

**FOURTH AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
ASPEN/PITKIN COUNTY HOUSING AUTHORITY**

THIS *FOURTH AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT* (hereinafter referred to as "Intergovernmental Agreement") made and entered into this 20<sup>th</sup> day of December 2007, by and between the CITY OF ASPEN, Colorado, a home rule municipal corporation (hereinafter referred to as "City"); and the BOARD OF COUNTY COMMISSIONERS of Pitkin County, Colorado, a body corporate and politic (hereinafter referred to as "County"):

**WITNESSETH:**

**WHEREAS**, the City is authorized by article XX, section 6 of the Colorado Constitution and City and County are each authorized by Article XIV, Section 18 of the Colorado Constitution, and Section 29-1-204.5, Colorado Revised Statutes to contract with each other to establish a multi-jurisdictional housing authority as a separate governmental entity; and

**WHEREAS**, the City and County entered into an Intergovernmental Agreement on January 9, 1984, a First Amended and Restated Intergovernmental Agreement on September 26, 1989, a Second Amended and Restated Intergovernmental Agreement in September, 1999, and a Third Amended and Restated Intergovernmental Agreement on October 28, 2002, establishing a multi-jurisdictional housing authority under the provisions of C.R.S. 1973, Section 29-1-204.5 which authority is known as the Aspen/Pitkin County Housing Authority (hereinafter referred to as "Authority") for the purpose of providing a program and a system to assure the existence of a supply of desirable and affordable housing for permanent residents, persons employed in the City or the County, senior citizens, disabled persons and other population segments residing or needing to reside in the Roaring Fork Valley which are necessary for a balanced community; and

**WHEREAS**, the City and County desire to create an independent housing authority that has all of the powers set forth at Section 29-1-204.5, C.R.S., and that will function as an advisory and recommending board to the Aspen City Council and the Board of County Commissioners on all matters relating to affordable housing in their respective jurisdictions; and

**WHEREAS**, the City and the County desire to further amend and to restate the Third Amended Intergovernmental Agreement.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived hereby, the City and the County amend and restate the Intergovernmental Agreement of January 9, 1984, the Second Amended and Restated Intergovernmental Agreement of

July 25, 2000 and the Third Amended and Restated Intergovernmental Agreement of October 28, 2002, effective on the date first stated above, to read as follows:

**I. MULTI-JURISDICTIONAL HOUSING AUTHORITY – PURPOSE.**

The Aspen/Pitkin County Housing Authority (hereinafter referred to as “Authority”) has been established as a multi-jurisdictional housing authority for the purpose of assisting the City and County, upon request by either party, in effecting the planning, financing, acquisition, construction, development, reconstruction or repair, maintenance, management and operation of housing projects pursuant to a multi-jurisdictional plan to provide residential facilities and dwelling accommodations at rental or sale prices within the means of families or persons of low, moderate and middle income who are employed in the City or the County, who reside or need to reside in the City or County, and who have identifiable needs for affordable housing; e.g., limited incomes, senior citizens and disabled persons, as defined by the Authority in published guidelines. The Authority shall be a political subdivision and a public corporation of the State of Colorado, separate from the City and County, and shall be a validly created and existing political subdivision and public corporation of the State of Colorado. It shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. The provisions of Articles 10.5 (the “Public Deposit Protection Act”) and 47 (the “Savings and Loan Association Public Deposit Protection Act”) of Title 11, Colorado Revised Statutes, shall apply to monies of the Authority.

The Authority shall have any and all powers, duties, rights and obligations as such are set forth herein and subject to the terms and conditions of this Agreement. In order to facilitate management oversight and to provide additional resources to the Authority, the Authority shall delegate to the City certain administrative functions as more fully described herein.

**II. BOARD OF DIRECTORS:**

**A. *Number, Manner of Appointment, Qualifications, Etc.:***

The Board shall consist of five (5) Directors (hereinafter referred to as “Directors”), and one (1) alternate, serving staggered terms to be appointed as follows:

1. Two Directors shall be appointed by the Board of County Commissioners.
2. Two Directors shall be appointed by the City Council.
3. One Director and one alternate shall be appointed jointly by the Board of County Commissioners and the City Council.
4. No Director shall be a member of the Board of County Commissioners, the City Council, or an employee of the City, County, or

Authority. All Directors and the Alternate Director shall be residents of Pitkin County.

5. As soon as reasonable after the effective date of this Amended Agreement, the City Council and Board of County Commissioners shall appoint initial Directors as set forth above for the following initial terms:

One Director appointed by County:	4 years
One Director appointed by City:	4 years
One Director appointed by County:	3 years
One Director appointed by City:	3 years
One Joint Director:	3 years
One joint alternate Director:	3 years

6. The terms of each Director and the Alternate Director following the initial term shall be for a period of two years. Notwithstanding the terms set forth herein, Directors and the Alternate Director shall continue to serve as Directors until such time as a successor has been appointed.

7. Directors appointed by the City Council may be removed at the sole discretion of the City Council. Directors appointed by the County Commissioners may be removed at the sole discretion of the County Commissioners. The Jointly appointed Director and the Alternate Director may be removed at the sole discretion of either the City Council or County Commissioners. Upon the removal of a Director or Alternate Director, a replacement shall be appointed by the respective governmental entity(ies) that originally appointed the Director for the unexpired term of the removed Director or Alternate Director.

***B. Officers:***

The officers of the Authority shall be a Chair, a Vice Chair, a Treasurer, and a Secretary.

1. Chair. The Chair shall preside at all meetings of the Authority. At each meeting, the Chair shall submit such recommendations and information as she or he may consider proper concerning the business, affairs and policies of the Authority.

2. Vice Chair. The Vice Chair shall perform the duties of the Chair in the absence or incapacity of the Chair; and in case of the resignation or death of the Chair, the Vice Chair shall perform such duties as are imposed on the Chair until such time as the Authority shall select a new Chair.

3. Treasurer. The Treasurer shall perform the duties of the Chair in the absence or incapacity of both the Chair and the Vice Chair. With respect to

expenses incurred directly by the Authority (as distinguished from expenses of either the City or County for affordable housing projects and their operations), either the Treasurer or the Secretary shall approve all orders and checks for payment of money and shall pay out and disburse such monies under the direction of the City's Finance Director. The Treasurer shall serve as advisor to the Authority and the Board on financial matters.

4. Secretary. The Secretary shall ensure that the records of the Authority are properly maintained, shall act as Secretary of the meetings of the Authority and ensure that all votes are recorded, and shall ensure that a record of the proceedings of the Authority are maintained in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his or her office.

5. Election or Appointment. The Chair, Vice Chair, Treasurer, and Secretary shall be elected at the annual meeting of the Authority from among the Directors of the Board, and shall hold office for one year or until their successors are elected and qualified.

6. Vacancies. Should the office of Chair, Vice Chair, Treasurer, or Secretary become vacant, the Board shall elect a successor from its membership at the next regular meeting, and such election shall be for the unexpired term of said office.

**C. *Voting Requirements:***

1. Quorum. The powers of the Authority shall be vested in the Directors of the Board in office from time to time. Three Directors of the Board shall constitute a quorum for the purpose of conducting Authority business and exercising Authority powers and for all other purposes. When a quorum is in attendance, action may be taken by the Authority upon a vote of a majority of the Directors of the Board present. The Alternate Director may be counted for purposes of determining the existence of a quorum at a meeting and may have his or her vote counted only if at least one Director is not present.

2. Manner of Voting. The voting on all questions coming before the Authority shall be by roll call, and the ayes and nays shall be entered upon the minutes of such meeting by name, except on the election of officers that may be by ballot.

**D. *Duties of the Officers.***

The officers of the Authority shall perform the duties and functions of the Authority as prescribed herein and such other duties and functions as may from time to time be required by the Authority, the by-laws or rules and regulations of the Authority, or upon the request of the City and County.

### **III. DUTIES OF THE PARTIES.**

#### **A. *Personnel.***

1. An Executive Director of the Authority shall be employed by the City who shall report to and be supervised by the City Manager. The City Manager and County Manager shall jointly hire the Executive Director. The City Manager shall have the authority to terminate the employment of the Executive Director in accordance with City Personnel Policies and Procedures, but shall exercise this authority only after reasonable consultation with the County Manager.

2. The Executive Director and all other personnel employed to work under the supervision of the Executive Director shall be City employees, subject to the City's payroll, benefits, and personnel policies and procedures (including disciplinary procedures).

3. The Executive Director shall work under the supervision of the City Manager and shall receive work assignments from the City Manager. Directors of the Housing Authority may suggest work assignment for the Executive Director to the City Manager, but shall have no authority to directly assign work, tasks, or priorities to the Executive Director or any of his or her staff.

4. Nothing in this Agreement shall create, or is intended to create, or shall be construed to constitute a contract of employment, express or implied between the Executive Director and the Authority, the City or the County.

#### **B. *Finances and Accounting.***

1. The Executive Director shall annually consult and cooperatively work with the City and County Finance Directors to prepare proposed budgets for the City and County relating to affordable housing in their respective jurisdictions. The Authority, upon reviewing the annual budget as presented by the Executive Director shall make recommendation to the City and County for their adoption. The annual budgets shall include funds necessary to reimburse the City for overhead expenses for personnel, finance, administrative, legal, and asset management services consistent with fees charged to other City departments.

2. The Executive Director shall annually consult and cooperatively work with the City's Finance Director to ensure the proper care and custody of all funds of the Authority, the prompt payment of all obligations of the Authority, and the keeping of regular books of accounts showing receipts and expenditures of the Authority. The Executive Director shall render to the Authority, the City and the County, at their regular meetings, or sooner if requested, an account of Authority transactions and also of the financial condition of the Authority. The Executive Director shall give such bond for the faithful performance of his or her duties as the City may require.

3. All accounting, payroll, and audit services for the Authority shall be performed by the Finance Department of the City.

4. The City's procurement policies, contract documents, and approval policies shall be used for all procurements of goods and services of the Authority except for any goods or services purchased entirely for County projects. A County project shall be defined for purposes of this section as any purchase for goods or services funded entirely by County funds or a combination of County funds and funds from a source other than from the City.

5. For each fiscal year of the City, the County and the Authority (each January 1 through each December 31), the City and County shall each appropriate their prorated share of operational monies necessary to provide for any budgeted deficit arising in connection with the Authority's operations which has been approved by the City and County, provided, however, that bonds, notes or other obligations payable solely from revenues as described in Section III hereof shall never constitute an indebtedness of the City or the County. The City and County shall each pay for 50% of the normal operating expenses of the Housing Office. This shall include such normal operating expenses as guideline development, qualifying applicants, enforcement, property management, etc. The City and County shall pay its share of any special projects, which either party may request to be included in the Annual Work Plan.

6. The County shall pay to the City for the benefit of the Authority its share of the Authority's annual budget upon the request of the Finance Director of the City. Both the City Council and the Board of County Commissioners shall approve any increases to the expense budget.

7. On or before April 15 of each fiscal year, the actual operations for the Authority for the immediate preceding fiscal year shall be reviewed by the City and County Finance Directors with the Executive Director for the determination of any necessary final reimbursements (and, therefore, necessary supplemental appropriations of monies by the City and the County) as a result of any non-budget appropriation of Authority staff or expenditure. The City and County hereby agree to make all necessary appropriations within a reasonable time to reconcile the final appropriations of each entity.

### **C. *Operations.***

1. *Annual Work Plan.* The Executive Director, with the assistance of the Authority, shall annually prepare a detailed Annual Work Plan that specifies goals, tasks, responsible employees and timelines, for the operation of the Authority. The Annual Work Plan shall include a summary detailing progress made in the implementation of action plans set forth in any adopted Housing Strategic Plan and recommendations for changes to the Housing Strategic Plan. Following the review of the Annual Work Plan by the Authority, the Executive Director shall meet with the City Manager and County Manager for approval. The Authority shall review the Annual

Work Plan as approved by the City Manager and County Manager and shall make recommendations to the City and County for its approval and adoption. Upon the adoption of the Annual Work Plan by the City and County, the Executive Director shall regularly meet with the City and County managers to review the progress of the implementation of the Annual Work Plan.

2. Annual Affordable Housing Guidelines. The Executive Director shall prepare Affordable Housing Guidelines every three years, including updates and recommendations for changes every year that:

- a. Identify “low, lower moderate, upper moderate, middle and upper middle income persons and families” eligible to participate in the housing program established by the City and County; and
- b. Qualifications for ownership and rental of low, lower moderate, upper moderate, middle and upper middle income housing within the City and the County for the population segments identified by the Authority as required by existing agreements and land use regulations.

The Authority shall review the Affordable Housing Guidelines, including deletions and additions, submitted to it by the Executive Director and shall make recommendations to the City and County for their approval and adoption.

3. The Housing Authority. The Authority shall meet monthly to conduct its business in accordance with the Colorado Open Meetings Law, Sections 24-6-401, *et seq.*, C.R.S. and the City of Aspen Municipal Code. The Authority shall be responsible for the following duties:

- a. To act as affordable housing advocates in all of its business by representing the views and perspectives of the larger communities of the City and County and translating those views and perspectives into concrete recommendations to the City and County.
- b. To review and make recommendations to the City and County with respect to the Annual Work Plan, Housing Guidelines, Affordable Housing Action Plans of the Aspen Area Community Plan, any Affordable Housing Strategic Plans adopted by the City or County, and advise on any other affordable housing related matters referred to it by either the City or County.
- c. To review specific development proposals initiated by the City or County and make recommendations thereon upon the request of either the City or County.
- d. To assist the City, County, and Executive Director, upon request, to define the need, planning, undertaking, construction, operation,

or financing of low, lower moderate, upper moderate, middle and upper middle income housing for the population segments designated here or identified by the Authority residing in or needing to reside in the City or the County; and

e. To assist the City, County and Executive Director, upon request, to plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate housing projects pursuant to the Annual Work Plan; and

f. To assist the City, County and Executive Director, upon request, to purchase, acquire, obtain options, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service from firms, corporations, the City, the County, other governmental entities or any other persons; and

g. To assist the City, County and Executive Director, upon request, to investigate housing needs within the jurisdiction of the City or the County and the means and methods for improving those conditions; and

h. To review growth management policy applications (or equivalent application procedures as the same are developed or established from time to time) by developers for low, lower moderate, upper moderate, middle and upper middle income housing in the City or the County as requested by the respective Community Development Departments of the City or the County for conformance with housing needs; and

i. To enforce all aspects of the affordable housing program, including, but not necessarily limited to, deed restrictions, guidelines, and qualifications; and

j. To establish a system to hear appeals from the interpretation or implementation of the Affordable Housing Guidelines and issue final administrative determinations on such appeals.

4. The Executive Director. The Executive Director shall be responsible for the following duties in addition to any duties assigned to him or her by the City Manager:

a. Working closely with the County and City managers to develop an Annual Work Plan and thereafter implementing said Work Plan under the supervision of the City Manager; and

b. Maintaining records of existing low, lower moderate, upper moderate, middle and upper middle income rental or resale restricted housing for the population segments designated herein or identified by the Authority and assure that such housing is used and occupied in accordance with existing City or County development approvals, contracts, or financing requirements; and

c. Taking all steps reasonably necessary to assure that all deed restricted units of housing comply with City and County regulations or resolutions concerning rental or resale restricted housing; and

d. Negotiating contracts as required to provide for management of deed-restricted APCHA units (as that term is defined in Affordable Housing Guidelines as such guidelines are published, modified, amended and supplemented from time to time); and

e. To review and recommend establishment of a computerized rental availability record system for use by the City, the County, the population segments designated herein or identified by the Authority and members of the general public; and

f. Taking all steps reasonably necessary to provide for marketing and reviewing qualification of applicants for rental deed restricted or for sale affordable housing units, and for marketing, reviewing qualifications of applicants for, and arranging for transfer of title of deed restricted units; and

g. Investigating housing needs within the jurisdiction of the City or the County and the means and methods for improving those conditions; and

h. To develop and recommend code changes associated with the provisions of the current County Strategic Plan, Housing subsection, or the current Housing subsection of the City's Aspen Area Community Plan (as they may be modified, amended and supplemented from time to time); and

i. To maintain data indicating housing needs in the City and the County for the population segments designated herein or identified by the Authority.

5. Project Management Services by the City. The City and County acknowledge that the City, because of its current personnel and expertise in construction management, is in a better position than the County to provide construction management services for the development and construction of affordable housing. The City agrees to negotiate in good faith with the County to provide construction management services for

County funded and sponsored affordable housing projects. Said agreements shall be on a case-by-case basis and shall include provisions for scope of services to be provided, reimbursement schedules, management responsibilities, and appropriate indemnification and insurance. The parties hereto agree that the City shall not be required to provide construction management services at any time that the City, in its sole discretion determines that it does not have the personnel or resources to provide such services.

**C. *Long-Range Planning.***

*Housing Strategic Plan:* The City and the County, individually or jointly, may periodically adopt a Housing Strategic Plan to assist City, County and Authority in the development of priorities, policies, and implementing actions that maximize affordable housing development. Financial support shall be designated to the City or County based on who is directly benefiting from the effort. The Housing Strategic Plan may include the following:

- Identification of existing community housing needs by type.
- Determination of the potential development of affordable sites located within the jurisdiction of the City or County.
- Evaluation of the economic performance of the City's or County's affordable housing sites and prototype projects and comparisons of their relative costs and benefits.
- Specifications for an affordable housing program and phasing schedule that best meets program objectives consistent with available funding sources and levels.
- Recommendations for strategies and actions that implement the housing development program
- It is agreed that when this document uses the phrase "Housing Strategic Plan" it is referring to either the County Strategic Plan's Housing subsection, or the Housing section of the City's "Aspen Area Community Plan".

**IV. BONDS, NOTES AND OTHER OBLIGATIONS:**

A. The bonds, notes, and other obligations of the Authority shall not be the debts, liabilities, or obligations of the City or the County unless expressly assumed by the City or the County;

B. The City and the County may provide for payment to the Authority of funds from proprietary revenues for services rendered or facilities provided by the Authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth herein, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the Authority;

C. To carry out the purposes for which the Authority was established, the Authority is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived or to be derived from the function, service, or facilities of the Authority or from any other available funds of the Authority. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and shall, as nearly as may be practicable, be substantially the same as those provided by law for any of the contracting parties to this Intergovernmental Agreement; except that bonds, notes, or other obligations so issued shall not constitute an indebtedness of the Authority, the City or the County within the meaning of any constitutional, home rule charter or statutory limitation or other provision unless expressly assumed by the City or the County. Each bond, note, or other obligation issued under this subsection shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the Authority pledged for the payment thereof unless expressly assumed by the City or the County and that said bond, note, or other obligation does not constitute a debt of the Authority, the City or the County or within the meaning of any constitutional, home rule charter or statutory limitations or provisions unless expressly assumed by the City or the County. Notwithstanding anything in this Section IV to the contrary, such bonds, notes, and other obligations may be issued to mature at such times not beyond forty (40) years from their respective issue dates, shall bear interest at such rates, and shall be sold at such prices at, above or below the principal amount thereof, as shall be determined by the Board.

D. The resolution, trust indenture, or other security agreement under which any bonds, notes, or other obligations are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the Board to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the Authority. The bonds, notes and other obligations of the Authority and the income therefrom are exempt from taxation, except inheritance, estate, and transfer taxes pursuant to the Colorado Revised Statutes.

**V. LEGAL ASSISTANCE:**

Legal assistance for the Authority shall be provided both by the City and County Attorney's Office for specific problems related to Authority programs; subject, however, to the availability of staff time of the respective attorney offices. The Executive Director may retain independent counsel whenever the City or County Attorney's Offices are unable or unwilling to provide legal representation to the Authority. In addition, the Executive Director may retain independent legal counsel, as needed, for day-to-day consultation and legal advice. The City Attorney shall review all contract documents that purport to legally obligate the City in any fashion. The County Attorney shall review all contract documents that purport to legally obligate the County in any fashion.

**VI. DISPOSITION OF ASSETS UPON TERMINATION:**

In the event of the termination of this Intergovernmental Agreement which termination may only occur in accordance with the requirements and limitations of Section VII hereof, and the resulting dissolution of the Authority, the assets of the Authority shall be distributed as follows:

A. All assets acquired from contributions from the City or the County shall be returned to the contributing party if said assets are still in existence.

B. If assets contributed to the Authority are not in existence, the contributing party shall have the option of receiving the fair market value of the asset at the time of disposal by the Authority in either cash or assets of the Authority.

C. All remaining assets acquired by the Authority after the date of this Intergovernmental Agreement from funds provided by the parties shall be distributed to the parties on the basis of the appraised value of said assets at the time of termination and in the same proportion as the respective contributions of funds by the parties for acquisition of the asset.

D. The City and the County may agree to dispose of any assets of the Authority in any other acceptable manner.

E. If the City and the County cannot agree on the disposition of any assets of the Authority within sixty (60) days after termination, said assets shall be subject to an independent appraisal and shall be sold at public auction as soon as practicable with the proceeds allocated to the City and the County in the same proportion as the total contribution of funds by the respective parties for acquisition of the asset.

**VII. ANNUAL RENEWAL AND TERMINATION:**

The term of this Intergovernmental Agreement shall be from the effective date hereof through December 31, 2007, and shall automatically be renewed for successive one-year periods thereafter. Either party hereto may terminate this Intergovernmental Agreement for any reason upon ninety (90) days' written notice, provided, however, that this Intergovernmental Agreement may not be terminated or rescinded so long as the Authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligations; provided, however, that if full payment has been provided by escrow, such termination or rescission shall not occur unless nationally recognized bond counsel has delivered an opinion to the effect that such termination or rescission, in and of itself, will not adversely affect the tax status of the interest on such escrowed obligations. Furthermore, this Intergovernmental Agreement may not be terminated if the Authority has obligations to the U.S. Department of Housing and Urban Development under any Low Rent Public Housing Program, or other similar program, unless those obligations are assumed by the City or the County.

**VIII. MODIFICATION OF THIS AGREEMENT**

This Agreement may be modified by written amendment approved by the City Council and Board of County Commissioners, acting separately.

**IX. NOTICES:**

Any formal notice, demand or request provided for in this Intergovernmental Agreement shall be in writing and shall be deemed properly given if deposited in the United States Mail, postage prepaid to:

City of Aspen, Colorado  
c/o City Manager  
130 South Galena Street  
Aspen, Colorado 81611

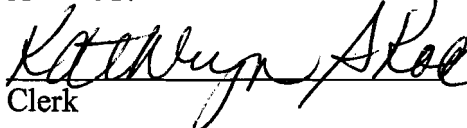
Board of County Commissioners  
c/o County Manager  
506 East Main Street  
Aspen, Colorado 81611

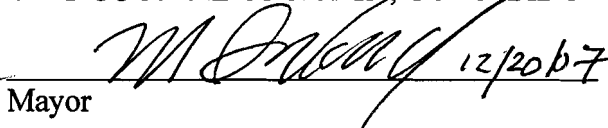
Aspen/Pitkin County Housing Authority  
c/o Executive Director  
530 East Main Street, Lower Level  
Aspen, Colorado 81611

**IN WITNESS WHEREOF**, the parties hereto have executed this Intergovernmental Agreement on the day and year first above written.

ATTEST:

CITY COUNCIL OF ASPEN, COLORADO

  
Clerk

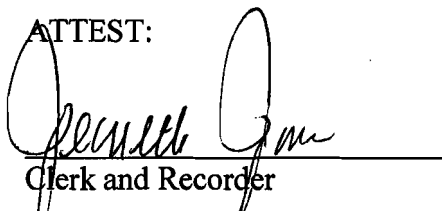
 12/20/07  
Mayor


APPROVED AS TO FORM:

  
City Attorney

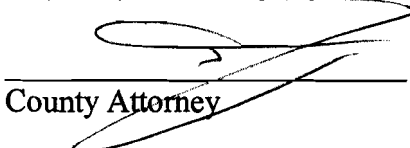
ATTEST:

BOARD OF COUNTY COMMISSIONERS OF  
PITKIN COUNTY, COLORADO

  
Clerk and Recorder

  
Chairman

APPROVED AS TO FORM:

  
County Attorney