

**INTERGOVERNMENTAL AGREEMENT
BETWEEN BRUSH CREEK METROPOLITAN DISTRICT
AND
PITKIN COUNTY, COLORADO**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into between Brush Creek Metropolitan District ("Brush Creek"), a Colorado special district, whose address is 500 Juniper Hill Road, Aspen, Colorado, and the Board of County Commissioners, Pitkin County, Colorado, whose address is 530 East Main Street, Aspen, Colorado ("the County").

I. Recitals

1. Brush Creek provides a variety of services to the residents within the district in Pitkin County, Colorado.
2. Certain landowners in Brush Creek petitioned the Board of County Commissioners of Pitkin County ("BOCC") to order an election on the question of whether the Brush Creek Subdivision which is located within the district incorporated as a separate entity. The Petition was styled *In re: Statutory Incorporation of Town of Brush Creek, Colo. Rev. Stat. '31-2-101 et seq., and Adoption of Home Rule Charter for Town of Brush Creek, Colo. Rev. Stat. '31-2-201 et seq.*, Case No. 96 CV 84-2 ("the Petition").
3. After a series of hearings on the issue, the BOCC refused to permit the petitioning landowners to proceed with an incorporation election. BOCC memorialized this decision in Resolution No. 96-206 ("the Resolution").
4. The petitioning landowners thereafter filed a Rule 106 complaint against BOCC, styled *Brush Creek Landowners Association v. Pitkin County Board of County Commissioners*, Case No. 96-CV-198 ("the Rule 106 Action"). The Rule 106 Action has not yet been served on Pitkin County.
5. Subsequent to entry of the Resolution, BOCC and Brush Creek have engaged in negotiations to determine whether there might be an amicable resolution of Brush Creek's needs and those of the landowners. As a result of such negotiations, the parties desire to enter into this IGA for the purpose of giving Brush Creek greater determination of its own affairs and those of its immediate neighborhood, as set forth below, and focusing the parties' attention on such solutions rather than on the Petition or the Rule 106 Action.

II. Agreement

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Utilities. The County recognizes that the operations of utility companies (telephone, natural gas, electricity, cable TV, and any other service provided by wires,

pipes or other permanently placed physical means to residents within Brush Creek) within Brush Creek, if not closely regulated, can result in damage to the Brush Creek water and road systems. The County agrees that, within the limits of its powers, that the following procedure will be followed in respect to all utility operations (including, without limitation, installation, maintenance, and repair, but excluding the operations of the Brush Creek Metropolitan District in repairing, improving, or maintaining its facilities) within Brush Creek:

A. The County will immediately notify Brush Creek when it receives requests from utility companies or their contractors or agents for permits to install facilities, perform maintenance, make repairs or conduct any other utility related activity within Brush Creek.

B. Permits will not be issued for any utility operations until the County has received all of the following: (i) written concurrence from Brush Creek; (ii) written agreement from the utility company agreeing to comply with a set of restoration standards, if any, to be provided to the County by Brush Creek, or, if Brush Creek has not developed such restoration standards for the project within fifteen days after receiving under subparagraph A hereof or the utility refuses to agree to such restoration standards, the restoration standards of the County shall be imposed on the utility; and (iii) a restoration bond supplied by the utility company. Written concurrence from Brush Creek shall not be required if Pitkin County is required by law to issue a permit. Pitkin County shall nonetheless seek to condition any permit issued according to the standards provided in this paragraph.

C. Restoration bonds will not be released and the County will not issue further permits to any utility company for activity within Brush Creek, unless and until both the County and Brush Creek agree that the work has been completed in a manner acceptable to each of them.

If any utility company undertakes the installation or repair of its facilities without first seeking a permit from the County, Brush Creek shall notify the County. The County shall be responsible, within the limits of its powers, for stopping such undertaking and for requiring the utility company to follow the procedures outlined herein. If these procedures are not followed and Brush Creek determines that its facilities have been damaged, Brush Creek may ask the County to remedy the deficiency either through the County's efforts or by compelling the utility company to effect the necessary remedies. Brush Creek shall retain the option to cause the repairs to be made (if in Brush Creek's judgment it is likely that delays will occur that further endanger or compromise Brush Creek's facilities) and deliver the bill to the County whose responsibility it shall be to reimburse Brush Creek through the utility company's bond. If payment by the utility company or the utility company's bonding agent is not made within 90 days, the County, to the extent permitted by law, shall take such steps against

the utility company as may be appropriate and necessary to restrict the conduct of the utility company in Brush Creek in the future until such amount is paid.

The County and Brush Creek also agree that it is in their interest to take all steps necessary and appropriate to remove overhead utility lines in Brush Creek. The County agrees to cooperate with Brush Creek in its efforts to accomplish this objective, provided however that nothing in this subparagraph shall create a financial obligation for the County.

2. Road Fund. Brush Creek and the County agree that certain road improvements or major maintenance projects are planned for Brush Creek including that certain project denominated "Brush Creek Roads Rehabilitation" consisting of drainage correction (the correcting of pavement pitch where necessary to insure that, wherever possible, water drains from the pavement into a drainage ditch, improvement of ditches where required, and repairs or improvements to existing culverts to insure proper drainage), local reconstruction (repair of areas where road base failures have occurred by removal of existing pavement and replacing road base and pavement, widening the existing platform where prudent (especially at the turns)), and asphalt overlay (installation of a leveling course with a minimum thickness of two inches and, where appropriate, three to five inches, over all Brush Creek roads which includes Juniper Hill Road through Cozy Point to Highway 82 and striping) (collectively "the Project"). The County agrees to spend a portion of any new or increased taxes levied by the County for the purpose of road improvements, road maintenance, or road repairs to complete the Project within five years after the first year in which such taxes are collected. The County and Brush Creek agree that the schedule for the Project must, of necessity, be subject to modification to allow the County to deal with emergency or unforeseen situations. If the County deems such modifications necessary, the County will notify Brush Creek and the entities will develop a revised schedule. Nothing herein, however, is intended to relieve the County of its obligation to expend the funds for the Projects within the five-year time frame described above.

In the event Brush Creek undertakes major road work as a part of the Project that requires financing through bonded indebtedness prior to the availability of the new or increased taxes described herein, such taxes may be used at Brush Creek's direction to retire such indebtedness once they become available; provided however that such taxes shall only be used to retire no more than \$500,000.00 of such indebtedness .

The County and Brush Creek acknowledge that the intersection of Medicine Bow Road and Brush Creek Road is inadequate and substandard and has been budgeted by the County for improvements to be completed no later than October 15, 1999, unless delayed as a result of the need for land to be acquired by acquisition or condemnation to accommodate the intersection alignment. The County shall be responsible for securing the appropriate rights of way to accommodate the intersection alignment, provided however that the County shall be responsible for the payment of a maximum of \$35,000.00 to secure such rights of way and Brush Creek shall be responsible for any amount that exceeds such amount, if any.

3. Road Weight Restrictions. Roads in Brush Creek are subject to seasonal weight restrictions. The County shall pass an ordinance that permits the County to delegate to Brush Creek the responsibility for determining the effective dates for such seasonal restrictions on an annual basis depending upon conditions. After the passage of such an ordinance, the County shall so delegate such responsibility and the County shall implement the restrictions based upon Brush Creek's determination.

4. Ridgeline Review. Whenever the County conducts a ridgeline review on a property located within or adjacent to Brush Creek, the County shall give Brush Creek timely notice of same and shall provide Brush Creek with input into the review process. In connection with the review for any application by a Brush Creek resident, the County shall take into account the topography of Brush Creek and the difficulties of residents of Brush Creek to utilize their property and satisfy the County ridgeline goals. Therefore, the County shall make reasonable accommodations for such applicants in making ridgeline review decisions to permit the applicant to appropriately use their property. With respect to applications submitted by Brush Creek residents that require a ridgeline review under the County land use code, the County shall charge a maximum of \$450.00 for each such review and shall decide the ridgeline issues, if any, within 60 days. The failure by the County to provide such notice to Brush Creek, to charge applicants as provided, or to make a timely decision in 60 days shall be deemed an approval of any applications without conditions.

5. Parking Enforcement. The County hereby delegates to Brush Creek the authority to enforce parking infractions within Brush Creek, pursuant to the County's Resolution 17-1, a copy of which is attached hereto and incorporated herein by this reference. This authority shall extend to towing wrongfully parked vehicles to the County impound lot, in accordance with applicable County ordinances and regulations. Brush Creek may use private contractors to implement its enforcement authority granted hereby. The enforcement authority delegated hereunder shall be in addition to, and not in lieu of, any other enforcement rights and authority Brush Creek may currently have. Since the County's obligation to purchase and install "no parking" signs within Brush Creek was fulfilled by Brush Creek, the County agrees to reimburse Brush Creek for the costs of the "no parking" signs that were purchased and installed by Brush Creek.

6. Land Use Decision Making.

a. Upon the receipt by the County of any land use application regarding lands within the geographic area defined on the attached map, the County shall refer such application to Brush Creek for its review and consideration. Such referrals shall be mailed through the U.S. mails to Brush Creek at 500 Juniper Hill Road, Aspen, Colorado 81611. In addition to participation in the normal public process with respect to such an application and to being able to provide written and oral comments based upon the referral of the application, Brush Creek shall have the right to confer with the County and the County agrees to consult with Brush Creek regarding such application through a public work session or sessions at which Brush Creek and the County can have a dialogue and exchange regarding the issues of Brush Creek and the County with the subject application. The County agrees to consider in good faith the

comments, suggestions, conditions, or other input of Brush Creek regarding any such application. Brush Creek shall have the opportunity to make recommendations for mitigation and conditions of approval to the County during the land use approval process of such applications and the County agrees to consider such recommendations in good faith and treated as if the recommendation came from a referral municipality. Notwithstanding the above, nothing in this agreement shall require the County to approve or deny any application or petition as a result of this agreement. Furthermore, the existence of this agreement shall not entitle any other entity to additional rights or review powers nor shall the existence of any other intergovernmental agreement now in existence or agreed upon in the future entitle Brush Creek to any additional powers.

b. The County agrees with the current City of Aspen Annexation Plan adopted in the City of Aspen's Resolution No. 96-34. The County further agrees to pass a resolution stating that the Board of County Commissioners is of the opinion that annexation to the City of Aspen of the Aspen Mass property or other property outside of the annexation areas identified in the Annexation Plan is inappropriate. Accordingly, the County agrees that while it maintains an ownership interest in Aspen Mass, it will not agree to the annexation of such property into the City of Aspen for a period of twenty-five years from the date of this IGA and further agrees to include a covenant in any deed for such property providing that the grantee shall not agree to annexation of such property into the City of Aspen for a period of twenty-five years from the date of this IGA. Prior to the expiration of any covenant, the parties shall discuss the advisability of extending the duration of such covenant.

c. The parties acknowledge that the discussions as of the date of this Agreement regarding the potential future development of the Aspen Mass property include the following concepts: (i) minimal commercial or retail uses for transit users, except retail uses that may be a component of a U.S. Forest Service facility, (ii) the clustering of any residential units near any transit center that may be built, and (iii) the dedication of the remaining portions of the property to open space in the form of a conservation easement. It is contemplated that a portion of the Aspen Mass property may be exchanged to the U.S. Forest Service. In addition, the discussions and thoughts expressed at a joint meeting with the City of Aspen City Council and the parties considered the further study of the possible development of 120 residential units in multi-unit structures clustered in a reasonably confined area of the property near the transit center with the remainder being dedicated to open space. Nothing herein shall be interpreted as a commitment on the part of the County for a particular intensity, type or quality of use of the Aspen Mass Property.

d. In connection with the development of the housing described in subparagraph c., Brush Creek agrees to use reasonable efforts to secure a source of supply of municipal water from the Snowmass Water and Sanitation District for the such housing and the facility described herein. However, it is understood that the current board of directors of the Snowmass Water and Sanitation District has previously advised Brush Creek that it will not provide additional water to Brush Creek to service any additional structures outside of Brush Creek's current district boundaries.

7. Participation in Meetings. Brush Creek shall have a right to participate in any meeting that the County has with the Town of Snowmass Village or the City of Aspen or both regarding any property or land use involving the geographic area defined on the attached map with the exception of executive sessions. Such participation shall be on an equal basis as the other governmental entities and shall include the right to have (a) equal standing and position at the particular meeting, (b) an equal voice during the meeting, (c) equal influence in the ultimate decision, and (d) equal weight given to its recommendations as the other governmental entities; provided that it is understood that the County retains its land use decision making authority for those matters that are within the County's jurisdiction and will consider the input of the Town of Snowmass Village, City of Aspen, and Brush Creek equally. The County shall advise Brush Creek in writing at the address set forth above the time and agenda for any such meeting. Nothing contained in this IGA shall confer the power to vote or veto on the part of Brush Creek an action or issue before the County.

8. Zoning Enforcement. Upon the receipt of a complaint from Brush Creek or any landowner within Brush Creek regarding a potential zoning or land use violation within Brush Creek, the County shall investigate the complaint and enforce the zoning laws with respect to any violations. Brush Creek agrees to provide assistance as requested by the County.

9. Implementation. The County shall promptly pass any ordinances, regulations, amendments, or modifications necessary to implement the provisions of this IGA.

10. Remedies. In the event of a default by the County hereunder, Brush Creek shall have the right to specific performance of the County's obligation hereunder and such other available and appropriate remedy in law or equity.

11. Superseding Prior Agreements. The parties agree to execute the attached Road Maintenance Contract, which, in conjunction with this IGA, shall supersede any and all prior agreements between the parties (or entities related to the parties) concerning operation, construction and maintenance of roads in Brush Creek. In the event of any conflict between the provisions of this IGA and the Road Maintenance Contract, this IGA shall control.

12. Representation of Authority. Each party has full power and authority to execute, deliver and perform this IGA, and each of them has taken all necessary steps for the execution and delivery of this IGA. In particular, both parties represent and warrant that they have complied with applicable statutory requirements pertaining to the authority of each to enter into and be bound by this IGA.

13. Attorney's Fees. In the event either party is required to take legal action through arbitration or the courts to enforce its rights under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, including expert witness fees, if any.

14. Successors and Transferees. This Agreement shall be binding upon and inure to the benefit of each of the parties' successors, assigns, heirs, and transferees.

15. No Construction Against Drafter. Each party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against any party.

16. Counterparts. This Agreement may be executed in counterparts and shall be fully effective when executed by all parties.

17. Arbitration/Costs of Enforcement. The parties agree to arbitrate in Denver, Colorado, pursuant to AAA rules, any dispute which they cannot resolve through negotiation which arises under this IGA, with each party to pay one-half of the common arbitration costs. All costs and expenses incurred by a party (including but not limited to attorneys' fees) in any actions to enforce any claim under this Agreement shall be paid by the party who does not prevail as to such claim.

18. Necessary and Further Documents. The parties agree to execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this Agreement.

19. Severability. If any provision or part of this Agreement is held invalid, or unenforceable for any reason, the remainder of this Agreement shall nonetheless remain in full force and effect. Representations and warranties of the parties shall survive the payment made pursuant to the Agreement.

BOARD OF COUNTY COMMISSIONERS, PITKIN COUNTY, COLORADO

By: Leslie Lemon
Its: CHAIR BOCC
Date: MAY 17, 99

BRUSH CREEK METROPOLITAN DISTRICT

By: Jan Sherry
Its: PRESIDENT
Date: MAY 20, 1999

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO PROHIBITING ON STREET PARKING
WITHIN BRUSH CREEK VILLAGE AND PROVISIONS FOR
PENALTIES FOR VIOLATION OF THIS ORDINANCE

ORDINANCE #97- 1

RECITALS

1. The county roads within Brush Creek Village are of a restricted width. For the most part these county roads are no more than 30 feet wide.
2. The parking of vehicles on county roads within Brush Creek Village presents a hazard to pedestrians and motorists utilizing these county roads.
3. This hazard is present year round when parked vehicles constrain the flow of traffic on the county roads within Brush Creek Village. This problem is particularly exasperated in the winter months with the accumulation of plowed snow on the shoulder of these roads and the interference with plowing operations that parked vehicles present.
4. Prohibition of parking is necessary immediately for the preservation of public health and safety in order to avoid traffic accidents on the Brush Creek Roads.
5. At the request of the Brush Creek Metropolitan District, and in response to the District's concerns, the Board of County Commissioners is willing to enact this ordinance.

NOW THEREFORE, BE IT ORDAINED, by the Board of County Commissioners of Pitkin County, Colorado, it shall be prohibited to park motor vehicles upon the roads within the Brush Creek Village at any time.

1. Motor vehicles as referred to by this ordinance shall be those defined by Colorado Statute.
2. This ordinance is enacted pursuant to the county's police power as established in Title 30 Articles 15 and 35, and Title 42 of Colorado Revised Statutes.
3. Appropriate signage concerning this ordinance shall be posted along the affected roads in Brush Creek Village.
4. The specific county roads to which this ordinance is applicable are the following:

Medicine Bow Road
Juniper Hill Road
Sagebrush Road
Turtle Cove
Daniel Drive
Red Tail Lane
Tabula Rasa Lane
Upper Ranch Road

5. The penalty for violation of this ordinance shall be a class 2 petty offense, punishable by a fine of \$100.00 per violation. The penalty assessment provisions of 16-2-201, C.R.S. shall be followed. The penalty assessment shall also include a surcharge of \$10.00 required by C.R.S. Section 30-15-402(2).

6. Violation of this parking restriction shall be subject to immediate towing by any licensed towing service doing business within Pitkin County.

7. This ordinance is necessary for the immediate preservation of the public health and safety, and shall take effect immediately upon adoption after second reading, pursuant to C.R.S. 30-15-405.

INTRODUCED, FIRST READ, AND SET FOR PUBLIC HEARING ON THE 8th DAY OF JANUARY, 1997.

NOTICE OF PUBLIC HEARING PUBLISHED IN THE WEEKEND EDITION OF THE ASPEN TIMES ON 28TH DAY OF DECEMBER 1996.

APPROVED UPON SECOND READING AND PUBLIC HEARING ON THE 14 DAY OF JANUARY, 1997.

PUBLISHED AFTER ADOPTION IN THE WEEKEND EDITION OF THE ASPEN TIMES ON THE 25th DAY OF JANUARY, 1997.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF PITKIN COUNTY, COLORADO

for Lynne Credova

Jeanette Jones
Deputy Clerk

Bill Tuite

Bill Tuite
Chairman
Date: 1-18-97

APPROVED AS TO FORM:

Deborah Quinn

Deborah Quinn
Assistant County Attorney

for Suzanne Konchan

Suzanne Konchan
County Manager