

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING
AN AMENDED INTERGOVERNMENTAL AGREEMENT WITH PITKIN COUNTY,
COLORADO RELATED TO COLLECTION OF THE PITKIN COUNTY USE TAX**

**Town of Basalt
Resolution No. 25
Series of 2019**

RECITALS

- A. By Resolution No.10, Series of 2019, the Town of Basalt, by and through its Town Council, approved an Intergovernmental Agreement with Pitkin County (the "IGA") related to the collection of the Pitkin County Use Tax by the Basalt Building Department.
- B. In short, the IGA calls for the Building Department to collect a deposit from any person applying for a building permit for a project in Basalt that is within the boundaries of Pitkin County, equal to .5% of 50% of the estimated valuation of work for any construction project at the time of building permit approval and, further, to provide other information to Pitkin County to assist the Pitkin County Finance Department in determining which taxpayers are subject to the Pitkin County use tax requirements.
- C. Pursuant to Pitkin County Resolution No. 045-2019, Pitkin County amended its Resolution No. 022-2019 and the IGA approved pursuant thereto, to revise the amount of use tax collected to be collected by the Town to a percentage established by Pitkin County resolution, as set forth in the Amended Intergovernmental Agreement ("Amended IGA") enclosed as **Exhibit A**.
- D. Accordingly, the Town wishes to approve the Amended IGA, with the correction of a typographical error in paragraph two which is corrected in the enclosed version of the Amended IGA.
- E. Both Pitkin County and the Town are governments authorized to enter into agreements pursuant to C.R.S. § 29-1-203 for purposes including the provision of any function, service, or facility lawfully authorized to each.
- F. The Town Council wishes to approve the Amended IGA, as set forth in **Exhibit A**, and finds and determines that doing so is in the interest of the public health, safety, and welfare of the residents of the Town of Basalt.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Basalt, Colorado as follows:

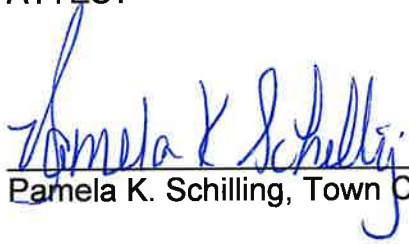
1. Recitals. The recitals set forth in Town of Basalt Resolution No. 10, Series of 2019, except as superseded by the foregoing recitals, as well as the foregoing recitals are incorporated herein as findings of Town Council.
2. Amended IGA. The Town Council hereby approves the Amended IGA in substantially the same form as set forth in **Exhibit A**, as determined to be satisfactory to the Town Attorney, and authorizes the Mayor to execute the same. The Town Council authorizes the Town Staff, at the direction of the Town Manager and Chief Building Official, to take such further actions as are necessary to implement the terms of the IGA.

READ AND ADOPTED on July 23, 2019, by a vote of 6 to 0.

TOWN OF BASALT, COLORADO

By: 
Jacquie R. Whitsitt, Mayor

ATTEST

By: 
Pamela K. Schilling, Town Clerk



**AMENDED INTERGOVERNMENTAL AGREEMENT BETWEEN THE PITKIN
COUNTY BOARD OF COUNTY COMMISSIONERS AND THE TOWN OF
BASALT FOR THE PROVISION OF USE TAX COLLECTION**

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made this _____ day of _____, 2019 by and between the Board of County Commissioners of Pitkin County, Colorado, ("Pitkin") whose address is 530 East Main Street, Suite 302 Aspen, Colorado 81611 and the Town of Basalt ("Basalt"), whose address is 101 Midland Avenue Basalt, Colorado 81621

RECITALS

WHEREAS, This Agreement is entered into pursuant to, *inter alia*, C.R.S. §§ 29-1-201, *et seq.*, and Article XIV, Section 18 of the Colorado Constitution.

WHEREAS, Pursuant to Resolution No. 149-1993, of the Board of County Commissioners of Pitkin, a question was proposed and approved by the electorate of Pitkin, imposing an additional ½% use tax for the privilege of using or consuming in Pitkin any construction and building materials purchased at retail.

WHEREAS, Resolution No. 149-1993 provided that the use tax on construction and building materials be collected according to the procedures established by Resolution No. 088-1989 as amended by Resolution No. 023-1989 and as they may be amended by future resolutions

WHEREAS, Resolution No. 002-2008 amended Resolution No. 023-1989 (in part) as follows:

- 1) To collect, administer, and enforce the ½% use tax imposed by Resolution #93-149 for the privilege of using or consuming in Pitkin, any construction and building materials purchased at retail. The use tax shall be imposed on the building materials' purchase price.
- 2) That every person who is required to obtain a master building permit in Pitkin shall remit a deposit to Pitkin at the time the building permit is issued at the rate of 0.5% multiplied by fifty percent (50%) of the total valuation of the construction project (as an estimate of the cost of construction materials). A master building permit is the primary permit issued for a building or unit.

WHEREAS, Due to changes in the Colorado Department of Revenue's collection of sales tax on deliverable goods purchased outside of Pitkin County, and the difference in the amount of labor costs as a portion of the total project cost as compared to the national average, the Board of County Commissioners determined that it was appropriate to amend Resolution No. 002-2008 to change the amount of the deposit from fifty percent

(50%) to ten percent (10%) as this will result in a use tax deposit more in line with the actual use tax paid.

WHEREAS, Persons who are issued a building permit by the Basalt Building Department in the Pitkin portion of the Basalt municipality, are subject to the amended provisions in Resolution No's 023-1989, 002-2008, 038-2019 and as they may be amended by future resolutions. Exemptions to this legislation are non-profits and government projects.

WHEREAS, Pitkin is requesting the Basalt Building Department to collect a deposit from taxpayers who apply for a building permit for a project in Basalt that is within the boundaries of Pitkin, equal to ~~.5% of 50%-10%~~ 0.5% of the established percentage, as provided for in the most current resolution in effect, of the construction estimate at the time of building permit approval. Further, to provide other information to Pitkin to assist the Pitkin Finance Department in determining which taxpayers are subject to the Pitkin use tax requirements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and agreements of the parties and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Effective _____, the Basalt Building Department will calculate 0.5% of the established percentage as provided for in the most current resolution in effect at the time of collection, of any construction project located in the Pitkin County portion of Basalt and collect this percentage at the time of building permit approval.
2. Basalt will deposit this 0.5% deposit in a liability account and pay such fees to Pitkin on a quarterly basis. Further, Basalt will provide Pitkin County with the following information:
 - A. On a quarterly basis, the address of the property, owner(s) name and contact information for all properties that have been issued a building permit by the Basalt Building Department, which are located in Basalt and are within the boundaries of Pitkin.
 - B. On a monthly basis, a list of Certificate of Occupancies issued to owner(s) for properties located within the boundaries of Pitkin.
3. Pitkin shall require the builder, within ninety (90) days of the issuance of a certificate of occupancy, to reconcile the actual cost of construction vs., the amount deposited and send the final reconciliation return to the county.

4. Assignability. This agreement is not assignable by either party.
5. Modification. This Agreement may be changed or modified only in writing, by an agreement approved by the respective Boards of the Governments and signed by authorized officers of each party.
6. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and all other promises and agreements relating to the subject of this Agreement, whether oral or written, are merged herein.
7. Severability. Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair, or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.
8. Termination Prior to Expiration of Term. Any Party has the right to terminate or withdraw from this Agreement, with or without cause, by giving written notice to the other Parties of such termination and specifying the effective date thereof. Such notice shall be given at least ten (10) days before the effective date of such termination. Termination of the Agreement relieves the cancelling or withdrawing Party of any further responsibility under this Agreement except for specifically identified obligations of a continuing nature based upon past performance under the Agreement.
6. Notice. Any notice required or permitted under this Agreement shall be in writing and shall be provided by electronic delivery to the e-mail addresses set forth below *and* by one of the following methods 1) hand-delivery or 2) registered or certified mail, postage pre-paid to the mailing addresses set forth below. Each party by notice sent under this paragraph may change the address to which future notices should be sent. Electronic delivery of notices shall be considered delivered upon receipt of confirmation of delivery on the part of the sender. Nothing contained herein shall be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process.

To: Pitkin County

With copies to:
Pitkin County Attorney's Office
530 East Main Street, Ste. 301
Aspen, CO 81611
attorney@pitkincounty.com

To: Town of Basalt

With copies to:
Town of Basalt Attorney's Office
101 Midland Avenue

Basalt, CO 81621
jjc@mountainlawfirm.com

7. Government Immunity. The parties agree and understand that both parties are relying on and do not waive, by any provisions of this Agreement, the monetary limitations or terms or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as from time to time amended or otherwise available to the parties or any of their officers, agents, or employees.
8. Current Year Obligations. The parties acknowledge and agree that any payments provided for hereunder or requirements for future appropriations shall constitute only currently budgeted expenditures of the parties. The parties' obligations under this Agreement are subject to each individual party's annual right to budget and appropriate the sums necessary to provide the services set forth herein. No provision of this Agreement shall be construed or interpreted as creating a multiple fiscal year direct or indirect debt or other financial obligation of either or both parties within the meaning of any constitutional or statutory debt limitation. This Agreement shall not be construed to pledge or create a lien on any class or source of either parties' bonds or any obligations payable from any class or source of each individual party's money.
9. Binding Rights and Obligations. The rights and obligations of the parties under this Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
10. Agreement made in Colorado. This Agreement shall be construed according to the laws of the State of Colorado, and venue for any action shall be in the District Court in and for Pitkin County, Colorado.
11. Attorney Fees. In the event that legal action is necessary to enforce any of the provisions of this Agreement, the substantially prevailing party, whether by final judgment or out of court settlement, shall recover from the other party all costs and expenses of such action or suit including reasonable attorney fees.
12. No Waiver. The waiver by any party to this Agreement of any term or condition of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
13. Authority. Each person signing this Agreement represents and warrants that said person is fully authorized to enter into and execute this Agreement and to bind the party it represents to the terms and conditions hereof.

The foregoing Agreement was approved by the Board of County Commissioners

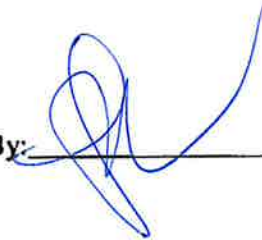
of Pitkin County, Colorado at its regular meeting held on the 26th day of June, 2019.

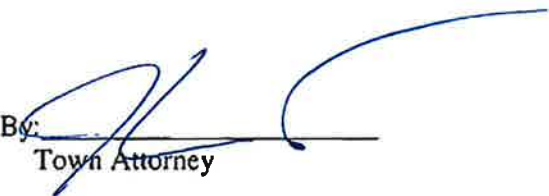
The foregoing Agreement was approved by [The Town of Basalt Council at its regular meeting held on the 23rd day of July, 2019.

In Witness whereof, the parties hereto have caused this agreement to be executed as of the day and year first above written.

TOWN OF BASALT


APPROVED AS TO FORM


By:  _____

By:  _____
Town Attorney

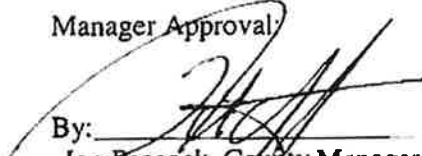
BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO

APPROVED AS TO FORM

By:  _____
Greg Poschman, Chair

By:  _____
John Ely, County Attorney

Manager Approval:

By:  _____
Jon Peacock, County Manager
