

8/6/19  
BOCC

## **INTERGOVERNMENTAL AGREEMENT FOR SAN JUAN RIVER TAKEOUT**

THIS AGREEMENT (this "Agreement") is made and entered into on the most recent day and year set forth below by and between Town of Pagosa Springs, a municipal corporation and political subdivision of the State of Colorado (the "Town"), whose mailing address is P. O. Box 1859 Pagosa Springs, CO 81147, and Archuleta County, a political subdivision of the State of Colorado (the "County"), whose mailing address is 398 Lewis Street, Pagosa Springs, CO 81147. The Town and the County are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

### **RECITALS**

WHEREAS, both Town and County are organized and existing under and by virtue of the laws of the State of Colorado and possesses plenary power and authority over the use and occupation of the public rights of way within their corporate boundaries; and

WHEREAS, both Town and County desire to acquire and improve a public, San Juan River take-out and access location (the "Take-Out") downstream and south of the Town for the benefit of the community; and

WHEREAS, the Town will be the owner of the property (as defined below, the "Property") upon which the Take-Out will be improved and is working with the Property owner to negotiate the sale; and

WHEREAS, the Parties have agreed to jointly share in the costs of purchasing the Property, annual maintenance and future improvements of the Take-Out; and

WHEREAS, by the authority granted under Colorado law, local governments may enter into agreements with other units of local government for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform; and,

WHEREAS, in an effort to improve San Juan River access in the form of an improved public take-out for rafters and other users, the Town and the County have agreed to cooperatively purchase Property and improve and maintain the Take-Out; and,

WHEREAS, the Parties find that the performance of this Agreement is in the best interest of both the Town and the County and that this undertaking will benefit the public.

NOW THEREFORE in consideration of the mutual agreements of the Town and the County in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Town and the County agree as follows:

## TERMS OF AGREEMENT

1. The Property. The property upon which the Take-Out improvements will be developed is roughly one acre in total size and consists of a half-acre along the San Juan River and a half-acre on the west side of Trujillo Road. The property is further defined in Exhibit A. The property is located roughly twelve (12) miles south of the Town Boundaries.
2. Term. The agreement shall be in effect upon the signing of both Parties. The Term of the Agreement shall be a period of fifteen (15) years from and after the date of the Agreement, unless sooner terminated as provided in this Agreement.
3. Representatives. Each Party shall designate, prior to commencement of work, its project representative (the "Representative") who shall make, within the scope of his or her authority, all necessary and proper decisions for the designating Party with reference to the terms of this Agreement. The Parties' Representatives may designate a Joint Representative who shall serve on behalf of both Parties as the Coordinator for all or any mutually-agreed upon aspect of managing the construction, installation, operation, repair, and maintenance of the improvements and the Take-Out. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the Joint Representative, if appointed, or otherwise to the Parties' Representatives. The Parties shall notify one another in writing of the designation and contact information of their Representatives and any changes during the term of this Agreement.
4. Property Purchase. In acknowledgement that the Take-Out is a benefit to the residents and visitors of both Parties, The Town and County shall jointly share in the purchase price of the Property. This includes, but is not limited to purchase price, surveying costs, title work, a policy of title insurance, closing costs, recording of documents, and related costs. At the time of this agreement, it is assumed that the Friends of the Upper San Juan shall contribute one third of the purchase price. County shall waive all fees for the purpose of this project related to development services and others that may occur.
5. Initial Improvements. The Parties shall jointly share in making the initial improvements of the Take-Out as set forth in this paragraph. The County shall, at its sole costs, provide grading of the parking area and beach/landing area under the supervision of the Town Public Works staff. Fencing and signage shall be installed by the Town, the cost of which shall be shared jointly by the Parties. The Town shall own all initial improvements to the Take-Out constructed or installed on the Property.
6. Future Improvements. By mutual, written agreement, the Parties may budget for and jointly fund the construction and maintenance of additional improvements to the Property. Future improvements are contemplated to include application of fill dirt to level the embankment to the road, surface grading, and application of gravel/road base. Additional signage, fencing and other improvements may be added in the future, as needed.

7. Annual Maintenance of the Take-Out. The Town shall maintain the property free of trash and debris, and maintain and repair as needed the fencing and signage. The Town may fulfill its maintenance responsibilities through agreement with the Friends of the Upper San Juan River, or other organizations or individuals. The County waives all dump fees associated with disposing of trash and debris collected at the Property.
8. Operation of the Take-Out. The Town shall have the sole authority to promulgate rules and regulations pertaining to all aspects of the operation and use of the Take-Out, including, but not limited to night and seasonal closures, parking, required safety equipment, and observation of safety rules. The Town, as it deems reasonable in its sole discretion, may impose conditions on the use of the Property and the Take-Out, may post signage regarding use and warnings, and may require agreements and waivers of liability from users.
9. Other Uses. The County shall be permitted to access the Property to withdraw water from the San Juan River as needed and legally permitted.
10. Insurance and Liability. The Town, as owner of record, shall include the Property and Improvements on its insurance policy. Nothing herein shall be construed to require the Town to indemnify or hold the County harmless from claims and liabilities of third parties associated with use of the Property and Take-Out.
11. No Waiver of Governmental Immunity: The Parties hereto understand and agree that the County, its commissioners, officials, officers, directors, agents and employees, and the Town, its council members, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities, defenses and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the County and Town. In addition, County, its commissioners, officials, officers, directors, agents and employees, and the Town, its council members, officials, officers, directors, agents and employees do not waive or intend to waive by any provisions of this Agreement, the rights, immunities and protections afforded the Parties by the Owners of Recreation Areas statutes, § 33-41-101 *et seq.*, C.R.S.

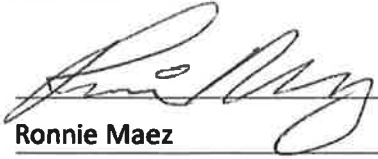
#### GENERAL PROVISIONS

1. This Agreement may be terminated by the mutual written consent of both Parties.
2. Either Party may terminate this Agreement under any of the following conditions:
  - a) For any or no reason upon thirty (30) days prior written notice from the terminating Party to the other Party.
  - b) If the other Party fails to perform any of the provisions of this Agreement, in accordance with its terms, and after receipt of written notice from the terminating Party, fails to correct such failures within ten (10) calendar days or such longer period as the terminating Party may authorize in writing.

- c) If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work or activities contemplated under this Agreement is prohibited or the terminating Party is prohibited by law from paying for such work from the planned funding source(s) such termination to take effect no sooner than thirty (30) days following prior written notice from the terminating Party to the other Party.
3. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
4. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
5. Both Parties shall perform the services contemplated under this Agreement as independent contractors and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. Both Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. Without limiting the generality of the foregoing, both Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) The Americans with Disabilities Act of 1990; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
7. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
8. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either Party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of either Party to enforce any provision of this Agreement shall not constitute a waiver by that Party of that or any other provision.
9. The laws of the State of Colorado shall govern the validity, interpretation, performance and enforcement of this Agreement and any dispute involving this Agreement without regard to conflicts of laws principles.

**THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.**

**ARCHULETA COUNTY**

By:   
Name: Ronnie Maez  
Title: Chairman, Board of County Commissioners  
Date: August 6, 2019

**TOWN OF PAGOSA SPRINGS**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**EXHIBIT A: PROPERTY DESCRIPTION AND MAP**

LEGAL DESCRIPTION, RIVER TAKEOUT 7/9/2019

A tract of land situated in the southeast corner of the southwest 1/4 of the southeast 1/4 of Section 3, Township 33 North, Range 2 West of the New Mexico Principal Meridian, Archuleta County, Colorado being further described as follows:

Beginning at the southeast corner of said SW 1/4, SE 1/4, Sec. 3 which is a point in the traveled gravel way of County Road 500 approximately at mile 11.7. From this point of beginning, the USDI BLM witness corner for this same point lies N 88°40'22" W at a distance of 74.97 feet; Thence N 02°07'20" E along the east line of said SW 1/4, SE 1/4, Sec. 3 to the center of the San Juan River at a distance of 137.78 feet, Said center of the San Juan River is a meander boundary, changing over time and defined as the midway between opposite banks of the river at the vegetation line;

Thence N 42°19'03" W along said meandered center of the San Juan River for a distance of 107.33 feet;

Thence N 29°41'11" W along said meandered center of the San Juan River for a distance of 145.93 feet;

Thence S 25°59'04" W leaving the center of the San Juan river for a distance of 127.22 feet to a 1/2" rebar and 2" aluminum cap stamped WC, LS 23909;

Thence S 25°59'04" W and crossing the traveled gravel way of County Road 500 for a distance of 142.15 feet to a 1/2" rebar and 2" aluminum cap stamped LS 23909;

Thence S 52°03'31" E for a distance of 160.44 feet to a 1/2" rebar and 2" aluminum cap stamped LS 23909 along the south line of said SW 1/4, SE 1/4, Sec. 3;

Thence S 88°40'22" E along the south line of said SW 1/4, SE 1/4, Sec. 3; for a distance of 55.99 feet to the USDI BLM witness corner for said southeast corner of SW 1/4, SE 1/4, Sec. 3;

Thence S 88°40'22" E along the south line of said SW 1/4, SE 1/4, Sec. 3; for a distance of 74.97 feet to the true southeast corner of said SW 1/4, SE 1/4, Sec. 3 in the traveled gravel way of County Road 500;

which is the point of beginning,  
having an area of 1.198 acres

END OF DESCRIPTION



# BOUNDARY SURVEY & EXEMPTION PLAT

A TRACT OF LAND AT MILE 11.7 TRUILLO ROAD, COUNTY ROAD 500,  
A PORTION OF THE SW 1/4 OF THE SE 1/4, SECTION 3, T-33-N, R-2-W, NMPM  
NEAR PAGOSA SPRINGS, ARCHULETA COUNTY, COLORADO.



**PROPERTY DESCRIPTION**

A tract of land situated in the southeast corner of the southwest 1/4 of the southeast 1/4 of Section 3, Township 33 North, Range 2 West of the New Mexico Principal Meridian, Archuleta County, Colorado being further described as follows:

Beginning at the southeast corner of said SW 1/4, SE 1/4, Sec. 3 which is a point in the unweeded gravel way of County Road 500 approximately at mile 11.7. From this point, beginning, the USDI BLM monument corner for this same point lies N 88° 02' 21" W at a distance of 74.97 feet; thence S 102° 01' 10" W at a distance of 107.18 feet to the southeast corner of the San Juan River at a distance of 132.78 feet. Said corner of the San Juan River is the center of the river changing over time and defined as the midway between opposite banks of the river at the vegetation line.

Thence N 42° 19' 03" W along said meandered center of the San Juan River for a distance of 107.13 feet;

thence N 39° 41' 11" W along said meandered center of the San Juan River for a distance of 145.93 feet;

Thence S 25° 59' 04" W leaving the center of the San Juan River for a distance of 127.22 feet to a 1/2" rebar and 2" aluminum cap stamped W.C. LS 21909;

Thence S 25° 59' 04" W said crossing the unweeded gravelled way of County Road 500 for a distance of 142.15 feet to a 1/2" rebar and 2" aluminum cap stamped L.S. 23909;

Thence S 52° 03' 31" E for a distance of 160.44 feet to a 1/2" rebar and 2" aluminum cap stamped L.S. 23909 along the south line of said SW 1/4, SE 1/4, Sec. 3;

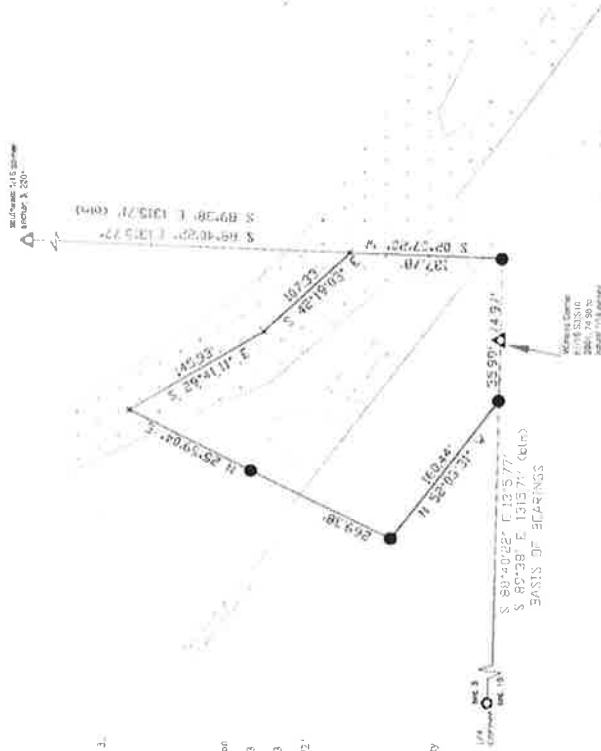
thence along the south line of said SW 1/4, SE 1/4, Sec. 3 for a distance of 55.99 feet to the southeast corner of said SW 1/4, SE 1/4, Sec. 3;

Thence S 88° 40' 22" E along the south line of said SW 1/4, SE 1/4, Sec. 3 for a distance of 74.97 feet to the true southeast corner of said SW 1/4, SE 1/4, Sec. 3 in the unweeded gravel way of County Road 500;

whence is the point of beginning;

having an area of 1.198 acres.

END OF DESCRIPTION



**SURVEYORS CERTIFICATION**

I, the undersigned, being duly sworn, depose and say that I am a duly Licensed Professional Surveyor in the State of Colorado, and that I am the author of the foregoing plat, and that the same is a true and correct representation of the facts as shown to me by the parties thereto, and that I am not aware of any fraud or illegality in the execution of the same, and that I am not aware of any fraud or illegality in the execution of the same, and that I am not aware of any fraud or illegality in the execution of the same.



1" = 50 FEET (NOT SCALE) 1" = 100' 1" = 200'

**CLERK AND RECORDERS CERTIFICATE**

County of Archuleta  
I hereby certify that this instrument was duly filed  
at \_\_\_\_\_ o'clock of the \_\_\_\_\_ day of \_\_\_\_\_ 2008  
Recorder number \_\_\_\_\_  
By \_\_\_\_\_  
Clerk and Recorder

**Mountain Land Assoc.**  
1111 W. 1st Ave.  
Pagosa Springs, CO 81429

**BOUNDARY SURVEY & EXEMPTION PLAT**  
A TRACT OF LAND AT MILE 11.7 TRUILLO ROAD, COUNTY ROAD 500,  
A PORTION OF THE SW 1/4 OF THE SE 1/4, SECTION 3, T-33-N, R-2-W, NMPM  
NEAR PAGOSA SPRINGS, ARCHULETA COUNTY, COLORADO

**State of Colorado**  
The State of Colorado, being duly sworn, depose and say that I am a duly Licensed Professional Surveyor in the State of Colorado, and that I am the author of the foregoing plat, and that the same is a true and correct representation of the facts as shown to me by the parties thereto, and that I am not aware of any fraud or illegality in the execution of the same, and that I am not aware of any fraud or illegality in the execution of the same.