



MEMORANDUM

TO: Mayor Jones and Members of the Board

FROM: Karen Proctor, Town Administrator

DATE: April 21, 2022

RE: Open Space Shareback Funds 2022 IGA with Arapahoe County

DISCUSSION:

Attached is a 2022 Intergovernmental Agreement with Arapahoe County for the Open Space Sales and Use Tax Shareback Funds. Last year, Arapahoe County voters approved the permanent reauthorization of the County's open space sales and use tax, with a new resolution governing the use of the funds. With the new resolution in place, the County and Foxfield need to enter into a new intergovernmental agreement (IGA) concerning shareback funding. The new IGA references the 2021 resolution, which superseded the prior resolutions, and it terminates the original shareback IGAs and amendments.

RECOMMENDED MOTION:

"I move to approve the 2022 Intergovernmental Agreement with Arapahoe County for the Open Space Sales and Use Tax Shareback Funds."

ATTACHMENTS:

Exhibit A – 2022 Intergovernmental Agreement with Arapahoe County for the Open Space Sales and Use Tax Shareback Funds

**2022 INTERGOVERNMENTAL AGREEMENT
FOR OPEN SPACE SALES AND USE TAX SHAREBACK FUNDS**

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** ("County"), and the **TOWN OF FOXFIELD**, a municipality and political subdivision of the State of Colorado ("Town"), collectively referred to as the "Parties."

RECITALS

- A. In 2003, the voters of the County approved a countywide sales and use tax of one-quarter of one percent (0.25% or 25 cents for every 100 dollars), which would expire December 31, 2013, to be used for specified open space objectives as set forth in County Resolution No. 030381;
- B. In 2011, the voters of the County reauthorized the open space sales and use tax until December 31, 2023, as set forth in County Resolution No. 110637;
- C. In 2021, the voters of the County permanently reauthorized the open space sales and use tax, until repealed, as set forth in County Resolution No. 21-263 ("Resolution"), which is attached and incorporated as Exhibit A and which superseded County Resolution Nos. 030381 and 110637;
- D. The Resolution provides that 50 percent of the annual revenue from the open space sales and use tax shall be distributed to all incorporated municipalities wholly or partially within the County ("Shareback Funds");
- E. The Resolution requires that each incorporated municipality enter into an intergovernmental agreement with the County before receiving Shareback Funds, as authorized by Article XIV, Section 18 of the Colorado Constitution and C.R.S. § 29-1-203; and
- F. The Resolution provides that each municipality shall collect the County's open space use tax on building and construction materials, as authorized by C.R.S. § 29-2-106(3)(a).

AGREEMENT

NOW, THEREFORE, the County and the Town agree as follows:

1. The Parties' 2004 Intergovernmental Agreement and 2012 First Amendment to Intergovernmental Agreement for Open Space Sales and Use Tax Shareback Funds are terminated and replaced in full by this Agreement.
2. On or before June 1 of each year, the County shall distribute to the Town its proportionate share of Shareback Funds. The amount of Shareback Funds will be based on the population of the Town in the County and the total incorporated population of the County. The population figures will be updated annually based on the official figures provided by the Demography Section of the Colorado Department of Local Affairs or any state agency that takes over the duties and responsibilities of the Demography Section.

3. If during each successive five-year period beginning with the effective date of this Agreement, the Town has not received or been allocated, through a combination of Shareback Funds, grant funds, joint project funds, or other County open space sales and use tax funds, a return of a total of 50 percent of the County open space sales and use tax revenues collected from within the Town boundaries, then the County shall use its best efforts to contribute or expend a portion of its share of County open space sales and use tax funds on a joint project or projects within the boundaries of the Town. The County's contribution or expenditure shall be in a total amount that equals or exceeds the difference between 50 percent of the County open space sales and use tax revenues collected within the boundaries of the Town during the five-year period and the amount returned to the Town through Shareback Funds, grant funds, joint project funds, and other County open space sales and use tax funds within the five-year period. Any such contribution or expenditure by the County shall be subject to the availability of County open space sales and use tax funds, annual appropriation by the County, and the availability and approval of the joint project or projects by the Board of County Commissioners after review and recommendation by the Open Space and Trails Advisory Board. The County shall be responsible for determining the amounts collected and returned for each five-year period based upon its records and information provided by the Colorado Department of Revenue, and the County's determination on this issue shall be final.
4. The Town specifically agrees that it shall only use its Shareback Funds for the uses set forth in Sections 12(c) and 12(e) of the Resolution.
5. The Town may use up to 20 percent of its annual distribution of Shareback Funds to maintain existing or new open space properties, trails, neighborhood and regional parks, and sports fields.
6. The Resolution allows Shareback Funds to be used for the development of trails, which may include on-street trails and sidepaths for the purposes of (a) connecting an isolated neighborhood or activity center to a park, trail, open space, or school, and (b) connecting to a trail system included in a regional, County, or special district planning document.
7. The Town agrees to erect and permanently maintain at least one sign in recognition of the Shareback Funds in a publicly visible area at each project site where Shareback Funds are invested for the purposes of acquiring land for open space, parks, or trails; improving sites for parks, trails, and open spaces; or other significant outdoor recreational purposes. The location, form, design, and wording of the sign(s) must be approved by the County's Open Spaces Director or delegate prior to installation. The sign(s) shall be erected prior to the site's public opening. Temporary construction signs shall also be erected in a publicly visible area to indicate where Shareback Funds are invested.
8. After receipt of its Shareback Funds, the Town will use any interest earned on these funds, and any income generated from the use or lease of lands acquired with these funds, only for the purposes set forth in the Resolution and in compliance with this Agreement.
9. The Town understands and agrees that no land or interests acquired with Shareback Funds may be sold, leased, traded, or otherwise conveyed, nor may an exclusive license or permit on the land or interests be given, without prior approval of the Town's governing body after

conducting a public hearing and without the prior written approval of the Board of County Commissioners or designee. The Town further agrees, if such sale, lease, trade, or conveyance is made or an exclusive license or interest has been given, the proceeds shall be deposited in a Town open space fund to be used for purposes consistent with the Resolution and this Agreement. In addition, any revenue earned by the Town through appreciation of land or interests acquired with Shareback Funds also shall be deposited in a Town open space fund to be used for purposes consistent with the Resolution and this Agreement.

10. In January of each year, the Town will submit to the County's Open Spaces Director or delegate an Annual Municipal Expenditure Report to certify that the Shareback Funds distributed in the previous year were used in conformance with the Resolution and to detail the Town's expenditures of its Shareback Funds.
11. The Town may bank its Shareback Funds from year to year as long as the funds are deposited into a reserve account for open space funds and expended in accordance with the Resolution and this Agreement. Further, when Shareback Funds are banked, it must be noted in the Town's Annual Municipal Expenditure Report.
12. Upon written notice from the County's Open Spaces Director or delegate informing the Town that it has failed to submit its Annual Municipal Expenditure Report, the Town shall submit its report to the County's Open Spaces Director or delegate within 30 days; if it fails to do so, the Town shall be deemed to be in violation of the Resolution and this Agreement. As such, the Town will be ineligible to receive future Shareback Funds, unless and until the Annual Municipal Expenditure Report and/or a compliance plan is submitted to the County's Open Spaces Director or delegate and is accepted and/or approved by the County.
13. The Town understands and agrees that if the Shareback Funds are not used in accordance with the Resolution and this Agreement, the Town will be ineligible to receive future Shareback Funds unless and until it submits a compliance plan to the County's Open Spaces Director or delegate and the County approves the compliance plan. Upon written notice by the County's Open Spaces Director or delegate that the Town must submit a compliance plan, the Town shall have 30 days to submit it.
14. The Town further understands and agrees that if it fails to (a) submit a compliance plan that is approved by the County, (b) meet the requirements of the County's approved compliance plan within 30 days of written notice of noncompliance by the County, or (c) submit its Annual Municipal Expenditure Report, then the Town's share of the Shareback Funds will be distributed, based on annual population figures, among the other participating incorporated municipalities.
15. Pursuant to the Resolution and C.R.S. § 29-1-203(1), the County specifically delegates authority to the Town to collect the County's open space use tax. The Town understands and agrees that it will use its best efforts and reasonable methods to collect the use tax on building and construction materials and will forward, on a monthly basis, by the end of the next month after the monies are collected (to facilitate such collection), such tax minus up to five percent (of the .25 percent tax collected), minus any refund given on previously collected building use tax, to the County's Sales Tax Analyst, 5334 South Prince Street, Littleton, CO 80120-1136. The County acknowledges and represents that the Town's retention of up to

five percent of the use tax collected, as set forth above, is not a violation of Section 9(c) of the Resolution.

16. The Town shall determine and use its own policies and procedures, including any exemption amounts, when it collects the County's open space use tax. A copy of the Town's policies and procedures relating to the County's open space use tax is attached and incorporated as Exhibit B. The Town understands and agrees that the County may conduct, at the County's expense, a review and/or an audit of the Town's records to verify collection by the Town of the County's open space use tax.
17. The County understands and the Town agrees and represents that the Town's policies and procedures (to the extent such policies and procedures exist for the collection of use taxes) provide for the collection of the County's open space use tax in accordance with the provisions above. However, if, following a County review and/or audit as set forth above performed in a manner consistent with the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201 et seq., the County determines that the Town failed to collect the County's open space use tax in accordance with the Town's policies and procedures (if such policies and procedures exist for the collection of use taxes) and this Agreement, the Town shall be deemed to be in default of the Agreement. In the event of such a determination of default, the Town will be provided 60 days to modify its policies and procedures (if they exist) or to modify the manner of collection if policies and procedures do not exist, to rectify the default of the Agreement and to notify in writing the County's Open Spaces Director or delegate of the actions taken by the Town to bring it into compliance with the Agreement. The Town's failure to modify its policies and procedures, or its manner of collection if policies and procedures do not exist, in order to avoid any future failure to properly collect the County's open space use tax will be deemed a breach of the Agreement, and Shareback Funds accruing to the Town during the period of such breach will not be distributed for the period of the breach. If the Town's policies and procedures contain a procedure to remedy the failure by the Town to collect use taxes and to collect unpaid use taxes from the taxpayer, the Town shall follow such procedure and notify the County's Open Spaces Director or delegate whether such tax has been collected and will promptly forward any collected use tax to the County as provided above. The County and the Town acknowledge and agree that the County will not seek payment from the Town for the County's open space use tax that was not collected, provided the Town has used reasonable efforts to comply with the Town's collection procedures and the provisions of this paragraph.
18. In the event of a conflict between the Resolution and this Agreement, the Resolution shall control.
19. If any one or more provisions of this Agreement is determined to be illegal or unenforceable, all other provisions shall remain effective; however, the Parties shall enter into good faith negotiations and proceed with due diligence to draft a replacement provision that will achieve the original intent of the Parties.
20. 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 Town.

21. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

22. Venue for any dispute under this Agreement shall be in Arapahoe County District Court, pursuant to the appropriate rules of civil procedure.

23. Notices under this Agreement shall be sent to:

COUNTY: Board of County Commissioners of Arapahoe County
5334 South Prince Street
Littleton, CO 80120-1136

and

Arapahoe County Attorney
5334 South Prince Street
Littleton, CO 80120-1136

and

Arapahoe County Open Spaces Director
6934 S. Lima Street, Suite A
Centennial, CO 80112

and

Arapahoe County Open Space and Trails Advisory Board
6934 S. Lima Street, Suite A
Centennial, CO 80112

TOWN: _____

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

25. This Agreement shall inure to the benefit of and be binding upon the Parties.

26. In the event of any claim by either party concerning this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the other party.

27. This Agreement shall continue in full force and effect until the repeal of the Resolution.

28. This Agreement may be terminated by either party upon 30 days' written notice to the other party. If this Agreement is terminated, the Town's participation in the Shareback Funds program is also terminated.

IN WITNESS WHEREOF, the County and the Town have executed this Agreement as of the date of the Town's signature below.

THE TOWN OF FOXFIELD

By: _____ Date: _____

Title: _____

Attest: _____

Title: _____

ATTEST:
Clerk to the Board

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARAPAHOE

By: _____
Shannon Carter on behalf of
the Board of County Commissioners
pursuant to Resolution No. 22-049

EXHIBIT A

BOARD OF COUNTY COMMISSIONERS OF ARAPAHOE COUNTY, COLORADO

TUESDAY, AUGUST 10, 2021

At the regular meeting of the Board of County Commissioners for Arapahoe County, Colorado held at the Administration Building, 5334 South Prince Street, Littleton, Colorado on Tuesday, the 10th day of August, 2021, there were present:

Nancy Jackson, Chair	Commissioner District 2	Present
Carrie Warren-Gully, Chair Pro Tem	Commissioner District 5	Present
Bill Holen	Commissioner District 1	Present
Jeff Baker	Commissioner District 3	Present
Nancy Sharpe	Commissioner District 4	Present
Ron Carl	County Attorney	Present
Joan Lopez	Clerk to the Board	Absent and Excused
Joleen Sanchez	Clerk to the Board Administrator	Present

RESOLUTION NO. 21-263 It was moved by Commissioner Sharpe and duly seconded by Commissioner Jackson to adopt the following Resolution:

WHEREAS, the Board of County Commissioners, on June 17, 2003, adopted Resolution Number 030381, which authorized the submission of a ballot issue to the eligible electors of Arapahoe County, proposing the imposition of a one quarter of one percent (0.25%) sales and use tax for open space and trails purposes; and

WHEREAS, on November 4, 2003, a majority of the eligible Arapahoe County electors approved the ballot issue authorizing the sales and use tax as specified in Resolution Number 030381; and

WHEREAS, the Board of County Commissioners, adopted Resolution Number 110637 on August 30, 2011, which authorized the submission of a ballot issue to the eligible electors of Arapahoe County, to extend the existing one quarter of one percent (0.25%) sales and use tax for open space and trails purposes; and

WHEREAS, on November 1, 2011, a majority of the eligible Arapahoe County electors approved the ballot issue extending the sales and use tax and making amendments as described in further detail in Resolution Number 110637; and

WHEREAS, pursuant to Resolution Number 110637, the sales and use tax is set to expire on December 31, 2023; and

WHEREAS, since establishing the open spaces program, Arapahoe County has built or improved 70 miles of trails, supported 168 park, trailhead, and heritage-area projects, conserved 31,000 acres of open space, and invested nearly \$360 million in open spaces, parks, trails and

heritage areas, with nearly 71% of funding provided directly to the County's cities and special districts for local needs; and

WHEREAS, Arapahoe County recently updated its open spaces master plan, which serves as a blueprint for the program's future, identifying opportunities for: conserving and enhancing natural lands, wildlife habitats and water resources, closing the gaps in the County's outdoor recreation network, and setting County priorities for educational programming and the stewardship of existing resources; and

WHEREAS, Arapahoe County sought and received substantial input from residents, businesses, municipalities, nonprofits, and special districts about the future of open spaces, parks, and trails within Arapahoe County as well as whether it is in the best interests of County residents to extend the sales and use tax past December 31, 2023; and

WHEREAS, the Board of County Commissioners established a reauthorization committee to evaluate options regarding a potential sales tax extension, engaging the public and the Open Spaces Citizen Advisory Board to make recommendations to the Board for consideration; and

WHEREAS, public feedback received demonstrated overwhelming support for extending the sales and use tax; and

WHEREAS, based upon input received, the Board of County Commissioners has determined that it is in the best interests of the residents of the County that the county-wide sales and use tax at the rate of one quarter of one percent (0.25%) be extended, the receipts from which will continue to be used for open space and trails purposes in the manner set forth in this resolution, which incorporates the provisions of both Resolution Numbers 030381 and 110637, as well as modifications to such provisions that extend the tax beyond its current expiration date of December 31, 2023, until repealed, increase the amount of funds available to municipalities and the County for maintenance, reduce funds available for acquisition, allow the County to allocate funds to active open space and park uses, allow for the re-distribution of unspent funds to other open space, park and trail uses, and makes some other revisions and clarifications to the County's open space tax program, as set forth in further detail below; and

WHEREAS, pursuant to Colorado Constitution Article X, Section 20, an extension of an expiring tax requires voter approval; and

WHEREAS, pursuant to Section IX. A. of Resolution Number 030381, some of the proposed amendments are permitted only if approved by a vote of the registered electors of Arapahoe County; and

WHEREAS, the Board of County Commissioners has determined that a ballot issue regarding the extension of the sales and use tax and modifications to the program, should be submitted by the Board of County Commissioners to the eligible electors of the County at the November 2, 2021, election; and

WHEREAS, pursuant to Section 1-5-203(3) C.R.S., the Board of County Commissioners through the adoption of this resolution certifies the ballot issue to the Arapahoe County Clerk and Recorder for said November 2, 2021, election.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Arapahoe, State of Colorado, as follows:

1. The ballot issue title and issue contained in Exhibit A, attached and incorporated herein, shall be presented in substantially such form to the registered electors of Arapahoe County at the coordinated election to be held on Tuesday, November 2, 2021, in accordance with all applicable laws. The Board of County Commissioners hereby directs that a copy of this Resolution be certified and filed in the Office of the Clerk and Recorder immediately and authorizes and directs the Clerk and Recorder to certify the ballot issue and ballot content as provided by law.
2. The name of the designated election official who will be responsible for conducting the election pursuant to the Uniform Election Code is Joan Lopez, Arapahoe County Clerk and Recorder.
3. Pursuant to C.R.S. § 1-11-203.5, any election contest arising out of a ballot issue or ballot question election concerning the order of the ballot or the form or content of the ballot title shall be commenced by petition filed with the proper court within five days after the title of the ballot issue or ballot question is set.
4. The officials and employees of Arapahoe County are hereby authorized and directed to take all actions necessary or appropriate to effectuate the provisions of this resolution.
5. The Arapahoe County Clerk and Recorder shall publish the text of the ballot title and question four separate times, a week apart, in the official newspaper of Arapahoe county and each incorporated municipality within Arapahoe County.
6. Subject to approval of the above-referenced ballot issue by a majority of the registered Arapahoe County electors voting at the November 2, 2021, election, the open space sales and use tax, as originally specified in Arapahoe County Resolution Number 030381, and as subsequently extended and amended as specified in Arapahoe County Resolution Number 10637, shall be further extended, amended and restated as specified below.
7. General Provisions.
 - (a) Purpose. The purpose of this Resolution is, upon the approval of a majority of registered electors voting on such proposal, to extend continuously beyond its current expiration date of December 31, 2023, until repealed, an existing sales tax of one quarter of one percent (0.25%) upon the sale at retail of tangible personal property and the furnishing of certain services in the County, and to extend continuously beyond its current expiration date of December 31, 2023, until repealed, an existing use tax of one quarter of one percent (0.25%) for the privilege

of use or consuming in the County any construction and building materials purchased at retail, and for the privilege of storing, using or consuming in the County any motor and other vehicles, purchased at retail on which registration is required, all in accordance with the provisions of Article 2 of Title 29, C.R.S., which provisions are incorporated herein by this reference, and to modify the provisions of the sales and use tax program as set forth herein.

- (b) Statutory Definitions Incorporated. For purposes of this Resolution, the definitions of the words contained herein shall be as defined in Sections 39-26-102 and 39-26-201, C.R.S., which definitions are incorporated herein by this reference.
- (c) Effective Date: The provisions of this Resolution shall become effective immediately upon approval by a majority of registered electors voting upon such proposal, and once effective, shall supersede Arapahoe County Resolution Numbers 030381 and 10637.

8. Sales Tax. The imposition and collection of a one-quarter of one percent (0.25%) sales tax on all sales of tangible personal property at retail or the furnishing of services in Arapahoe County, as provided in Section 29-2-105(1)(d), C.R.S., effective throughout the incorporated and unincorporated portions of Arapahoe County, such tax having been originally imposed by Arapahoe County Resolution Number 030381, shall hereby continue to and beyond its current expiration date of December 31, 2023, until repealed, subject to the following terms and conditions:

- (a) Transactions Subject to the Sales Tax.
 - i. The tangible personal property and services taxable hereunder shall be the same as the tangible personal property and services taxable pursuant to Section 39-26-104, C.R.S., subject to the same exemptions as those specified in part 7 of article 26 of title 39, C.R.S. and Section 29-2-105, C.R.S. expressly including the exemption allowed by section 39-26-709 (1), C.R.S., for purchases of machinery or machine tools; the exemption for sales of electricity, coal, wood, gas, fuel oil, or coke specified in section 39-26-715 (1)(a)(II), C.R.S.; the exemption for sales of food specified in section 39-26-707 (1)(e), C.R.S.; the exemption for vending machine sales of food set forth in section 39-26-714 (2), C.R.S.; the exemption for occasional sales by a charitable organization set forth in section 39-26-718 (1)(b), C.R.S.; the exemption for sales and purchases of farm equipment and farm equipment under lease or contract specified in section 39-26-716 (2)(b) and (2)(c), C.R.S., excepting from the definition of “farm equipment” the sales and purchases of parts used in the repair or maintenance of farm equipment, all shipping pallets or aids paid for by a farm operation, any visual, electronic identification, or matched pair ear tags and electronic identification readers used to scan ear tags that are used by farm operators to identify or track food animals including animals used for food or in the production of food as specified in section 39-26-716 (1)(d), all sales and purchases of dairy equipment, and aircraft designed or adapted to undertake

agricultural applications; and the exemption for sales of low-emitting motor vehicles, power sources, or parts used for converting such power sources as specified in section 39-26-719 (1), C.R.S.; the exemption for sales of machinery or machine tools specified in section 39-26-709 (1), C.R.S., used in the processing of recovered materials by a business listed in the inventory prepared by the department of public health and environment pursuant to section 30-20-122 (1)(a)(V), C.R.S.; the exemption for sales of wood from salvaged trees killed or infested in Colorado by mountain pine beetles or spruce beetles as specified in section 39-26-723, C.R.S.; the exemption for sales that benefit a Colorado school specified in section 39-26-725, C.R.S.; the exemption for sales by an association or organization of parents and teachers of public school students that is a charitable organization as specified in section 39-26-718 (1)(c), C.R.S.; the exemption for sales of property for use in space flight specified in section 39-26-728, C.R.S.; and the exemption for manufactured homes set forth in section 39-26-721 (3).

- ii. All sales of personal property on which a specific ownership tax has been paid or is payable shall be - exempt from the sales tax imposed by Arapahoe County when such sales meet both of the following conditions: (1) the purchaser is a non-resident of or has his principal place of business outside of Arapahoe County, and (2) such personal property is registered or required to be registered outside the limits of Arapahoe County under the laws of the State of Colorado.
 - iii. Such sales tax will not be imposed upon the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule county equal to or in excess of that sought to be imposed hereunder by Arapahoe County. A credit shall be granted against the sales tax imposed hereunder by Arapahoe County with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule county. The amount of the credit shall not exceed the sales tax imposed hereunder by Arapahoe County.
- (b) Determination of Place at Which Sales are Consummated. For the purposes of this Resolution, all retail sales are sourced as specified in section 39-26-104 (3), C.R.S. The amount subject to the sales tax imposed hereunder shall not include any Colorado state sales or use tax imposed by Article 26 of Title 39, C.R.S.
- (c) Collection, Administration, and Enforcement. The sales tax imposed hereunder shall be collected, administered and enforced by the Executive Director of the Colorado Department of Revenue ("Executive Director") in the same manner as the collection, administration and enforcement of the Colorado state sales tax. The provisions of Article 26 of Title 39, C.R.S., and all rules and regulations promulgated thereunder by the Executive Director shall govern the collection, administration, and enforcement of the sales tax imposed hereunder. Distribution

of all sales tax collected by the Executive Director, pursuant to this Resolution, shall be to Arapahoe County.

- (d) Vendor's Fee. The vendor shall be entitled as collection agent for the County to withhold an amount equal to one-half of one percent (.50%) of the total amount to be remitted by the vendor to the Executive Director each month to cover the vendor's expense in the collection and remittance of the Sales Tax. If any vendor is delinquent in remitting the Sales Tax, other than in unusual circumstances shown to the satisfaction of the Executive Director, the vendor shall not be allowed to retain any amounts to cover his or her expense in collecting and remitting said Sales Tax, and an amount equivalent to the full amount of the Sales Tax imposed by this Resolution shall be remitted to the Executive Director by any such delinquent vendor.

9. Use Tax. The imposition and collection of a one-quarter of one percent (0.25%) use tax in accordance with the provisions of Article 2, Title 29, C.R.S., for the privilege of using or consuming in Arapahoe County any construction and building materials purchased at retail and for the privilege of storing, using, or consuming in Arapahoe County any motor and other vehicles, purchased at retail on which registration is required, effective throughout the incorporated and unincorporated portions of Arapahoe County, such tax having been originally imposed by Arapahoe County Resolution Number 030381, shall hereby continue to and beyond its current expiration date of December 31, 2023, until repealed, subject to the following terms and conditions:

- (a) Exemptions from the Use Tax.
 - i. Storage, use, or consumption of any tangible personal property the sale of which is subject to a retail sales tax imposed by Arapahoe County.
 - ii. Storage, use or consumption of any tangible personal property purchased for resale in Arapahoe County either in its original form or as an ingredient of a manufactured or compounded product, in the regular course of a business.
 - iii. Storage, use or consumption of tangible personal property brought into Arapahoe County by a nonresident thereof for his own storage, use, or consumption while temporarily within the County; however, this exemption does not apply to the storage, use, or consumption of tangible personal property brought into this State by a nonresident to be used in the conduct of a business in this State.
 - iv. Storage, use, or consumption of tangible personal property by the United States government, or the State of Colorado, or its institutions, or its political subdivisions in their governmental capacities only or by religious or charitable corporations in the conduct of their regular religious or charitable functions.
 - v. Storage, use, or consumption of tangible personal property by a person

engaged in the business of manufacturing or compounding for profit, or the use of any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished and the container, label, or the furnished shipping case thereof.

- vi. Storage, use, or consumption of any article of tangible personal property, the sale or use of which has already been subjected to a legally imposed sale or use tax of another statutory or home rule county equal to or in excess of that imposed by Arapahoe County. A credit shall be granted against the use tax imposed by Arapahoe County with respect to a person's storage, use, or consumption in Arapahoe County of tangible personal property purchased in another statutory or home rule county. The amount of the credit shall be equal to the tax paid by the person by reason of the imposition of a sales or use tax of the other statutory or home rule county on the purchase or use of the property. The amount of the credit shall not exceed the tax imposed by this proposal.
 - vii. Storage, use, or consumption of tangible personal property and household effects acquired outside of Arapahoe County and brought into it by a non-resident acquiring residency.
 - viii. Storage or use of a motor vehicle if the owner is or was, at the time of purchase, a non-resident of Arapahoe County and he purchased the vehicle outside of Arapahoe County for use outside of Arapahoe County and actually so used it for a substantial and primary purpose for which it was acquired and he registered, titled, and licensed said motor vehicle outside of Arapahoe County.
 - ix. Storage, use, or consumption of any construction and building materials and motor and other vehicles on which registration is required if a written contract for the purchase thereof was entered into prior to the effective date of this use tax resolution.
 - x. Storage, use, or consumption of any construction and building materials required or made necessary in the performance of any construction contract bid, let, or entered into any time prior to the effective date of the use tax imposed hereunder
- (b) The use tax imposed hereunder shall be applicable to every motor vehicle for which registration is required by the laws of the State of Colorado, and no registration shall be made of any motor or other vehicle for which registration is required, and no certificate of title shall be issued for such vehicle by the Department of Revenue or its authorized agents until any tax due upon the use, storage, or consumption thereof pursuant to this Resolution has been paid.

- (c) Collection, Administration, and Enforcement Except as provided by Section 39-26-209, C.R.S., the use tax imposed hereunder shall be collected, enforced and administered by Arapahoe County, consistent with Arapahoe County's guidelines, policies and procedures, which exist or may hereafter be promulgated not inconsistent with this Resolution. The use tax on construction and building materials shall be collected by the County's Public Works and Development Department, by each municipality or, as may be otherwise provided by intergovernmental agreement, based upon an estimate of building and construction materials costs submitted by the owner or contractor at the time a building permit application is made. All use tax collected on construction and building materials pursuant to this Resolution shall be distributed to Arapahoe County. All use tax collected on motor or other vehicles pursuant to this Resolution shall be distributed to Arapahoe County.
10. Arapahoe County Open Space Fund. A separate fund, known as the "Arapahoe County Open Space Fund" (the "Fund"), shall continue to be maintained, and 100% of the revenue derived from the sales and use tax imposed on the incorporated and unincorporated areas of Arapahoe County shall continue to be deposited thereto to be used solely for the purposes stated herein and as further described more fully below.
- (a) For purposes of Colo. Const., Art. X, Section 20, the receipt and expenditure of revenues of the sales tax and use tax shall be accounted for, budgeted and appropriated separately from other revenues and expenditures of Arapahoe County and outside of the fiscal year spending of the County as calculated under Art. X, Section 20, and nothing in Art. X, Section 20, shall limit the receipt and expenditure in each fiscal year of the full amount of such revenues of the sales tax and use tax, nor shall receipt and expenditure of such revenues affect or limit the receipt or expenditure of any and all other revenues of Arapahoe County for any fiscal year.
 - (b) Interest from Revenues and Income Generated from Acquired Lands. Interest generated from the revenues of the sales and use taxes imposed herein shall be used for the purposes stated herein. Income generated from the use or lease of preserved lands, natural areas, wildlife habitats, and parks acquired with the sales and use taxes imposed herein shall be used for the purposes stated herein.
11. Open Space and Trails Advisory Board. The Open Space and Trails Advisory Board ("OSTAB") shall continue to operate and advise the Board of County Commissioners on Open Space fund uses.
- (a) OSTAB shall consist of seven members.
 - (b) Each County Commissioner shall appoint one resident of his/her commissioner district to serve as an OSTAB member.
 - (c) The Board of County Commissioners shall appoint two Arapahoe County residents as at-large members.

- (d) OSTAB members shall serve three-year terms of office. Members may be re-appointed to no more than two successive terms.
- (e) OSTAB members shall serve at the pleasure of the Board of County Commissioners.
- (f) Members shall not be compensated for their services.
- (g) Members shall act in accordance with law, including Colorado conflict of interest laws applicable to public bodies. No member shall vote or participate in the application process regarding an acquisition or expenditure in which he or she has a financial or ownership interest, or where he or she has an ownership interest in an adjacent property.
- (h) OSTAB shall continue to meet as provided in its bylaws to review proposed projects and perform other duties in accordance with this Resolution.
- (i) OSTAB shall make recommendations to the Board of County Commissioners regarding the distribution of revenue collected from the Open Space Sales and Use Tax, in accordance with the guidelines set forth in this Resolution.

12. Distribution of Sales and Use Tax Revenue. The revenue collected from the Open Space Sales and Use Tax shall be distributed and administered in the following manner and subject to the definitions and conditions as set forth in this Resolution:

- (a) The annual revenue from the Open Space Sales and Use Tax shall be distributed according to the percentages as set forth below. Expenditure of said revenue is governed by the provisions set forth in Section 12.

Shareback to all incorporated municipalities or portions thereof based on the population of the incorporated municipality or portions thereof in Arapahoe County versus total population of incorporated areas in Arapahoe County 50%

County Open Space Program funds to be used as follows:

County Administrative Costs	4%
Available as grants to incorporated municipalities and special districts within Arapahoe County	12%
Designated Arapahoe County Heritage Areas	4.1%

Maintenance of County Open Space	9.9%
Acquisition of open space and/or interests in open space to include for the development of multi-use trails	20%
	<u>50%</u>
Total distribution by percentages of Open Space Fund created by Open Space Sales and Use Tax	100%

- (b) County Administrative Costs are those costs necessary for the County to administer the distribution of funds, to include distribution of Shareback Funds; development, creation, oversight and monitoring of and compliance with Intergovernmental Agreements ("IGAs"); grant review and distribution of grant funds; site reviews for grants and review of certified Annual Municipal Reports, as well as to administer the County's own Open Space Program, excluding maintenance, as set forth more fully below.
- (c) Shareback Funds are those monies distributed to the incorporated municipalities wholly and/or partially in Arapahoe County for open space uses as more fully set forth below.
 - i. These funds will be distributed to each incorporated municipality within or partially within Arapahoe County based on the population within said jurisdiction in Arapahoe County and the total incorporated population of Arapahoe County.
 - ii. The population figures will be updated annually based on the official figures provided by the Demography Section of the Colorado Department of Local Affairs or any state agency which takes over the duties and responsibilities of said Demography Section.
 - iii. The Shareback Funds will be distributed on an annual basis to each incorporated municipality, wholly or partially within Arapahoe County, provided that:
 - a. The incorporated municipality has entered into an Intergovernmental Agreement (IGA) with the Board of County Commissioners.
 - b. Such required IGA reflects the terms, conditions, intent and purpose of this Resolution consistent with the guidelines as set forth in Section 12(c) and (e) below.
 - c. Shareback Funds may be used for the open space uses as set forth in Section 12(e) below.

- d. Further, an incorporated municipality may use up to the percentage of its Shareback Funds designated in the IGA with the Board of County Commissioners, which designated percentage shall be at least 20% of the annual allocation, to maintain existing or new open space properties, trails, neighborhood and regional parks, and sports fields.
- e. Incorporated municipalities may bank Shareback Funds from year to year, as long as such funds are expended in accordance with the purposes set forth in this Resolution, and such is noted in the Annual Municipal Expenditure Report as set forth in Section 12 (iii) (g).
- f. Every December 31st, each incorporated municipality which received Shareback Funds, must certify and submit in writing, to the Board of County Commissioners, that the funds were used in conformance with this Resolution and must detail the expenditures of its Shareback Funds. Such submission shall be called the Annual Municipal Expenditure Report.
- g. If Shareback Funds are not used in accordance with the provisions and guidelines set forth in this Resolution and/or are used in violation of the terms and conditions of the IGA, the offending incorporated municipality will be ineligible for future Shareback Funds, unless and until a compliance plan is submitted by the offending municipality to and approved by the Board of County Commissioners.
- h. If the offending municipality fails to submit a compliance plan approved by the Board of County Commissioners or fails to meet the requirements of the Board of County Commissioners' approved compliance plan, then the Share of the non-complying entity will be distributed, based on annual population figures, among the other participating incorporated municipalities.

(d) The County Open Space Program shall have the following components:

- i. Grant Program. The County shall have funds, as specified above in Section 12 (a), available for distribution in the form of grants to incorporated municipalities; special districts, which provide recreational services or amenities; and recreation districts.

Said grants shall be used for the purposes specified in Section 12 (c) (iii) (d) or 12 (e) (i), and in accordance with the guidelines set forth in this Resolution.

- a. Those entities having proposals consistent with the guidelines as set forth in this Resolution may submit their grant applications to OSTAB.

- b. OSTAB and County staff shall review the grant applications and make recommendations to the Board of County Commissioners regarding the approval, conditional approval or denial of each application.
 - c. The Board of County Commissioners then shall approve, conditionally approve, or deny the grant application.
 - d. If the County distributes less than 12% of the Open Space Sales and Use Tax as designated for grants, the remaining portion shall be retained by the County to be used for purposes set forth in Section 12 (d) (v) below.
- ii. Designated Heritage Areas. The Board of County Commissioners shall authorize expenditure of funds for Designated Arapahoe County Heritage Areas ("Designated Heritage Areas") located in unincorporated Arapahoe County.
- a. A Designated Heritage Area is defined as lands or structures which have a cultural or historical significance to Arapahoe County, such as a historic property or the fairgrounds.
 - b. The Board of County Commissioners shall consider designating land or a structure as a Designated Heritage Area after OSTAB and County staff have reviewed and made recommendations on a proposal for such an area.
 - c. Before it designates a Designated Heritage Area, the Board of County Commissioners shall conduct a public hearing on the proposal.
 - d. Funds allocated to Designated Heritage Areas may be used for maintenance of structures and grounds, as well as for future improvements and operations. Funds may not be used for construction of new buildings.
 - e. If the County uses less than the allocated funds for Designated Heritage Areas, the remaining portion shall be retained by the County as set forth in Section 12 (d) (5) below.
- iii. Open Space Maintenance. The County may use funds, as specified in Section 12 (a), for maintenance of County Open Space, to include trails.
- a. Open Space maintenance funds may not be used for maintenance of Designated Heritage Areas if said area's maintenance is funded under the Designated Heritage Areas portion of the County's program.
 - b. If the County uses less than the allocated amount in the Fund for

maintenance, the remaining portion shall be retained by the County as set forth in Section 12 (d) (v) below.

- iv. Acquisition of Open Space and Trail Development. The County shall use the percentage of the Fund, as specified in Section 12(a) above, to acquire open space or interests in open space, to restore, improve and protect open space, to acquire and develop trails, and for such other uses set forth in Section 12 (e) (i) and subject to any other applicable restrictions on the use of the funds set forth herein.
 - v. If the allocated funds for the County administrative costs, grants, Designated Heritage Areas, County open space maintenance and/or acquisition of open space or interests in open space or trail development are not expended by December 31st of each year, the County shall bank such funds, and such funds may be expended in a future year for such uses. Alternatively, the Board of County Commissioners may reallocate unspent funds to other uses allowed by this Resolution based on recommendations from OSTAB.
 - vi. On an annual basis, the County will hire an independent auditor to audit the County's expenditures of the Fund.
- (e) Additional Guidelines for Use of Funds:
- i. Revenues collected from the Open Space Sales and Use Tax may be used in the following manner:
 - a. To acquire fee title interest in real property for the purposes provided herein;
 - b. To acquire less than fee interests in real property for the purposes provided herein; such as easements (including conservation and agricultural), future interests, covenants, development rights, subsurface rights and contractual rights, either on an exclusive or nonexclusive basis;
 - c. To acquire water rights for use in connection with the purposes provided herein;
 - d. To acquire lands that preserve urban and rural open space; natural areas; agricultural and ranch lands; water quality; lakes; rivers; streams; corridors of rivers and streams; views; vistas; ridgelines; wildlife habitat and movement corridors; trail corridors; flood plains and wetlands;
 - e. To acquire lands that are buffers maintaining community identity;

- f. To acquire and/or improve lands for neighborhood and regional parks, sports fields, dog parks, and other active and passive outdoor recreation purposes;
 - g. To acquire lands with other important values such as historic sites that contribute to the County's and County municipalities' natural and cultural heritage;
 - h. To acquire rights-of-way and easements for trails and access to public lands, and to build and improve such trails and access ways;
 - i. To allow expenditure of funds, consistent with the guidelines set forth in this Resolution, for joint projects between counties and municipalities, special districts which have a recreational component, recreation districts, or other governmental entities in the County;
 - j. To improve, restore and/or protect open space lands as provided herein;
 - k. To manage, patrol and maintain those lands as provided herein;
 - l. To pay for related acquisition, construction, equipment, and/or improvements;
 - m. To allow for the funding of environmental education programs in a manner consistent with the purposes of this Resolution;
 - n. To implement and effectuate the purposes of the Open Space Program.
- ii. No land or interests acquired with the revenues of the Open Space Sales and Use Tax may be sold, leased, traded, or otherwise conveyed, nor may an exclusive license or permit on such land or interests be given, without such approval by the governing body of the entity having received any portion of the Fund, after conducting a public hearing.
 - iii. If the Board of County Commissioners sells land or interests as specified in paragraph 2 above, the proceeds shall be deposited with the Open Space Fund.
 - iv. If any incorporated municipality; special district, which provides recreational services or amenities; or recreation district, sells land or transfers interests as specified in Paragraph 2 above, the proceeds shall be deposited in a fund to be used for purposes consistent with this Resolution.

13. Repeal and Amendment

- (a) If this Resolution is approved by a majority of the registered electors of Arapahoe

County at the election to be held on November 2, 2021, its provisions relating to the amount of tax imposed, specifically the one-quarter of one percent (0.25%) sales tax specified in Section 8 and one-quarter of one percent (0.25%) use tax specified in Section 9, the provisions relating to the deposit and expenditure of revenue as set forth in Section 10, and the provisions of Sections 11 and 12, shall not be repealed or amended except by a vote of the registered electors of the County.

- (b) Except as provided in subsection A hereof, or as otherwise provided in Article 2 of Title 29, C.R.S., the provisions of this Resolution may be repealed or amended, subsequent to its adoption of the sales and use tax by a majority of the voters of Arapahoe County, by a majority vote of the Board of County Commissioners, and such repeal or amendment need not be submitted to the registered electors of the County for their approval.

- 14. If any section, paragraph, clause or provision of this Resolution is held to be invalid or unenforceable, such invalidity or lack of enforceability shall not affect any of the remaining sections, paragraphs, clauses or provisions of this resolution.

The vote was:

Commissioner Baker, Yes; Commissioner Holen, Yes; Commissioner Jackson, Yes; Commissioner Sharpe, Yes; Commissioner Warren-Gully, Yes.

The Chair declared the motion carried and so ordered.

EXHIBIT A

CONTINUE EXISTING FUNDING FOR ARAPAHOE COUNTY'S OPEN SPACES, TRAILS, AND PARKS

WITHOUT INCREASING THE TAX RATE, SHALL ARAPAHOE COUNTY BE AUTHORIZED TO EXTEND ITS EXISTING ONE-QUARTER OF ONE PERCENT SALES AND USE TAX, OR 25 CENTS FOR EVERY 100 DOLLARS, WHICH WILL NOT BE COLLECTED ON SALES OF FOOD OR PRESCRIPTION DRUGS, WITH THE PROCEEDS TO BE USED FOR THE SAME PURPOSES, INCLUDING BUT NOT LIMITED TO:

CONSERVING LANDS THAT PROTECT WATER QUALITY IN RIVERS, LAKES AND STREAMS;

PROTECTING AND MAINTAINING NATURAL AREAS, WILDLIFE HABITAT, AND OPEN SPACE;

PROVIDING, MAINTAINING, AND IMPROVING REGIONAL AND NEIGHBORHOOD PARKS AND TRAILS;

PROVIDING MORE ACTIVE RECREATION OPPORTUNITIES FOR CHILDREN, YOUTH, ADULTS AND OLDER ADULTS;

PRESERVING WORKING FARMS AND RANCHES TO ENSURE LOCAL FOOD PRODUCTION; AND

MAINTAINING AND PRESERVING HISTORIC SITES;

WITH THE CONTINUED REQUIREMENT THAT THE COUNTY'S PROGRAM EXPENDITURES FOR PROJECTS AND GRANTS BE FIRST SUBMITTED TO A CITIZEN ADVISORY BOARD FOR A RECOMMENDATION TO THE COUNTY COMMISSIONERS; AND THAT THE PROGRAM BE SUBJECT TO AN ANNUAL INDEPENDENT AUDIT PUBLISHED ON THE COUNTY'S WEBSITE, AND SUBJECT TO SUCH OTHER RESTATED, UPDATED AND AMENDED REQUIREMENTS AS ARE SET FORTH IN ARAPAHOE COUNTY RESOLUTION NUMBER 21-263, AND EXTENDING THE TAX CONTINUOUSLY BEYOND ITS CURRENT EXPIRATION DATE, UNTIL REPEALED, AS A VOTER APPROVED REVENUE CHANGE AND EXCEPTION TO LIMITS WHICH WOULD OTHERWISE APPLY UNDER ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION OR ANY OTHER LAW, THE ABOVE CONSTITUTING NO SIGNIFICANT CHANGES TO THE PROGRAM REQUIREMENTS, EXCEPT TO: INCREASE THE AMOUNT OF FUNDING AVAILABLE TO MUNICIPALITIES AND THE COUNTY FOR MAINTENANCE OF OPEN SPACE, PARKS AND TRAILS, REDUCE THE ALLOCATION AVAILABLE FOR ACQUISITION AND DEVELOPMENT OF OPEN SPACE AND TRAILS, ALLOW COUNTY EXPENDITURES TO BE ALLOCATED TO ACTIVE OPEN SPACE AND PARK USES BASED ON RECOMMENDATIONS OF THE CITIZEN ADVISORY BOARD, AND TO ALLOW UNSPENT COUNTY OPEN SPACE FUNDS TO BE RE-ALLOCATED FOR OTHER OPEN SPACE, PARK AND TRAIL PURPOSES?

I, Joan Lopez, Arapahoe County Clerk and ex-officio Clerk to the Board of County Commissioners, in and for the County and State aforesaid, do hereby certify that the annexed and foregoing order is truly copied from the records of the proceedings of the Board of County Commissioners for said Arapahoe County, now in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said County, at Littleton, Colorado this 20th day of August, 2021.



A handwritten signature in cursive script, reading "Joan Lopez", is written over a solid horizontal line.

Joan Lopez, Clerk to the Board

EXHIBIT B

POLICIES AND PROCEDURES FOR COLLECTION OF OPEN SPACE USE TAX

Open Space Use Tax shall be collected with each Building Permit issued by the Town of Foxfield.

The amount collected shall be remitted quarterly to the Arapahoe County Sales Tax Analyst.