

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 29
Series of 2020

TITLE: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH JEFFERSON COUNTY FOR CARES ACT LOCAL GOVERNMENT DISTRIBUTIONS

WHEREAS, on March 13, 2020, the Chairman of the Board of County Commissioners declared a local disaster emergency because the cost and magnitude of responding to and recovering from the impact of the COVID-19 pandemic is expected to exceed Jefferson County's available resources; and

WHEREAS, on March 20, 2020 the Wheat Ridge City Council approved Resolution 16-2020 declaring an emergency to provide the necessary organization, powers, and authority to enable the timely and effective use of all available City resources to prepare for, respond to, and recover from the declared local public health emergency caused by the COVID-19 pandemic; and

WHEREAS, the conditions that spurred the local disaster emergency declaration have not abated, as the virus continues to spread within the community and the virus has created a myriad of economic distresses and unanticipated costs in American society to individuals and families, to businesses, and to state and local governments addressing the pandemic's effects; and

WHEREAS, on March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") which established a \$150 billion Coronavirus Relief Fund; and

WHEREAS, Jefferson County has a population in excess of 500,000 people and therefore is an eligible unit of local government under the CARES Act and Jefferson County requested direct payment of its share of funding from the US Department of the Treasury on April 17, 2020; and

WHEREAS, Jefferson County desires to disburse to the City of Wheat Ridge a portion of the CARES Act funding.

NOW, THEREFORE, BE IT RESOLVED by the Wheat Ridge City Council, that:

Section 1. Intergovernmental Agreement CARES Act Local Government Distribution. The Council hereby approves the Intergovernmental Agreement attached hereto as **Exhibit 1.**

Section 2. Effective Date. This Resolution shall be effective upon adoption.

DONE AND RESOLVED this 11th day of May 2020.



Bud Starker, Mayor

ATTEST:



Steve Kirkpatrick, City Clerk



EXHIBIT 1

INTERGOVERNMENTAL AGREEMENT CARES ACT LOCAL GOVERNMENT DISTRIBUTIONS

THIS INTERGOVERNMENTAL AGREEMENT – CARES ACT LOCAL GOVERNMENT DISTRIBUTIONS (the “Agreement”), dated for reference purposes only this 6th day of May, 2020, is made by and between COUNTY OF JEFFERSON, STATE OF COLORADO, a body politic and corporate (the “County”) and the CITY OF WHEAT RIDGE, STATE OF COLORADO a quasi-municipal corporation 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.”

RECITALS

A. On March 5, 2020, Jefferson County Public Health confirmed a case of COVID-19 in an out-of-state visitor to Summit County who was transported to Jefferson County; and

B. On March 10, 2020, the first Jefferson County resident tested positive for COVID-19, with two additional cases reported on March 11, 2020, and public health experts anticipated that, due to the contagiousness of the illness, over the coming weeks, Jefferson County would continue to see cases of the virus and its transmission within the community; and

C. On March 13, 2020, pursuant to C.R.S. § 24-33.5-709(1), the Chairman of the Board of County Commissioners declared a local disaster emergency because the cost and magnitude of responding to and recovering from the impact of the pandemic is expected to exceed Jefferson County’s available resources; and

D. The effect of a declaration of local disaster emergency is to activate the response and recovery aspects of any and all applicable local and interjurisdictional disaster and emergency plans and to authorize the furnishing of aid and assistance under such plans, as set forth in C.R.S. § 24-33.5-709(2); and

E. The Board of County Commissioners adopted Resolutions CC20-055, CC20-058 and CC20-073 extending the local disaster emergency to May 26, 2020; and

F. The conditions that spurred the local disaster emergency declaration have not abated, as the virus continues to spread within the community and the virus has created a myriad of economic distresses and unanticipated costs in American society to individuals and families, to businesses, and to state and local governments addressing the pandemic’s effects; and

G. On March 27, 2020, the United States Congress adopted the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, div. A, Title V (the “CARES Act”), which established a \$150 billion Coronavirus Relief Fund (the “Fund”); and

H. Pursuant to the CARES Act, the United States Treasury (“Treasury”) will make payments from the Fund to States and eligible units of local government; and

I. Jefferson County has a population in excess of 500,000 people and therefore is an eligible unit of local government under the CARES Act, and, as a result, the County may request direct payments from the US Department of the Treasury of its portion of the Fund; and

J. Jefferson County elected to request direct payment of its share of the Fund from the US Department of the Treasury on April 17, 2020; and

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

L. The Local Government and the County are governmental entities, each with authority to provide resources and services to citizens contemplated under the CARES Act as a result of public health emergencies within their respective boundaries; and

M. The County desires to disburse to the Local Government a portion of the CARES Act Fund pursuant and subject to the terms of this Agreement.

AGREEMENT

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

1. The County's Funding. The County has requested and received its share of the Fund from the US Department of Treasury pursuant to the CARES Act. The County desires to distribute to local governments within Jefferson County a portion of the Fund as more particularly set forth herein.

2. The Local Government's Share of the Fund. The County and the Local Government hereby agree that the Local Government's share of the Fund shall be Two Million, Four Hundred Sixty-Three Thousand, One Hundred Forty-Two Dollars (\$2,463,142) (the "Local Fund Distribution Amount").

3. Fund Distribution. Within 10 calendar days of receipt of a fully executed Agreement and wiring instructions from the Local Government or other mutually agreeable instructions for distribution of the funds, the County will disburse 50% of the Local Fund Distribution Amount to the Loc-1 Government. Prior to release of any of the remaining Local Fund Distribution Amount, the Local Government shall provide a Request for Additional Funding, in a form to be determined to by the County, that outlines a plan for how the remainder of the CARES Act funding will be spent by the Local Government on Eligible Expenses (as defined below).

The County has the right to deny part or all of any Request for Additional Funding if, in the County's sole discretion, the expenditures outlined in the Request appear not to reasonably qualify for reimbursement under the CARES Act. Within 10 calendar days of the County's

receipt and approval of a Request for Additional Funding, the County will disburse the eligible amount requested, not to exceed the total Local Fund Distribution Amount. Local Government acknowledges and agrees that the County's approval and disbursement of a Request for Additional Funding does not create liability on the County for the Local Government's use of such funds. As provided in Section 5.c. below, the Local Government remains solely responsible for any repayment to the U.S. Treasury for CARES Act Funding spent by the Local Government on ineligible expenses.

4. The Local Government's Obligation. By signing this Agreement, the Local Government hereby certifies that the Local Fund Distribution Amount will be used by the Local Government only to cover those costs and expenses that are eligible expenses in compliance with the CARES Act and:

- a. are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19);
- b. were not accounted for in the budget most recently approved as of March 27, 2020, for the Local Government; and
- c. were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020 (collectively, "Eligible Expenses").

5. Use of Funds and Reporting.

- a. Use of Funds. On or before December 30, 2020, the Local Government shall use the Local Fund Distribution Amount for Eligible Expenses in accordance with local, state and federal law, including all U.S. Department of Treasury guidance relating to the CARES Act. Further, as detailed in Section 5.e below, the Local Government agrees to return to the County by September 1, 2020, any amount it reasonably anticipates will be unused as of December 30, 2020, and it agrees to return to the federal government all unused amounts of the Local Fund Distribution Amount in its possession as of December 30, 2020.
- b. Expenditures and Accounting. The CARES Act imposes expenditure and accounting obligations upon local governments receiving CARES Act funds. The Local Government agrees to be responsible for ensuring that it spends, documents, and accounts for its portion of the CARES Act Fund received from the County in strict compliance with the CARES Act requirements. Further, if Local Government distributes CARES Act Funds to a separate entity, enterprise, agency, or any other public, private, or non-profit entity (Third-party), Local Government agrees to require the Third-party to meet all the provisions in this Agreement, and Local Government assumes liability under this Agreement for the Third-Party. Because the CARES Act is recent legislation, the Parties anticipate that additional federal legislation, rules, and regulations 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, and regulations.

To assist with compliance, the Local Government shall:

- 1) Maintain an effective system of internal fiscal control and accountability for all CARES Act Funds and property acquired or improved with CARES Act Funds, and make sure the same are used solely for authorized purposes.
- 2) Keep a continuing record of all disbursements by date, check number, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in the Local Government's accounting records.
- 3) Maintain payroll, financial, and expense reimbursement records for a period of three (3) years after receipt of final payment under this Agreement or any time period required by the CARES Act, whichever is longer.
- 4) Permit inspection and audit of its records with respect to all matters authorized by this Agreement by representatives of the County or Federal Government at any time during normal business hours and as often as necessary.

c. Reporting. The Parties anticipate that the Office of Inspector General ("OIG") will audit the use of CARES Act Funds beginning in January 2021, or thereafter. In anticipation of the upcoming audit, the Local Government shall provide to the County regular reporting of its use of the Local Fund Distribution Amount, including the following minimum requirements:

- 1) The County will create a shared drive in which the Local Government will input certain required data and upload receipts, payroll records, or other documentation for all expenditures made using CARES Act Funds distributed by the County to the Local Government;
- 2) On or before the 20th of each month, beginning May 20, 2020, the Local Government will update the expense tracking form and upload all related receipts, payroll records, or other documentation in the shared drive; and
- 3) On or before January 30, 2021, the Local Government will review its records and ensure that the shared drive contains a complete record of all expenditures from the Local Fund Distribution Amount, including, but not limited to, date of expenditure, amount, vendor, description of expense, explanation of expense's connection to COVID-19.

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 Local Fund Distribution Amount. The Local

Government acknowledges and agrees that the expenses submitted will only be submitted for CARES Act funding and will not be submitted for reimbursement or as expenses under any other federal government program, including but not limited to, FEMA or another aid program, regardless of its source.

None of the reporting requirements herein are intended to shift the responsibility of the Local Government for ensuring that each dollar of its Local Fund Distribution Amount is spent in compliance with the CARES Act. 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 determines that the Local Government spent any amount of its Local Fund Distribution Amount on ineligible expenses, the Local Government acknowledges and agrees that it is solely responsible for any repayment of those funds to the U.S. Treasury.

- d. Audit. The Local Government also agrees to fully and completely cooperate with the County in any audit of the CARES Act funding provided to the Local Government pursuant to this Agreement. If the County incurs legal expenses relating to an audit of the Local Government's expenditure of the Local Fund Distribution Amount, the Local Government agrees to pay the County's reasonable attorneys' fees and costs associated with such audit and/or any legal action in which the Local Government is alleged to have used the CARES Act funding for Local Government's ineligible expense.
- e. Return of Unused Funds. The Parties acknowledge that the CARES Act requires Local Governments to return all Funds that have not been spent as of December 30, 2020. For purposes of this Agreement, "spent" means that a Local Government has paid for and received the goods or services and actually expended the funds. Ordering or contracting to receive goods or services is not considered "spent" for purposes of this Agreement. All goods and services purchased with CARES Act Funding must be received on or before December 30, 2020. For any grants issued by the Local Government using CARES Act Funding, the term "spent" means that the grant funding must be distributed by the Local Government to the recipient on or before December 30, 2020.

To ensure that the maximum amount of CARES Act Funds are expended by this deadline for the benefit of Jefferson County residents and businesses, the Local Government agrees to work with the County to determine whether any of its Local Fund Distribution Amount will not be expended as of December 30, 2020. To ensure that the maximum amount of funds are utilized by the deadline, the Local Government agrees to return to the County the amount of its anticipated unused funds on or before September 1, 2020, so those funds may be reallocated by the County for use to fund other Eligible Expenses by December 30, 2020. Any unreturned, unused amount of the Local Government's Local Fund Distribution in the Local Government's possession as of December 30, 2020, must be returned to the United States Department of Treasury per the terms of the CARES Act.

- f. Non-Compliance. In the event the Local Government fails to comply with any of the requirements of the CARES Act with respect to the Local Fund Distribution Amount, the federal government may seek reimbursement of such funds. If the federal government seeks reimbursement of all or a portion of the Local Fund Distribution Amount spent by the Local Government, the Local Government shall be solely responsible for reimbursing said funds to the federal government. In addition, in the event the federal government seeks reimbursement of funds spent by the Local Government as contemplated in this Section from the County, the County has the right, but not the obligation, to reimburse those funds to the federal government on the Local Government's behalf, and the Local Government shall reimburse the County for such expenditure within 30 calendar days of payment by the County.

6. Term. This Agreement begins on the date of full execution by the Parties to this Agreement and shall expire on June 30, 2021. The Parties, however, acknowledge all continuing performance obligations, such as identified in Section 9.g below, that may extend beyond the term of this Agreement. Local Government agrees to execute an extension of this Agreement timely and in good faith as may be necessitated. The County reserves the right to terminate this Agreement at any time if the Local Government is not in material compliance with the terms hereof.

7. 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 fails to use the Local Fund Distribution Amount in compliance with 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; provided, however, the total amount owed by the Local Government to the County under this provision shall not exceed the total Local Distribution Fund Amount received under this Agreement.

8. 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.

9. Miscellaneous Provisions.

a. Notice.

- 1) "Key Notices" under this Agreement are notices regarding any default, dispute, or changes in the notice address. Key Notices shall be given in writing and shall be deemed received if given by: (i) confirmed electronic transmission (as defined in subsection (2) 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 a(1)(ii) or a(1)(iii) above. All other daily communications or notices between the parties that are not Key Notices may be done via electronic transmission. Notices shall be sent to the address or email below:

Notice to the Local Government shall be delivered to:

Wheat Ridge City Manager
Patrick Goff
7500 W. 29th Avenue, 1st Floor
Wheat Ridge, CO 80033
Email: pgoff@ci.wheatridge.co.us

Notice to the County shall be delivered to:

Jefferson County Manager
100 Jefferson County Parkway, Suite 5000
Golden, CO 80419
Email: dodavis@jeffco.us

with a copy to:

Jefferson County Attorney
100 Jefferson County Parkway Suite 5500
Golden, Colorado 80419
Email: CAOContracts@jeffco.us

- 2) 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 or texts.

- b. Entire Agreement. This Agreement represents the entire agreement between the parties and there are no oral or collateral agreements or understandings. Local Government agrees that if the Treasury issues additional guidance, rules or regulations, Local Government will agree to those terms and execute an Amended Agreement, if necessary.
- c. Recitals. The paragraphs contained in the section entitled “Recitals,” above, are a material and integral part of this Agreement.
- d. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the District Court for Jefferson County, Colorado.
- e. Governmental Immunities.
 - 1) The Parties hereto intend that nothing herein shall be deemed or construed as a waiver by either Party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (Section 24-10-101, C.R.S., et seq.) as now or hereafter amended or otherwise available at law or equity.
 - 2) The Parties agree that in the event any claim or suit is brought against either or both Parties by any third party as a result of the operation of this Agreement, both Parties will cooperate with each other, and with the insuring entities of both Parties, in defending such claim or suit.
- f. Modifications. No modification of this Agreement shall be effective unless agreed to in writing by the Local Government and the County in an amendment to this Agreement that is properly executed and approved in accordance with applicable law.
- g. Continued Performance. 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 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.
- h. 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.
- i. 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.

- j. Severability. If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.
- k. 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.
- l. Further Assurances. Each Party hereto agrees to execute and deliver, by the proper exercise of its powers, all such other and additional instruments and documents and do all such other acts and things as may be necessary to more fully effectuate this Agreement.
- m. 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.
- n. Assignment. This Agreement may not be assigned by any Party without the prior written consent of the other Party.
- o. 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.
- p. 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 Parties hereto have caused this Agreement to be duly authorized and executed.

**COUNTY OF JEFFERSON,
STATE OF COLORADO**

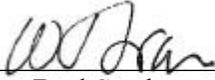
By: _____
Lesley Dahlkemper, Chairman
Board of County Commissioners

Date: _____

APPROVED AS TO FORM:

Kimberly S. Sorrells
Jefferson County Attorney

**CITY OF WHEAT RIDGE, STATE OF
COLORADO**

By: 

Name: Bud Starker

Title: Mayor

Date: May 12, 2020

ATTEST:



Steve Kirkpatrick, City Clerk

APPROVED AS TO FORM:



Gerald Dahl
City Attorney