

## INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this 14<sup>th</sup> day of June, 2004 by and between VILLAGES AT CASTLE ROCK METROPOLITAN DISTRICT NO. 6, a quasi-municipal corporation and political subdivision of the State of Colorado ("District"), and the TOWN OF CASTLE ROCK, a municipal corporation and political subdivision of the State of Colorado ("Town") (collectively, "Parties").

### RECITALS

A. The Town is empowered to provide and currently provides fire protection and emergency response services to its residents ("Fire Protection and Emergency Response Services" or "Services").

B. The property within the District ("Property") is wholly located within the jurisdictional boundaries of the Town, but has not yet been developed.

C. Due to the remote location of the Property in relation to the existing facilities, the Town does not now have the capacity to provide the Fire Protection and Emergency Response Services to the Property nor does the Town have sufficient revenue to develop the capacity to serve the Property.

D. The District anticipates that it will have the limited power to provide for the financing of fire protection and emergency response services for its residents, subject to the Town's approval of the District's Second Amended and Restated Service Plan and as authorized by Article 1, Title 32, Colorado Revised Statutes.

E. The constitution and laws of the State of Colorado permit and encourage local governmental entities to cooperate with each other to make the most efficient and effective use of their powers and responsibilities.

F. Article 1, Title 32, Colorado Revised Statutes, provides that the District has the power to enter into contracts and agreements affecting the affairs of the District.

G. Pursuant to Colorado Constitution, Article XIV, Section 18(2)(a) and (b) and Part 2 of Article I of Title 29, Colorado Revised Statutes, the Parties may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each.

H. It is more cost effective for the District to contract with the Town for the Town to provide for the Fire Protection and Emergency Response Services than for the District to develop its own facilities and systems for the provision of such services.

I. Upon receipt of revenue as set forth in this Agreement, the Town will be able to provide or cause to be provided fire protection and emergency response services to District residents to the same extent and degree as is provided to others similarly situated in the Town consistent with applicable Town policies.

J. This Agreement, upon execution and satisfaction of all conditions precedent contained herein, is intended to be and to represent "indebtedness" within the meaning of Article XI, Section 6, of the Colorado Constitution.

K. The obligations of the District pursuant to this Agreement are "multiple fiscal year financial obligations" within the meaning of Article X, Section 20, of the Colorado Constitution.

NOW, THEREFORE, in consideration of the mutual promises and covenants, agreements, conditions and provisions herein, the Parties agree as follows:

### AGREEMENT

1. Conditions Precedent. The Parties acknowledge and agree that this Agreement shall be of no force or effect unless and until each of the following conditions ("Conditions Precedent") has occurred.

(a) The District shall submit and the Town Council of the Town of Castle Rock ("Council") shall approve the Second Amended and Restated Service Plan for the Villages at Castle Rock Metropolitan District No. 6, which shall include the limited power to finance fire protection and emergency response services as among those services the District is authorized to provide to its residents; and

(b) A ballot issue in substantially the form of **Exhibit A** attached hereto, or in such other form as shall permit the District to incur the obligations of this Agreement, shall have been approved by a majority of those qualified to vote and voting at an election of the District.

(c) The first final plat for the development known as "Villages at Castle Rock, 2nd Amendment –Liberty Village Portion" has been approved by the Town and recorded in the real property records of the County of Douglas, Colorado.

2. Pledge of Taxes. For the purpose of paying the District's obligations under this Agreement, there shall be levied on all taxable property of the District, in addition to all other taxes, direct annual taxes in each year beginning in 2004 and continuing for so long as this Agreement is in effect, in the amount of ten (10) mills (a mill being equal to 1/10 of 1¢) (the foregoing mill levy being referred to herein as the "Fire Protection and Emergency Response Mill Levy". Nothing herein shall be construed to require the District to levy an *ad valorem* property tax for payment of its obligations hereunder in excess of the Fire Protection and Emergency Response Mill Levy.

The foregoing provisions of this Agreement are hereby declared to be the certificate of the Board to the Board of County Commissioners of Douglas County, Colorado, showing the aggregate amount of taxes to be levied from time to time, as required by law, for the purpose of paying the District's obligations under this Agreement.

It shall be the duty of the Board, annually, at the time and in the manner provided by law for levying other District taxes, to ratify and carry out the provisions hereof with reference to the

levying and collection of taxes; and the Board shall levy, certify, and collect said taxes in the manner provided by law for the purpose of paying its obligations under this Agreement.

The amounts necessary to pay all District obligations hereunder shall be included in the annual budget and the appropriation bills to be adopted and passed by the Board in each year, respectively, until such obligations have been fully paid, satisfied, and discharged.

3. Payment Schedule. The District shall make payment to the Town an amount equal to the amount of property taxes the District receives from the Fire Protection and Emergency Response Mill Levy within thirty (30) days of the District's receipt of such amount from the County.

4. Accounting. The Town shall deposit all revenues received from the District pursuant to this Agreement ("Designated Revenues") into a segregated book account ("Account"). The Town shall direct the investment of the Designated Revenues. The costs and expenses of the Account shall be paid from the interest earned on the Designated Revenues deposited in the Account. The Town shall use the Designated Revenues solely for the purposes and pursuant to the provisions of this Agreement. The District shall have the right to inspect the records of the Account at any time. The Town shall submit to the District a written report on or before December 31 of each year evidencing (a) that the Designated Revenues were utilized solely for the purpose set forth in Paragraph 5 below and (b) any amount remaining in the Account. All interest earnings on the Designated Revenues shall be retained by the Town in the Account and shall be used solely for the purposes and pursuant to the provisions of this Agreement.

5. Utilization of Designated Revenues. The Town shall be authorized to withdraw all or a portion of the Designated Revenues to provide Fire Protection and Emergency Response Services to the District and its residents.

6. Service. The Town hereby agrees to provide Fire Protection and Emergency Response Services to the Property to the same extent and degree as it provides such services to others similarly situated in the Town consistent with applicable Town policies.

7. Relationship of the Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners or employer-employee between the District and the Town.

8. Remedies. In the event of a breach of this agreement, the non-breaching Party may ask a court of competent jurisdiction to enter a writ of mandamus to compel the other Party to perform its duties under the Agreement and may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the breaching Party to perform in accordance with its obligations herein.

9. Waiver. The waiver of a breach of any of the provisions of this Agreement by the District or the Town shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

10. Assignment. The District acknowledges that the Town has entered and may in the future enter into agreements with other entities ("Third Party Providers") for the provision of certain Fire Protection and Emergency Response Services, including mutual aid agreements. The District hereby consents to the Town's assignment of the Town's duty under this Agreement to provide Fire Protection and Emergency Response Services to such Third Party Providers only to the extent that such assignment shall not adversely impact the response time, scope and quality of the Services provided to the District, and in no event shall such District consent relieve the Town of its obligation to provide Fire Protection and Emergency Response Services to the same extent and degree as it provides such services to others similarly situated in the Town consistent with applicable Town policies. Subject only to the foregoing exception in this Section 10, neither this Agreement nor any Party's rights, obligations, duties or authorities hereunder may be assigned in whole or in part without the prior written consent of the other Party. Any purported attempt to assign the Agreement or any rights hereunder without such prior written consent of the other Party shall be void and of no force and effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment, nor shall the waiver of any right hereunder be deemed to be consent such subsequent assignment.

11. Amendment. This Agreement may be modified, amended or terminated, except as otherwise provided herein, in whole or in part, only by written agreement duly authorized and executed by the District and the Town; provided that this section shall not preclude separate agreements between the Parties for separate services, functions or exercise of authority.

12. Term. After the satisfaction of the Conditions Precedent, this Agreement shall constitute a contract between the Town and the District, and shall be and remain irrevocable unless otherwise agreed in writing by the Parties; provided, however, that in the event that the Town causes any increase in or addition to the *ad valorem* taxes it imposes on property within the Town and such increase or addition is for fire protection and/or emergency response services, the District's obligation to impose and pay to the Town District *ad valorem* taxes as provided herein shall be reduced by the same number of mills as such increase in or addition to the Town mill levy.

13. Integration. This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party that is not contained in this Agreement shall be valid or binding.

14. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

15. Headings for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.

16. Notices. Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent via facsimile with a hard copy sent immediately thereafter by first class mail or sent by first class certified mail, postage pre-paid and return receipt requested, and addressed to the Parties at the addresses set forth below or such other address as the parties may hereafter or from time to

time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given when personally delivered, transmitted by facsimile or mailed by first class, certified mail, return receipt requested, and shall be considered received on the earlier of the day on which such notice is actually received by the Party to whom it is addressed or the third day after such notice is mailed.

To the District: Villages at Castle Rock Metropolitan District No. 6  
6550 S. Greenwood Plaza Blvd.  
Centennial, CO 80111  
Attn: Jerry Richmond  
Phone: (303) 773-2727  
Facsimile: (303) 773-3247

With copy to: McGeady Sisneros, P.C.  
1675 Broadway, Suite 2100  
Denver, CO 80202  
Attn: MaryAnn M. McGeady  
Phone: (303) 592-4380  
Facsimile: (303) 592-4385

To the Town: Town Manager  
Town of Castle Rock  
100 Wilcox St.  
Castle Rock, CO 80104  
Phone: (303) 660-1374  
Facsimile: (303) 660-1024

17. Reservation of Police Powers. The Town shall retain full authority under this Agreement to act in the public interests in exercising its municipal police powers, including enactment, amendment or modification of ordinances concerning fire protection and emergency response.

18. Provisions Construed as to Fair Meaning. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attributes to such Party of the source of the language in question.

19. Compliance with Ordinances and Regulations. The Parties shall perform their respective obligations under this Agreement in strict compliance with all applicable laws, rules, charters, ordinances and regulations, as now exist or are later enacted or amended, of the Town.

20. No Implied Representations. No representations, warranties or certifications, express or implied, shall exist as between the Parties, except as specifically stated in this Agreement.

21. No Third Party Beneficiaries. None of the terms, conditions or covenants in this Agreement shall give or allow any claim, benefit or right of action by any third person not a

Party hereto. Any person other than the Town or the District receiving services or benefits under this Agreement shall be only an incidental beneficiary.

22. Financial Obligations of Town. All financial obligations of the Town under this Agreement are contingent upon appropriation, budgeting and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the Town's credit.

23. Binding Effect. This Agreement shall be binding upon the Parties and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.


VILLAGES AT CASTLE ROCK  
METROPOLITAN DISTRICT, NO. 6, a quasi-  
municipal corporation and political subdivision  
of the State of Colorado

By:   
James L. Yates, President

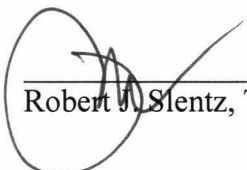
Attest:

  
Theresa Kistner, Secretary

TOWN OF CASTLE ROCK, a municipal  
corporation and political subdivision of the  
State of Colorado

By:   
Its: MAYOR

Approved as to Form:

  
Robert J. Slentz, Town Attorney



## **EXHIBIT A**

SHALL VILLAGES AT CASTLE ROCK METROPOLITAN DISTRICT NO. 6 TAXES BE INCREASED \$\_\_\_\_\_ ANNUALLY, OR BY SUCH GREATER OR LESSER AMOUNT AS IS PRODUCED BY AN AD VALOREM PROPERTY TAX MILL LEVY EACH YEAR., BEGINNING IN 2004, ON ALL TAXABLE PROPERTY OF THE DISTRICT, IN THE ANNUAL AMOUNT OF TEN (10) MILLS, AND SHALL THE DISTRICT BE AUTHORIZED TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE TOWN OF CASTLE ROCK, COLORADO, OBLIGATING THE DISTRICT TO IMPOSE SUCH TEN (10) MILLS EACH YEAR, THE REVENUES FROM WHICH WILL BE PLEDGED TO AND USED BY THE TOWN TO PROVIDE FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES TO THE PROPERTY WITHIN THE DISTRICT, SUCH AGREEMENT TO CONSTITUTE AN INDEBTEDNESS AND A MULTIPLE-FISCAL YEAR FINANCIAL OBLIGATION OF THE DISTRICT; AND IN CONNECTION THEREWITH SHALL THE DISTRICT BE AUTHORIZED TO MAKE SUCH COVENANTS, REPRESENTATIONS, AND WARRANTIES WITH RESPECT TO MATTERS ARISING UNDER SUCH AGREEMENT, ALL AS MAY BE DETERMINED BY THE BOARD OF DIRECTORS OF THE DISTRICT; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?