INTERIM INTERGOVERNMENTAL AGREEMENT
BETWEEN AND AMONG
BERTHOUD COMMUNITY LIBRARY DISTRICT
TOWN OF BERTHOUD
AND
THE COUNTY OF LARIMER, COLORADO

RECITALS

a. The voters within the boundaries of the Berthoud Community Library District (the “District” or “Library District”) approved its formation at an election held in November of 2007.

b. The “legal service area” of the District defined in §24-90-103(4.5), C.R.S. is comprised of the same boundary as that of the Berthoud Fire Protection District (minus the Weld County and Boulder County addresses).

c. The District was established under the provisions of §24-90-107(3)(g), C.R.S. by Resolution of the Berthoud Town Board, dated July 8, 2008 and Resolution of the Board of County Commissioners of Larimer County, dated July 29, 2008 (collectively, the “Resolutions”).

d. Pursuant to §24-90-107(3)(h), C.R.S., the Town of Berthoud (“Town”), Larimer County (the “County”) and the Library District are required to enter into an intergovernmental agreement within ninety days of the appointment of the board of trustees that “shall set forth fully the rights, obligations, and responsibilities, financial and otherwise,” of the Town, the County and the Library District.

e. With the consent of the County, the District will be submitting a mill levy ballot question (“Mill Levy Question”) to the voters within the legal service area at the November 4, 2008 election.

f. Pending the outcome of the election, the Parties wish to memorialize in an interim intergovernmental agreement (“Interim IGA”), the funding mechanism for the District pending a successful election either in 2008 or in a subsequent year.

g. Following the election, the parties intend to reach agreement on all of the necessary terms of a long-term intergovernmental agreement, as contemplated by the Library Law.

NOW, THEREFORE, the Town, the County and the Library District agree that their rights, obligations, and responsibilities are as set forth in this Interim IGA.
AGREEMENT

Section 1.1 Term. This Interim IGA shall be effective on the date last signed below, and shall remain in full force and effect until midnight, March 31, 2009, unless extended sooner, in writing, by mutual agreement of the Parties.

Section 1.2 Financial Support. The Town will continue to financially support the library as it has in the past by appropriating and remitting to the District, the revenues from the 2.4 mill levy historically imposed by the Town for library purposes and to the extent annually allocated by the Board of Trustees of the Town, a share of the 1% sales tax until the earlier of 2012 or the year following the passage of the Mill Levy Question.

Section 1.3 Final IGA. The Parties will make best efforts to negotiate mutually acceptable terms for, approve and execute the final IGA by March 31, 2009.

Section 1.4 Miscellaneous

a. Jurisdiction and Venue: The laws of the State of Colorado shall govern the interpretation, validity, and effect of this Agreement. The Parties agree that venue for any disputes arising under this Agreement shall be with the Larimer County District Court, Colorado.

b. Assignability: Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable without the prior written consent of all parties.

c. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver of any other provision, unless such waiver has rendered future performance impossible.

d. Force Majeure: Except as otherwise provided by Colorado law, neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.

e. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile or electronic mail transmission was received. For the purposes of this IGA, any and all notices shall be addressed to the contacts listed below:
For the County:

Board of County Commissioners  
Larimer County Attorney’s Office  
200 West Oak Street  
200 West Oak Street  
Fort Collins, Colorado 80521  
Fort Collins, Colorado 80521  
ATTN: County Manager  
Phone:  
Facsimile:  
Email:

For The Library District:

Board of Trustees  
Seter & Vander Wall, P.C.  
Berthoud Library Dist.  
7400 E. Orchard Rd., Ste 3300  
236 Welch Avenue  
Greenwood Village, CO 80111  
Berthoud, Colorado 80513  
Phone: (303) 770-2700  
Phone: (970) 532-2757  
Facsimile: (303) 770-2701  
Facsimile: (970) 532-4372  
Email: director.bpl@gmail.com  
Email: ksetter@svwpc.com

For the Town:

Bruce Fickel  
Town Attorney  
PO Box S  
Berthoud, CO 80513  
Facsimile:  
Email:

f. Integration: This Agreement contains the entire understanding of the parties and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties.

g. Paragraph Headings: Paragraph headings are inserted for the convenience of reference only.

h. Intended Beneficiaries: Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to, any person other than the parties, any right, remedy or claim under or by reason of this Agreement or any covenant, terms, conditions, or provisions hereof. All covenants, terms, conditions, and provisions in this Agreement are for the sole and exclusive benefit of the Town, the County and the District.
i. **Severability:** If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of the Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

j. **Authorization:** Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.
IN WITNESS WHEREOF, the Town, the County and the District have signed this Agreement to be effective on the date last written below or __________, whichever is first.

BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO

__________________________  ____________________
Chairman  Date

ATTEST:

__________________________  ____________________
Approved as to form:

Larimer County Attorney

BERTHOUD COMMUNITY LIBRARY DISTRICT
BOARD OF TRUSTEES

__________________________  ____________________
President  Date

ATTEST:

__________________________  ____________________
Approved as to Form:

Secretary  Seter & Vander Wall, P.C.
TOWN OF BERTHOUD, COLORADO

Mayor

ATTEST:                       Approved as to Form:

Clerk

Attorney
INTERGOVERNMENTAL AGREEMENT
AMONG
BERTHOUD LIBRARY DISTRICT
TOWN OF BERTHOUĐ
AND
THE COUNTY OF LARIMER, COLORADO

RECITALS

a. The voters within the boundaries of the Berthoud Library District (the “District” or “Library District”) approved its formation at an election held on ________ and a levy of _____ mills on all property within the District at the general election on November 4, 2008.

b. The “legal service area” of the District defined in §24-90-103(4.5), C.R.S., as amended is described on Exhibit A (the “Service Area”).

c. Pursuant to §24-90-107(3)(g), C.R.S. the Town of Berthoud, Colorado (the “Town”) and Larimer County, Colorado (the “County”) were required to “forthwith establish such library and provide for its financial support beginning on or before January 1 of the year following the election.”

d. The District was established under the provisions of §24-90-107(3)(g), C.R.S. by Resolution ______ of the Berthoud Town Board adopted November ____, 2008 and Resolution _____ of the Board of County Commissioner of Larimer County on November ____, 2008 (collectively, the “Resolutions”).

e. Pursuant to § 24-90-108(1), C.R.S., as amended, under the Resolutions, the Town and County appointed a seven-member board of trustees in which the management and control of the Library District has been vested.

f. Pursuant to § 24-90-107(3)(h), C.R.S., the Town, the County and the Library District are required to enter into an intergovernmental agreement within ninety days of the appointment of the board of trustees that “shall set forth fully the rights, obligations, and responsibilities, financial and otherwise,” of the Town, the County and the Library District.

g. It is the intent of the Town, the County and the Library District that the transfer to the Library District, pursuant to this IGA, of assets and liabilities held by the Town for the benefit of the former Berthoud Public Library (the “Town Library”), including all real and personal property, be effectuated in a manner that serves the best interests of the citizens of the Library District, the Town and the County.
NOW, THEREFORE, the Town, the County and the Library District agree that their rights, obligations, and responsibilities are as set forth in this Intergovernmental Agreement.

AGREEMENT

ARTICLE I: OBLIGATIONS AND RESPONSIBILITIES OF THE LIBRARY DISTRICT

Section 1.1 General Obligations. The Library District shall operate, provide, and maintain public library services for citizens residing within its Service Area in a manner consistent with the Colorado Library Law, § 24-90-101, et seq., C.R.S., as amended, this Agreement and the bylaws and policies of its Board of Trustees.

Section 1.2 Powers of Trustees. The Board of Trustees shall have all powers and duties delegated to it under §24-90-109, C.R.S., as amended from time to time.

Section 1.3 Reimbursements for Town and County Services. The Board of Trustees shall pay (to be discussed):

ARTICLE II: OBLIGATIONS AND RESPONSIBILITIES OF THE TOWN

Section 2.1 Support Services. During calendar year 2009, the Town will provide services to the District at cost (to be discussed—these can be such items as payroll, HR and accounting if there is a need on the part of the district). For the 2009 Calendar year these services shall include the following services and costs:

(the “Town Support Services”).

Section 2.1.1 In receiving the aforementioned services from the Town, it is the District’s intention to adhere to the Town’s policies and procedures. However, the District Director will have authority to make exceptions to such policies and procedures that would otherwise require Town Manager approval.

Section 2.1.2 The Town will provide any or all of the Town Support Services to the District at cost as defined in Exhibit C, for years subsequent to 2009, upon written notice of the desired services from the District on or before August 1 of the year preceding the year for which services are sought.
Section 2.1.3 The Town may terminate the Town Support Services at the beginning of any fiscal year after at least one full year’s notice to the Board of Trustees of its intention to do so.

Section 2.2 Library Finances. The constituents of the District approved a _____ mill levy to support the District. Additional sources of revenue have been secured by the Town that are designated for library services only.

Section 2.2.1 Public Library Fund. Pursuant to § 24-90-112(2)(a), C.R.S., as amended, all moneys generated for library district purposes shall be delivered to the custody of the Town Chief Financial Officer and credited to a special fund known as the “Public Library Fund.”

a. Pursuant to § 24-90-112(2)(a), C.R.S., as amended, all moneys in the Public Library Fund, together with all interest income that accrues thereon, shall continue to be used only for library purposes at the direction of the District.

b. Pursuant to § 24-90-112(2)(a), C.R.S., as amended, effective ________, money held in the Public Library Fund shall be expended only upon warrants signed by the President of the Board of Trustees or his or her designee as established in the District Finance Policy.

c. The Board of Trustees of the District may require the Town Chief Financial Officer to transfer all of a portion of the Public Library Fund into the custody of the Board of Trustees pursuant to § 24-90-112(2)(c), C.R.S., as amended. However, in the event the Board of Trustees does so, it shall carry a bond for such purpose, make monthly accountings and cause an annual audit to be performed as required by law.

Section 2.2.2 Town Local Sales Tax. (Sara to provide base amount library is entitled to under Town Ord.)

Any others?

Section 2.3 Technology Services.

Section 2.3.1 Existing technology and infrastructure shall be conveyed as legally appropriate (will there be any sharing of IT services between Town and District going forward?).
ARTICLE III: EMPLOYMENT AND PERSONNEL

Section 3.1 Town Library Employees. A list of Town library employees is attached as Exhibit B (the “Town Library Employees”). Town Library Employees shall continue to be employees of the Town through December 31, 2008. The Town Library Employees shall be subject to Town personnel policies and procedures and shall be eligible to receive all the benefits and privileges associated with Town employment.

Section 3.2 Transfer of Town Library Employees to the District. The expectation is that all Town Library Employees employed on December 31, 2008 will become District library employees on January 1, 2009 by the process described herein.

Section 3.2.1 On or before December 15, 2008, the District shall make offers of employment to all Town Library Employees to be effective January 1, 2009.

a. The District will strive to offer salaries and pay grades similar to or better than those provided by the Town for the Town Library Employees. However, benefits may vary.

b. On January 1, 2009, the Library District shall be responsible for the payment of salary and wages and its share of any retirement benefits, state and/or federal taxes, workers compensation insurance, and unemployment insurance for these employees, and shall be responsible for the defense and indemnification of such employees pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as amended.

Section 3.2.2 At midnight December 31, 2007, the Town will eliminate all Town Library positions and will no longer have Town Library employees.

a. The Town will examine means of distribution and/or payment of unused accrued annual vacation and sick leave to minimize the tax consequences for transitioning employees.

b. The Town shall be responsible for the payment of salary and wages, and its share of retirement benefits, state and/or federal taxes, workers compensation insurance, and unemployment insurance for Town Library Employees, and shall be responsible for the defense and indemnification of such employees pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as amended.

ARTICLE IV: REAL PROPERTY

Section 4.1 Town Library Facility. The Town owns or otherwise controls real property on which public library facilities are situated located at: ______________________.
Section 4.2  Conveyance and Use of Property and Rights. On or before January 1, 2009, the Library Real Property or real property rights shall be conveyed, assigned leased or otherwise transferred to the District.

ARTICLE V: TRANSFER OF PERSONAL PROPERTY

Section 5.1  No later than December 31, 2008, the Town shall convey to the District the following items of personal property:

a. All books, shelving, magazines, and collections of other materials owned by the Town in association with or used by the Town Library; and

b. All furniture, shelving, and other items that are not fixtures that are owned by the Town in association with or used by the Town Library; and

c. All computers, computer programs and related research and/or office equipment and supplies owned by the Town in association with or used by the Town Library; and

d. All office supplies and equipment associated with the Town Library; and

e. All other items of personal property owned by the City in association with or used by the Town Library.

Does the library have any vehicles?

ARTICLE VI: ASSIGNMENT OF CONTRACTUAL RIGHTS AND DELEGATION OF DUTIES AND LIABILITIES

Section 6.1  Effective January 1, 2009, the District shall assume all contractual rights and obligations of the Town entered into solely for library purposes, as more particularly described in Exhibit C, ASSIGNED CONTRACTS.

ARTICLE VII: OBLIGATIONS AND RESPONSIBILITY OF THE COUNTY

Section 7.1  Appointment of Trustees. The County, in cooperation with the, shall be responsible for appointing trustees to the Board of Trustees pursuant to §24-90-108, C.R.S., as amended, and for any additional responsibilities mandated under the Colorado Library Law, as amended.
ARTICLE VIII - MUTUAL UNDERSTANDINGS

Section 8.1 Jurisdiction and Venue: The laws of the State of Colorado shall govern the interpretation, validity, and effect of this Agreement. The and the District agree that venue for any disputes arising under this Agreement shall be with the Larimer County District Court, Colorado.

Section 8.2 Compliance with Laws: In connection with the negotiation and performance of this Agreement the parties state that they are familiar with § 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, and that no violations of such provisions are present. The parties agree to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) when exposed to or provided with any data or records that are considered to be “Protected Health Information.” The parties agree to comply with any other federal or state laws concerning the confidentiality or privacy of any information contained in the records accessed under or in association with this Agreement.

Section 8.3 Assignability: Neither this Agreement nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable without the prior written consent of all parties.

Section 8.4 Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver of any other provision, unless such waiver has rendered future performance impossible.

Section 8.5 Force Majeure: Except as otherwise provided by Colorado law, neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.

Section 8.6 Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile or electronic mail transmission was received. For the purposes of this IGA, any and all notices shall be addressed to the contacts listed below:

For the County:

Board of County Commissioners
200 West Oak Street
Fort Collins, Colorado 80521
ATTN: County Manager
Phone:

Larimer County Attorney’s Office
200 West Oak Street
Fort Collins, Colorado 80521
For The Library District:

Board of Trustees
Berthoud Library Dist.
236 Welch Avenue
Berthoud, Colorado 80513
Phone: (970) 532-2757
Facsimile: (970) 532-4372
Email: director.bpl@gmail.com

Seter & Vander Wall, P.C.
7400 E. Orchard Rd., Ste 3300
Greenwood Village, CO 80111
Phone: (303) 770-2700
Facsimile: (303) 770-2701
Email: ksetter@svwpc.com

For the Town:

Bruce Fickel
Town Attorney
PO Box S
Berthoud, CO 80513
Facsimile:
Email:

Section 8.7 Integration: This Agreement contains the entire understanding of the parties and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties.

Section 8.8 Paragraph Headings: Paragraph headings are inserted for the convenience of reference only.

Section 8.9 Intended Beneficiaries: Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or to give to, any person other than the parties, any right, remedy or claim under or by reason of this Agreement or any covenant, terms, conditions, or provisions hereof. All covenants, terms, conditions, and provisions in this Agreement are for the sole and exclusive benefit of the Town, the County and the District.

Section 8.10 Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of the Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

Section 8.11 Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.
IN WITNESS WHEREOF, the Town, the County and the District have signed this Agreement to be effective on the date last written below or __________, whichever is first.

BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO

____________________________________  ______________________
Chairman                                      Date

ATTEST:

____________________________________
Larimer County Attorney

BERTHOUD LIBRARY DISTRICT
BOARD OF TRUSTEES

____________________________________  ______________________
President                                      Date

ATTEST:

____________________________________
Seter & Vander Wall, P.C.

TOWN OF BERTHOUD, COLORADO

____________________________________
Mayor
ATTEST: ______________________________  Approved as to Form: ______________________________

Clerk

Attorney
EXHIBIT A

Legal Service Area

§24-90-103(4.5), C.R.S.
Exhibit B

Library Employees
To be
Transferred to the District
Exhibit C

Assigned Contracts
Within Boulder city limits:
Residential: $1,927,165,000
Non-residential: $5,958,947,000

Within Comp Plan boundary:
Residential: $2,382,739,000
Non-residential: $6,521,399,000

Within Extended Area boundary:
Residential: $2,541,743,000
Non-residential: $6,574,718,000
NOTE: If the patrons file listed a city other than Boulder, those points are grouped together at one location.

Heat Map of Patron Locations Within Boulder County