

**CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 08
Series of 2019**

TITLE: RESOLUTION NO. 08-2019 – A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF ARVADA REGARDING STREET IMPROVEMENTS AT THE WHEAT RIDGE · WARD STATION AREA

WHEREAS, the Cities of Wheat Ridge and Arvada have facilities within the Wheat Ridge · Ward Station area; and

WHEREAS, the Cities of Wheat Ridge and Arvada have programmed various street improvements within the Wheat Ridge · Ward Station area; and

WHEREAS, the Cities of Wheat Ridge and Arvada have agreed to share the cost of the improvements; and

WHEREAS, the City of Wheat Ridge will oversee the design, right-of-way acquisition, and construction of those street improvements; and

WHEREAS, the City of Wheat Ridge will seek reimbursement from the City of Arvada for their share of the street improvements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

Section 1. Intergovernmental Agreement Approved.


The Intergovernmental Agreement with the City of Arvada regarding street improvements at the Wheat Ridge · Ward Station area is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

DONE AND RESOLVED this 28th day of January 2019.



Bud Starker, Mayor

ATTEST:



Janelle Shaver, City Clerk



**INTERGOVERNMENTAL AGREEMENT
AMONG CITY OF WHEAT RIDGE AND CITY OF ARVADA,
REGARDING ROADWAY IMPROVEMENTS
IN THE WHEAT RIDGE · WARD ROAD STATION AREA**

THIS INTERGOVERNMENTAL AGREEMENT AMONG THE **CITY OF WHEAT RIDGE** AND THE **CITY OF ARVADA** REGARDING ROADWAY IMPROVEMENTS IN THE WHEAT RIDGE · WARD ROAD STATION AREA is made and entered into as of the XXth day of February, 2019 by and between the City of Wheat Ridge (Wheat Ridge), a home rule municipal corporation of the State of Colorado and the City of Arvada (Arvada), a home rule municipal corporation of the State of Colorado together referred to herein as the "Parties."

WHEREAS, Article XIV, Section 18(2)(a), of the Constitution of the State of Colorado and Part 2, Article 1, Title 29, C.R.S., encourage and authorize intergovernmental agreements;

WHEREAS, C.R.S. 29-1-203 authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each;

WHEREAS, the Regional Transportation District (RTD) has completed a commuter rail station in Wheat Ridge near the intersection of Taft Court and Ridge Road, also referred to as the Wheat Ridge · Ward Road Station (the "Station");

WHEREAS, future development of real property surrounding the Station and extending into the territorial jurisdiction of both Parties is expected to generate significant amounts of additional traffic over a multi-year period after the Station opens;

WHEREAS, much of the existing roadway infrastructure is considered inadequate for meeting future projected traffic needs in the vicinity of the Station;

WHEREAS, 52nd Avenue between Ward Road and Tabor Street is shared by the Parties and is relied upon by citizens and stakeholders of the Parties;

WHEREAS, Ridge Road between Tabor Street and the Parties' boundary east of Simms Place is in Wheat Ridge and is relied upon by citizens and stakeholders of the Parties; and

WHEREAS, the Parties share an interest in planning, designing, and constructing improvements to those streets that mutually serve the short and long-term interests of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is expressly acknowledged, the Parties hereby agree as follows:

1. Traffic Study. The Parties shall commit funds to a comprehensive Traffic Study and subsequent revisions to ascertain future needs and traffic impacts to utilize for the design of specific streets and intersections, as described in the Traffic Study Scope of Work as depicted on the attached **Exhibit A** (the "Traffic Study"). Wheat Ridge shall act as "Lead Agency" for the Traffic Study and shall contract for and administer the Traffic Study and bill Arvada for their portion of the costs in accordance with the terms of this Agreement as set forth below.
2. Street Improvements. The Parties desire to plan, design, and construct the transportation infrastructure and roadway improvements for 52nd Avenue between Ward Road and Tabor Street and Ridge Road between Tabor Street and the Parties' boundary east of Simms Place (the "Street Improvements" or the "Street Project"). The Street Improvements shall be administered, managed, and funded as described below.

- a. Lead Agency. Wheat Ridge shall serve as the “Lead Agency” and “Project Manager” for the design, construction, and project management of the Street Improvements. As the Lead Agency, Wheat Ridge shall coordinate and provide final roadway construction plans, conduct the bidding and award processes, provide construction contract management, construction inspection and quality assurance services, coordinate design and construction with public and private utilities and other agencies (including the Colorado Department of Transportation), and coordinate and manage the public process regarding the Street Improvements.
- b. Lead Agency Responsibilities. As part of the Lead Agency and Project Manager role as described in Section 2.a, Wheat Ridge shall be responsible for delivery of complete construction plans, bidding and awarding of a construction contract in accordance with the Lead Agency’s policies for competitive bidding, preparation of pay estimates, performance of all construction inspection, construction staking, testing, and all related construction management and contract administration services. For-Bid construction plans for the Street Improvements shall be approved by Arvada in writing prior to Wheat Ridge advertising the Street Project for bid. In addition, Arvada will be given the opportunity to review and comment on the form of the construction contract proposed for the Street Project prior to the advertising the project for bid, and Wheat Ridge shall use reasonable efforts to incorporate Arvada’s comments into the final contract. Wheat Ridge shall not award a construction contract and issue a Notice to Proceed without prior written approval of the bid results by Arvada. Any construction contract shall include a minimum one-year warranty on the improvements.
- c. Engineer’s Estimate and Final Contract. As part of the construction management services provided by the Lead Agency, Wheat Ridge shall provide an Engineer’s Estimate and projected cost share to Arvada prior to advertising the Street Project for bid. The Engineer’s Estimate shall include a contingency amount up to 10% of projected costs to address unforeseen costs and expenses during construction. Arvada shall review and provide written approval of the Engineer’s Estimate to the Lead Agency prior to submission of the Street Project for bid. The written approval of the Engineer’s Estimate shall include a commitment by Arvada to fund the Street Project up to the amount included in the Engineer’s Estimate, including contingencies. Should the actual contract prices for the Street Project after receipt of the bids exceed the Engineer’s Estimate, Wheat Ridge shall not award a contract until written concurrence from Arvada is received and a commitment for the revised Street Project costs is received. Wheat Ridge, as the Lead Agency, will be responsible for issuing change orders as part of the contract management services. Wheat Ridge is not authorized to issue any change orders in excess of \$10,000, unless agreed upon jointly by Arvada. In addition, Wheat Ridge shall not issue any change orders, regardless of amount, that would cause the cost of the Street Project to exceed the total project expenditures approved by the Parties to this Agreement.
- d. Maintenance Obligations. Upon completion of the project, the Parties will each be responsible for the maintenance of the facilities within their respective jurisdictions. Should the final design of the street necessitate a modification to maintenance responsibilities, the Parties agree to negotiate an amendment to this Agreement in good faith in order to equitably address the modification.

3. Reimbursement. The Lead Agency shall submit invoices to Arvada at the notice address below for project costs at regular intervals, but not more than monthly, as the project progresses. Arvada shall reimburse the Lead Agency for their respective share of the total cost as forth in this Agreement within forty-five (45) days of receipt of an invoice for services and costs which shows the project costs due and payable in sufficient detail to validate the expenditure.
 - a. Traffic Study. The Parties agree that cost of the Traffic Study will not exceed \$27,500. The Parties agree to share the costs of the Traffic Study as follows: Wheat Ridge 50% up to \$13,500 and Arvada 50% up to \$13,500. A revision to the Traffic Study has been deemed necessary. The Parties agree that the cost of revision will not exceed \$17,060. The Parties agree to share the costs of the revision as follows: Wheat Ridge 50% up to \$8,530 and Arvada 50% up to \$8,530. In the event the cost of the Traffic Study or revision exceeds the agreed upon amounts, the additional cost must be agreed to by all Parties in advance in writing and shall be shared by the same percentages.
 - b. 52nd Avenue Improvements. The Parties agree to share the Total Construction Cost (as defined below) of the 52nd Avenue Improvements as follows: Wheat Ridge 50% and Arvada 50%.
 - c. Ridge Road Improvements. Wheat Ridge and Arvada agree to share the Total Construction Cost (as defined below) based on the distribution of the traffic from Wheat Ridge and Arvada that is projected to use that portion of Ridge Road in the revision to the Traffic Study.
 - d. Total Construction Cost. The "Total Construction Cost" shall include all design and plan preparation services, construction contract, testing, permit fees, and any other construction related cost including the cost for the acquisition of any easements and right of way. The intent is the Parties will bear all costs of the construction for the entire project in accordance with the agreed upon percentages.
4. Additional Improvements Projects. The Parties acknowledge and agree that there are other transportation infrastructure projects that have been identified within Wheat Ridge - Ward Road Station area. The Parties agree to coordinate efforts on additional projects in the area including, but not limited to, Ward Road between 52nd Avenue and I-70. As additional projects are identified, the Parties may amend this Agreement to include such projects.
5. Other Agencies. The Parties shall work together in an effort to encourage participation and assistance from the Regional Transportation District (RTD) and the Colorado Department of Transportation (CDOT) as needed to successfully implement projects.
6. Grants and Funding. The Parties shall use reasonable efforts to pursue grants and funding opportunities as available to advance the improvements as described in this Agreement.
7. Term. This Agreement shall be and remain in effect for five (5) years from the date first set forth above, except for items 2.d., unless modified or extended by amendment to the Agreement.
8. Liability. Each Party shall be responsible for its own negligent acts. To the extent permitted by law subject to all immunities, defenses and other protections afforded to the Parties pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, et seq, C.R.S., each Party shall reimburse the other Parties for any costs, expenses or legal fees that

such Parties may incur for any liability resulting from the negligent acts of the other Party in its performance of its obligations under this Agreement.

9. Notices.

- a. "Key Notices" under this Agreement are notices regarding any default or contractual dispute relating to this Agreement. Key Notices shall be given in writing and shall be deemed received if given by: (i) confirmed electronic transmission (as defined in subsection (b) below) when transmitted, if transmitted on a business day and during normal business hours of the recipient, and otherwise on the next business day following transmission, (ii) certified mail, return receipt requested, postage prepaid, three (3) business days after being deposited in the United States mail, or (iii) overnight carrier service or personal delivery, when received. For Key Notices, the parties will follow up any electronic transmission with a hard copy of the communication by the means described in subsection 9(a)(ii) or 9(a)(iii) above. All other daily communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notice shall be given to the parties at the following addresses:

To Wheat Ridge:

City Manager
City of Wheat Ridge
7500 W. 29th Avenue
Wheat Ridge, Colorado 80033
Tel: _____
Email: _____

To Arvada:

City Manager
City of Arvada
8101 Ralston Road
Arvada, Colorado 80002
Tel: _____

- b. Electronic Transmissions. The Parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the party in its original form. The Parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Agreement, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts.

10. No Waiver of Immunity. Each Party, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations

or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, as amended, or otherwise available to it, its officers and employees.

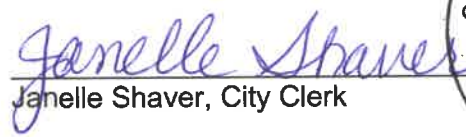
11. Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by the Parties.
12. Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the subject matter of this Agreement.
13. Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Jefferson, State of Colorado. If the final judgement of a court or arbitrator declares that any term or provision hereof is invalid, void, or unenforceable, the Parties agree to reduce the scope, duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the original intention of the invalid or unenforceable term or provision. In the event that such replacement is not possible, said term or provision shall be severed, and the validity and enforceability of the remaining provision of this Agreement shall not be affected thereby.
14. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.
15. Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.
16. No Multi-Year Fiscal Obligation. The parties understand and acknowledge that each of them is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, the obligations of each party are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period ending upon the next succeeding December 31. Financial obligations of each party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of such party and other applicable law. Notwithstanding any other provision of this Agreement concerning termination or term, upon any party's failure to appropriate such funds, this Agreement shall automatically terminate. Each party agrees to provide the other with thirty (30) days' notice of its intent to fail to appropriate funds for purposes of this Agreement.
17. No Third Party Beneficiaries. This Agreement will not confer any rights or remedies upon any person other than the Parties and their respective successors and permitted assigns.
18. Informational Obligations. Each Party hereto will meet its obligations as set forth in C.R.S. 29-1-205, as amended, 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 or the remedies available to the Parties hereunder.

19. Execution by Counterparts; Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties approve the use of electronic signatures for execution of this Agreement. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24 71.3 101 to -121.

20. Authority to Enter Agreement. The signatures of those representatives of the Parties below affirm that they are authorized to enter into and execute this Agreement and that all necessary actions, notices, meetings, and/or hearings pursuant to any law required to authorize the execution of this Agreement have been made.


IN WITNESS WHEREOF, the Parties have executed this Intergovernmental Agreement as of the date and year first set forth above.

CITY OF WHEAT RIDGE



Janelle Shaver, City Clerk





Bud Starker, Mayor

CITY OF ARVADA

, City Clerk

, Mayor