

**AGREEMENT**  
**for Private Snow Plowing Activities**  
**on Unincorporated Arapahoe County Roads**  
**Homeowners Associations**

**THIS AGREEMENT** for Private Snow Removal and Plowing Activities on Unincorporated Arapahoe County Roads, dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, is made by and between the Arapahoe County Board of County Commissioners, by and through the Director of the Arapahoe County Department of Public Works and Development (“the County”, and \_\_\_\_\_ Home Owners’ Association (the "Operator").

**RECITALS**

**WHEREAS**, the Board of County Commissioners for Arapahoe County, in accordance with the provisions of Article 2 of Title 43 of the Colorado Revised Statutes (“CRS”) and CRS 30-11-101, 103 and 107(1)(h) have jurisdiction and authority over County roads in the unincorporated territory of Arapahoe County and, as such, have authority to authorize snow removal and plowing activities on County Roads; and

**WHEREAS**, the Board of County Commissioners have by Resolution authorized the Director of the Public Works and Development Division of Arapahoe County to execute agreements such as this Agreement to authorized on behalf of the Board; and

**WHEREAS**, the Operator is the duly authorized Homeowners’ Association for the \_\_\_\_\_ subdivision and the roads identified in this Agreement are internal to said subdivision; and

**WHEREAS**, due to the necessity for the County to prioritize snow removal on County roads to best facilitate winter travel on all County roads, the County is generally unable to assign a high priority for snow removal on internal subdivision roads or other relatively low use County roads, such as the roads described in this Agreement; and

**WHEREAS**, the Operator desires to have snow removed or plowed from the County roads described in this Agreement on a more frequent basis than the County is able to given the overall County road priority and demand for snow removal or plowing countywide; and

**WHEREAS**, the County is willing to authorize the Operator to privately remove or plow snow or contract for the private removal or plowing of snow on the roads described herein, subject to the terms and conditions for such snow removal or plowing operations as are set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises, authorizations, and conditions set forth in this Agreement, the Parties hereto agree as follows:

1. The Term of this Agreement shall commence on the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, and shall end on the \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_ , unless sooner terminated in accord with the provisions of this Agreement.

2. The Operator is hereby authorized to remove or plow snow during the term of this Agreement from the County roads or road segments that are identified in Exhibit A, which is attached hereto and is incorporated into this Agreement by this reference, and from no other County roads.

3. Prior to commencing any snow removal or plowing operations under this Agreement, the Operator shall identify to the County for its approval any contractors and/or subcontractors who will be performing the snow removal or plowing operations on behalf of the Operator. In the event that the Operator desires or needs to change or replace such contractors or subcontractors during the term of this Agreement, the Operator shall notify the County and shall not perform or authorize the performance of any further snow removal or plowing operations until the County approves the new or replaced contractors or subcontractors. The County may withhold approval of any proposed contractor or subcontractor for any reasonable and lawful cause.

4. Before commencing any snow removal or plowing activities under this Agreement, the Operator shall furnish to the County a non-cancelable bond or other surety acceptable to the County in the amount of \$20,000, payable to the Board of County Commissioners, Arapahoe County. This bond or surety shall be furnished in the name of the entity or contractor performing the snow removal work and assure recovery by the County of any expense incurred for any damages to County road(s) or roadway infrastructure including but not limited to road surface, signage, curb, gutter, sidewalk, or drainage facilities, and to assure recovery for any other expense caused to the County as a result of the performance of snow removal or plowing activities. This bond or other surety shall be in effect and provide coverage throughout the term of this Agreement and shall continue in effect, or may be retained by the County, as applicable, for a period of one (1) year after the termination of this Agreement.

5. Before commencing any snow removal or plowing activities under this Agreement, the Operator shall furnish to the County proof of commercial general liability insurance providing insurance coverage in an amount of no less than \$400,000 per individual claim and \$1,000,000 aggregate coverage. The Operator shall obtain and carry the liability insurance coverage required hereunder for the full term of this Agreement and throughout the performance of the snow removal or plowing activities authorized under this Agreement. Such commercial general insurance coverage shall be provided against any claim, demand, suit or action for property damage, personal injury or death resulting, directly or indirectly, from the performance by the Operator, its officers, employees, agents, contractors or subcontractors of the snow removal or plowing activities authorized under this Agreement or otherwise related to such activities. The said policy or policies shall include as an additional named insured: Arapahoe County Board of County Commissioners, Arapahoe County Officers, agents and employees. The policy shall provide that the County shall be notified at least thirty (30) days in advance of any reduction in coverage, termination or cancellation of the policies. Such notice shall be sent to the Road and Bridge Division Manager by Certified Mail, Return Receipt Requested. Failure to maintain such coverage for the full term of this Agreement or throughout the performance of any of the snow removal or plowing activities authorized hereunder shall be deemed a material event of default and shall result in the termination of this Agreement effective immediately as of the date of the lapse of the insurance coverage, and may result in forfeiture of the bond or cash surety required under this Agreement to the extent of any expenses or damages caused to the County thereby up to the full amount of said bond or cash surety. The Operator shall require that any contractor or subcontractor engaged to perform any of the snow removal or plowing activities authorized under this Agreement shall obtain and maintain the insurance coverage in no less than the terms and amounts required under this Paragraph. Proof of such contractor or subcontractor's insurance coverage shall be furnished to the County prior to the performance of any snow removal or plowing activities by that contractor or subcontractor.

6. In performing the snow removal or plowing operations authorized hereunder, the Operator and any contractor or subcontractor shall comply with the provisions of Exhibit B attached hereto and incorporated herein by this reference, and the Operator and any contractor or subcontractor shall exercise all reasonable and due care in the performance of the snow removal or plowing activities authorized under this Agreement and shall, jointly and severally, be responsible for any damages caused to persons or property, directly or indirectly, in the performance of the snow removal or plowing activities.

7. All equipment used in the performance of the snow removal or plowing activities authorized under this Agreement and the performance of such snow removal or plowing activities shall comply with all applicable federal, state, and local laws, ordinances, and rules and regulations.

8. This Agreement, and any issues involving this Agreement, are subject to and shall be interpreted under the law of the State of Colorado and the rules and regulations of Arapahoe County. Court venue and jurisdiction shall exclusively be in the Colorado District Court for Arapahoe County. The parties agree that this Agreement shall be deemed to have been made in, and the place of performance is deemed to be in, Arapahoe County, State of Colorado.

9. Any dispute as to the interpretation of this Agreement or the requirements stated in Exhibit B shall be submitted to Arapahoe County's Road and Bridge Division Manager. The Division Manager shall review and make a written decision on the dispute within ten (10) Arapahoe County business days of receiving the dispute. The Road and Bridge Division Manager's decision shall be final and binding on the Operator.

10. In accordance with the Colorado Constitution, Article X and CRS 29-1-110, performance of any County obligations under or related to this Agreement, if any, is expressly subject to the appropriation of funds by the Arapahoe County Board of Commissioners. Nevertheless, it is expressly understood and agreed that this Agreement and the snow removal or plowing activities authorized thereunder are for the benefit of the Operator and shall be at the sole expense of the Operator. The County has no obligation to pay for any of or any portion of the snow removal or plowing activities authorized hereunder and the Operator is entitled to no compensation from the County for its performance of same.

11. This Agreement may be amended only in writing by the duly authorized representatives of the Parties.

12. Notices. All notices shall be sent to the following addresses:

For the Operator:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For the County:      Arapahoe County Public Works  
                             Road and Bridge Division  
                             7600 South Peoria Street  
                             Englewood, CO 80112

13. THIS AGREEMENT IS MADE AT THE REQUEST OF THE OPERATOR FOR THE OPERATOR'S BENEFIT. THE OPERATOR DOES HEREBY WAIVE, REMISE, AND RELEASE ANY CLAIM, RIGHT, OR CAUSE OF ACTION THE OPERATOR MAY HAVE OR WHICH MAY

ACCRUE IN THE FUTURE, WHETHER UNDER THEORIES OF CONTRACT OR ANY OTHER CAUSE OF ACTION WHATSOEVER, AGAINST THE COUNTY ARISING IN WHOLE OR IN PART FROM THIS AGREEMENT.

14. The County does not waive any governmental immunity available to it or its elected officials, employees or agents under CRS 24-10-101, *et seq.*, or any other federal or state law or the common law, and nothing in this Agreement shall be interpreted to effect a waiver of any such governmental immunity available to the County, its elected officials, employees or agents.

15. Either Party may terminate this Agreement for convenience upon thirty (30) calendar day's prior written notice to the other party. Any notice of termination shall state the actual effective date of termination. Upon termination of this Agreement, all rights and obligations thereunder shall terminate, except that the Operator shall remain responsible and liable for any damages caused, directly or indirectly, by its performance under this Agreement and the Bond or other surety referenced above shall remain in effect or be retained by the County, as applicable, for one (1) year after the date of such termination as provided herein.

16. 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 hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or individual homeowner association member or other person or entity whatsoever on or under this Agreement. It is the express intention of the parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

17. This Agreement constitutes the entire Agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein.

18. The Operator shall not assign or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of the County.

19. To the fullest extent permissible under the law of the State of Colorado, the Operator agrees to indemnify, defend, and hold harmless the County, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Operator's obligations or actions or inactions, and the Operator's snow removal or plowing contractor's or subcontractor's obligations or actions or inactions, under this Agreement. The Operator shall promptly repair to the County's standards and satisfaction, or pay to the County the costs of repairing, any damage to County roads, curbs, gutters, sidewalks, signage, or any other County property resulting from operations or activities under this Agreement. The Operator's indemnity obligation under this Paragraph shall be for the full amount of any such loss, damages, injuries, claims, cause or causes of action or any liability whatsoever, including attorneys' fees, and court costs, and shall not in any way be capped or limited by the insurance or bonding or surety provisions of this Agreement.

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**IN WITNESS WHEREOF**, the Parties hereto set their hands in agreement as of the date first written above.

For Arapahoe County Board of County Commissioners:

By \_\_\_\_\_  
Director, Arapahoe County  
Department of Public Works and Development

For \_\_\_\_\_ Homeowners' Association

By \_\_\_\_\_

Its \_\_\_\_\_

Acknowledgment

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ )ss

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by \_\_\_\_\_ as \_\_\_\_\_  
of \_\_\_\_\_, on behalf of the Association.

\_\_\_\_\_  
Notary Public  
My Commission Expires:  
  
\_\_\_\_\_

## **Exhibit A**

Snow removal or plowing operations authorized under this Agreement are permitted on the following Arapahoe County Roads:

[ \*\* ]

## **Exhibit B**

### **General Considerations:**

- All snow removal or plowing services to be provided shall be performed and completed in a similar manner as performed by the County upon other public roads, exercising all reasonable and due care, and in good and workman like manner.
- All requests to provide snow removal or plowing authority must be submitted to the Arapahoe County Road and Bridge Division.
- The Contractor/Operator retained by the Homeowners' Association ("HOA") is to report directly to those entities.
- As provided in the Agreement authorizing the snow removal or plowing operations and in addition to the bonding or surety and insurance requirements contained therein, the HOA along with their Contractor/Operator agrees to indemnify and hold harmless the County and its employees against all claims, damages, losses, and expenses, arising from accidents or property damage due to winter operations. In addition the HOA along with their Contractor/Operator agree to indemnify and hold harmless the County and its employees against all claims, damages, losses, and expenses arising from non-performance of winter operations.

This document requires certain actions be taken by either the HOA or their designated winter operations Contractor/Operator at certain times before, during and after the snow season.

### **Prior to Winter Operations:**

#### **Street Information/Infrastructure Inventory**

The HOA, in collaboration with their Contractor/Operator, must submit a written request to the Road and Bridge Division to perform winter operations on a publicly owned street system. The written request shall include the name/designation of the street(s) to be plowed, a map of the area, and a list of adjoining property owners with contact information.

#### **Licensing**

The Contractor/Operator retained by the HOA shall be responsible for obtaining any other County licenses to operate within the public right-of-way that may be required under the Arapahoe County Infrastructure and Design Standards.

#### Pre-season meeting

Upon execution of the Agreement, the HOA and their designated Contractor/Operator will schedule a pre-season meeting with the Road and Bridge Division staff to discuss procedures and associated paperwork.

#### Inventory and Condition

The HOA or their designated Contractor/Operator shall develop and submit an inventory of the roadway system on which winter operations shall be performed. This inventory shall include a spreadsheet detailing the required information as well as a video showing the current condition of the requested items. Items required in the inventory are street names, street dimensions, and the current condition of pavement, curb & gutter, sidewalk, drainage, fencing, mailboxes etc. This inventory must be submitted to the County Road and Bridge Division for review.

#### Dry Run

The Contractor/Operator must arrange for a dry run of all applicable roads with County Road and Bridge staff.

#### List of Equipment

The HOA in collaboration with their Contractor/Operator must submit and update as necessary, a complete list of equipment planned for winter operations. The equipment description should include specific information i.e., type & make of trucks, make of plow, type of blades (carbide /regular steel), model of sanders, calibration units; pre-wetting systems; types & make of loaders/graders, etc.

#### Equipment Inspection

The Contractor/Operator must arrange for the inspection of their equipment with County Road and Bridge staff.

#### Materials

Notwithstanding any contrary provisions of the List of Equipment section stated above, **no** solid materials may be used as either a de-icing agent or for traction. Any liquid materials must be first approved by the Arapahoe County Road and Bridge Division manager.

#### Snow Plowing Procedures

The HOA in collaboration with their Contractor/Operator must provide a copy of their snow removal procedures to the County's Road and Bridge Division. These procedures shall include complete information on frequency, duration and the extent of snow plowing as well as details on how the Contractor/Operator plans to stabilize roads during normal snow events and under heavy storms or blizzard conditions.

The Contractor will meet with Road and Bridge staff prior to commencing operations to discuss and agree upon specific plowing standards and techniques, particularly as they relate to piling snow, snow storage areas, windrows left in front of driveways, intersections, pedestrian ramps, etc.

### Training

The HOA in collaboration with their Contractor/Operator must ensure all operators (routine drivers and fill-ins) have received proper training on both equipment safety and snowplowing operations/procedures. The operators may be required to participate in at least one 4-hour training class offered through the County Road and Bridge Division annually.

### Informing Homeowners of the change in responsibility

The HOA, in collaboration with their Contractor/Operator, must inform property owners in advance of the Contractor/Operator's responsibility for winter operations. The HOA in collaboration with their Contractor/Operator must provide property owners a designated snow removal phone number to call during such events.

### **During Winter Operations:**

#### Event Logs

On a daily basis during winter operations, the Contractor/Operator shall complete an event log. On a monthly basis, or when requested by the County, the contractor shall supply these logs to the Road and Bridge Division. Contractor/Operator critique at any time the County may require a meeting with the HOA and their Contractor/Operator to discuss performance issues. If said issues are not corrected to the County's satisfaction, the HOA shall be asked to replace their Contractor/Operator or this agreement can be terminated.

### **End of Season:**

#### End of Season Report

On or around June I the HOA along with their Contractor/Operator shall supply to the County a combined report that includes all information supplied on a by request or monthly basis as requested above.