



MEMORANDUM

TO: Mayor Jones and Members of the Board

FROM: Karen Proctor, Town Administrator

DATE: June 18, 2020

RE: IGA with Arapahoe County for the CARES Act Local Government Distribution

DISCUSSION:

Attached for Board approval is an Intergovernmental Agreement with Arapahoe County for the CARES Act Local Government Distribution.

The Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law on March 27, 2020. It provides over \$2 trillion of economic relief by providing payments to State, Local, and Tribal governments affected by the COVID-19 outbreak. Arapahoe County is an eligible unit of local government under the CARES Act and has received an allocation of Coronavirus Relief Funds.

Arapahoe County has agreed to administer the business support grant program on behalf of the Town of Foxfield. Foxfield businesses would apply and be awarded these grants through the County's process for their two grant programs – business interruption and for PPE/business improvements for re-opening. If grants are awarded to businesses within Foxfield, the County would deduct/charge these amounts to the distribution set aside for the Town. The Town of Foxfield allocation of Coronavirus Relief Funds in an amount not to exceed Seventy-Two Thousand One Hundred Fifty Dollars (\$72,150.00).

ATTACHMENTS:

Exhibit A – Intergovernmental Agreement CARES Act Local Government Distribution

INTERGOVERNMENTAL AGREEMENT
CARES Act Local Government Distribution

This Intergovernmental Agreement (“Agreement”), is made and entered into by and between **THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ARAPAHOE, STATE OF COLORADO**, (the “County”) and **THE TOWN OF FOXFIELD**, a municipality and political subdivision of the State of Colorado (the “Local Government”). The County and the Local Government shall be referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was passed by Congress and signed into law on March 27, 2020, which provides over \$2 trillion of economic relief; and

WHEREAS, through the Coronavirus Relief Fund, the CARES Act provides for payments to State, Local, and Tribal governments navigating the impact of the COVID-19 outbreak; and

WHEREAS, the CARES Act provides that the U.S. Treasury Department was to make payments from the Coronavirus Relief Fund to states and eligible units of local government; the District of Columbia and U.S. territories; and tribal governments, based on population calculations provided in the CARES Act; and

WHEREAS, Arapahoe County is an eligible unit of local government under the CARES Act and has received an allocation of Coronavirus Relief Funds; and

WHEREAS, the CARES Act requires that Coronavirus Relief Funds may only be used to cover those costs of the Local Government that:

- are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- were not accounted for in the budget most recently approved as of March 27, 2020, for the local government entity; and
- were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020;

and

WHEREAS, pursuant to Section 18(2) of Article XIV of the Colorado Constitution and C.R.S. Section 29-1-203, as amended, the County and the Local Government have the authority to enter into intergovernmental agreements and are authorized to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the County desires to distribute a portion of its allocation of Coronavirus Relief Funds with the Local Government in order to effectuate the purpose and intent of the CARES Act and to assist the Local Government in mitigating the impacts of the COVID-19 emergency, and the Parties desire to enter to this intergovernmental agreement in order to set forth the terms and conditions pertaining to such distribution.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises herein contained, the County and the Local Government agree as follows:

1. Coronavirus Relief Funds Available to Local Government. The County will make available for reimbursement to the Local Government, and, in certain limited cases, advancement to the Local Government, on an as needed basis, a portion of the County's allocation of Coronavirus Relief Funds (the "Coronavirus Relief Funds" or "Funds") in an amount not to exceed Seventy-Two Thousand One Hundred Fifty Dollars and no/100 (\$72,150.00) (the "Distribution Amount"). The Local Government acknowledges and agrees that the County, at its sole discretion, may increase or decrease the Distribution Amount as may be necessary to reallocate Funds to address county-wide needs, other local government or sub-grantee needs, and/or other needs consistent with the CARES Act, or because the Local Government will not be able to use its full share by December 30, 2020. Prior to making a decision to increase or decrease the Distribution Amount, the County shall consult with the representative for the Local Government to determine the anticipated needs and expenses of the Local Government and the amounts of any unreimbursed expenses. The County shall provide written notice of at least ten (10) business days prior to the effective date of any increase or decrease in the Distribution Amount. Once such notice has been given, the County will continue to reimburse Local Government expenses that meet the requirements of this Agreement and that were incurred or committed to prior to the Local Government's receipt of the notice, so long as reimbursement is requested in compliance with this Agreement prior to the effective date of the notice.

2. Local Government Request for Reimbursement. The Local Government may make a request for reimbursement of its expenditures to the County. The Local Government's total requests for reimbursement, along with the total amount of any Funds paid or advanced, shall not exceed the Distribution Amount. The Local Government acknowledges and agrees that the costs and expenses submitted will only be submitted for reimbursement pursuant to this Agreement and will not be submitted for reimbursement, or paid with funds from any other federal government program, such as FEMA or another aid program. Prior to making an expenditure, the Local Government may consult with the County to inquire whether certain costs and expenditures may be in compliance with the CARES Act.

A. Requests. The request for reimbursement shall be submitted with the form provided by the County and shall include the following documentation:

1) The Local Government shall provide a description of the date of expenditure, amount, vendor, description of expense, an explanation of expense's connection to COVID-19, and a certification that are eligible expenses in compliance with the CARES Act that:

- are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- were not accounted for in the budget most recently approved as of March 27, 2020, for the Local Government; and
- were incurred during the period that begins on March 1, 2020, and ends on December 23, 2020 ("Eligible Expenses").

2) The Local Government shall provide supporting information for the request for reimbursement in the form of contracts, invoices, vouchers, receipts, payroll and time records, or other official documentation proving/verifying its expenditures submitted on the form provided as Eligible Expenses under the CARES Act.

3) The Local Government shall provide ACH or wire transfer instructions for distribution from the County of reimbursement of Eligible Expenses.

B. Request Submission Dates. Local Government shall use its best efforts to submit requests for reimbursement according to the following schedule, but shall not be deemed to have waived eligibility for reimbursement if a request is late or includes Eligible Expenses that could have been submitted earlier, provided that no request may be submitted later than December 23, 2020 unless advance permission is obtained from the County:

1) Upon execution of this Agreement: Eligible Expenses incurred between March 1, 2020-April 30, 2020.

2) June 10, 2020: Eligible Expenses incurred between May 1, 2020-May 31, 2020.

3) July 10, 2020: Eligible Expenses incurred between June 1, 2020-June 30, 2020.

4) August 10, 2020: Eligible Expenses incurred between July 1, 2020-July 31, 2020.

5) September 10, 2020: Eligible Expenses incurred between August 1, 2020-August 31, 2020.

6) October 10, 2020: Eligible Expenses incurred between September 1, 2020-September 30, 2020.

7) November 10, 2020: Eligible Expenses incurred between October 1, 2020-October 31, 2020.

8) December 10, 2020: Eligible Expenses incurred between November 1, 2020-November 30, 2020.

9) December 23, 2020: Eligible Expenses incurred between November 31, 2020 and December 23, 2020.

C. County Review and Acceptance. The County shall review and/or audit the Local Government's reimbursement request. The County shall only accept and reimburse requests that provide adequate documentation, and only for what the County determines, at its sole discretion, are Eligible Expenses. The County may contact the Local Government to discuss the documentation and nature of the expenses included in the request for reimbursement. In the event the County does not accept, in whole or in part, the Local Government's request for reimbursement, the County shall provide a written response documenting the basis for the County's determination. The Local Government may resubmit a corrected or augmented request for reimbursement and any necessary additional supporting documentation within ten (10) days of receiving notice of the County's written determination, and the County will then re-review the request and any additional supporting documentation and rationale submitted by the Local Government; except that, no request may be submitted or re-submitted any later than December 23, 2020 and any request submitted after such date will not be paid, unless advance permission to submit or re-submit a request after this date is obtained from the County. The Local Government acknowledges and understands that the U.S. Treasury is the authorizing agency and the County is using its best efforts to determine Eligible Expenses. Any reimbursement request accepted and

paid, in whole or in part, by the County, is still subject to federal review and has the potential to be subsequently dis-allowed. As such, any acceptance by the County of the Local Government's request to reimburse and subsequent payment shall not be construed to operate as a waiver of the Local Government's obligation to comply with the CARES Act, this Agreement, and any other laws, regulations or rules and shall not operate as a waiver or estoppel of the Local Government's obligation to return/repay any Funds distributed to the Local Government that are subsequently found to not have been used or reimbursed for Eligible Expenses or the use of which was found to otherwise be unlawful.

D. Distribution. The County shall disburse reimbursement directly to the Local Government via ACH or wire transfer as provided by the Local Government. The County shall use its best efforts to distribute Funds to the Local Government within ten (10) days of the County's review and acceptance. Prior to receiving reimbursement under this Agreement, the Local Government shall complete the required risk assessment questionnaire, conflict of interest, and mandatory disclosure forms per the OMB Uniform Guidance for Federal Awards (2 CFR § 200) provided by the County.

E. Consultation. The Local Government is encouraged to consult with the County if there is any question regarding whether proposed expenses are viewed by the County as being Eligible Expenses or regarding any other requirements for reimbursement, prior to incurring or otherwise committing to the expenses. The Local Government shall not enter into any sub-grant arrangements or agreements without first consulting with and obtaining permission from the County. The County will use its best efforts to promptly respond to any questions regarding eligibility, sub-grants, or other requirements.

F. Advancement of Funds. The County will consider requests for advancement of Funds where the Local Government provides substantial justification for its need for advancement instead of reimbursement. Such requests will be evaluated by the County on a case-by-case basis and its decision as to whether there is adequate justification and whether Funds shall be advanced shall be in its sole discretion and shall be final; any advancement of Funds shall be subject to all terms and conditions of this Agreement except those specifically pertaining only to reimbursement, and shall be subject to such additional terms and conditions as may be agreed upon in writing between the County and Local Government, which, once executed, shall automatically become part of this Agreement.

G. Disputes/Release. The Local Government understands that the County is obligated to expend its allocation of Coronavirus Relief Funds no later than December 30, 2020, and that any unexpended Funds as of that date must be returned to the U.S. Treasury Department. Due to the limited time to administer the Coronavirus Relief Funds, the Local Government agrees that there is no time to file an action to compel any alleged reimbursement requirement or other relief. The Local Government understands that the resubmittal process contained in Paragraph 2C above is the sole process for disputes regarding eligibility. The Local Government acknowledges that the County's decisions concerning any advancement of Funds, or reimbursement of any submittal or re-submittal are final, and cannot be challenged or appealed in court or otherwise. Local Government hereby waives, relinquishes and forever releases any and all claims or actions for damages, injunctive relief, and any other relief of any kind whatsoever, that it has or may have

now or in the future, against Arapahoe County, its Board of County Commissioners, elected and appointed officials, employees and agents, to obtain advancement or reimbursement of Funds and/or expenses related to COVID-19, or to obtain damages for the County's failure to advance or pay Funds and/or expenses related to COVID-19, or to seek any other relief that is inconsistent with this sub-section of the Agreement.

3. Return of Funds. To the extent any reimbursement or advance paid to the Local Government under this Agreement is not actually expended, or any costs and expenses are subsequently refunded to the Local Government, the Local Government agrees that it shall return any Funds that are unused or refunded to the County by December 10, 2020.

4. Expenditures and Accounting.

A. The CARES Act imposes expenditure and accounting obligations upon local governments receiving Coronavirus Relief Funds. The Local Government acknowledges and agrees to be solely responsible for ensuring that it procures, spends, documents, and accounts for its portion of the Distribution Amount received from the County in strict compliance with the CARES Act requirements and this Agreement, and any other applicable laws, regulations and rules, formal guidance from the U.S. Treasury Department, and the OMB Uniform Guidance for Federal Awards (2 CFR § 200). Because the CARES Act is recent legislation, the Parties anticipate that additional federal legislation, rules, regulations, and guidance from the U.S. Treasury Department may be promulgated regarding the expenditure and accounting requirements. The Local Government agrees to familiarize itself with, and shall adhere to, all current and subsequent legislation, rules, regulations, and guidance from the U.S. Treasury Department.

B. The Local Government shall maintain a complete set of books and records documenting its use of Funds under this Agreement. Records are to include relevant financial information such as bids, proposals, contracts, invoices, vouchers, receipts, payroll and time records as well as administrative records documenting the Local Government's determination that such expenditures are Eligible Expenses under the CARES Act. The Local Government shall provide full access to these books and records to the County, the U.S. Treasury Department, and the Office of Inspector General ("OIG"), so that compliance with the CARES Act and other applicable laws and regulations can be monitored, audited, and confirmed. During the term of this Agreement, the County will monitor the use of Funds distributed to the Local Government through reporting, site visits, regular contact, or other means to provide reasonable assurance of compliance with laws, regulations, and the provisions of the CARES Act. All records pertaining to the use of Funds under this Agreement are to be maintained for five (5) years from December 30, 2020.

C. The Parties anticipate that the Office of Inspector General ("OIG") will audit the use of Coronavirus Relief Funds beginning in January 2021, or thereafter. In anticipation of the upcoming audit, the Local Government agrees to provide to any additional documentation required to respond to such audit.

D. If the federal government imposes additional documentation requirements on the County, the Local Government agrees to timely provide to the County all information and documentation necessary for the County's compliance with such requirements as related to the Distribution Amount.

E. None of the reporting requirements herein are intended to shift the responsibility of the Local Government for ensuring that each dollar of its requests for reimbursement or advances were spent in compliance with the CARES Act and this Agreement. The County assumes no responsibility for oversight or management of the Local Government's spending and requires the above reporting to ensure the County has sufficient documentation for the OIG audit. In the event the OIG, U.S. Treasury Department, or any other federal agency/division determines that the Local Government spent its Distribution Amount on, or was reimbursed by the County for any ineligible expenses, or that the expenditure or use of Funds was otherwise unlawful, the Local Government acknowledges and agrees that it is solely responsible for any required recoupment/repayment of those Funds.

5. Audit. In the event of an audit or other investigation or review by the U.S. Treasury Department, or other federal agency/division, of the use of any Coronavirus Relief Funds provided by the County, the Local Government shall, at its own costs, provide documentation and defend the Local Government's use of the Funds. The Local Government agrees to provide the County, upon request, a copy of any audit reports pertaining to its use of Funds under this Agreement. In the event that the U.S. Treasury or other federal agency/division finds that the Local Government's use of Funds was not authorized by the CARES Act or this Agreement, or that the Local Government received advancement or reimbursement of Funds from the County to cover expenditures that are not Eligible Expenses or was otherwise in violation of the CARES Act, or was otherwise unlawful, the Local Government acknowledges and agrees that it shall be solely responsible for paying/refunding/reimbursing the amount of such Funds to the County, along with any interest and costs owed on such amount. The County shall then pay the amount of such Funds, and interest and costs, received from the Local Government to the U.S. Treasury or other federal agency/division. In the event the Local Government fails to comply with its obligation to pay/refund/reimburse Funds as set forth above, in addition to any other remedy that the County may have available, the County may withhold any funds collected by the County that would be owed to the Local Government as a set off to make any required payments/refunds/reimbursements to the U. S. Treasury or other federal agency/division, or to cover any amounts expended by the County for such purpose. The Local Government further acknowledges and agrees that, if the expenditure of Federal awards by the Local Government meets or exceeds \$750,000 during the fiscal year 2020, it shall perform audits as required by the OMB Uniform Guidance per §200.501.

6. Publicity. The Local Government agrees to acknowledge the Arapahoe County CARES Program as a contributor to any project or program that is funded with Coronavirus Relief Funds pursuant to this Agreement in all publications, news releases, and other publicity issued by the Local Government and agrees to allow the County to do the same. The Local Government shall cooperate with the County in preparing public information pieces, including photos, for publications, news releases, and other publicity issued by the County. The County's contact for purposes of this section of the Agreement is Luc Hatlestad, Arapahoe County Public Information Officer.

7. Representatives. The County's primary representative and contact for matters pertaining to this Agreement (other than matters pertaining to section 6) shall be Todd Weaver, Director of

the Finance Department. The Local Government's primary representative and contact for matters pertaining to this Agreement shall be Karen Proctor, Town Administrator.

8. Compliance with Laws. The Local Government shall comply with the Cares Act and any other applicable federal, state, and local laws, regulations and rules.

9. Indemnification. To the extent permitted by law, the Local Government shall indemnify the County and its elected and appointed officials, officers, employees, and agents from and against any and all losses, damages, liabilities, claims, suits, actions, or awards, including costs, expenses, and attorney's fees, incurred or occasioned as a result of the acts or omissions of the Local Government, or its elected officials, employees, agents, or subcontractors arising out of or in any way connected with the performance of this Agreement. The Local Government's obligation to indemnify pursuant to this paragraph shall survive the termination of this Agreement.

10. Hold Harmless. The Local Government agrees that in the event the Local Government (or anyone acting on its behalf) fails to perform the terms of the Agreement or is found to use any Funds received on ineligible expenses, or found to have been reimbursed for ineligible expenses, under the CARES Act and/or other applicable law, the Local Government agrees to hold the County harmless for any damages suffered as a result thereof. The Local Government also agrees to pay any actions, claims, lawsuits, damages, charges, or judgments whatsoever that arise out of the Local Government's performance or nonperformance under this Agreement, including the costs and reasonable attorneys' fees incurred by the County in the defense thereof.

11. Term. This Agreement begins as of March 1, 2020 and shall expire on June 30, 2021. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that may require continued performance or compliance beyond the termination date of this Agreement, including, without limitation, Sections 2-5 and 8-10 of this Agreement, shall survive such termination date and shall be enforceable as provided herein in the event of a failure by a party to perform or to comply under this Agreement.

12. Miscellaneous Provisions.

A. Assignment. No Party shall have the right and authority to assign any of the obligations associated with this Agreement to another Party.

B. Successors and Assigns. Except as herein otherwise provided, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

C. No Third-Party Beneficiaries. It is expressly understood and agreed that the enforcement of this Agreement and all rights of action relating thereto shall be strictly reserved to the County and the Local Government. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person.

D. 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 provision that will achieve the original intent of the parties hereunder.

E. Laws and Venue. This Agreement shall be governed by, and shall be construed in accordance with, the laws of the State of Colorado. Venue for the trial of any action arising out of any dispute hereunder shall be in Arapahoe County District Court, pursuant to the appropriate rules of civil procedure.

F. Appropriation. Notwithstanding any other term, condition, or provision herein, each and every obligation of the Parties stated in this Agreement is subject to the requirement of a prior appropriation of funds therefor by the appropriate governing body of the Local Government and/or the County.

G. Notices. Notices to be provided under this Agreement shall be given in writing and either delivered via e-mail, by hand or deposited in the United States mail with sufficient postage to the addresses set forth herein:

COUNTY: Board of County Commissioners of Arapahoe County
5334 South Prince Street
Littleton, Colorado 80120-1136
commissioners@arapahoegov.com

And

Arapahoe County Attorney
5334 South Prince Street
Littleton, Colorado 80120-1136
attorney@arapahoegov.com

LOCAL
GOVERNMENT: Town of Foxfield
Attn: Town Clerk
P.O. Box 461450
Foxfield, CO 80046-1450

And

Corey Y. Hoffmann
Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202

H. Modifications. This Agreement may be amended, modified, or changed, in whole or in part, only by written agreement duly authorized and executed by the County and the authorized signatories for the Local Government.

I. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto. The parties agree that there have been no representations made regarding the subject matter hereof other than those, if any, contained herein, that this Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and further agree that the various promises and covenants contained herein are mutually agreed upon and are in consideration of one another.

J. Counterparts. 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. Electronic or facsimile delivery of a fully executed copy of the signature pages below shall constitute an effective and binding execution of this Agreement.

K. Authorization. The Parties hereto stipulate and represent that all procedures necessary to authorize the execution of this Agreement have been performed and that the persons signing for each Party have been authorized to do so.

L. Electronic Signatures. 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.

IN WITNESS WHEREOF, the County and the Local Government have executed this Agreement as of the date(s) set forth below.

ATTEST:

TOWN OF FOXFIELD, COLORADO

By: _____
Miranda Gallivan, Town Clerk

By: _____
Name: _____
Title: _____
Date: _____

APPROVED AS TO FORM:

By: 
Corey Y. Hoffmann, Town Attorney

ATTEST:

COUNTY OF ARAPAHOE
STATE OF COLORADO

By: _____
Clerk to the Board

By: _____
Name: Nancy N. Sharpe
Title: Chair, Board of County
Commissioners
Date: _____

APPROVED AS TO FORM:

By: _____
County Attorney