incurs costs and expenses beyond the amount remitted to the District and the person or entity making the reimbursement request does not pay those costs and expenses within ten (10) days after written notice from the District, then, in addition to the other remedies the District may have, the District shall be entitled to a lien on the property that is the subject of the request, or the District may elect to certify the assessed costs and expenses to the office of the County Treasurer for collection in the same manner as general property taxes are collected. Such lien shall be perfected and foreclosed upon in accordance with applicable laws of the State of Colorado.

11. DISTRIBUTION DECISIONS.

a. At the Developer's expense, prior to payment by the District, the Developer shall furnish a certification to the District signed by the design engineer for the public improvement stating: (1) that the improvements for which reimbursement is sought are all public improvements that comply with the District's Service Plan, (2) that the bidding process utilized for labor and materials for the public improvements over \$60,000 substantially conformed to the requirements of §32-1-1001(1)(d), C.R.S.; (3) that the public improvements have been completed to the standards of all applicable regulatory jurisdictions, (4) that the cost of the public improvements was reasonable, and (5) that the public improvements have been or will be conveyed with easements, licenses, assignments, warranty, dedication, deeds and/or bills of sale, as applicable, to a unit of government for ownership.

b. The Developer shall furnish evidence satisfactory to the Board that a unit of government has accepted the public improvement for ownership. The Board shall, in its sole discretion, determine whether preliminary acceptance is such satisfactory evidence under the circumstances.

c. The District Board shall annually meet, either in a regular meeting of the Board or at a special meeting called for that purpose, to review all pending requests for reimbursement and to allocate such funds as the District Board, in its sole discretion, deems are available to distribute to persons or entities requesting reimbursement after the District funds projects initiated by the District and all bonds, financing, operations and other obligations of the District. At that meeting the Board may determine that it will authorize distribution of all or any

part of the requested reimbursement made by all or any part of the persons or entities requesting reimbursement and also may determine which, if any, requested reimbursements to fund.

The District may also take into account: i) where the District issues bonds to repay a reimbursement and the Developer offers to provide credit enhancement for the bonds; or ii) such other factors as the District Board, in its sole discretion, seems appropriate.

Nothing herein shall be deemed or construed to create any obligation to reimburse persons or entities for the design and construction of improvements or to be a promise to pay reimbursements or to give rise to any claims for reimbursement whether such claim is made as breach of contract, promissory estoppel, restitution or unjust enrichment, or otherwise.

12. AGREEMENT REQUIRED. No reimbursement shall be committed to or made for the costs of public improvements unless an agreement memorializing the terms of such reimbursement shall have been approved by the Board at a duly called and held meeting, and executed by all parties prior to commencement of construction of such improvements. The agreement shall contain such terms and conditions, including time of reimbursement and contingencies, as the Board determines in its sole discretion. To this end, neither the District Board, nor its employees, agents nor independent contractors shall be authorized to make representations regarding the eligibility of a particular public improvement for reimbursement by the District, nor shall any person or entity receiving such representations be entitled to rely upon such. The District shall only become obligated to reimburse as specified in a properly approved reimbursement agreement.

At the request of the District, and as a condition to reimbursement, the developer shall cooperate with the District in locating bus benches and/or bus shelters on private property adjacent to public right-of-way, which cooperation may require that the developer grant to the District a public use easement or other items deemed necessary by the District for the location of bus benches and/or bus shelters.

13. REIMBURSEMENT PERSONAL TO PARTY. Unless otherwise agreed by the parties, any reimbursement due under an approved reimbursement agreement shall be payable to the recipient specified in the agreement, and shall not become an entitlement of the owner of the land upon which the improvement is located.

14. PRO-RATA BOND APPORTIONMENT. Any developers seeking reimbursement for the construction and/or installation and/or maintenance of any public improvements within the District from funds generated by the issuance of any District bonds shall, as a condition precedent of receiving any reimbursement funds, agree to pay a pro rata portion of the issuance costs of said bonds to the District.

15. This Policy shall become effective upon adoption.

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DONE AND ADOPTED this 16th day of OCTOBER, 2012, by the Board of Directors of the Parker Jordan Metropolitan District.

PARKER JORDAN METROPOLITAN DISTRICT

By: Norman Sheldon
PRESIDENT

ATTEST:
