

INTERGOVERNMENTAL AGREEMENT

(Roadwork on Denver Mountain Parks)

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement"), dated as of the date set forth on the City's signature page below, is made and entered into by and between the COUNTY OF JEFFERSON, STATE OF COLORADO, a body politic and corporate (the "County"), and the CITY AND COUNTY OF DENVER, a Colorado municipal corporation (the "City").

RECITALS

A. The County and the City desire that the County perform and complete, or cause to have performed and completed, certain roadway improvements to portions of the Denver Mountain Park system, all owned by the City and partially located within Jefferson County.

B. The work to be performed by the County and its crews will consist of road and parking lot resurfacing with recycled asphalt or other material approved by the City along existing or new roadway and parking lots, as further described in this Agreement (referred to herein as the "Roadwork").

C. The Roadwork will benefit both the County and the City, in that the County owns adjoining or nearby property and regularly utilizes City property for access to and from County property, including property of County residents, and the City and City residents and the general public use County property to access City park and other property.

D. The County and the City enter into this Agreement to memorialize the terms and conditions for the funding and work to be completed for the Roadwork.

E. Section 29-1-203, C.R.S, as amended, permits and encourages local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized function, service, or facility.

NOW, THEREFORE, for and in considerations of the promises, terms and conditions set forth herein, the County and the City agree as follows:

1. The Roadwork:

A. The Roadwork will be undertaken within the Denver Mountain Park system, some of which is located within Jefferson County, and will be limited to those portions of the Denver Mountain Park system.

B. The County shall perform Roadwork projects as described in this Agreement or as may be requested, and at such costs as may be specified, all subject to approval and authorization by the City. The City will make written requests for certain Roadwork projects to be performed on City property. A request shall include a description of the project, the location of the work to be performed, a proposed scope of work, the period of performance including an estimated time for completion, and any other information as may be deemed necessary by the City. The Roadwork shall consist of, but may not be limited to, the construction of a recycled asphalt or other approved material for roadway and parking lot surfaces where indicated by City's request, including any necessary utility locations; minor clearing and grubbing; drainage improvements, culvert repairs, shaping and scarifying of the existing road or parking lot surface; placing, shaping, and compacting six inches of screened millings to create a new road or parking lot surface or improvement to existing road or parking lot surfaces. The County will provide specifications and an estimated cost for the Roadwork, which the City shall either approve, reject, or request modification to. If approved, the City will provide a written authorization for the Roadwork including the agreed upon specifications and costs. The written authorization for the Roadwork and the written request shall together constitute the scope of work for each project under this Agreement (the "Project Scope of Work"). If the cost of a project is estimated to exceed \$500,000, the parties shall enter into a formal agreement regarding the work to be done on such project, the terms of which shall not be inconsistent with the terms set forth in this Agreement.

C. Projects under this Agreement will be completed in the time agreed upon by the parties and approved by the City in each Project Scope of Work. In cases where projects cannot be completed prior to the expiration date of this Agreement, as specified in section 3 below, the Agreement shall remain in effect until the project is completed. Any modifications to the specifications and costs stated in an authorization for work, or modifications to proposed work, shall require the prior written approval of the City and the total costs of the work, including modifications. No project inclusive of any modifications shall exceed the cost approved by the City. No work under this Agreement shall exceed the Maximum Contract Amount specified in section 4 below unless an amendment to this Agreement is entered into increasing the Maximum Contract Amount.

D. All work shall be performed by the County's Road and Bridge crews.

2. Representatives; Coordination; Corrective Actions:

A. The County designates the Construction Project Manager, currently Will Truesdale, of the Road & Bridge Division as the County Representative under this Agreement. The City designates the Department of Parks and Recreation's ("DPR") Mountain Parks Planning Director and DPR's Natural Resources Director, as the City Representative under this Agreement. Each party shall be notified of any change by the other in its authorized representative.

B. The County Representative shall coordinate and collaborate with the City Representative as to the schedule and progress of work under the Agreement, any proposed modifications to any approved projects and any problems or difficulties encountered in the performance of the work, and shall schedule inspections with the City Representative upon completion of the work and as warranted during the progress of the work.

C. If the City Representative observes any work or materials that are not in accordance with this Agreement and Project Scope of Work or not in accordance with any modifications approved by the City Representative, the City Representative shall immediately notify the County Representative. The County shall immediately, or as soon as is reasonably practicable, cause any such work to be repaired or redone, and any such materials to be replaced, in accordance with this Agreement and Project Scope of Work, and any costs related to such corrective actions shall not be billed to the City.

3. Term: The Agreement shall be effective as of the execution of this Agreement and shall expire ten (10) years after execution.

4. Maximum Contract Amount: In no case shall the total compensation for the work under this Agreement, including any authorized modifications, exceed One Million Dollars and Zero Cents (\$1,000,000.00) (the "Maximum Contract Amount"). Any proposed modifications to the Roadwork or a Project Scope of Work that exceed this Maximum Contract Amount shall require an amendment to this Agreement, which must be approved in the same manner as this Agreement. Upon submission of an invoice and supporting documentation as to the work and cost of the work completed and accepted by the City Representative, the City shall pay the County within thirty (30) days after completion of a project and acceptance of the work by the City Representative. In the event that the duration of a project is greater than thirty (30) days, the County shall submit a monthly invoice and supporting documentation reflecting the work completed on such project to the City. The City shall pay the County within thirty (30) days after receipt of such invoice and acceptance by the City Representative.

5. General Provisions:

A. Reasonable Efforts; Good Faith: The County and the City agree to work diligently together and in good faith, using reasonable efforts to resolve any unforeseen issues and disputes and to expeditiously take such actions as are necessary and appropriate to perform the duties and obligations of this Agreement.

B. Fair Dealing. In all cases where the consent or approval of one party is required before the other may act, or where the agreement or cooperation of the parties is separately or mutually required as a legal or practical matter, then in that event the parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing in this Agreement shall be construed as imposing on either party any greater duty or obligation to the other than that which already exists as a matter of Colorado law, including but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arm's length.

C. Financial Interests: The parties agree and covenant that any financial interests created in, or used to secure financing and payment for the costs of, any work performed under this Agreement, including but not limited to any bonds, certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude, and not encumber, property title, rights and interests held by Denver from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Agreement.

D. Appropriation: Notwithstanding any provision of this Agreement to the contrary but subject to sub-sections 5.A. and 5.B above, the parties agree that the rights and obligations under this Agreement are contingent upon all funds necessary for work or expenditures contemplated under this Agreement being budgeted, appropriated and otherwise made available by the respective parties. The parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party, except to the extent that capital improvement funds that are lawfully appropriated can be lawfully carried over to subsequent years.

E. Non-waiver: No party shall be excused from complying with any provision of this Agreement by the failure of the other party to insist upon or to seek compliance. No assent, expressed or implied, to

any failure by a party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said party.

F. Examination of Records/Audit: Any authorized agent of either Party, including the City Auditor or his or her representative with regard to the City, has the right to access, and the right to examine, copy and retain copies, at the other Party's election in paper or electronic form, any pertinent books, documents, papers and records related to performance of this Agreement, provision of any goods or services, and any other transactions related to this Agreement. Parties shall cooperate with the other Party's representatives and respective representatives shall be granted access to documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the City Auditor shall be subject to government auditing standards issued by the United States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require the other Party to make disclosures in violation of state or federal privacy laws. The Parties shall at all times comply with D.R.M.C. 20-276.

G. Applicable Law/Exercise of Authority: The parties agree to comply with all applicable Federal, State and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and become applicable; provided, however, both Parties agree that neither party shall enact or adopt any ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of the respective parties.

H. No Discrimination In Employment: In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender variance, marital status, or physical or mental disability; and the parties further agree to insert the foregoing provision, or an equivalent provision, in all approved contracts and subcontracts hereunder.

I. Conflict of Interest: The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein, and the County further agrees not to hire or contract for services any official, officer or employee of Denver or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

J. Liability:

1) To the extent authorized by law, the County shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission of the County or its officers, employees, and agents in connection with the subject matter of this Agreement.

2) To the extent authorized by law, the City shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by the City, or its officers, employees, and agents in connection with the subject matter of this Agreement.

3) Nothing in this sub-section 5.J. or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the parties may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the parties against third parties by law.

K. Force Majeure: Neither party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*, and any time limit expressed in this Agreement shall be extended for the period of any delay resulting from any *force majeure*. Timely notices of the occurrence and the end of such delay shall be provided by the party asserting *force majeure* to the other party. "*Force majeure*" shall mean causes beyond the reasonable control of a party such as, but not limited to, adverse weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities other than the parties.

L. Further Assurances: From time to time, upon the request of a party, the other Party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting party any and all further

instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting party, be necessary or desirable in order to effectuate, complete or perfect the rights of said party under this Agreement, provided said requesting party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other party is entitled under the Agreement.

M. Contracting or Subcontracting: The work for the Project as specified in this Agreement shall be conducted solely by the County through the County's Road and Bridge Division. The County shall not voluntarily or involuntarily assign any of its rights or obligations or subcontract performance obligations under this Agreement. Any assignment or subcontracting will be ineffective and void, and shall be cause for termination of this Agreement by the City, in which event the City shall not be obligated to pay any compensation to the County as specified in section 4 of this Agreement. In the event of any subcontracting or assignment: (i) the County shall remain responsible to the City; and (ii) no contractual relationship shall be created between the City and any party to whom the County has assigned or subcontracted its rights or obligations under this Agreement.

N. Enforcement: The parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages (notwithstanding termination of the Agreement), as may be available according to the laws and statutes of the State of Colorado; provided, however, the parties agree to and hereby release any claims for incidental, consequential, or punitive damages; provided, further, no provision of this Agreement nor the rules and regulations of the County may be enforced by the creation or recording of any type of lien against real property owned by the City, nor may any foreclosure process be utilized to recover any moneys owed by the City to the County. It is specifically understood that, by executing this Agreement, each party commits itself to perform pursuant to these terms and conditions contained in this Agreement, and that any failure to comply which results in any recoverable damages shall not cause, by itself, the termination of any rights or obligations under this Agreement.

O. Governing Law; Venue: This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver, and the applicable resolutions and ordinances of the County. Venue for any legal action relating to this Agreement shall lie in either the District Court in and for the City and County of Denver or the District Court in and for Jefferson County, as the party initiating the legal action may choose.

P. No Third-Party Beneficiaries: It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the County and the City; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of the County and the City that any person or entity other than the County and the City receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

Q. Claims: In the event that any claim, demand, suit, or action is made or brought in writing by any person or entity against one of the parties related in any way to this Agreement, the party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other party.

R. Notice: All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally or by certified mail, return receipt requested, to the following:

To the County:

Will Truesdale, Construction Project Manager Jefferson County
Department of Road & Bridge 21401 Golden Gate Canyon Road
Golden, Colorado 80401

With a copy to:
Jefferson County Attorney's Office
100 Jefferson County Pkwy., Suite 5500
Golden, CO 80419 To the City:

Executive Director
Department of Parks and Recreation City and County of
Denver
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

City Attorney

City and County of Denver 1437 Bannock Street,
Room 353
Denver, Colorado 80202

The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein.

S. Entire Agreement: This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the parties. The parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

T. Amendment: Except as otherwise expressly provided in this Agreement, this Agreement may be amended, modified, or changed, in whole or in part, only by written agreement executed by the parties in the same manner as this Agreement.

U. Severability: Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will achieve the original intent and purposes of the parties hereunder.

V. Headings for Convenience: Headings and titles contained herein are intended for the convenience and reference of the parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

W. Authority: Each party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the party and to bind the party to its terms. The person(s) executing this Agreement on behalf of each party warrants that he/she/they have full authorization to execute this Agreement.

X. Execution of Agreement: This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully executed by all signatories of the County and the City.

Y. Electronic Signatures and Electronic Records: The parties consent to the use of electronic signatures for the execution of this Agreement. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24-71.3-101 to -121.

Z. Filing with Division of Local Government. Each party hereto will meet its obligations as set forth in Section 29-1-205, C.R.S., to include information about this Agreement in a filing with the Division of Local Government; however, failure to do so shall in no way affect the validity of this Agreement nor the remedies available to the parties hereunder.

[Remainder of the page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Intergovernmental Agreement to be executed.

COUNTY OF JEFFERSON
STATE OF COLORADO

By: _____
Lesley Dahlkemper
Chairman, Board of County Commissioners

APPROVED AS TO FORM:

Kelsey M. Hall
Assistant County Attorney

CITY AND COUNTY OF DENVER

By: _____
Michael B. Hancock
Mayor

Contract Control Number: PARKS-202054314-00
Contractor Name: JEFFERSON COUNTY

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202054314-00
JEFFERSON COUNTY

[See Next Page for Signature]

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

IN WITNESS WHEREOF, the parties hereto have caused this Intergovernmental Agreement to be executed.

COUNTY OF JEFFERSON
STATE OF COLORADO

DocuSigned by:
By: Wesley Dahlkemper
4628F76A51984EB...

Chairman, Board of County Commissioners

APPROVED AS TO FORM:

DocuSigned by:
Kelsey Hall
K32A52A77F9E43F
Kelsey M. Hall
Assistant County Attorney

DocuSigned by:
CHECKED BY: Janice Mayer
0A751E863B7B404...

CITY AND COUNTY OF DENVER

By: _____
Michael B. Hancock
Mayor