

**CITY OF WHEAT RIDGE, COLORADO**  
**RESOLUTION NO. 48**  
**Series of 2020**

**TITLE: A RESOLUTION OF THE CITY OF WHEAT RIDGE, COLORADO APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH JEFFERSON COUNTY CONCERNING THE INSTALLATION AND OPERATION OF A SECURE MAIL BALLOT DROP BOX AT PROSPECT PARK**

**WHEREAS**, pursuant to Section 14.12 of the Home Rule Charter, C.R.S. §§ 29-1-201 and 203, and Colo. Const. Art. XIV, § 18(2)(a), the City of Wheat Ridge is authorized to enter into cooperative agreements with other governmental entities to provide any function, service or facility each is authorized to undertake; and

**WHEREAS**, to better serve its citizens, Jefferson County wishes to install an additional secure mail ballot drop box in the City of Wheat Ridge; and

**WHEREAS**, the Jefferson County Clerk and Recorder and City staff have met and discussed locating a ballot drop box and video surveillance recording system in a designated location at Prospect Park, and have mutually agreed that Jefferson County will install the ballot drop box on the premises, and both the City of Wheat Ridge and Jefferson County will have a role in the installation of the video surveillance recording system, as detailed in the Use Agreement; and

**WHEREAS**, this Agreement is designed to serve the citizens of Jefferson County during elections by providing convenient locations for voters to drop off their completed mail ballots; and

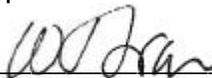
**WHEREAS**, the City of Wheat Ridge wishes to enter into an intergovernmental agreement with the County of Jefferson, State of Colorado to accomplish these goals.

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

**Section 1.** The Intergovernmental Agreement between the City and the County of Jefferson, State of Colorado hereto attached as **Exhibit A**, is hereby approved.

**Section 2.** This Resolution shall be effective upon adoption.

**DONE AND RESOLVED** this 28<sup>th</sup> day of September 2020.

  
\_\_\_\_\_  
Bud Starker, Mayor

ATTEST  
  
\_\_\_\_\_  
Steve Kirkpatrick, City Clerk



**EXHIBIT A  
INTERGOVERNMENTAL AGREEMENT  
USE AGREEMENT**

**[ATTACHED]**

## USE AGREEMENT

THIS USE AGREEMENT (this "Agreement"), dated this 28 day of September, 2020 (the "Effective Date") is made and entered into by and between the City of Wheat Ridge, Colorado a home rule municipality (the "City") and the County of Jefferson, State of Colorado, a body politic and corporate (the "County," and together with the City, the "Parties").

### RECITALS

A. The City owns certain real property located at 44<sup>th</sup> Ave & Robb St Wheat Ridge, CO 80033 ("Prospect Park").

B. The County desires to use a portion of land located at Prospect Park, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Site"), for the purpose of installing and operating a secure mail ballot drop box (the "Ballot Box") thereon.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth hereinafter, the Parties agree as follows:

I. AGREEMENT. The City agrees to permit the County use of the Site for the purpose of installing and operating the Ballot Box according to the terms and conditions set forth herein.

II. TERM AND TERMINATION.

A. Term. This Agreement shall commence on the Effective Date and remain in effect until terminated by the Parties in accordance with the terms of this Agreement.

B. Termination – Without Default. Either Party may terminate this Agreement at any time for any reason by providing the other Party with a minimum of thirty (30) days' notice of its intent to terminate pursuant to Section XI below, except that the City must provide a minimum of one hundred twenty (120) days' notice to the County in order to terminate this Agreement without an uncured "Event of Default" (as defined below) prior to (1) the first Tuesday in November of every year; (2) the last Tuesday in June of every even-numbered year; and (3) the first Tuesday in March in a Presidential election year.

C. Termination for Default. In addition to the foregoing, either Party may terminate this Agreement immediately upon an uncured Event of Default by the other Party as described herein. An uncured Event of Default shall occur if either Party fails to materially perform or observe a term of this Agreement, and such failure continues for more than seven (7) days after written notice from the other Party, except that such seven (7) day cure period shall be extended as is reasonably necessary to permit the Party in default to complete cure, so long as such Party continuously and diligently pursues and completes cure.

III. RENT. No rent or other payment will be due or payable by the County under this Agreement.

#### IV. INSTALLATION OF BALLOT BOX.

A. The County agrees to install and maintain a solid surface (the "Surface") on the Site that is sufficiently large enough to install and securely anchor the Ballot Box. The Surface shall be (a) a minimum of four (4) inches thick and (b) large enough to install and securely anchor the Ballot Box, which is thirty-six (36) inches wide by thirty (30) inches deep. The Surface shall be the property of the County, and the County shall bear all costs associated with the installation and maintenance of the Surface. The County shall have access to the Site at all reasonable times to install, inspect and maintain the Surface.

B. Upon the successful installation of the Surface by the County, the County agrees to install and securely anchor the Ballot Box on the Surface. The Ballot Box shall remain the property of the County, and the County shall bear all costs associated with the installation and maintenance of the Ballot Box. The County shall have access to the Site at all reasonable times to install, inspect and maintain the Ballot Box.

#### V. USE OF BALLOT BOX.

A. For any coordinated election or other election in which the County Clerk and Recorder is serving as the election official, the Ballot Box shall be available for use by the County as a twenty-four hour, seven-day-a-week drop-off location for the purpose of allowing electors to deposit their completed mail ballots. For the period beginning thirty (30) days before such an election and ending thirty (30) days after such an election, the County shall have access to the Ballot Box twenty-four (24) hours a day, seven (7) days a week for the purpose of opening, inspecting and collecting from the Ballot Box or performing its other duties and responsibilities in connection with such election.

B. With the prior consent of the City, the County may install signs or flags on or near the Site to direct electors to the Ballot Box.

C. The Ballot Box shall be covered and locked during the period beginning three (3) days after each election and ending thirty-five (35) days prior to the next election.

D. The County shall have access to the Site a minimum of thirty-five (35) days before each election in order to inspect and prepare the Ballot Box for the election.

E. The City shall have no responsibility regarding the conduct of any elections, and shall have no obligations or liability to ensure that the election is properly conducted. The County shall be solely responsible for responding to any challenges regarding the validity or propriety of any election.

VI. VIDEO SURVEILLANCE. For any election in which the County Clerk and Recorder is serving as the election official, the Parties agree to collaborate as described below to operate a video surveillance system (the "VR System") owned by the City to record activity at the Ballot Box and the surrounding Site:

A. The County will provide a camera, camera mounting bracket, modem and cabling;

B. The City will install the camera mounting bracket in the location indicated in Exhibit A and install conduit to run cabling through;

- C. The County will install the camera, modem and cabling. The modem will need to be located in a restricted access location;
- D. The City will install a light pole and solar light into concrete at the Site to illuminate the Ballot Box. The County will reimburse the City for the cost of the light pole, solar light and concrete.
- E. The City shall pay for the utilities required for the County to operate the VR System during the time period beginning at least thirty (30) days prior to, and continuing through at least three (3) days after, each election (the "Voting Period"), including electricity, and shall provide adequate lighting to the Ballot Box and surrounding Site during the Voting Period;
- F. The camera, camera mounting bracket, modem, cabling and solar light shall remain the property of the County, and the County shall be responsible for maintaining them at its own expense;
- G. The County will need periodic access to the modem and camera to conduct routine maintenance and upgrades; and
- H. If the video feed is disrupted or otherwise compromised, the County will attempt to correct the disruption and restore the feed. If the County believes the source of the disruption to be within the City's control, upon notification from the County, the City shall take all reasonable efforts to promptly resolve the disruption and restore the video feed.

VII. DESTRUCTION OF SITE. In the event the Site is rendered substantially unsuitable for the purposes of this Agreement by flood, fire or other casualty, the County may at its option either (i) restore the Site to a suitable condition, or (ii) terminate this Agreement by written notice to the City.

VIII. INSURANCE.

A. City's Insurance. The City shall maintain, through commercial policy or self-insurance, insurance coverage insuring the Site against loss or damage by fire, lightning, windstorm, tornado, hail and other risks as are customarily covered by extended coverage endorsement.

B. County's Insurance. The County shall maintain, through commercial policy or self-insurance, property insurance covering all County equipment and other personal property located on the Site.

IX. PERMITS AND APPROVALS. Each Party shall be solely responsible for obtaining any licenses, permits or approvals that are required by law to complete their respective obligations set forth herein.

X. SURRENDER OF SITE. Upon the termination of this Agreement, the County shall, at its sole expense, remove the Ballot Box, the Surface, and all other County personal property located on the Site from the Site and surrender the Site to the City in as good condition as received, reasonable wear and tear excepted, free from debris and broom clean. The County shall not remove anything from the Site which constitutes an integral part of the real estate. Any personal property not removed by the County within thirty (30) days after the termination of this Agreement shall be deemed abandoned and the City may, without notice to the County, dispose of the same.

## XI. NOTICES.

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

### To the County:

Cody Swanson  
Jefferson County Clerk and Recorder’s Office  
Elections Division  
3500 Illinois Street, Suite 1100  
Golden, Colorado 80401  
Phone: (303) 271-8111  
[logistics@jeffco.us](mailto:logistics@jeffco.us)

### with a copy to:

Jefferson County Attorney  
100 Jefferson County Parkway, Suite 5500  
Golden, Colorado 80419  
Phone: (303) 271-8900  
Email: CAOContracts@jeffco.us

### To the City:

Office of the City Clerk  
Steve Kirkpatrick, City Clerk  
City of Wheat Ridge  
7500 W 29<sup>th</sup> Ave  
Wheat Ridge CO 80033  
Phone: 303-235-2823  
Email: [skirkpatrick@ci.wheatridge.co.us](mailto:skirkpatrick@ci.wheatridge.co.us)

All Key Notices to the County shall include a reference to the Agreement identifying the City’s name and the date of the Agreement.

B. Electronic Transmissions. The Parties agree that: (i) any notice or communication transmitted by electronic transmission, as defined below, shall be treated in all manner and respects as an original written document; (ii) any such notice or communication shall be considered to have the same binding and legal effect as an original document; and (iii) at the request of either Party, any such notice or communication shall be re-delivered or re-executed, as appropriate, by the Party in its original form. The Parties further agree that they shall not raise the transmission of a notice or communication, except for Key Notices, by electronic transmission as a defense in any

proceeding or action in which the validity of such notice or communication is at issue and hereby forever waive such defense. For purposes of this Agreement, the term “electronic transmission” means any form of communication not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process, but specifically excluding facsimile transmissions and texts.

## XII. MISCELLANEOUS PROVISIONS.

A. Non-Appropriation. To the extent that this Agreement purports to create a financial obligation of either Party payable in a fiscal year subsequent to the fiscal year of execution of this Agreement, such obligation is contingent upon such Party appropriating and budgeting funds for that purpose. The County’s fiscal year is currently the calendar year.

B. Survival Clause. Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that may require continued performance or continue beyond the termination date of this Agreement shall survive such termination date and be enforceable as provided herein in the event of a failure to perform or comply by a Party to this Agreement.

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

D. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties, and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both Parties.

E. Severability. If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

F. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the respective successors and permitted assignees of the Parties.

G. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado without regard to any conflict of laws doctrine. The Parties agree that any dispute, action or proceeding arising out of this Agreement shall be subject to the venue and jurisdiction of the County or District Court of Jefferson County, Colorado.

H. Waiver. No term or condition of this Agreement shall be deemed to have been waived by either Party unless the waiver is in writing and signed by both Parties or their duly authorized representatives.

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

The Parties hereto have signed this Agreement as of the date indicated below.

**THE CITY:**

By: 

Name/Title: Bud Starker, Mayor

Date: September 28, 2020

LEGAL COUNSEL - OPTIONAL

By: 

Name/Title: Gerald Dahl, City Attorney

Date: September 28, 2020

**THE COUNTY:**

COUNTY OF JEFFERSON  
STATE OF COLORADO

By: \_\_\_\_\_  
George Stern, Jefferson County Clerk & Recorder

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant County Attorney

Exhibit A

Box location

Camera location

