



Board of Trustees - Study Session

Tuesday, February 27, 2024 at 5:45 pm

**PLEASE SILENCE ALL CELL PHONE AND ELECTRONIC DEVICES.
THANK YOU**

1. Meeting Information

207 Muegge Way, Bennett, CO 80102

For a live stream of the meeting use the information below:

<https://us02web.zoom.us/j/84285000718>

Meeting ID: 842 8500 0718

Passcode: 677682

One tap mobile

+16699006833

2. First Amendment to the IGA Between the Town of Bennett and Arapahoe County Regarding Funding for the I-70 and SH79 Interchange Operational Improvement Project

Resolution No. 1001-24 - A Resolution Approving a First Amendment to Intergovernmental Agreement with Arapahoe County for the I-70 and SH 79 Interchange Operational Improvement Project

Danette Ruvalcaba, Director of Finance

Attachments:

- **Staff Report First Amendment to the IGA Between the Town of Bennett and Arapahoe County Regarding Funding for the I-70 and SH79 Interchange Operational Improvement Project** (0_-_Staff_Report_TownofBennett_ArapCountyIGAAmendmentExit304_thredline_.pdf)
- **IGA dated February 21, 2020 Between the Town of Bennett and Arapahoe County** (1_-_2020_-_Executed_IGA_I-70___SH79_Interchange_Operational_Improvement_Project__1_.pdf)
- **Proposed First Amendment to the IGA Between the Town of Bennett and Arapahoe County** (2_-_FIRST_AMENDMENT_TO_INTERGOVERNMENTAL_AGREEMENT_-_1.30.24_Revised_spk_clean.pdf)
- **Resolution No. 1001-24 - A Resolution Approving a First Amendment to Intergovernmental Agreement with Arapahoe County for the I-70 and SH 79 Interchange Operational Improvement Project** (3_-_Reso._No._1001-24_-_Approving_First_Amendment_ARCO_IGA_-_spk_clean.pdf)

STAFF REPORT



welcome neighbors.

TO: Mayor and Town of Bennett Board of Trustees
FROM: Danette Ruvalcaba, Director of Finance
DATE: February 27, 2024
SUBJECT: First Amendment to the IGA Between the Town of Bennett and Arapahoe County Regarding Funding for the I-70 and SH79 Interchange Operational Improvement Project

Background

The Town of Bennett was awarded \$150,000 in Federal Funding from the Arapahoe County Sub-Regional Transportation Forum. This Federal Funding required a 62% local match or \$242,000. To offset the burden of \$242,000 for the Town of Bennett, Arapahoe County agreed to give the Town \$150,000 of county funds. An Intergovernmental Agreement (IGA) was signed to this fact in February 2020, reducing the Town's Contribution to \$92,000. The agreement further states that the project was to be completed within four years of the contract date or by February 21, 2024.

In January 2021, DRCOG advised the Arapahoe County Transportation Forum of additional funding coming available for all sub-regionals via COVID Relief Funding.

On March 4, 2021, the Arapahoe County Executive Committee of the County Transportation Forum approved a plan that was recommended to the DRCOG Board for the allocation of COVID relief funds that were received by DRCOG and allocated to the Arapahoe County Sub-Region. Arapahoe County Sub-region was allocated \$8.1M of additional funds. Based on a motion by Trustee Vittum, the Forum recommended to allocate \$800,000 to the Broadway Transit Study (Littleton waiting list project) plus allocation of \$7.302M to already approved TIP projects that had overmatch to bring the local match requirement as close as possible to the typical 20%. In the case of the I-70 and SH79 Interchange project, it added an additional \$155,000 of federal funds to the already \$150,000 from the Arapahoe County Sub-Regional Forum for a total federal share from Arapahoe County Sub-Regional Transportation Forum of \$305,000. As the intent of the motion was to reduce local match to as close as possible to 20%, the proportional local match was reduced to 22% from 62% with the subsequent reduction in the County share to \$53,940 from \$150,000 and the Town's local match reduced to \$33,060 from \$92,000.

Summary of IGA

The original IGA indicated that Arapahoe County would contribute \$150,000 to the project. Additionally, it stated that the project would need to be complete by February 21, 2024 or the funding would need to be returned to Arapahoe County plus 3%.

At this time Staff is requesting that the IGA be amended to reflect Arapahoe County's contribution as \$53,940 as well as the completion date to be extended one year to February 21, 2025 to ensure that sufficient time is available to finish the installation of the signalization on the 304 exit.

Staff Recommendation

Staff recommends approval of the First Amendment to Intergovernmental Agreement Between the Town of Bennett and Arapahoe County Regarding Funding for the I-70 and SH79 Interchange Operational Improvement Project.

Attachments

1. IGA dated February 21, 2020 Between the Town of Bennett and Arapahoe County
2. Proposed First Amendment to the IGA Between the Town of Bennett and Arapahoe County
3. Resolution No. 1001-24

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF BENNETT AND ARAPAHOE COUNTY
REGARDING FUNDING FOR THE
I-70 AND SH 79 INTERCHANGE OPERATIONAL IMPROVEMENT PROJECT**

This INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into effective the 21st day of February, 2020, (the “Effective Date), by and between the **TOWN OF BENNETT**, a statutory town whose principal business address is 207 Muegge Way, Bennett, CO 80102 (the "Town") and the Board of County Commissioners of **ARAPAHOE COUNTY, COLORADO** a body corporate and political, whose principal business address is 5334 South Prince Street, Littleton, CO 80120 (the "County") (collectively referred to herein as the "Parties" or each individually as a "Party").

RECITALS

WHEREAS, the Parties, as Colorado governmental entities, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18 and Sections 29-1-201, *et seq.*, C.R.S., to cooperate or contract via intergovernmental agreement with one another to provide functions, services or facilities authorized to each cooperating government; and

WHEREAS, the Town desires to construct operational improvements on the eastbound off-ramp at the interchange of I-70 and State Highway (SH) 79 as illustrated in Exhibit A attached hereto and incorporated herein (“the Project”); and

WHEREAS, CDOT estimated the cost for the Project at Two Million Two Hundred Thousand Dollars (\$2,200,000); and

WHEREAS, as a result of the regional benefits to the citizens of both Parties, the County is willing to contribute funds as provided in this Agreement towards the costs of design, environmental clearances, right-of-way and construction of the Project, provided the Town assumes full responsibility for coordinating and managing said Project with CDOT; and

WHEREAS, the Town received Eight Hundred Thousand Dollars (\$800,000) in federal funding through the Denver Regional Council of Governments (“DRCOG”) 2020-2023 Transportation Improvement Program (TIP), supplemented by One Million Four Hundred Thousand (\$1,400,000) in Local Agency Contributions (“LAC”) from the Town, CDOT, Adams and Arapahoe Counties (“Funding Partners”), allocated by jurisdiction as shown in Exhibit B; and

WHEREAS, the County has agreed in principle to provide Seven Percent (7%) or \$150,000 in LAC towards Project costs in the Budget for the Project; and

WHEREAS, the Parties wish to enter into this Agreement to establish the terms of the County's funding commitment and the terms of the Town's commitment to complete the Project.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and the foregoing recitals, the sufficiency of which is hereby acknowledged, the Parties do hereby agree as follows:

COVENANTS AND AGREEMENTS

1. **Purpose.** The purpose of this IGA is to provide for and to set the terms and conditions by which the County contributes the funding contemplated under this Agreement towards the Project and to establish the process by which such cost sharing between the Town and the County will be accomplished.
2. **General Description of the Project.** The Project consists of design, environmental clearances, rights-of-way acquisition as needed and construction of improvements in and around the I-70 EB off-ramp at SH-79 (Exit 304). Project improvements will widen out the interchange footprint, relocate the existing ramp intersection on top of the interchange and signalize the eastbound off-ramp. Improvements may include, but not limited to, the installation of a traffic signal, earthwork, applicable environmental clearances, drainage and utilities, construction mobilization and traffic control, lighting and electrical, signage, pavement markings, paving, guardrail, design, inspection and project coordination. Pre-construction phases are expected to start in the federal FY 2020 with construction anticipated to begin in FY 2021.
3. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated into the covenants and agreements set forth below.
4. **Project Costs and Funding Resources.** The Parties understand CDOT estimates the Project will cost \$2,200,000. Exhibit B provides a breakdown of federal, state and LAC, subject to annual appropriation. Upon approval of the 2020 budget, the County agrees to contribute the total sum of \$150,000 for use in the pre-construction and construction phases of the Project (the "County Funds". Funds are payable within fifteen (15) days of the County's receipt of a written funding request from the Town in January 2020.
5. **Cost Overruns.** It is agreed and understood that \$150,000, shall constitute the full measure of the County's monetary contributions towards the Project. In no event shall the County be obligated to contribute any further additional funds or services to the current or ultimate Project than the County Funds specified in this Agreement. Notwithstanding the foregoing two sentences, should additional funds be required due to unforeseen costs, the County may elect, but is not obligated, to contribute additional monies, up to 7% of the incremental cost overrun, provided the State and all LAC Funding Partners contribute their proportionate share as identified in Exhibit B.
6. **Project Representatives.**
County Representative: The County hereby designates the County's CIP Manager (Cathleen Valencia, Cvalencia@arapahoegov.com), as the County's representative to coordinate all communication with the Town related to the Design, environmental, right-of-way or construction issues arising under this IGA. Ms. Valencia will be copied

on all correspondence, and Ms. Valencia will be the day-to-day contact. The County's designation of representatives may be amended by the County's Public Works and Development Director upon written notification to the project representatives of the Town.

Town Representative: The Town hereby designates the Town's Transportation Consultant Engineer (Mike Rocha, mrocha@smrocha.com) as the Town's representative to coordinate all communication with the County related to any pre-construction and construction issues arising under this IGA. The Town's designation of representatives may be amended by the Town Administrator upon written notification to the project representatives of the County.

7. **Minimization of Traffic Impacts to County Roads.** The Town agrees to perform, or cause to be performed, the Project construction in a manner minimizes construction traffic impacts to persons traveling on any County Roads and agrees to include this requirement in any and all design and construction contracts through which the Project. For all methods of handling traffic that will occur on County roadways, the County shall have review and approval authority.
8. **Design and Construction.** The Town shall be solely responsible for contracting for the full design and construction of the Project, including, but not limited to, obtaining all necessary permits, Rights-of-way and easements, consents and approvals for the construction of the Project, in accordance with all applicable federal, state and local statutes, ordinances, codes, rules and regulations. The Town agrees to perform, or cause to be performed, the Project in a workmanlike manner, and to expressly mandate this condition in any and all construction contracts. Further, the Town agrees to consult with the County during the pre-construction and construction phases and to keep the County advised as each phase progresses. Finally, the Town shall ensure that the construction of the Project is performed in a workmanlike manner in accordance with all applicable federal and state statutes and local ordinances, rules, and regulations.
9. **Town Representation.** The Town hereby represents to the County that it has the expertise, experience, and ability to professionally manage the design and construction of the Project, including the deliverables associated with the Project within the established budget and within time requirements for the Project, as the same may be amended, and, in reliance upon such representation, the County consents to the Town serving as the project manager and contract administrator for the professional services agreement for the Design Work.
10. **Completion Requirement or Return of County Funds.** If construction of the Project is not substantially complete (as that concept is defined in C.R.S. § 24-91-102(5)) before the date that is four (4) years from the Effective Date of this Agreement, the Town, within ninety (90) days of written notice from the County, shall repay the County in the amount of any County Funds released by the County to the Town for construction of the Project, plus three percent (3%) per annum compounded interest. The Town shall receive credit or reduction for construction that was completed during such four-year period that provides independent utility

from the completed Project. The Parties, in conjunction with CDOT, shall determine what, if any, completed construction is deemed to have independent utility and the estimated cost the Project was reimbursed using TIP funds (both federal share and LAC). This estimated cost will be used to determine any proportionate return of Arapahoe County Funds. Upon said fourth anniversary, the County shall be fully released from all obligations under this Agreement and the County Funds shall no longer be in any way pledged to the Project.

11. **Indemnification.** To the extent permitted by law, the Town hereby agrees to defend, indemnify and hold harmless the County, its officers, employees and agents against any liability, loss, damage, demand, action, cause of action, or expense of whatever nature, and including court costs and attorney fees, which results from the Town's acts or omissions in the construction of the Project. The County, however, agrees that Town has no obligation to indemnify or hold the County harmless for the liability, loss, damage, demand, action, cause of action, or expense of whatever nature due or caused directly by the negligence or willful misconduct of the County or its employees, contractors, or agents.

12. **Government Immunity.** Neither the Town nor the County waive or intend to waive any of the rights and protections provided under the Colorado Governmental Immunity Act ("CGIA"), C.R.S. sections 24-10-101, et seq., and nothing in this Agreement shall be interpreted as, expressly or impliedly, waiving or intending to waive any Governmental Immunity available to the Parties under any applicable law.

13. **Breach and Enforcement.** It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of either Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. In the event that either Party shall be in default of this Agreement, the other Party shall provide notice to the defaulting Party specifically describing the default. The Party allegedly in default shall have 30 days from the date of such notice to cure the default. If such default is not so cured then at the election of the non-defaulting Party, the Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.

14. **Article X, Section 20/TABOR.** The Parties understand and acknowledge that the County and the Town are subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this IGA. It is understood and agreed that this IGA does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this IGA to the contrary, all payment obligations of the Parties are expressly dependent and conditioned upon the continuing availability of funds for such party beyond the term of the party's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the paying Party and other applicable law.

Upon the failure to appropriate such funds, this IGA shall be terminated.

15. Miscellaneous Provisions.

a. Assignment. Neither the County nor the Town may assign this Agreement or parts hereof or its rights hereunder without the express written consent of the other Party.

b. Time is of the Essence. The Parties acknowledge that time is of the essence in the performance of this Agreement

c. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, neither the Town nor the County shall be deemed or constitute a partner, joint venturer or agent of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the other.

d. No Third-Party Beneficiaries. It is expressly understood and agreed that 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. It is the express intention of the Parties that any person other than the Town and the County shall be deemed to be only an incidental beneficiary under this Agreement.

e. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party hereto by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

The County:

Board of County
Commissioners, Arapahoe
County
5334 South Prince Street
Littleton, CO 80120
Attn: Chairman

The Town:

Town of Bennett
207 Muegge Way, Bennett, CO 80102
Attn: Trish Stiles, Town Administrator

Either Party may change its address for the purpose of this Section by giving written notice of such change to the other Party in the manner provided in this Section.

f. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

g. Controlling Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement to be provided hereunder shall lie in the state courts of the State of Colorado.

h. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

i. Binding Contract. This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.

j. Entire Contract. This Agreement constitutes the entire agreement between the Parties and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect.

k. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

l. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

m. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

ATTEST:



**BOARD OF COUNTY COMMISSIONERS
ARAPAHOE COUNTY, COLORADO**

[Signature]

[Signature]
By: Chair of the Board of County Commissioners,

TOWN OF BENNETT

ATTEST:



[Signature]
Royce Pindoff, Mayor

[Signature]
Lynette White, Town Clerk

APPROVED AS TO FORM:

[Signature]
Melinda Culley, Town Attorney

Approved By: [Signature]
Bryan D. Weimer, P.W.L.F., Director, PW&D
Authority Granted by Commissioner Resolution 200110

Exhibit A – Project Area

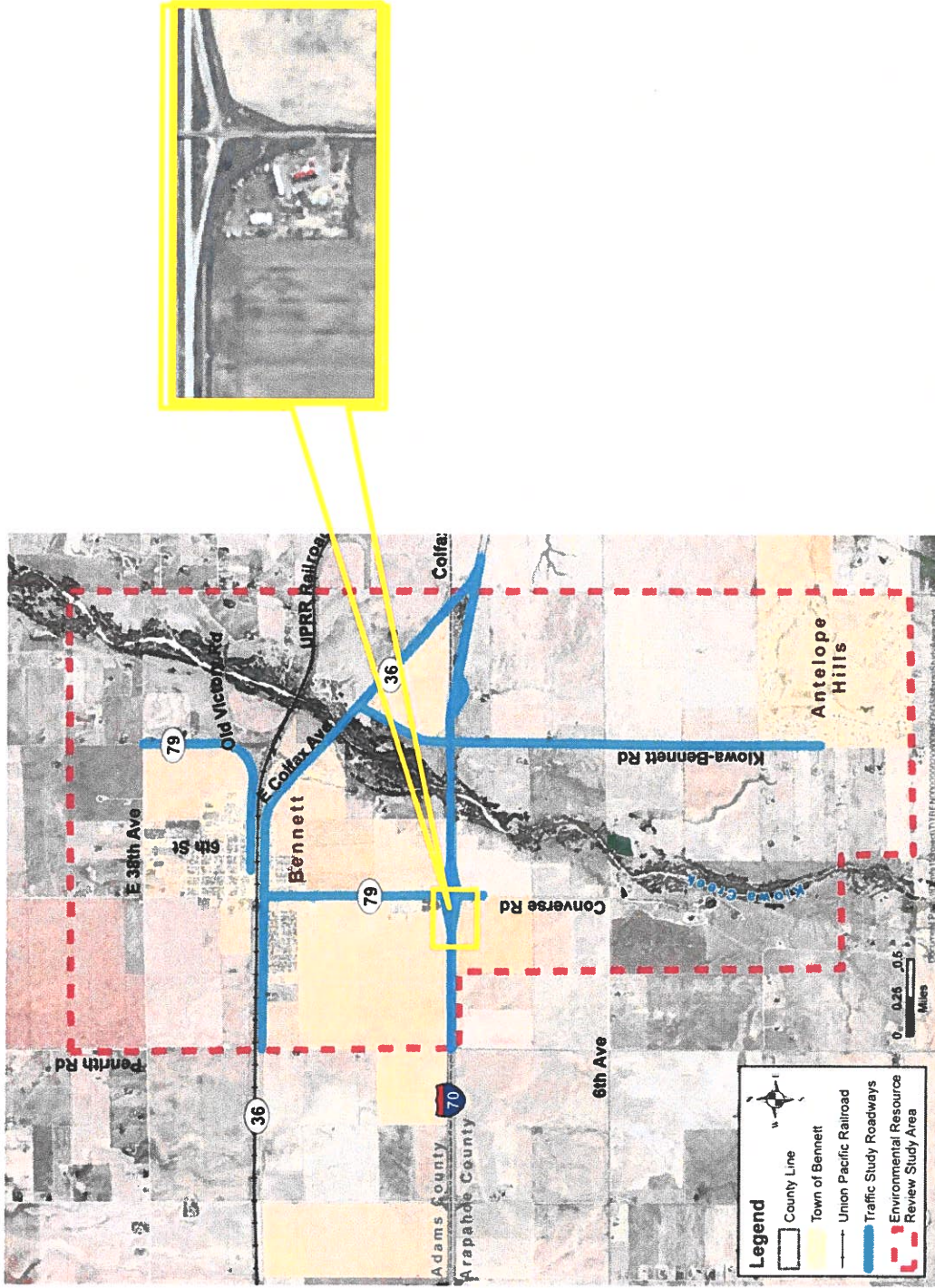


Exhibit B – Funding Breakdown

CDOT	\$500,000 (23%)
Adams County	\$300,000 (14%)
Bennett	\$450,000 (20%)
Arapahoe County	\$150,000 (7%)
Arapahoe Subregional Forum	\$150,000 (7%)
Adams Subregional Forum	\$650,000 (29%)

Note: CDOT combines all federal dollars for purposes of the grant.

**FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF BENNETT AND ARAPAHOE COUNTY
REGARDING FUNDING FOR THE
I-70 AND SH79 INTERCHANGE OPERATIONAL IMPROVEMENT PROJECT**

This First Amendment to Intergovernmental Agreement Between The Town of Bennett And Arapahoe County Regarding Funding For The I-70 And SH79 Interchange Operational Improvement Project (the “First Amendment”) is entered into this ____ day of February, 2024 (“Effective Date”), by and between the Town of Bennett, Colorado, a statutory town (the “Town”) and the Board of County Commissioners of Arapahoe County, Colorado (the “County”).

WHEREAS, the Town and the County previously entered into that certain Intergovernmental Agreement Between The Town of Bennett And Arapahoe County Regarding Funding For The I-70 and SH79 Interchange Operational Improvement Project, effective February 21, 2020 (the “IGA”); and

WHEREAS, the IGA addresses the funding commitments of the Town and the County, as well as other entities, toward the I-70 and SH79 Interchange Operational Improvement Project (“the Project”); and

WHEREAS, Exhibit B to the IGA set forth the Funding Breakdown for the Project; and

WHEREAS the funding commitments of the various entities for the Project have changed since entry into the IGA; and

WHEREAS, the Town and the County wish to amend the IGA to reflect their updated funding commitments for the Project; and

WHEREAS, Section 10 of the IGA provides that if construction of the Project is not substantially complete within four (4) years from the February 21, 2020 Effective Date of the IGA, then the Town is obligated to repay the County the funds released by the County plus three percent (3%) per annum interest; and

WHEREAS, the Town and the County desire to extend the deadline for substantial completion contained in Section 10 of the IGA for an additional one year.

NOW THEREFORE, IN MUTUAL CONSIDERATION OF THEIR RIGHTS AND OBLIGATIONS, THE TOWN AND THE COUNTY AGREE TO AMEND THE IGA AS FOLLOWS:

1. Exhibit B to the IGA is hereby amended by replacing it in its entirety with Amended Exhibit B – Funding Breakdown, attached hereto.

2. The deadline for substantial completion of the Project set forth in Section 10 of the IGA is Amended from four years to five years from the Effective Date of the IGA.

3. Except as specifically revised by this First Amendment, all other provisions of the IGA shall remain in full force and effect.

ATTEST

ATTEST

BOARD OF COUNTY COMMISSIONERS
ARAPAHOE COUNTY, COLORADO

By: _____

TOWN OF BENNETT, COLORADO

By: _____

AMENDED EXHIBIT B – FUNDING BREAKDOWN

TIP	\$1,255.00
Arapahoe County	\$ 53,940
Adams County	\$ 300,000
CDOT	\$ 500,000
Bennett	\$ 91,060
TOTAL	\$2,200,000

RESOLUTION NO. 1001-24

A RESOLUTION APPROVING A FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT WITH ARAPAHOE COUNTY FOR THE I-70 AND SH 79 INTERCHANGE OPERATIONAL IMPROVEMENT PROJECT

WHEREAS, the Town of Bennett and the County of Arapahoe previously entered into that certain Intergovernmental Agreement between the Town of Bennett and Arapahoe County regarding funding for the I-70 and SH-79 Interchange Operational Improvement Project, effective February 21, 2020; and

WHEREAS, the IGA addressed the funding commitments of the Town and the County, as well as other entities, toward the I-70 and SH79 Interchange Operational Improvement Project (“the Project”); and

WHEREAS, Exhibit B to the IGA set forth the Funding Breakdown for the Project; and

WHEREAS the funding commitments of the various entities for the Project have changed since entry into the IGA; and

WHEREAS, Section 10 of the IGA provides that if construction of the Project is not substantially complete within four (4) years from the February 21, 2020 Effective Date of the IGA, then the Town is obligated to repay the County the funds released by the County plus three percent (3%) per annum interest; and

WHEREAS, the Town and the County desire to extend the deadline for substantial completion contained in Section 10 of the IGA for an additional one year.

WHEREAS, the Town and the County have negotiated the First Amendment to Intergovernmental Agreement Between the Town of Bennett And Arapahoe County Regarding Funding For The I-70 And SH79 Interchange Operational Improvement Project (the “First Amendment”), attached hereto.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF BENNETT, COLORADO:

1. The First Amendment attached hereto, reflecting the updated commitments of the Town and the County and extending the deadline for substantial completion for a period of an additional one year is hereby approved.

2. The Mayor is authorized to execute the First Amendment on behalf of the Town, and the Mayor is hereby further authorized to negotiate and approve such revisions to the First Amendment as the Mayor and Town Administrator determine are necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the First Amendment are not altered.

PASSED AND ADOPTED THIS 13TH DAY OF FEBRUARY 2024.

TOWN OF BENNETT, COLORADO

Royce D. Pindell, Mayor

ATTEST:

Christina Hart, CMC
Town Clerk