

BCC

Resolution No. 20-260

**INTERGOVERNMENTAL AGREEMENT BETWEEN
EL PASO COUNTY, COLORADO AND THE TOWN OF GREEN MOUNTAIN FALLS,
COLORADO REGARDING SNOW REMOVAL AND FUEL SUPPORT**

This Intergovernmental Agreement ("IGA") Between El Paso County, Colorado and the Town of Green Mountain Falls, Colorado regarding snow removal and fuel support from El Paso County dated this 21 day of January, 2020, is made between El Paso County by and through the Board of County Commissioners of El Paso County, Colorado, a duly organized county and political subdivision of the State of Colorado, whose address is 200 South Cascade Avenue, Colorado Springs, Colorado 80903 ("COUNTY") and the Town of Green Mountain Falls, a statutory town and Colorado municipal corporation, whose address is 10615 Green Mountain Falls Road, Green Mountain Falls, CO 80819 ("TOWN"). The County and Town may be referred to collectively as "Parties" or individually as "Party."

RECITALS

WHEREAS, Article XIV, Section 18, of the Colorado Constitution, and C.R.S. § 29-1-201, et seq., provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibility by cooperating and contracting with each other; and

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1), 30-11-103 and 30-11-107(1), the Board of County Commissioners of El Paso County, Colorado has the legislative authority to make all contracts and to settle all accounts of the COUNTY and to exercise such other and further powers as are conferred by law; and

WHEREAS, the TOWN, as a statutory town, is a political subdivision of the State of Colorado, and likewise, has similar powers pursuant to C.R.S. § 31-15-101 et seq.; and

WHEREAS, COUNTY constructed a covered storage building in the TOWN Public Works Yard for the purpose of stockpiling materials and equipment for snow and ice control; and

WHEREAS, COUNTY maintains a Front End Loader in the TOWN Public Works Yard for COUNTY use to load snow/ice control materials into snow plow trucks, and agrees to allow TOWN use of the loader within the TOWN Public Works Yard at no cost; and

WHEREAS, TOWN maintains an above ground storage tank for diesel fuel in the Public Works Yard; and

WHEREAS, COUNTY agrees to stockpile snow/ice control materials in the covered storage building for its own use, and for TOWN use at no cost; and

WHEREAS, TOWN agrees to provide COUNTY access to the Public Works Yard, and access to and use of the diesel fuel tank; and

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WHEREAS, COUNTY identified a need for diesel fuel for its vehicles, estimated not to exceed 500 gallons per snow season; and

WHEREAS, TOWN agrees to provide diesel fuel to COUNTY, to be invoiced at actual cost of the fuel; and,

WHEREAS, COUNTY agrees to pay for the diesel fuel dispensed and any operational cost incurred, if any.

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the parties agree as follows:

1) OBJECTIVES

- A. The purpose of the IGA is to outline certain understandings between the Parties regarding the voluntary provision of support between the COUNTY and the TOWN, and nothing in this IGA shall be construed to obligate the Parties to provide said support.**
- B. The TOWN will provide to the COUNTY diesel fuel in an amount not to exceed 500 gallons per snow season.**
- C. The COUNTY will stockpile snow/ice control materials in the TOWN Public Works Yard provide the TOWN use of such snow/ice control materials at no cost.**
- D. The COUNTY will provide access to and use of the Front End Loader to the TOWN at no cost.**
- E. The TOWN will submit a monthly invoice to the COUNTY Public Works Department for diesel fuel at the TOWN's actual cost per gallon, and the COUNTY hereby agrees to pay for diesel fuel at that rate, notwithstanding Paragraph A above.**
- F. The COUNTY shall pay the invoice for diesel fuel within the time frame and in the manner required by the TOWN as noted in the invoice.**
- G. The COUNTY shall be responsible for any operational cost incurred, including but not limited to, spill cleanup and any enforcement action(s) by Colorado Public Health and Environment and/or the U.S. Environmental Protection Agency related to any fuel spill or and damage to the TOWN diesel fuel tank and/or property by the COUNTY. This provision is strictly limited to the situation where the COUNTY, its employees and/or agents, cause a fuel spill or damage to the diesel fuel tank.**
- H. The COUNTY shall pay the invoice for any operational costs incurred within the timeframe and in the manner required by the TOWN as noted in the invoice.**
- I. The COUNTY certifies that fuel purchased from the TOWN will be used exclusively for the COUNTY and the COUNTY will not resell the fuel to any person or entity.**

- J. The COUNTY will receive the fuel required from the TOWN Public Works Yard.
- K. The receiver of heavy equipment mutual aid support shall pay the invoice within the time frame and in the manner required by the provider as noted in the invoice.

2) **PARTIES' RESPONSIBILITIES**

- A. The Parties agree to meet by July 31 of each year to review procedures for the upcoming snow/ice season.
- B. The COUNTY will, within one (1) hour of discovery of a spill event caused by the COUNTY, inform the TOWN of any diesel spill of 1 gallon or more at TOWN property.
- C. The COUNTY will be responsible to clean up all diesel fuel spills within 10 hours of a spill caused by the COUNTY. If the COUNTY does not clean up the fuel spill, it will be invoiced for the actual cost incurred by the TOWN to clean up the fuel spill. The COUNTY shall pay the invoice within the time frame and in the manner required by the TOWN as noted in the invoice.
- D. The Parties agree the TOWN will maintain sufficient records to meet auditing requirements to show that there were no sales to any purchaser other than another state/local government (including no federal agency or tribal government) and the COUNTY will maintain records to show that it legitimately purchased no-tax-paid taxable fuels from specific other state/local governments (the TOWN OF GREEN MOUNTAIN FALLS).
- E. The TOWN through Public Works will make available upon request by the COUNTY records showing price per gallon for fuels based on market cost.
- F. The TOWN agrees to allow the COUNTY legal access to its property for the purposes stated within this IGA.

3) **CONTACTS AND NOTICE**

For El Paso County:
Troy Wiitala, Highway Manager
El Paso County Public Works Department
3275 Akers Drive, Colorado Springs, CO 80922
Office: 719-520-7888

For the Town of Green Mountain Falls:
Angie Sprang, Town Clerk
10615 Green Mountain Falls Road, Unit B
P.O. 524

Green Mountain Falls, CO 80819
719-684-9414
manager@gmfco.us

- 4) **PERIOD OF PERFORMANCE AND TERMINATION**
This IGA shall be effective upon all signatures and remains in effect until such time the COUNTY or the TOWN designates. The COUNTY or TOWN FALLS may terminate this IGA at any time for any reason, upon thirty (30) days' written notice to the other Party.
- 5) **LAW AND VENUE**
This IGA is subject to, and shall be interpreted under the laws of the State of Colorado, Court venue and jurisdiction shall exclusively be in the 4th Judicial District Court for El Paso County, Colorado.
- 6) **RIGHT AND REMEDIES NOT WAIVED**
No assent, express or implied, by either party to any breach of this IGA by the other Party shall be held to be a waived by such non-breaching Party or any later breach by the other Party. Neither the COUNTY nor TOWN shall be excused from complying with any provision of this IGA because of any failure to the other to insist upon or to seek compliance with such provision.
- 7) **NO THIRD PARTY BENEFICIARIES**
It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of acting relating to such enforcement, shall be strictly reserved to the COUNTY and TOWN and nothing in this IGA shall give or allow any claim or right of action by any other or third person under this IGA. It is the express intention of the COUNTY and TOWN that any person, other than the Parties receiving services or benefits under this IGA, shall be deemed to be an incidental beneficiary only.
- 8) **ASSIGNMENT**
The COUNTY and TOWN each understand and agree that it shall not assign this IGA except upon prior written consent and approval of the other Party.
- 9) **BREACH OF AGREEMENT**
The Parties shall have such remedies as provided by law or equity for breach of this IGA.
- 10) **PARAGRAPH HEADINGS**
The captions and headings set forth herein are for convenience of reference only and shall not be construed to define or limit the terms and provisions hereof.
- 11) **SEVERABILITY**
It is understood and agreed by the Parties that if any part, term or provision of this IGA is held by a court of competent jurisdiction to be illegal or in conflict with any federal laws,

or any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected and the rights and obligations of the Parties shall be construed and enforced as if the IGA did not contain the particular part, term or provision determined by the court to be invalid.

12) **ENTIRE AGREEMENT AND MODIFICATION**

This IGA is intended as the complete integration of the understanding between the Parties and constitutes the entire IGA between the Parties. All other representations or statements previously made, whether verbal or written are merged herein.

This IGA and any amendments to it shall be binding upon the Parties, their successors and assigns. Any amendments to this IGA shall be in writing entered into between the Parties.

13) **INDEMNIFICATION**

The Parties are prohibited by Article XI, Section 1 of the Constitution of the State of Colorado and specifically the COUNTY, by Board of County Commissioner Resolution No. 10-219, from indemnifying one another. Nothing in this paragraph shall be deemed to waive or otherwise limit any defense available to the Parties pursuant to the Colorado Governmental Immunity Act, §§24-10-101, C.R.S., *et seq.*, or as otherwise provided by law.

14) **NON-APPROPRIATION**

To the extent this IGA is read to include financial obligations on behalf of the COUNTY, the financial obligations of the COUNTY as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This IGA is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated by the Board of County Commissioners, El Paso County.

To the extent this IGA is read to include financial obligations on behalf of the TOWN, the financial obligations of the TOWN as set forth herein after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise available. This IGA is automatically terminated on January 1st of the first fiscal year for which funds are not appropriated by the Board of Trustees for the Town of Green Mountain Falls.

15) **DISCLAIMER OF WARRANTIES**

THE COUNTY DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY COUNTY-OWNED EQUIPMENT OR FOR ANY SERVICES RENDERED OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO ANY OBLIGATION OR SERVICES UNDER THIS AGREEMENT.

THE TOWN DOES NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF ANY TOWN-OWNED EQUIPMENT OR FOR ANY SERVICES RENDERED OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO ANY OBLIGATION OR SERVICES UNDER THIS AGREEMENT.

16) INDEPENDENT CONTRACTOR

COUNTY is rendering services as an independent contractor, not as an employee, and shall not be accountable to the TOWN for the ultimate results of its actions; further, COUNTY shall not be subject to the direct supervision and control of the TOWN. Neither COUNTY nor any agent, employee, or servant of COUNTY shall be deemed to be an employee, agent or servant of the TOWN.

TOWN is rendering services as an independent contractor, not as an employee, and shall not be accountable to the COUNTY for the ultimate results of its actions; further, TOWN shall not be subject to the direct supervision and control of the COUNTY. Neither TOWN nor any agent, employee, or servant of TOWN shall be deemed to be an employee, agent or servant of the COUNTY.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this 21 day of January, 2020.

ATTEST:

**BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO**

BY: Chuck Broerman
Chuck Broerman
El Paso County Clerk and Recorder

BY: Mark Waller _____
Mark Waller Date
Chair

ATTEST:

TOWN OF GREEN MOUNTAIN FALLS

BY: Laura Kotewa 2/6/2020
Laura Kotewa Date
Town Clerk

BY: Jane Newberry 2/4/2020
Jane Newberry Date
Mayor