

TOWN OF SUPERIOR
BOARD OF TRUSTEES
RESOLUTION NO. R-52
SERIES 2020

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN AND THE BOULDER COUNTY CLERK AND RECORDER FOR COORDINATION OF THE TOWN'S REGULAR ELECTION WITH THE NOVEMBER 3, 2020 GENERAL ELECTION

BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF SUPERIOR, COLORADO, as follows:

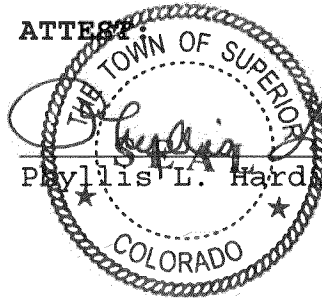
Section 1. The Intergovernmental Agreement between the Town of Superior and the Boulder County Clerk and Recorder for the coordination of the Town's regular election with the 2020 General Election is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney.

ADOPTED this 10th day of August, 2020.



Clint Folsom, Mayor

ATTEST:



Phyllis L. Harden, Town Clerk-Treasurer

INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF SUPERIOR AND THE BOULDER COUNTY CLERK AND RECORDER FOR THE CONDUCT AND ADMINISTRATION OF THE 2020 GENERAL ELECTION TO BE HELD NOVEMBER 3, 2020

This Intergovernmental Agreement for general election (“IGA”) is made and entered into by and between the Town of Superior, a Colorado municipal corporation (the “Jurisdiction”), and the County Clerk and Recorder for Boulder County, Colorado (the “County Clerk” or “Clerk”) (together “the Parties”).

1. RECITALS AND PURPOSES

1.1 The County Clerk and the Jurisdiction are each authorized to conduct elections as provided by law; and

1.2 The election to be held on November 3, 2020 (the “Election”) shall be conducted as a “mail ballot election” as defined in the Uniform Election Code of 1992 (“the Code”) and the Rules and Regulations of the Colorado Secretary of State (“the Rules”); and

1.3 Pursuant to § 1-7-116(2), Colorado Revised Statutes (“C.R.S.”), the County Clerk and the Jurisdiction are required to enter into an agreement for the administration of their respective duties and sharing of the actual costs related to the Election; and

1.4 Section 20 of Article X of the Colorado Constitution (“TABOR”) requires the production of a mailed notice (“TABOR Notice”) concerning tax and liability ballot issues that will be submitted to the electors of Boulder County; and

1.5 The County Clerk and the Jurisdiction have determined that it is in the best interests of the Jurisdiction, and its inhabitants and landowners, to cooperate and contract for the Election upon the terms and conditions contained in this IGA; and

1.6 The purpose of this IGA is to allocate responsibilities between the County Clerk and the Jurisdiction for the preparation and conduct of the Election and provide for a reasonable sharing of the actual costs of the Election among the County and other participating political subdivisions.

For and in consideration of the mutual covenants and promises in this IGA, the sufficiency of which is acknowledged, the Parties agree as follows:

2. GENERAL MATTERS

2.1 The County Clerk shall act as the chief designated election official in accordance with C.R.S. §1-1-110 and will be responsible for the administration of the Election as detailed in the Code and the Rules.

2.2 Boulder County Clerk and Recorder Molly Fitzpatrick will be the primary liaison and contact for the County Clerk. The Jurisdiction designates Phyllis Hardin, Town Clerk, as its “Election Officer” who shall act as the primary liaison between the Jurisdiction and the County Clerk and who shall have primary responsibility for the management and performance of the Jurisdiction’s obligations under this IGA. If the Code requires a “designated election official” within the Jurisdiction to perform tasks, the Election Officer shall act as such designated election official. Nothing in this IGA relieves the County Clerk or the Jurisdiction’s governing board from their official responsibilities for the conduct of the Election.

2.3 **Term.** The term of this IGA shall be from the date of signing through December 28, 2020.

3. RESPONSIBILITIES OF THE COUNTY CLERK

3.1 **Initial ballot layout.** Upon receipt of the certified ballot text provided by the Jurisdiction pursuant to Section 4.2 below, the County Clerk will create the layout of the text of the ballot in a format that complies with the Code. The ballot text must be satisfactory to the Clerk. Furthermore, no content changes by the Jurisdiction shall be allowed after the September 4, 2020 certification of the ballot, without the approval of the County Clerk or as directed by the Clerk. The County Clerk will provide the Jurisdiction with a copy of the draft ballot for the Jurisdiction’s review along with any instructions for modifications to the ballot layout and the time period within which the Jurisdiction must return the modified ballot to the County Clerk. If modifications are made by the Jurisdiction, the Clerk will review the changes upon receipt from the Jurisdiction of the modified ballot and notify the Jurisdiction that the ballot is approved or return the ballot for further modifications and time requirements.

3.2 **Final ballot layout.** Once the Jurisdiction has made all changes to the ballot layout as required by the County Clerk and the ballot is in final draft form, the Clerk will lay out the ballot text and submit it to the Jurisdiction for final review, proofreading, and approval. The Jurisdiction shall return the final draft form ballot proofs on or before September 11, 2020. The Clerk is not responsible for ensuring that the final ballot text complies with the requirements of TABOR or any other constitutional or statutory requirement related to the text of ballot language.

3.3 **Ballot printing and mailing.** The County Clerk will contract with a vendor to prepare and print the ballots; prepare a mail ballot packet for each registered elector within the Jurisdiction; address a mail ballot packet to each elector within the Jurisdiction; and mail the ballots between 22 days and 18 days before Election Day, or between October 9, 2020 and October 16, 2020. In cooperation and coordination with the Clerk, the vendor shall perform the printing, preparation of the ballots for mailing, and the mailing of the ballots.

3.4 **Voter Service and Polling Centers.** The County Clerk shall provide Voter Service and Polling Centers from October 19, 2020 through Election Day. The County Clerk will hire and train staff to operate Voter Service and Polling Centers in up to 20 locations across Boulder County (Boulder, Lafayette, Longmont, Louisville, Lyons, Nederland, Superior and University of Colorado - Boulder).

3.5 **Additional ballots.** In addition to the mail ballots printed and mailed by the vendor as specified in subsection 3.3, the County Clerk will provide regular and provisional ballots to electors in the manner and method required by the Code.

3.6 **Mail ballots.** In cooperation with the vendor, the County Clerk will ensure that the mail ballot packets contain the materials required by the Code, including voter instructions; an inner verification/privacy return envelope; and the outer/mail envelope containing the appropriate postage, Official Election logo, and indicia for Return Service Requested.

3.7 **Ballot security.** The County Clerk will track inventory and provide security for all ballots as required by the Code.

3.8 **Election Judges.** The County Clerk will appoint, train, provide written materials to and pay a sufficient number of qualified election judges to receive and process the voted ballots.

3.9 **TABOR Notice.** If applicable, the County Clerk, through a vendor, will distribute to all Boulder County registered electors' households the printed TABOR Notice submitted by the Jurisdiction along with those of other jurisdictions. The County Clerk may determine the order of the TABOR Notice submitted by the Jurisdiction and those of other jurisdictions to be included in the TABOR Notice Package provided. However, the materials supplied by the Jurisdiction shall be kept together as a group and in the order supplied by the Jurisdiction. The cost for the printing and mailing of the TABOR Notice Package shall be shared on a prorated basis as further described in section 6 below. The Clerk is not responsible for ensuring that the TABOR Notice complies with the requirements of TABOR or any other constitutional or statutory requirement relating to notice.

3.10 **Testing.** The County Clerk will perform Logic and Accuracy Testing of the electronic vote counting equipment as required by the Code.

3.11 **Election Support.** The County Clerk will provide support to the Election Officer via telephone, email or in person throughout the Election process and during all ballot-counting procedures for the Election.

3.12 **Tally.** The County Clerk will provide for the counting and tallying of ballots, including any recounts required by law. The Clerk will release initial election returns after 7:00 p.m. on the date of the Election. With the exception of Provisional Ballots, all ballots received by 7:00 p.m. on November 3, 2020 shall start to be counted the night of the Election and may extend past election day due to volume and COVID-19 safety precautions. The unofficial results will be published to the County website following the completion of the Election Day counting. The Clerk will count and tally valid cured and provisional ballots on or before 5:00 pm on November 12, 2020.

3.13 **Certification of results.** Jurisdictions shall be issued a certified statement of results by November 25, 2020.

4. RESPONSIBILITIES OF JURISDICTION

4.1 ***Boundaries of Jurisdiction.*** If any annexations to the Jurisdiction have occurred between January 1, 2020 and the date of the signing of this IGA, the jurisdiction is responsible for informing the County Clerk in writing by the date of the signing of this IGA.

4.2 ***Ballot content and layout.*** No later than September 4, 2020, the Election Officer shall certify the ballot order and content for the Jurisdiction and deliver the certified ballot layout to the County Clerk. The ballot layout shall be in a form acceptable to the Clerk. Ballot content layout shall not include any graphs, tables, charts, or diagrams. The ballot order and content shall include the names and office of each candidate for whom a petition has been filed with the Election Officer and any ballot issues or ballot questions the Jurisdiction has certified. The Jurisdiction shall be solely responsible for the accuracy of the information contained in the certificate and ballot content. The Jurisdiction shall make any modifications to the ballot layout requested by the County Clerk. The County Clerk will correct errors as specified in C.R.S. § 1-5-412 at the Jurisdiction's expense.

4.3 ***Audio for visually impaired.*** Within 7 days of the Jurisdiction's submission of the ballot layout to the County Clerk, the Jurisdiction shall submit to the Clerk a high quality audio recording with the name of each candidate clearly spoken on the recording. This requirement aids the County Clerk in programming the audio component of the electromechanical voting equipment for the Election. The Jurisdiction shall timely make any modifications to the audio recording requested by the County Clerk.

4.4 ***TABOR Notice.*** The Jurisdiction shall provide to the County Clerk all required TABOR Notices concerning ballot issue(s) in the manner required by Article X, Section 20 of the Colorado State Constitution by noon on September 21, 2020. The submission will include the ballot title, text, and fiscal history or any other required wording for the TABOR Notice. The submission date will expedite print layout and allow the Jurisdiction time to proofread their portion of the TABOR Notice.

4.5 ***Final layout.*** The Jurisdiction shall timely make any modification to the ballot layout requested by the County Clerk. The Jurisdiction shall review and proofread and approve the layout, format, and text of the final draft form of the Jurisdiction's official ballot and, if applicable, TABOR Notice within 24 hours of the County Clerk providing the Jurisdiction with the copy to be proofed.

4.6 ***Testing.*** The Jurisdiction must provide two people to participate in Logic and Accuracy Tests, which will be scheduled during the week of October 5, 2020, and may take place over a number of days.

4.7 ***Cancellation of Election by the Jurisdiction.*** If the Jurisdiction resolves not to hold the election or to withdraw a ballot issue, the Jurisdiction shall immediately provide notice of such action to the County Clerk. Initial notice to the County Clerk may be informal. The Jurisdiction shall provide proof of the Jurisdiction's formal action canceling the election or withdrawing a ballot issue(s) as soon as practicable after the Jurisdiction's formal action. The Jurisdiction shall promptly pay the County Clerk the full actual costs relating to the Jurisdictions

election, both before and after the County Clerk's receipt of such notice. The Jurisdiction shall provide notice by publication of such cancellation or withdrawal of ballot or question(s). The County Clerk shall post notice of the cancellation or withdrawal of ballot issue(s) or question(s) in the office of the County Clerk, and the Election Officer shall post notice of the cancellation at buildings of the Jurisdiction. The Jurisdiction shall not cancel the election after the 25th day prior to the Election as provided in C.R.S. § 1-5-208.

5. PROVISIONS UNIQUE TO SPECIAL DISTRICTS AND OTHER COORDINATING DISTRICTS

5.1 *Boundaries of Jurisdiction.* No later than the date this IGA is signed by the Jurisdiction, the Jurisdiction shall either confirm that the map of its boundaries provided to the County Clerk and County Assessor in January of 2020 is current and accurate or provide an accurate map. The Jurisdiction is responsible for ensuring that its boundaries are accurately defined in the Assessor's database because the County Clerk uses this database to identify eligible voters.

5.2 *Multi-county special district jurisdictions.* If the Jurisdiction's boundaries include areas outside of Boulder County, the County Clerk will communicate with the corresponding counties to create a master list of all property owner ballots issued in this jurisdiction.

5.3 *Non-resident property owners entitled to vote.* Where non-resident property owners may be entitled to vote in the Jurisdiction's election, the County will review a list of such property owners and identify those owners who may be entitled to vote in the Jurisdiction's election. The County will complete the review and create a list of potentially eligible non-resident property owners by September 15, 2020, 48 days prior to Election Day. The County will send this list to the Jurisdiction for review and approval. Once this list has been approved by the Jurisdiction, the Clerk will send non-resident property owners on the final list a letter and self-affirmation to establish eligibility. See **Attachment A – Non-Resident Property Owner Letter** (attached only if applicable). The Clerk will send mail ballots to the non-resident property owners who return to the Clerk the signed affirmation establishing their eligibility.

6. PAYMENT

6.1 *Intent.* This section addresses the reasonable sharing of the actual cost of the Election among the County and the political subdivisions participating in the Election.

6.2 *Responsibility for costs.* The Jurisdiction shall not be responsible for sharing any portion of the usual costs of maintaining the office of the County Clerk, including but not limited to overhead costs and personal service costs of permanent employees, except for such costs that are shown to be directly attributable to conducting the General election on behalf of the Jurisdiction.

6.3 State Election Costs. The State of Colorado's share of the costs of conducting the election shall be reimbursed as established by the Code, and the Jurisdiction shall not be responsible for any portion of the election costs attributable to the state.

6.4 Invoice. The Jurisdiction shall pay the County Clerk the Jurisdiction's share of the Clerk's costs and expenses in administering the Election within thirty days of receiving an invoice from the Clerk. If the invoice is not timely paid by the Jurisdiction, the Clerk, in his or her discretion, may charge a late fee not to exceed 1% of the total invoice per month.

6.5 Cost Allocation. The County Clerk will determine the jurisdiction's invoice amount by allocating to all participants in the ballot a share of the costs specific to the administration of the General election as provided by law. If the Jurisdiction is placing a ballot question that qualifies as a TABOR election, a portion of the TABOR notice publication and mailing costs will also be billed for in the invoice. The Jurisdiction agrees to pay the invoice within 30 days of receipt unless the Clerk agrees to a longer period of time.

6.6 Disputes. The Parties shall attempt to resolve disputes about the invoice or payment of the invoice informally. If the Parties cannot reach an informal resolution, disputes regarding the invoice or the payment of the invoice shall be filed in Boulder County or District Court, depending on the amount.

7. MISCELLANEOUS

7.1 Notices to Parties. Notices required to be given by this IGA are deemed to have been received and to be effective: (1) three 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 fax or email was received to the fax numbers or email addresses of the Parties as set forth below or to such party or addresses as may hereafter be designated in writing.

To County Clerk:

Molly Fitzpatrick

1750 33rd St., Suite 200

Boulder, CO 80301-2546

303-413-7700

Fax: 303-413-7728

E-mail: mfitzpatrick@bouldercounty.org

To Election Officer:

Phyllis Hardin, Town Clerk

124 E. Coal Creek Drive

Superior, CO 80027

303-499-3675

Fax:

E-mail: phyllish@superiorcolorado.gov

7.2 Amendment. This IGA may be amended only in writing, and following the same formality as the execution of the initial IGA.

7.3 Integration. The Parties acknowledge that this IGA constitutes the sole agreement between them relating to the subject matter of this IGA and that no party is relying upon any oral representation made by another party or employee, agent or officer of that party.

7.4 **Waiver of claims.** The Jurisdiction has familiarized itself with the election process used by the County Clerk and waives any claims against the Clerk related to the Clerk's processing or administration of the Election except as specified in paragraph 7.5 below and claims arising out of willful and wanton acts of the Clerk.

7.5 **Limitation of damages.** If a lawsuit is filed challenging the validity of the Jurisdiction's election, the Jurisdiction shall provide prompt notice to the County Clerk of such a lawsuit. If the Clerk chooses to intervene and defend its position, the Jurisdiction will support such intervention and cooperate in the defense of any such claims. If, as a result of a lawsuit against the Jurisdiction or against the Jurisdiction and other defendants by a third party, a court of competent jurisdiction finds that the Jurisdiction's election was void or otherwise fatally flawed due solely to a cause arising from the negligence of the County Clerk, then the Clerk shall refund all amounts paid to the Clerk under section 6 above. The Clerk shall not be responsible for any other judgment, damages, costs, or fees.

7.6 **Conflicts of this IGA with the Law, impairment.** If any provision in this IGA conflicts with the law, this IGA shall be modified to conform to such law or resolution.

7.7 **Time of the essence.** Time is of the essence in the performance of the work under this IGA. The statutory time requirements of the Code shall apply to completion of the tasks required by this IGA, unless earlier deadlines are required by this IGA.

7.8 **Good faith.** The Parties shall implement this IGA in good faith, including acting in good faith in all matters that require joint or coordinated action.

7.9 **Third party beneficiary.** The enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement shall be strictly reserved to the County Clerk and the Jurisdiction, and nothing contained in this IGA shall give or allow any claim or right of action by any other or third person. It is the express intent of the Parties that any person receiving services or benefits under this IGA shall be deemed an incidental beneficiary.

IN WITNESS WHEREOF, the Parties have signed this IGA.

Boulder County

Jurisdiction

Molly Fitzpatrick Date
Boulder County Clerk and Recorder

Clint Johnson 8/10/2020
Jurisdiction Administrator Date

Phyllis L. Hardin 8/10/2020
Elections Officer Date

