

INTERGOVERNMENTAL AGREEMENT
between
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE
and
THE TRUSTEES OF THE TOWN OF FOXFIELD

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made this ____ day of _____, 2022, between the Board of County Commissioners of the County of Arapahoe (“County”) and the Trustees of the Town of Foxfield (“Foxfield” or “the Town”), collectively referred to herein as the “Parties.”

Premises

WHEREAS, pursuant to Colorado Constitution Article XIV, §18(2)(a), and Colorado Revised Statutes (CRS) §29-1-203, Colorado local governments may cooperate or contract with each other to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, this Agreement is intended to apply to that segment of Arapahoe Road from Parker Road to the eastern boundary of Foxfield (at the eastern section line of Section 28, Township 5 South, Range 66 W), as more particularly described in Section 1.a of this Agreement, and referred to herein as “Arapahoe Road” or the “segment of Arapahoe Road”; said segment of Arapahoe Road is described and shown in the attached Exhibit A, which is incorporated herein by this reference; and

WHEREAS, the Parties desire to establish agreement for the performance of certain maintenance activities on the segment of Arapahoe Road contemplated hereunder and to provide for funding for the cost of such road maintenance; and

WHEREAS, the Agreement shall be used to address the provisions described in the Board of County Commissioners’ Resolution No. 1052-94 for the incorporation of the Town in accordance with CRS 31-2-101 and to serve as an IGA for road maintenance as contemplated in said Resolution; and

WHEREAS, County has maintained some or all of the segment of Arapahoe Road described above at its expense since its improvement to an arterial; and

WHEREAS, portions of the segment of Arapahoe Road mentioned in Resolution 1052-94 have been annexed by the City of Aurora and the City of Centennial and are under the jurisdiction of those Cities; and

WHEREAS, the Agreement is in the interest of the health and safety of the residents of both County and Foxfield.

Terms

NOW, THEREFORE, in consideration of the mutual covenants, promises, and premises contained herein, and the mutual benefits to be gained by performance, the Parties hereby agree as follows:

1. **Division of Responsibility.** The Parties agree to provide for the maintenance of Arapahoe Road as follows:
 - a. The County agrees to maintain and control access, as provided herein, for the segment of Arapahoe Road within the jurisdiction of Foxfield from Parker Road to the eastern boundary of the Town. This segment generally includes the lanes of Arapahoe Road that are within the Town boundary and run from Parker Road to the eastern boundary of Foxfield (also known as eastern section line of Section 28, Township 5 South, Range 66 W) approximately 11.96 lane miles of Arapahoe Road. *See*, attached Exhibit A.
 - b. As used herein, maintenance is limited to the following:
 - Snow Plowing and ice removal/per Arapahoe County policy
 - Long line painting
 - Durable markings
 - Signs
 - All signal related maintenance at S. Buckley Rd. and Waco
 - Minor pothole repairs
 - Sweeping
 - c. Crack fill maintenance, asphalt overlay, any surface treatments, concrete, signal replacement, or any other activity or work not identified in 1.b. above are specifically excluded from the maintenance activities that the County will perform under this Agreement. Any projects for these items may be performed through a separate IGA negotiated between the County and Foxfield for each such project. The County and Foxfield agree to cooperate in good faith with the planning for and funding of such projects. For purposes of illustration and future planning for such work by the Parties, the County's estimate for the anticipated cost of maintenance for overlays and crack sealing over the next ten years under this 1.c. is approximately \$1,690,973.
 - d. Responsibility for future road expansion or other capital improvement projects shall be as provided in Section 7 of this Agreement below.
 - e. By approving this Agreement, Foxfield grants the County access to enter the segment of Arapahoe ROW to perform maintenance duties described hereunder and the County shall not be required to seek any further access permit or permission to perform the work.
 - f. This Agreement does not include the lanes of Arapahoe Road that are located within the jurisdictions of the City of Aurora and the City of Centennial

(collectively “the Cities”). The County and the Cities may, nevertheless, elect to arrange through separate IGAs or other agreements to provide for performing maintenance activities for the lanes of Arapahoe Road that are within the jurisdictions of the Cities, as well as for sharing of maintenance on the lanes within Foxfield. Foxfield hereby authorizes Arapahoe County and the City of Aurora and the City of Centennial to perform the maintenance activities described in Section 1.b. above to the extent authorized in any such IGAs other agreements between or among the County and the Cities, and agrees to cooperate with the County and the Cities or City in the execution of such IGAs or agreements as necessary.

2. **Level of Maintenance and Budget Discretion.** County retains all discretion and decisional authority regarding the need for and level of maintenance to be performed under this Agreement and the amount of funding to be budgeted for such maintenance.
3. **Liability and Governmental Immunity.** The parties hereto do not waive any governmental immunity available under CRS 24-10-101, *et seq.*
4. **Funding for Maintenance Described in Paragraph 1.b. Above**
 - a. Highway User Trust Fund (HUTF) The County shall be entitled to claim the annual HUTF for lane miles attributed to the segment of Arapahoe Road within the jurisdiction of Foxfield for which the County is responsible for maintenance under Paragraph 1.b above from the State of Colorado. Foxfield agrees to cooperate with the County in making such annual claims and agrees to execute any documents required by the State of Colorado in order for the County to claim the monies.
 - b. Proportional Sharing of Certain Other Fees or Other Funds as will be collected and distributed to the Town from SB21-260. The Town agrees to allocate those revenues received by the Town from SB21-260, to the extent such funds include revenues attributable to the inclusion of Arapahoe Road within the corporate limits of the Town, to the maintenance activities described in Section 1, subsection c. of this Agreement.
5. **Right-of-Way and Easements.** The Parties agree to cooperate in securing any needed right-of-way or easements required within the other jurisdiction in order to provide for maintenance or as the Parties may agree are needed for a future capital road project.
6. **Permitting Within/Control of Right of Way.** County shall have the right under this Agreement to control access to the segment of Arapahoe Road and shall have final approval over all access, right-of-way, utility, and construction permits within said roadway as defined in Section 1.a. of this Agreement.

- a. Foxfield shall not issue a permit to any third-party for a new driveway, agricultural access, street cut, road or other access to this segment of Arapahoe Road without the County's consent and approval. Upon receipt of such application, in accordance with Paragraph 1.a. above, the application shall be sent to the County with a referral request, including all necessary and applicable supporting documentation (i.e., traffic studies, land use applications, plans, etc.). The County shall respond with either comments/concerns or recommendation for approval of the application. Referral comments or recommendations for approval shall be sent within ten (10) working days from the date the referral was received. Once all information is satisfactory to County for approval, the County will approve the access permit request within ten (10) working days. All comments/concerns must be addressed by the applicant prior to the issuance of the access permit by the County and prior to Building Permit issuance by the Town. The access shall be designed and constructed in accordance with the most restrictive criteria of either the Colorado Department of Transportation Access and Design Standards or Arapahoe County Criteria. The County as the jurisdiction responsible for the maintenance of the segment of Arapahoe Road shall have the authority to decide disputes concerning design and construction issues or standards.
- b. The Town will assure that the County's referral comments are adequately addressed by the permit holder prior to issuance of the permit or approval of the development plan. Referral comments or recommendation for approval shall be sent within ten (10) working days from the date the referral is received. Access permits cannot be unreasonably withheld by the County.
- c. If a new access to Arapahoe Road is not constructed per the requirements of the Access Permit/Driveway Permit, the County reserves the right to physically remove said access/driveway between the fenceline and Arapahoe Road. County will be responsible for approval inspection and acceptance of the access onto Arapahoe Road.
- d. In issuing street cut or other Right-of-Way or Utility Use and Construction permits for Arapahoe Road, the County will work cooperatively with the Town in reviewing and if appropriate approving applications for such permits for the segment of Arapahoe Road; including inspecting work performed under such permits and granting if appropriate final acceptance of work performed under such permits.
- e. For any proposed new access onto Arapahoe Road, the County will make decisions using the most restrictive design criteria and of either the Colorado Department of Transportation Access and Design standards or Arapahoe County criteria. and based on the traffic report of the development project, projected traffic volumes, accessing sight-distance criteria, and other safety considerations.

- f. In making access determinations for proposed new developments along Arapahoe Road, both Parties shall work cooperatively in reviewing and approving, if appropriate, access applications for proposed new developments onto Arapahoe Road, and in inspecting and granting, if appropriate, final acceptance of all work performed with respect to new development access onto Arapahoe Road.
7. **Capital Improvements.** The Parties agree to cooperate on any capital improvements along Arapahoe Road within the jurisdiction of the Town, and as long as the County has maintenance responsibility for any segment of Arapahoe Road within the Town's jurisdiction, the County may after consultation with and input from the Town proceed to design and construct such capital improvements within the right of way as are necessary to meet the traffic demands. The County will utilize professional engineering judgment to design and construct any such improvements. Prior to designing and constructing such capital improvements, the County shall seek input from and consult with Town for its concurrence with the need for and the design of the improvement. Funding for the improvements and specific provisions for the design and construction of such improvements shall be established by separate agreement between the Parties.
8. **Term of Agreement and Termination.**
- a. The Effective Date of this Agreement shall commence from the date of execution by the final party to the Agreement.
 - b. This Agreement shall remain in full force and effect for a period of five (5) years from such Effective Date unless terminated as provided herein.
 - c. Thereafter, this Agreement shall automatically renew for subsequent periods of one (1) year after the initial term, unless, at least sixty (60) days prior to its termination, either party notifies the other party, in writing, of its decision not to renew the Agreement.
 - d. This Agreement may also be terminated at any time by either of parties upon sixty (60) days advance written notice to the other party.
 - e. In the event annexation from a municipality occurs along the unincorporated portion of Arapahoe Road as described in Exhibit A, the Agreement shall be terminated within 60 days of the final annexation.
9. **Successors and Assigns.** The Agreement shall be to the benefit of, and be binding upon, the Parties, their successors, and assigns.
10. **No Third-Party Beneficiaries.** The benefits and burdens of the Agreement shall inure solely to the Parties. There are no third-party beneficiaries of the Agreement.

11. **Applicable Law.** The Agreement shall be governed by and construed in accordance with the law of the State of Colorado.
12. **Non-Appropriation/TABOR.** Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of County payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available. This Agreement may be terminated on January 1 of the first fiscal year for which funds are not appropriated. County shall give advance written notice of such termination for non-appropriation as provided in this Agreement. Nothing in this Agreement is intended to be or shall be interpreted as creating a multi-fiscal year obligation within the meaning of Article X, Section 20 of the Colorado Constitution.
13. **Indemnification and Insurance.** To the extent allowed under the law of the State of Colorado, Foxfield shall indemnify and hold Arapahoe County, its elected officials, officers and employees harmless from and against any liability, claims, damages, injuries or death resulting from the performance of the maintenance activities described in this Agreement. Such indemnity obligation shall not apply to claims arising from willful and wanton or intentional misconduct in the performance of such maintenance services. The Parties shall each maintain adequate insurance or self-insurance to protect against any liability not covered by Governmental Immunity.
14. **Non-Waiver.** No waiver of any of the provisions of the Agreement shall be deemed to constitute a waiver of any other of the provisions of the Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
15. **Severability.** Should any one or more provisions of the 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 such language that will achieve the original intent of the Parties hereto.
16. **Assignability.** Neither Party shall assign its rights or delegate its duties hereunder without the prior written consent of the other Party.
17. **Liability of the Parties.** Except as may otherwise be provided herein, no Party shall have any obligation whatsoever to repay any debt, financial obligation, or liability of the other Party.
18. **Survival.** Each and every covenant, promise, or term contained in the Agreement shall not merge in any deed or other document executed by either or both Parties to affect the Agreement, but shall survive such instrument.

19. **Headings for Convenience.** The headings, captions, and titles contained herein are for convenience and reference only and are not intended to enlarge or restrict the content thereof.
20. **Entire Agreement.** The Agreement constitutes the entire Agreement between the Parties with respect to the matters addressed herein. Any prior agreements, promises, negotiations, representations, or understandings not expressly set forth in the Agreement are of no force and effect. The Agreement may not be modified except in writing executed by both Parties.
21. **Notice of Communications.** All notice required under the Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return-receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Postal Service mail with the proper address as set forth below. Either Party by notice so given may change the address to which future notices shall be sent. [*what about emailed notice???*]

Notice to Arapahoe County:

Chairman
Board of County Commissioners
Arapahoe County
5334 South Prince Street
Littleton, Colorado 80126-0001

With copy to:

Arapahoe County Attorney
Arapahoe County
5334 South Prince Street
Littleton, Colorado 80126-0001

and

Director
Department of Public Works and Development
Arapahoe County
6924 South Lima Street
Centennial, Colorado 80112

Notice to Town of Foxfield:

Mayor
Town Trustees
Town of Foxfield
P.O. Box 461450
Foxfield, CO 80046

With copy to:

Corey Y. Hoffmann, Esq.
Town of Foxfield Attorney
Hoffmann, Parker, Wilson & Carberry, PC
511 16th Street, Suite 610
Denver, Colorado 80202

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the day and year first above written:

**ARAPAHOE COUNTY, STATE OF COLORADO
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPHAOE:**

BY: _____ DATE: _____
Bryan Weimer
Director, Arapahoe County Department
Of Public Works and Development
Pursuant to the Authority of Resolution No. ____.

**TOWN OF FOXFIELD, STATE OF COLORADO
MAYOR AND TOWN TRUSTEES:**

BY:  _____ DATE: 11-17-2022
Mayor

ATTEST

BY:  _____ DATE: 11-17-2022
Clerk to the Trustees

APPROVED AS TO FORM

BY:  _____ DATE: 11-17-2022
Corey Y. Hoffmann, Town Attorney