

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

**Town of Basalt
Resolution No. 10
Series of 2019**

RECITALS

- A. Pursuant to Pitkin County Resolution No. 149-1993, of the Board of County Commissioners of Pitkin County proposed imposing an additional 0.5% use tax for the privilege of using or consuming in Pitkin County any construction and building materials purchased at retail and such tax was approved by the electorate of Pitkin County.
- B. Pitkin County 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.
- C. Pitkin County Resolution No. 002-2008 amended Resolution No. 023-1989 (in part) as follows:
- i. To collect, administer, and enforce the 0.5% use tax imposed by Resolution No. 149-1993 for the privilege of using or consuming in Pitkin County, any construction and building materials purchased at retail. The use tax shall be imposed on the building materials' purchase price.
 - ii. That every person who is required to obtain a master building permit in Pitkin County 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.
- D. Persons who are issued a building permit by the Basalt Building Department in the Pitkin County portion of the Town of Basalt, are subject to the amended provisions in Resolution No. 023-1989 and as amended by Resolution No. 002-2008.
- E. Currently, taxpayers who have projects permitted by Basalt, are required to contact the Pitkin County Finance Department to pay their deposit and further, to file a use tax return and pay any use tax due within ninety (90) days after substantial completion of the project. This sometimes results in a very lengthy

process and the County Finance Department has to spend a great deal of time determining which taxpayers are subject to the use tax requirements to ensure compliance with the requirements for payment and further, in trying to collect the use tax owed by a taxpayer at the end of the project.

- F. Pitkin County has requested that the Basalt Building Department 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.
- G. Pitkin County and the Town wish to enter into an intergovernmental agreement for the purposes of use tax collection.
- H. 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.
- I. The Town Council wishes to approve in Intergovernmental Agreement with Pitkin County (the "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 foregoing recitals are incorporated herein as findings of Town Council.
- 2. IGA. The Town Council hereby approves the 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 that 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 March 12, 2019, by a vote of ___ to ___.

TOWN OF BASALT, COLORADO

By: _____

Jacque R. Whitsitt, Mayor

ATTEST

By: _____

Pamela K. Schilling, Town Clerk



**RESOLUTION OF THE BOARD OF COUNTY
COMMISSIONERS ("BOCC") OF PITKIN COUNTY,
COLORADO, APPROVING AN
INTERGOVERNMENTAL AGREEMENT BETWEEN
THE BOARD OF COUNTY COMMISSIONERS OF AND
THE TOWN OF BASALT ("BASALT") FOR USE TAX
COLLECTION**

RESOLUTION NO. 022 -2019

RECITALS:

WHEREAS, Pursuant to Title 29, Article 1, part 2, Colorado Revised Statutes, as amended (the "Intergovernmental Relations Statutes") and Article XIV, Section 18 of the Colorado Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility, including the establishment of a separate legal entity to do so.

WHEREAS, Pursuant to Section 2.8.3 (Actions) of the Pitkin County Home Rule Charter ("HRC") official action by formal resolution shall be required for all actions of the Board not requiring ordinance power on matters of significant importance affecting citizens; and

WHEREAS, Pursuant to Resolution No. 148-1993 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; and

WHEREAS, Resolution No. 093-149 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; and

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, 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. 023-1989 and as amended by Resolution No. 002-2008. Exemptions to this legislation are non-profits and government projects; and

WHEREAS, Currently, taxpayers who have projects permitted by Basalt, are required to contact the Pitkin Finance Department to pay their deposit and further, to file a use tax return and pay any use tax due within ninety (90) days after substantial completion of the project. This sometimes results in a very lengthy process and the county finance department has to spend a great deal of time determining which taxpayers are subject to the use tax requirements to ensure compliance with the requirements for payment and further, in trying to collect the use tax owed by a taxpayer at the end of the project; and

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% of the construction estimate at the time of building permit approval. Further, to provide additional information to Pitkin, to assist the Pitkin Finance Department in determining which taxpayers are subject to the Pitkin use tax requirements; and

WHEREAS, Pitkin and Basalt wish to enter into an intergovernmental agreement for the purposes of use tax collection and;

WHEREAS, Both Pitkin and Basalt 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; and

WHEREAS, The BOCC finds that it is in the best interests of the citizens of Pitkin and Basalt to enter into this agreement in order to ensure the welfare of the citizens of both governments.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pitkin County, Colorado that Pitkin County is authorized to enter into an Intergovernmental Agreement with the Town of Basalt in substantially the same form satisfactory to the County Attorney, and authorizes the Chair or designee, to sign the resolution and the agreement on behalf of the County.

INTRODUCED AND FIRST READ ON THE 27th DAY OF March, 2019
AND SET FOR SECOND READING AND PUBLIC HEARING ON THE 10th DAY
OF April 2019.

NOTICE OF PUBLIC HEARING AND TITLE AND SHORT SUMMARY OF THE
RESOLUTION PUBLISHED IN THE ASPEN TIMES WEEKLY ON THE 28th DAY
OF March, 2019.

NOTICE OF PUBLIC HEARING AND THE FULL TEXT OF THE RESOLUTION
POSTED ON THE OFFICIAL PITKIN COUNTY WEBSITE (www.pitkincounty.com)
ON THE 28th DAY OF March 2019.


ADOPTED AFTER FINAL READING AND PUBLIC HEARING ON THE 10th
DAY OF April 2019.

PUBLISHED BY TITLE AND SHORT SUMMARY, AFTER ADOPTION, IN THE
ASPEN TIMES WEEKLY ON THE 14th DAY OF April, 2019.

POSTED BY TITLE AND SHORT SUMMARY ON THE OFFICIAL PITKIN COUNTY
WEBSITE (www.pitkincounty.com) ON THE 11th DAY OF April 2019.


ATTEST:

By


Jeanette Jones
Deputy County Clerk


BOARD OF COUNTY COMMISSIONERS

By:



Greg Pöschman, Chair

Date: 4/26/19

APPROVED AS TO FORM:


John Ely, County Attorney

MANAGER APPROVAL


Jon Peacock, County Manager

**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 10th day of April, 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, 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. 023-1989 and as amended by Resolution No. 002-2008. 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% 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 6/1/2019, the Basalt Building Department will calculate 0.5% of fifty percent (50%) 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 05% 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 10th day of April, 2019.

The foregoing Agreement was approved by [The Town of Basalt Council at its regular meeting held on the _____ day of _____, 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

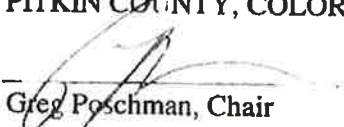
APPROVED AS TO FORM

By: _____

By: 
Town Attorney

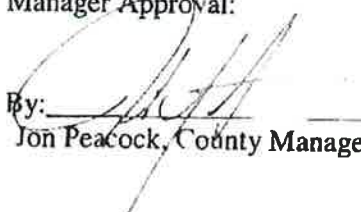
BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO

APPROVED AS TO FORM

By: 
Greg Poschman, Chair

By: _____
John Ely, County Attorney

Manager Approval:

for By: 
Jon Peacock, County Manager