

AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (this "Intergovernmental Agreement") made and entered into this 26th day of September, 1989, by and between the CITY OF ASPEN, COLORADO, a municipal corporation (the "City"); and the BOARD OF COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO, a body corporate and politic (the "County"):

W I T N E S S E T H:

WHEREAS, the City and County entered into an Intergovernmental Agreement (the "Initial Intergovernmental Agreement") on January 9, 1984, by and among the City, the County, the Housing Authority of Aspen, Colorado (the "City Housing Authority") and the Pitkin County Housing Authority (the "County Housing Authority") establishing a multijurisdictional housing authority under the provisions of C.R.S. 1973, Section 29-1-203 et. seq. which authority is known as the Aspen/Pitkin County Housing Authority (the "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, on November 14, 1988, and November 15, 1988, respectively, the City Council of the City (the "City Council") and the Board of County Commissioners of the County (the "Board of County Commissioners") authorized an amendment to the Initial Intergovernmental Agreement; and

WHEREAS, the City Housing Authority and the County Housing Authority are no longer in existence as separate governmental entities; and

WHEREAS, the City and the County desire to further amend and to restate the Initial Intergovernmental Agreement; and

WHEREAS, this Intergovernmental Agreement shall be deemed to incorporate all terms in full and relate back in time to the date of the Initial Intergovernmental Agreement and the provisions of this Intergovernmental Agreement shall supercede in all cases the Initial Intergovernmental Agreement; and

WHEREAS, the 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 separate governmental entity to be known as a multijurisdictional housing authority; and

WHEREAS, the City and County wish, by this Intergovernmental Agreement, to provide for the establishment of a multi-jurisdictional housing authority;

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom it is agreed by the City and the County as follows:

I. MULTIJURISDICTIONAL HOUSING AUTHORITY - NAME, PURPOSE, FUNCTIONS AND SERVICES

The City and the County do hereby establish a multijurisdictional housing authority designated as the "Aspen/Pitkin County Housing Authority" (the "Authority") for the purpose of effecting the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management and operation of housing projects pursuant to a multijurisdictional 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 permanent residents, persons employed in the City or the County, senior citizens, disabled persons, or other population segments identified by the Authority, residing in or needing to reside in the City or the County, intended for use as the sole place of residence by the owners or intended occupants. The Authority shall be a political subdivision and a public corporation of the State of Colorado, separate from the City and the 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 and 47 of title 11, Colorado Revised Statutes, shall apply to moneys of the Authority.

The Authority shall determine "low, moderate and middle income persons and families" as those persons and families lacking the financial ability to pay sale prices or rentals sufficient to induce private enterprise in the City and the County to build a sufficient supply of adequate, safe and sanitary dwellings without the special assistance afforded by the Authority and this Intergovernmental Agreement. The City and the County intend that the Authority's determination of "low, moderate and middle income persons and families" for all population segments designated herein or identified by the Authority shall be conclusive. The Authority shall have any and all powers, duties, rights and obligations as such are set forth in Section 29-1-204.5, Colorado Revised Statutes and herein, including (but not by limitation) the following:

1. Administration:

(a) To prepare an annual budget for the Authority which will identify revenues and expenditures required to accomplish the goals and objectives of the Authority as set forth herein;

(b) To maintain records of all Authority meetings, resolutions and planning documents and make them available in the Authority's office for public review;

(c) To appoint an Executive Director to serve as the executive secretary to the Board of Directors (the "Board") of the Authority (as more particularly described in Section II hereof); and

(d) To comply with the personnel and administrative guidelines and procedures established by and for the County, except to the extent superceded by this Intergovernmental Agreement.

2. Housing Development; General Powers:

(a) To do all things necessary or convenient to define the need, planning, undertaking, construction, operation or financing of low, moderate and 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 to develop creative financing and construction methods as well as incentives for providing low, moderate and middle income housing in the City and the County, by the public or private sector;

(b) To plan, finance, acquire, construct, reconstruct or repair, maintain, manage, and operate housing projects pursuant to a multijurisdictional plan to provide residential facilities and dwelling accommodations at rental or sale prices within the means of families or persons of low, moderate or middle income intended for use as the sole place of residence by the owners or intended occupants; which housing projects shall be subject to the zoning, review and approval processes of the City Code or the County Code;

(c) To make and enter into contracts, including, without limitation, contracts with state or federal agencies also involved in providing such housing or the financing for such housing;

(d) To employ agents and employees;

(e) To cooperate with state and federal governments in all respects concerning the financing of such housing projects;

(f) 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;

(g) To condemn property for public use, if such property is not owned by any governmental entity or any public utility and devoted to public use pursuant to state authority;

(h) To incur debts, liabilities, or obligations, issue bonds or notes pursuant to Section III hereof, borrow money, secure mortgages, obtain grants, gifts or otherwise obtain funds for implementing, completing and operating housing projects;

(i) To sue and be sued in its own name;

(j) To have and use a corporate seal;

(k) To fix, maintain, and revise fees, rents, prices, security deposits, and charges for functions, services, or facilities provided by the Authority;

(l) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

(m) To exercise any other powers which are essential to the provision of functions, services, or facilities by the Authority; and

(n) To do and perform any acts and things authorized by this Intergovernmental Agreement under, through, or by means of an agent or by contracts with any person, firm, or corporation.

3. Management and Enforcement:

(a) To maintain records of existing low, moderate, and 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;

(b) To assure that all deed restricted units of housing comply with City and County regulations or resolutions concerning rental or resale restricted housing;

(c) To negotiate contracts as required to provide for management of Permanent Moderate Housing units (as that term is defined in Authority housing guidelines as such guidelines are published, modified, amended and supplemented from time to time); and

(d) 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.

4. Marketing of Resales and Rental Vacancies:

To provide for marketing and reviewing qualification of applicants for rental deed restricted or affordable housing units, and for marketing, reviewing qualifications of applicants for, and arranging for transfer of title of, deed restricted units.

5. Review of Applications:

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, moderate and middle income housing in the City or the County as requested by the respective Planning Offices of the City or the County for conformance with housing needs.

6. Master Plan and Needs Assessments:

(a) To investigate housing and employment conditions and needs within the jurisdiction of the City or the County and the means and methods for improving those conditions;

(b) To develop and recommend code changes associated with the provisions of the City and County Master Plan (as the same may be modified, amended and supplemented from time to time); and

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

7. Authority Requirements:

To annually recommend to the City and the County for approval, development of, and qualifications for, ownership and rental of low, moderate and middle income housing within the City and the County for the population segments designated herein or identified by the Authority as required by existing agreements and land use regulations.

II. BOARD OF DIRECTORS

1. Number; Manner of Appointment Etc.:

The Board shall consist of seven (7) Directors (the "Directors"), serving staggered terms to be appointed as follows:

(a) Three (3) Directors shall be appointed by the Board of County Commissioners.

(b) Three (3) Directors shall be appointed by the City Council.

(c) One (1) Director shall be appointed jointly by the Board of County Commissioners and the City Council.

(d) One (1) Director shall be a member of the Board of County Commissioners and one (1) Director shall be a member of the City Council to be appointed by the Board of County Commissioners and the City Council, respectively, on an annual basis, and to serve as such a Director until a successor has been appointed.

The term of office of the members of the Board shall be two (2) years, except as otherwise provided in Section II.1.(d) above and except as provided herein with respect to the initial Board members.

All Directors shall be residents of the County, provided that three (3) of the Directors shall also be residents of the City. Except for the two (2) Directors described in Section II.1.(d) above, the Directors shall not be members of the Board of County Commissioners or the City Council, and no members shall be employees of the Authority.

Except for the two (2) Directors described in Section II.1.(d) above, the initial Board of Directors shall be appointed as follows:

| <u>Jurisdiction</u> | <u>Term</u> |
|---------------------|---------------------|
| County | 1 year (2/89-2/90) |
| County | 2 years (2/89-2/91) |
| Joint | 2 years (2/89-2/91) |
| City | 2 years (2/89-2/90) |
| City | 1 year (2/89-2/91) |

2. Officers:

The officers of the Authority shall be a Chairman, a Vice Chairman, a Treasurer and a Secretary who shall be the Executive Director of the Authority.

(a) Chairman. The Chairman shall preside at all meetings of the Authority. Except as otherwise authorized by resolution of the Authority, the Chairman shall sign all contracts, deeds and other instruments made by the Authority. At each meeting, the Chairman shall submit such recommendations and information as he may consider proper concerning the business, affairs and policies of the Authority.

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

(c) Treasurer. The Treasurer shall perform the duties of the Chairman in the absence or incapacity of both the Chairman and the Vice Chairman. Either the Treasurer or the Secretary shall sign all orders and checks for payment of money and shall pay out and disburse such moneys under the direction of the Authority. The Treasurer shall serve as advisor to the Authority and the Board on financial matters.

(d) Secretary/Executive Director of the Authority. The Secretary shall be the Executive Director of the Authority and, as such, shall have general supervision over the administration of the Authority's business and affairs, subject to the direction of the Board. The Secretary shall be charged with the management of the housing projects of the Authority. The Secretary shall keep the records of the Authority, shall act as secretary of the meetings of the Authority and record all votes, and shall keep a record of the proceedings of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to his office. He shall keep in safe custody the seal of

the Authority and shall have power to affix such seal to all contracts and instruments authorized to be executed by the Authority.

The Secretary shall have the care and custody of all funds of the Authority and shall deposit the same in the name of the Authority in such bank or banks as the Authority may select. Either the Secretary or the Treasurer shall sign all orders and checks for the payment of money and shall pay out and disburse such moneys under the direction of the Authority. Except as otherwise authorized by resolution of the Authority, all such orders and checks shall be countersigned by the Chairman. The Secretary shall keep regular books of accounts showing receipts and expenditures and shall render to the Authority, at such regular meeting (or oftener when requested), an account of Authority transactions and also of the financial condition of the Authority. He shall give such bond for the faithful performance of his duties as the Authority may require.

The compensation of the Secretary/Executive Director shall be determined by the Authority, provided that a temporary appointee selected from among the Directors of the Board shall serve without compensation (other than the payment of necessary expenses).

(e) Election or Appointment. The Chairman, Vice Chairman and Treasurer 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.

The Secretary shall be appointed by the Board. Any person appointed to fill the office of Secretary or any vacancy therein, shall have such term as the Authority fixes, but no Director of the Board shall be eligible to this office except as a temporary appointee.

(f) Vacancies. Should the office of Chairman, Vice Chairman or Treasurer 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. When the office of Secretary becomes vacant, the Board shall appoint a successor, as aforesaid.

(g) Additional Personnel. The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by this Intergovernmental Agreement and all other laws of the State of Colorado applicable there.

The selection and compensation of such personnel shall be determined by the Authority in accordance with the requirements of Section I.1.(d) hereof.

3. Voting Requirements:

(a) Quorum. The powers of the Authority shall be vested in the Directors of the Board in office from time to time. Four Directors of the Board shall constitute a quorum for the purpose of conducting Authority business and exercising Authority powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. 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.

(b) 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 which may be by ballot.

4. Duties:

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 or the bylaws or rules and regulations of the Authority. As provided in Section 29-1-204.5(2)(b)(IV), Colorado Revised Statutes, the Board shall comply with the provisions of parts 1, 5 and 6 of article 1 of title 29, Colorado Revised Statutes, the "Local Government Budget Law of Colorado," the "Colorado Local Government Uniform Accounting Law," and the "Colorado Local Government Audit Law."

III. 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 facility or the combined functions, services, 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 III 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 Section 29-1-204.5(7)(b) Colorado Revised Statutes.

IV. BUDGET

The Authority shall annually prepare a budget pursuant to the terms and provisions of the Local Government Budget Law of Colorado. In expending the budget, the Executive Director of the Authority shall, insofar as practical, devote the time and monies equally between the City and County functions as shown on said budget. All work allocations among Authority personnel, including "exclusive" City or County work shall be the responsibility of the Executive Director. The Executive Director shall certify as to the distribution of office time in the form of bi-monthly time sheets which shall verify the actual employee time effort on specific program allocation. This information will be summarized in monthly progress reports submitted to the City Manager and the County Manager. The reports will also summarize the program and financial status of work contracted with the Authority.

V. ACCOUNTING, REPORTS, AUDIT AND OPERATIONS

With respect to accounting, reporting, auditing and operational procedures, the Authority shall follow the provisions and guidelines of the Colorado Local Government Uniform Accounting Law and the Colorado Local Government Audit Law. In addition to such provisions and guidelines:

(a) All accounting, payroll, and audit services for the Authority shall be performed by, or follow the same procedures as those followed by, the Finance Department of the County.

(b) The Executive Director shall assure compliance with personnel and procurement policies as established by the County.

(c) For each fiscal year of the City, the County and the Authority (each January 1 through each December 31) the City and the County shall each appropriate one-half (1/2) of the moneys necessary to provide for any deficit arising in connection with the Authority's operations, provided however, that bonds, notes or other obligations payable solely from revenues as described in Section III(c) hereof shall never constitute an indebtedness of the City or the County. Any revenues of the Authority in any fiscal year in excess of the moneys necessary to the operation of the Authority shall be retained by the Authority for use in the Authority's operations in the then subsequent fiscal year.

(d) The City shall pay to the County for the benefit of the Authority its share of the Authority's annual budget upon the request of the Finance Director

of the County. Revisions to the budget shall be approved by both the City Council and the Board of County Commissioners.

(e) 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 moneys by the City and the County) as a result of any nonbudget appropriation of Authority staff or expenditure.

VI. LEGAL ASSISTANCE

Legal assistance for the Authority will be provided both by the City and the County attorneys for specific problems related to Housing Office programs. The Executive Director shall recommend to the Board when legal services are required and how they could be attained.

VII. 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 IX 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.

VIII. MODIFICATION OF THIS INTERGOVERNMENTAL AGREEMENT

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

IX. ANNUAL RENEWAL AND TERMINATION

The term of this Intergovernmental Agreement shall be January 1, 1989, through December 31, 1989, and shall automatically be renewed for successive one-year periods thereafter upon the approval of the annual budget for such year by the City Council and the Board of County Commissioners. Either party thereto 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.

X. 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 of
Pitkin County, Colorado
c/o County Manager
506 East Main Street
Aspen, Colorado 81611

Aspen/Pitkin County Housing Authority
c/o City of Aspen, Colorado
130 South Galena Street
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

Kathryn A Koca
Clerk and Recorder

By: William L. Atkinson
Mayor

APPROVED AS TO FORM:

Fred W. Hamann
City Attorney

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO

Jeanette Jones
Clerk and Recorder

By: Colette Penne
Chairman

APPROVED AS TO FORM:

Susan W. Snyder
Asst County Attorney

