

RESOLUTION NO. R – 021 - 036

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF LONE TREE AND THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,
REGARDING FINANCIAL CONTRIBUTION FOR THE COUNTY LINE ROAD
AND YOSEMITE STREET TRAFFIC SIGNAL REPLACEMENT PROJECT

WHEREAS, the Board of County Commissioners of the County of Douglas (the “County”) and the City of Lone Tree (the “City”), desire to execute an intergovernmental agreement regarding financial contribution for the County Line Road and Yosemite Street Traffic Signal Replacement Project, and

WHEREAS, the County is willing to enter into such an agreement with the City in accordance with the terms and conditions set forth in the intergovernmental agreement attached hereto, and

WHEREAS, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution, and section 29-1-203, C R S , now, therefore,

BE IT RESOLVED, BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO, that the intergovernmental agreement between the Board of County Commissioners of the County of Douglas and the City of Lone Tree, a copy of which is attached hereto and incorporated herein, is hereby approved, and the Chair of the Board is authorized to execute the agreement on behalf of Douglas County

PASSED AND ADOPTED this 13th day of April, 2021, in Castle Rock, Douglas County, Colorado

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO

BY:

DocuSigned by

Lora L Thomas

A4003FE630E6444

LORA L. THOMAS, Chair

ATTEST:


DocuSigned by

Kristin Randlett

A00F70F5198B420

Kristin Randlett

DocuSigned by



_____, Clerk to the Board

pre-recording to include 15A

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF LONE TREE AND THE BOARD OF COUNTY
COMMISSIONERS OF THE COUNTY OF DOUGLAS, STATE OF COLORADO,
REGARDING FINANCIAL CONTRIBUTION FOR THE COUNTY LINE ROAD
AND YOSEMITE STREET TRAFFIC SIGNAL REPLACEMENT PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2021 by and between the City of Lone Tree, Colorado, a Colorado home rule municipality (the "City"), and the Board of County Commissioners of Douglas County, State of Colorado, (the "County"), hereinafter collectively referred to as the "**Parties** "

RECITALS

WHEREAS, the Parties are legally empowered under Section 29-1-201, et seq , C R S to enter into this Agreement, and

WHEREAS, the City and the County desire to cooperate in advancing the design and construction necessary to replace the existing span wire traffic signal with poles and mast arms at the County Line Road and Yosemite Street intersection, including related inspection and testing, as generally depicted on the attached **Exhibit A** and hereinafter referred to as the "**Project**", and

WHEREAS, the traffic signal is wholly within the City of Lone Tree's operational control, the final design has already been completed, and construction is anticipated to begin in the summer of 2021, and

WHEREAS, the City is responsible for managing all aspects of **Project**, including providing project oversight of design, right-of-way and construction, and

WHEREAS, the City is responsible for securing all funding necessary to design and construct the **Project**, except for the County's construction contribution, which represents approximately fifty percent (50%) of the anticipated construction costs, and

WHEREAS, the County's only responsibility for the Project is for its voluntary contribution of up to Three Hundred Thousand Dollars and No Cents (\$300,000 00) for a portion of the **Project** construction costs identified in **Section 4**.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1 **Acknowledgment and Incorporation of Recitals.** The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this Agreement

2. **Term.** This Agreement shall commence upon execution by both Parties and shall continue until twelve (12) months following substantial completion, as that term is defined in the City's General Conditions to the Construction Contract, of the **Project**

3 **City Responsibilities and Contribution.**

The City has estimated the total construction costs for the **Project** to be Six Hundred Thousand Dollars and No Cents (\$600,000 00), hereinafter referred to as the "**Project Cost Estimate**"

The City agrees to manage all aspects of the **Project** Except as expressly provided in **Section 4**, the City shall be responsible for paying for all construction costs for the **Project**, including any cost in excess of the **Project Cost Estimate** Additionally, the City is responsible for the completion and final acceptance of the **Project**

The City agrees to provide the County with a copy of the Bid Tabulations results and the Engineer's Estimate of probable costs Once the City has determined to award a construction contract for the **Project**, the City shall submit an invoice to Douglas County Public Works Engineering, (attention Ashley Pennick), requesting full payment from the County, and this invoice shall include a statement that the City has awarded the construction contract for the **Project** and stipulate the amount of the construction contract

Within sixty (60) days after notice of award has been given to the contractor(s), the City agrees to provide the County. two (2) full sets (11x17 plan sheets) of the final construction documents (plans and specifications) marked "For Construction" and stamped by a Colorado Licensed Professional Engineer for both the **Project**, and one electronic copy on a CD or thumb drive of the same documents

4. **County Responsibilities and Contribution**

The County agrees to provide the City with a lump sum payment for fifty percent (50%) of actual construction costs not to exceed **Three Hundred Thousand Dollars and No Cents (\$300,000.00)**, hereinafter referred to as the "**County Contribution**" for the sole purpose of contributing funds for the construction of the **Project** In no event will the County be liable for paying the City any amount in excess of the **County Contribution**, including for any unforeseen **Project** costs or claims

The County shall pay the **County Contribution** to the City within thirty (30) days after the County has received a written invoice from the City for a construction contract for the **Project** The **County Contribution** shall be separately accounted for by the City and used by the City solely for constructing the **Project** The City will not use the **County Contribution** for any other purpose unless agreed to by both Parties by executing a formal written contract amendment

If any of the **County Contribution** is not used within eighteen (18) months of being paid to the City, then the City shall notify the County, and the County may request

any unused portion be returned with sixty (60) days' of written notice. Under this provision, any amount the City desires to retain (not refunded to the County), shall be detailed in a written request and presented by the City for the County's consideration, and said request shall include copies of applicable supporting documentation justifying why the unused funds are still needed for additional Project costs. The County will determine in its sole discretion if the City may retain such funds.

Any portion not refunded under this provision will be indicated by the City with copies of all documents justifying why the unused funds are still needed for additional applicable construction expenditures.

5 **Time of Performance.** Upon execution of this Agreement by both Parties, the City shall diligently pursue award of the construction contract and construction of the **Project**. Currently, the City anticipates that the **Project** will be substantially completed and open to traffic by **November 19, 2021**.

6 **Remedies** The Parties hereto acknowledge and agree that each Party may exercise all rights and remedies in law or in equity, by a decree in specific performance, or such other legal or equitable relief as may be available, including a return of the funds described in **Section 4** of this Agreement in the event of a default by the other Party. In the event that the actual construction of the **Project** is delayed and does not commence before **June 30, 2022**, unless an extension is agreed to in writing by both Parties prior to **June 15, 2022**, the County may terminate this Agreement and the City will give a full refund of any County Contribution received. This Section shall survive the termination of this Agreement.

7 **Notice** Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

City of Lone Tree	City of Lone Tree 9220 Kimmer Drive, Suite 100 Lone Tree, Colorado 80124 Attention: Seth Hoffman, City Manager Seth.hoffman@cityoflonetree.com
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With a copy to.	Michow Cox & McAskin LLP Attn: Lone Tree City Attorney 6530 S Yosemite Street, Ste 200 Greenwood Village, Colorado 80111
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Douglas County	Douglas County 100 Third Street
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Castle Rock, Colorado 80104
Attention Douglas J. DeBord, County Manager
DDebord@douglas.co.us

With an electronic copy sent to attorney@douglas.co.us

8 **Appropriation** Pursuant to section 29-1-110, C.R.S., any financial obligations of the County contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available on an annual basis. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

9 **Additional Documents**. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

10 **Colorado Law** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado and the Parties waive any right to remove any action to any other court, whether state or federal.

11 **Separate Entities** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

12 **No Third-Party Beneficiaries**. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

13 **No Waiver of Governmental Immunity Act** The Parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, and the City, its council members, officials, officers, directors, agents and employees are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S. or otherwise available to the County and the City.

14 **Entirety** This Agreement merges and supersedes all prior negotiations, representations and agreements between the Parties hereto relating to the subject matter hereof and constitutes the entire agreement between the Parties concerning the subject matter hereof.

15 **Severability** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect

16 **Modification.** This Agreement may only be modified upon written agreement signed by the Parties

17 **No Waiver** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either Party shall not constitute a waiver of any of the other terms or obligations of this Agreement

18 **Assignment.** Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other

19 **Survival** Any terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the termination date of the Agreement shall survive such termination date and shall be enforceable in the event of a failure to perform or comply

20 **Agreement Controls** In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit

21 **Force Majeure** Neither the County nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure ” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party

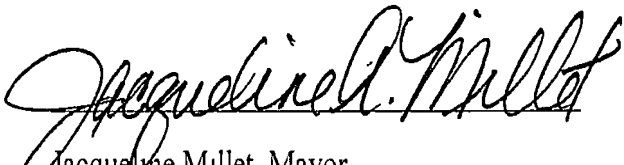
22 **Authority** The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Lone Tree and the County and bind their respective entities

23 **Counterparts** This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71 3 of the Colorado Revised Statutes.

[signature page follows]

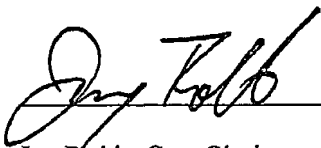
IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above


CITY OF LONE TREE, COLORADO


Jacqueline Millet, Mayor

ATTEST:

APPROVED AS TO FORM:


Jay Robb, City Clerk


City Attorney

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY

Loia L. Thomas, Chair

ATTEST:

APPROVED AS TO CONTENT:

Emily Wrenn,
Clerk to the Board

Douglas J. DeBord,
County Manager

APPROVED AS TO FORM:

APPROVED AS TO FISCAL CONTENT:

Chris Pratt,
Senior Assistant County Attorney

Andrew Copland,
Director of Finance

EXHIBIT A

Project Description

This Project involves replacing and upgrading the existing traffic signal and other associated infrastructure, including related inspection and testing, at the County Line Road / Yosemite Street Intersection, which will improve safety and traffic operations. The existing span wire traffic signal will be replaced with new traffic poles and mast arms that meet current local agency and industry standards. The graphic shown below generally illustrates the layout of the proposed improvements.

