

**CITY OF LEADVILLE, COLORADO
RESOLUTION NO. 22
SERIES 2018**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEADVILLE
APPROVING A FIRST AMENDED AND RESTATED LAKE COUNTY 911
AUTHORITY INTERGOVERNMENTAL AGREEMENT BETWEEN THE LAKE
COUNTY BOARD OF COUNTY COMMISSIONERS AND THE CITY OF LEADVILLE**

WHEREAS, the City of Leadville ("City") has the authority to enter into contracts for any lawful municipal purpose pursuant to C.R.S. § 31-15-101; and; and

WHEREAS, local governments, including statutory cities, are authorized by C.R.S. § 29-1-201 et seq. to enter into intergovernmental agreements with other governments to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units; and

WHEREAS, the City and Board of County Commissioners of Lake County ("County") previously entered into that certain Intergovernmental Agreement for E911 Telephone Service dated October 17, 1990 ("Original IGA") which created the Lake County Emergency Telephone Service Authority ("Authority"); and

WHEREAS, the City and County desire to amend and restate the provisions of the Original IGA as set forth in the attached agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Leadville, Colorado as follows:

Section 1. The Leadville City Council hereby: (1) approves the First Amended and Restated Lake County 911 Authority Intergovernmental Agreement by and between the City of Leadville and the Board of County Commissioners of Lake County, Colorado in substantially the same form as attached hereto as Exhibit A; (2) authorizes the City Administrative Services Manager, in consultation with the City Attorney, to make such changes as may be necessary that do not materially increase the obligations or decrease the rights of and benefits to the City, as needed; and (3) authorizes the Mayor to execute the same on behalf of the City when in final form.

Section 2. **Effective Date.** This Resolution shall take effect upon its adoption by the City Council.

CITY OF LEADVILLE, COLORADO

By: Greg Labbe
Greg Labbe, Mayor

ATTEST:

Bo Allen
Deputy City Clerk

ADOPTED by a vote of 6 in favor and 0 against, and 0 abstaining, this 21st day of August, 2018.

***I MOVE TO APPROVE RESOLUTION NO. 22, APPROVING THE FIRST AMENDED AND
RESTATED LAKE COUNTY 911 AUTHORITY INTERGOVERNMENTAL AGREEMENT.***

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Patricia Berger
Lake County

**First Amended and Restated
Lake County 911 Authority
Intergovernmental Agreement**

Effective July 1, 2018

**First Amended and Restated
Lake County 911 Authority
Intergovernmental Agreement**

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**First Amended and Restated
Lake County 911 Authority
Intergovernmental Agreement**

This First Amended and Restated Lake County 911 Authority Intergovernmental Agreement (this “**Agreement**”) is made as of July 1, 2018 (the “**Effective Date**”), by and between Lake County, a Colorado county acting by and through its Board of County Commissioners (“**Lake County**”), and the City of Leadville, a municipal corporation (“**Leadville**”).

Lake County and Leadville may be referred to herein as a “**Party**” or the “**Parties**.” Capitalized terms are defined throughout this Agreement.

Recitals

- A. The Parties are bodies politic and corporate within the State of Colorado.
- B. The Parties entered into that certain Intergovernmental Agreement for E9-1-1 Telephone Service (the “**Original IGA**”) dated October 17, 1990, which created the Lake County Emergency Telephone Service Authority (the “**Authority**”).
- C. Pursuant to Part 1 of Article 11, Title 29, C.R.S. (the “**Emergency Telephone Service Law**”), the Parties have the authority to enter into agreements for the purpose of providing emergency telephone service and emergency notification services and to impose an emergency telephone charge (the “**ETC**”).
- D. Part 2 of Article 1, Title 29, C.R.S., encourages and authorizes governmental entities to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other governmental entities. Specifically, C.R.S. § 29-1-103.5 authorizes the establishment of a separate legal entity for those purposes.
- E. The Parties desire to amend and restate the provisions of the Original IGA as set forth herein.

Agreement

Now, therefore, in consideration of the recitals and the mutual promises set forth herein, the Parties agree as follows:

Article 1. The Authority

Section 1.01 Continuation of the Authority as a Separate Legal Entity. The Authority created under the Original IGA shall remain in existence and continue as a separate legal entity subject to the provisions of this Agreement.

Section 1.02 Name of the Authority. The name of the Authority shall be the Lake County 911 Authority.

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911 Authority Intergovernmental Agreement*

Section 1.03 Status of the Authority.

(a) The Authority is a separate legal entity pursuant to C.R.S. § 29-1-203.5. As such, the Authority is a political subdivision and public corporation of the State of Colorado and is separate from the Parties.

(b) The Authority is and shall be a “public entity” pursuant to the Colorado Governmental Immunity Act, Article 10 of Title 24, C.R.S. (“CGIA”) and shall be operated in conformance with CGIA.

Section 1.04 Boundaries of the Authority. The boundaries of the Parties and their respective members, if any, as they may from time to time be changed, shall comprise the jurisdictional boundaries of the Authority.

Section 1.05 Purpose of the Authority. The purpose of the Authority is to support 9-1-1 service in the Authority’s jurisdiction, including without limitation emergency telephone service, emergency notification service, and basic emergency service. “9-1-1” means a three-digit telephone number to facilitate the reporting of an emergency requiring response by a public safety agency.

Section 1.06 Powers of the Authority.

(a) Emergency Telephone Service Law

(i) Generally. The Authority shall have all the rights and obligations of a “governing body” under the Emergency Telephone Service Law.

(ii) Emergency Telephone Charge.

(1) Amount of the ETC. The Authority may set the amount of the ETC pursuant to the Emergency Telephone Service Law, specifically C.R.S. § 29-11-102(2).

(2) Annual Determination of ETC Rate. Pursuant to the Emergency Telephone Service Law, specifically C.R.S. § 29-11-103(3), the Authority shall annually establish the amount of the ETC such that, together with any surplus revenues carried forward, the ETC will produce sufficient revenues to fund the Authority’s authorized expenditures.

(3) Handling of ETC Revenue. Monies collected from the ETC (“ETC Funds”) shall be kept in accordance with the Emergency Telephone Service Law, specifically C.R.S. § 29-11-104(3).

(4) Use of ETC Revenue. ETC Funds shall be spent sole as authorized by the Emergency Telephone Service Law, specifically C.R.S. § 29-11-104(2).

(b) Additional Authority. In order to enable the Authority to exercise its rights and perform its obligations, the Authority shall have the power and authority to do all of the following:

- (i) acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any legal or equitable interest in real or personal property;
- (ii) adopt rules and regulations regarding the exercise of its powers and the carrying out of its purposes;
- (iii) apply for and receive grants in its own name;
- (iv) conduct its business and affairs for the benefit of the Parties and their residents;
- (v) enter into, make, and perform contracts of every kind;
- (vi) engage, employ, or appoint agents or service

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providers, including accountants, architects, attorneys, consultants, employees, engineers, and managers, and to pay the direct and indirect reasonable costs for services rendered to the Authority; (vii) purchase insurance; (viii) litigate, arbitrate, and/or mediate in its own name; (ix) receive contributions of gifts, grants, or services; and (x) exercise any additional power or authority, not inconsistent with this Agreement, that is necessary or appropriate to carry out the intent of this Agreement.

(c) Restrictions on Authority. Except as expressly authorized herein, the Authority shall not have the power or authority to do any of the following: (i) incur debt or issue revenue bonds, unless the Authority has sufficient unencumbered cash in its possession to pay the same; (ii) take property by eminent domain; or (iii) impose taxes; provided, however, that either Party, acting individually or jointly with the other Party, may take any of the foregoing prohibited actions for the benefit of the Authority.

Section 1.07 Obligations of the Authority.

(a) Annual Budget. Unless the financial activities of the Authority are fully reported in the budget of one of the Parties, the Authority shall annually prepare a budget in accordance with the Local Government Budget Law of Colorado, Part 1 of Article 1, Title 29, C.R.S.

(b) Distribution of Funds. Distributions of the Authority's funds, including of ETC Funds, shall only be made by check pursuant to approval by the Board. The Board may, however, approve payment of regularly recurring expenses without considering each such expense individually.

(c) Books and Records. The Authority shall maintain adequate and correct accounts of its funds, properties, and business transactions. The Authority's accounts shall be open to inspection at any reasonable time by the Parties, their attorneys, and their authorized agents.

(d) Audit. Unless the financial activities of the Authority are fully reported in the audit of one of the Parties, the Authority shall cause to be made an annual audit of the financial statements of the Authority for each fiscal year, which audit shall be conducted by an independent certified public accountant licensed to practice in the State of Colorado and which shall be conducted in accordance with the Colorado Local Government Audit Law, Part 6 of Article 1, Title 29, C.R.S.

(e) Compliance with Law. The Authority shall comply with any applicable law or regulation. If the Authority's performance of an obligation imposed by this Agreement would result in the Authority's violation of an applicable law, the Authority shall take a course of action that, in its reasonable determination, would carry out the intent of this Agreement while not violating the law.

Article 2. Board of Directors

Section 2.01 Board of Directors. All powers of the Authority shall be exercised by or under the authority of, and the business and affairs of the Authority shall be managed under the direction of, the Authority's board of directors (the "**Board**"), in which all administrative and legislative power of the Authority is vested.

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Section 2.02 General Standards of Conduct for Directors.

(a) Standard. Each director of the Board (a “**Director**”) shall discharge the Director’s duties as a Director: (i) in good faith; (ii) with the care an ordinarily prudent person in a like position should exercise under similar circumstances; (iii) in a manner the Director reasonably believes to be in the best interests of the Authority; and (iv) otherwise in accordance with applicable law.

(b) Reliance on Experts. In discharging his or her duties, a Director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by one or more of the following persons or groups: (i) one or more employees of either Party whom the Director reasonably believes to be reliable and competent in the matters presented; and (ii) legal counsel, public accountant, or another person as to matters that the Director reasonably believes to be within such person’s professional or expert competence.

(c) Knowledge. A Director is not acting in good faith if the Director has knowledge concerning the matter in question that makes reliance otherwise permitted by Section 2.02(b) unwarranted.

(d) Liability for Actions. A Director shall not be liable as such to the Authority for any action taken, or omitted to be taken, as a Director performing the duties of the position in compliance with this Section 2.02.

Section 2.03 Number of Directors. The Board shall be comprised of five Directors.

Section 2.04 Appointment of Directors. Lake County, acting through its Board of County Commissioners, shall appoint each Director. Appointments shall be made on or before January 31 of the applicable year or as soon as practicable thereafter.

Section 2.05 Director Qualifications. To serve as a Director, a person must be at least 18 years old. Otherwise, there is no requirement that a Director be employed by either Party or a public safety agency.

Section 2.06 Directors’ Terms.

(a) Generally. Each Director may serve an unlimited number of three year terms (each, a “**Term**”). Each Term shall expire on January 31 of the third year of the Term; provided, however, that a Director shall remain in office until his or her successor is appointed (unless the Director resigns or is removed pursuant to this Agreement).

(b) Staggered Terms. Notwithstanding Section 2.06(a), (i) the Terms for the first and second Directors appointed shall initially expire in 2020, (ii) the Terms for the third and fourth Directors appointed shall initially expire in 2021, and (iii) the Term for the fifth Director appointed shall initially expire in 2022.

Section 2.07 Resignations, Removals, and Vacancies.

(a) Resignations of Directors. A Director may resign at any time by giving written notice to the Board Chair. Such resignation shall take effect at the time specified therein and, unless

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otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Removal of Directors. A Director may be removed for cause by the unanimous affirmative vote of the remaining Directors (*i.e.*, all of the Directors except the Director being removed); provided, however, that the unanimous affirmative vote of the remaining Directors totals at least three Directors. A Director removed under this Section 2.07(b) may not be reappointed as a Director. This Section 2.07(b) sets forth the only manner in which a Director may be removed.

(c) Vacancies on the Board. A vacancy occurring on the Board shall be filled in accordance with Section 2.04. Any person appointed to fill a vacancy shall complete the prior Director's Term.

Section 2.08 Officers of the Board. The Board shall elect one Director to each of the following officer positions: (a) chair of the Board ("**Board Chair**"); (b) vice-chair of the Board; (c) secretary of the Board; and (d) treasurer of the Board. Each elected officer shall perform the duties incident to the office to which he or she was elected.

Section 2.09 Meetings.

(a) Regular Meetings. The Authority shall hold at least two regular meetings per year. The Board may hold additional regular meetings as it deems necessary.

(b) Special Meetings. Special meetings of the Board may be called by (i) the Board Chair or (ii) any two Directors.

(c) All meetings shall be held in compliance with the Open Meetings Law, C.R.S. §§ 24-6-401-402.

Section 2.10 Quorum and Voting. A quorum for the transaction of business shall be present if the number of Directors present at a meeting equals or exceeds the majority of the Directors in office immediately before the meeting, but in no case less than two Directors. The vote of a majority of the Directors present in person at a meeting at which a quorum is present shall be the act of the Board. No Director may vote or act by proxy at any meeting of the Board of Directors.

Section 2.11 Participation by Electronic Means. Directors may participate in a meeting of the Board by means of telephone conference or similar communications equipment by which all persons participating in the meeting can hear each other at the same time. Such participation shall constitute presence in person at the meeting.

Section 2.12 Compensation. Directors shall not receive compensation for their services as such, although the reasonable expenses incurred by a Director in performance of official duties may be paid or reimbursed by the Authority. Directors shall not be disqualified to receive reasonable compensation for services rendered to or for the benefit of the Authority in any other capacity.

Section 2.13 Committees. By one or more resolutions, the Board may establish one or more committees. The normal role of a committee is to consider matters of concern to the committee and to make recommendations thereon to the Board. A committee shall not have any authority to bind the Board or the Authority. The chair and membership of any such committee shall be

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appointed by the Board on an annual basis. Unless a future termination date is specified by resolution, a committee shall exist until disbanded by the resolution of the Board.

Article 3. Term and Termination

Section 3.01 Term. This Agreement shall be in full force and effect from the Effective Date, subject to any amendments, until terminated as provided for herein.

Section 3.02 Termination.

(a) Either Party may terminate this Agreement by giving written notice to the other Party and the Authority on or before June 30 of any given year and, if notice is so given, this Agreement shall terminate on December 31 of the same year. If notice is given after June 30 of a given year, this Agreement shall terminate on December 31 of the following year.

(b) The Parties may by mutual written agreement terminate this Agreement at any time.

(c) Upon termination of this Agreement, (i) the Authority shall remain in existence to wind up its business affairs and then shall cease to exist and (ii) the Authority's assets, net of any of the Authority's outstanding liabilities, shall be distributed to the Parties as follows: (1) 33.3% by fair market value to Leadville; and (2) 66.6% by fair market value to Lake County.

Article 4. General Provisions

Section 4.01 Amendments. Any amendment or addition to this Agreement will be effective only if in writing and approved and signed by both Parties.

Section 4.02 Further Assurances. Each Party shall execute all further documents and take all further acts reasonably necessary or appropriate to carrying out the intent of this Agreement.

Section 4.03 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to such jurisdiction's conflict of laws principles.

Section 4.04 Venue. An action brought by any Party or the Authority to interpret or enforce any provision of this Agreement may be brought only in a state court located in Colorado. Each Party submits to the jurisdiction and venue of such courts and waives any objection to which it otherwise might be entitled regarding such jurisdiction or venue.

Section 4.05 WAIVER OF RIGHT TO JURY TRIAL. EACH PARTY AND THE AUTHORITY HEREBY WAIVE ANY RIGHT IT HAS OR MAY HAVE TO A JURY TRIAL IN ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

Section 4.06 Relationship of the Parties.

(a) Nothing in this Agreement creates a joint venture or partnership between or among: (i) the Parties, or either of them; (ii) the Authority; and (iii) any third party.

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(b) Neither Party nor the Authority: (i) will be liable for the debts, liabilities, or obligations of the others; (ii) is acting as the agent or partner of the others or will hold itself out as such; or (iii) has the authority to bind the others.

Section 4.07 Force Majeure. Neither Party nor the Authority will be considered in default under this Agreement to the extent that their performance is delayed or prevented by fire, flood, hurricane, tornado, earthquake, other natural disasters, riot, war, terrorism, labor disputes, civil strife, or other event outside the reasonable control of the performing Party or Authority.

Section 4.08 Entire Agreement. This Agreement states the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes and replaces all previous discussions, negotiations, and agreements, including the Original IGA.

Section 4.09 Waiver. The failure of any Party to insist upon the performance of any provision of this Agreement or to exercise any right or privilege granted to such Party under this Agreement will not be construed as waiving such provision or any other provision of this Agreement.

Section 4.10 Severability. If any provision of this Agreement is held to be invalid or unenforceable, then the provision shall, if practicable, be modified or amended by the court to render it enforceable to the maximum extent permitted; if modification or amendment is not practicable, then the provision shall be severed from this Agreement with no effect upon the remaining provisions of this Agreement.

Section 4.11 Third Party Beneficiaries. No provision of this Agreement is intended, nor shall it be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any person except the Parties and the Authority.

Section 4.12 Counterparts. This Agreement may be executed and delivered in counterparts (including by means of electronic signatures), all of which taken together will constitute one and the same agreement.

Section 4.13 Rules of Construction.

(a) Numbered Sections. Unless otherwise stated, a reference to any numbered Section or subsection will be construed as a reference to the entire Section or subsection so numbered, including any subsections thereof.

(b) Headings. The headings in this Agreement are for convenience of reference only and will be ignored for purposes of construing and interpreting this Agreement.

(c) Citations to Statutes. Any citation to one or more statutes in this Agreement shall be interpreted as a citation to those statutes as they may be amended from time to time.

[signature page follows]

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Patricia Berger
Lake County

Signature Page to the
First Amended and Restated Lake County
911 Authority Intergovernmental Agreement

In witness whereof, the Parties are executing this Agreement to signify their acceptance of all the provision set forth herein, to be effective as of the Effective Date regardless of the actual date of signature.

Attest: Lake County, acting by and through its
Board of County Commissioners

By: _____ By: Mark E. Glenn

Name: _____ Name: Mark E. Glenn

Title: _____ Title: Chairman

Date: _____ Date: 8-14-2018

Approved as to legal form:

By: _____

Name: _____

Title: _____

Date: _____

Attest: City of Leadville

By: Bethany Maher By: Greg Labbe

Name: Bethany Maher Name: GREG LABBE

Title: Deputy City Clerk Title: MAYOR

Date: August 21, 2018 Date: August 21, 2018

Approved as to legal form:

By: _____

Name: _____

Title: _____

Date: _____