

INTERGOVERNMENTAL AGREEMENT FOR ASPEN SPRINGS PLAYGROUND

This Agreement (the "Agreement") is made and entered into on the most recent day and year set forth below by and between Aspen Springs Metropolitan District, a metropolitan district formed pursuant to the Special District Act, C.R.S. § 31-1-101 *et seq.* (the "ASMD"), whose mailing address is P.O. Box 488, Pagosa Springs, CO 81147, and Archuleta County, a political subdivision of the State of Colorado (the "County"), whose mailing address is P.O. Box 1507, Pagosa Springs, CO 81147. The ASMD and the County are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

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

WHEREAS, both the ASMD and County desire to acquire and improve a public playground (the "Playground") for the benefit of the community; and,

WHEREAS, the County will be the owner of the equipment (as defined below, the "Equipment") which will be installed on real property owned by the ASMD; and,

WHEREAS, the ASMD will be responsible for the maintenance of the Equipment and management of the Playground; and,

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

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

TERMS OF AGREEMENT

1. **The Playground.** The property on which the Playground will be situated is in Aspen Springs, a subdivision in Archuleta County, Colorado, and located at 911 Ute Drive, Pagosa Springs, CO 81147. The property is owned by ASMD.
2. **The Equipment.** The Equipment shall be playground equipment to be purchased and installed through Game Time Company, as shown in the attached Exhibit A.
3. **Term.** This Agreement shall be in effect upon the signing of both Parties. The Term of the Agreement shall be until the Equipment is replaced or removed from the Playground.

4. 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’ Representative 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 Equipment. 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.
5. Equipment Purchase. The County shall purchase the Equipment, at a cost not to exceed \$117,246.70 from monies within the Conservation Trust Fund. The County shall waive all fees for the purpose of this project related to development services and others that may occur.
6. Improvements. The ASMD shall, at its sole costs, remove any existing equipment, if necessary, on the property and provide grading of the area. Any fencing and signage shall be installed by the ASMD, the cost of which shall be borne by ASMD. The County shall own the Equipment purchased and installed on the Playground.
7. Maintenance of the Playground and Equipment. ASMD shall maintain the Playground and the Equipment in accordance with the recommended maintenance plan from the Equipment’s manufacturer. ASMD is solely responsible for the upkeep and maintenance of the Playground and the Equipment. Any repairs to the Equipment may be contracted out, at the sole expense of the ASMD. If the County reasonably believes that ASMD is not maintaining the Playground and/or Equipment in accordance with the recommended maintenance plan from the Equipment’s manufacturer or to the County’s satisfaction, the County reserves the right to enter upon the Playground and perform maintenance on the Equipment and ASMD shall reimburse the County the cost of such maintenance within thirty (30) days of receiving an invoice or similar billing statement from the County.
8. Operation of the Playground. The ASMD shall have the sole authority to promulgate rules and regulations pertaining to all aspects of the operation and use of the Equipment, including, but not limited to night and seasonal closures, parking, required safety equipment, and observation of safety rules. The ASMD, as it deems reasonable in its sole discretion, may impose conditions on the use of the Playground and the Equipment, may post signage regarding use and warnings, and may require agreements and waivers of liability from users.
9. Compliance with The Americans with Disabilities Act of 1990. ASMD is solely response for ensuring that the Playground and the Equipment are installed and maintained in accordance with all of the applicable requirements of The Americans with Disabilities Act of 1990 (the “ADA”), and for any and all costs associated with complying with said ADA requirements.

10. Insurance and Liability. The ASMD shall include the Playground and Equipment on its own insurance policy with the County as an additional insured. Nothing herein shall be construed to require the ASMD to indemnify or hold the County harmless from claims and liabilities of third parties associated with use of the Playground and Equipment unless such claim is based in any way upon a failure by ASMD to properly maintain the Equipment and/or to properly operate the Playground. If such claim is made against the County, ASMD is required to defend the County against such claim and indemnify the County against any loss, damage or judgment, including but not limited to court costs and attorney's fees.
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 ASMD, its directors, officials, officers, agents and employees, are relying on, and do not waive or intend to waive by any provision 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 ASMD. In addition, the County, its commissioners, officials, officers, directors, agents and employees, and the ASMD, its directors, officials, officers, agents and employees do not waive or intend to waive by any provision 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

12. This Agreement may be terminated by the mutual written consent of both Parties.
13. 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.
14. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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.
20. The substantive laws of the State of Colorado (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Venue for any action hereunder shall be in the District Court, County of Archuleta, State of Colorado. The Parties expressly waive the right to bring any action in or to remove any action to any other jurisdiction, whether state or federal.

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: Alvin Schaaf
Title: Chair, Archuleta Board of
County Commissioners
Date: _____

**ASPEN SPRINGS METROPOLITAN
DISTRICT**

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

(Anticipated Equipment and Layout)