

GREAT OUTDOORS COLORADO SCHOOL YARD INITIATIVE GRANT
SPONSORSHIP ON BEHALF OF SKYWAY ELEMENTARY

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement (“IGA”), dated for reference this ___ day of _____, 2020 is made by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city (“City”) and School District 12 (“District”) for the School Yard Initiative grant at Skyway Elementary located at _____ (the “Property”). The City or the District may be referred to herein individually as a “Party” or collectively as the “Parties.”

A. RECITALS

1. The City is an eligible applicant for a Great Outdoors Colorado (“GOCO”) School Yard Initiative grant as defined by GOCO as an incorporated municipality or special district that receives Conservation Trust Funds from the Department of Local Affairs.
2. The District desires a new playground at the Property, but it is not an eligible recipient for a School Yard Initiative grant.
3. The City agrees to provide sponsorship as an eligible applicant in support of the grant application to GOCO. The City will be the submitting entity through which District will receive the benefit of the grant.
4. The District understands and acknowledges that it will be bound to the obligations of the GOCO School Yard Initiative grant agreement (“Grant Agreement”) and shall be responsible for all obligations required for performance of the Grant Agreement if funds are awarded for this project.
5. The Parties are authorized under Colorado Revised Statute (“C.R.S.”) § 29-1-203 to cooperate and contract with one another to provide the functions, services and facilities contemplated by the Grant Application.

NOW THEREFORE, in consideration of the mutual promises stated below and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

B. INTERGOVERNMENTAL AGREEMENT TERM

This IGA shall commence upon the award of the GOCO grant (“Grant”) on _____, 2020 and shall terminate when the District no longer owns and maintains the property as required in the Grant Agreement.

C. AGREEMENT

1. **Party Responsibilities.** District agrees that it is responsible for design, construction, maintenance, liability and development of the play yard. The City does not assume any obligation of the District to construct, operate or maintain the improvements contemplated by the grant for the play yard.
2. **Maintenance.** The District shall operate and maintain the playground as mandated by the Grant Agreement for a minimum of twenty-five (25) years, in accordance with established District policy for playground maintenance.
3. **Public Access and Right to Use.** The District agrees that when regular scheduled classes are not in session at the Property, the play yard will be open to all persons for public use.
4. **GOCO Grant Administration.** City agrees to act as the GOCO grant administrator. The City further agrees to provide payment of grant monies to the District on a reimbursement basis in accordance with the terms and conditions of the Grant Agreement. The District is responsible for providing updates to GOCO to maintain grant compliance, maintaining invoicing and closeout documentation as required by GOCO.
5. **Grant Project Terms.** The District shall bind itself to the City for all obligations stated in the Grant Agreement.

D. GENERAL TERMS AND CONDITIONS

1. **Approval of City Council.** The Parties understand and agree that the terms, conditions and provisions of this IGA are subject to the approval of the City Council of the City of Colorado Springs, which approval shall be evidenced by a City Council Resolution.
2. **Assignment.** District shall not assign or otherwise transfer this IGA or any right or obligation hereunder without the prior written consent of the City. The City shall not assign or otherwise transfer this IGA or any right or obligation hereunder without the prior written consent of District.
3. **Law.** This IGA is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation. Court jurisdiction shall exclusively be in the El Paso County District Court for the Fourth Judicial District of Colorado. The Parties shall insure that they and their employees, agents, and officers are familiar with, and comply with,

applicable federal, state, and local laws and regulations as now written or later amended.

4. **Termination.** Either Party may, by City Council or District Resolution, terminate this IGA for convenience upon thirty (30) days prior written notice to the other Party. Upon receipt of Notice of Termination, District shall immediately stop all GOCO grant funded work hereunder, and shall immediately cause any suppliers or subcontractors to cease such work. Further, the District and the City may terminate this IGA by mutual agreement. Any agreed upon termination shall be in writing and shall be by the City and District. The City will coordinate reimbursement from GOCO on behalf of the District for services actually performed prior to the termination or during the 30 day notice period in accordance with the GOCO grant up to \$110,000.00. The District may terminate this IGA with the City for the District's convenience upon 30 days' written notice to the City and agrees that the District will be obligated for services actually performed prior to the termination or during the 30 day notice period.
5. **Breach.** It is understood and agreed between the District and City that either Party may terminate this Agreement at any time whenever the other Party has failed to comply with any of the terms, conditions or provisions of this Agreement. Such termination as a result of a breach shall not be effective unless the aggrieved Party has given written notice of the alleged breach and has provided the Party in default at least thirty (30) days to cure the breach. In the event that the notice to cure has been properly served and the defaulting Party is still in breach of the terms, conditions or provisions of this Agreement, then the aggrieved Party shall have the right to terminate the Agreement by written notice.
6. **Waiver.** A waiver by the District or the City of the breach of any term of this IGA shall not operate or be construed as a waiver of any subsequent breach by District or the City, and all remaining provisions of this IGA shall continue in full force and effect.
7. **Headings.** The headings of the several articles and sections of this IGA are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this IGA and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.
8. **Integration and Severability.** The foregoing constitutes the entire agreement between the parties and no additional or different oral representation, promise, or agreement shall be binding on any of the parties hereto with respect to the subject matter of this IGA. Further, the District and the City acknowledge and agree that the text of this agreement was negotiated by the Parties, and that no term shall be construed against the City as the author thereof. If any provisions of this IGA shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.

9. **No Third Party Beneficiary.** It is expressly understood and agreed that enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, and nothing contained in this IGA shall give or allow any such claim or right of action by any other or third person or entity on such IGA. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this IGA, receiving services or benefits under this IGA shall be deemed to be incidental beneficiaries only.
10. **Indemnification and Governmental Immunity.** Both City and District are governmental entities subject to the provisions of Article XI, Section 1 of the Colorado Constitution. Therefore, each party agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to the City by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq. and Article XI of the Colorado Constitution.
11. **Independent Contractor.** In their performance of their obligations under this Agreement, it is understood, acknowledged and agreed between the Parties that the District is at all times acting and performing as an independent contractor. The City shall neither have nor exercise any control or direction over the manner and means by which the District performs its obligations under the IGA other than as stated within the IGA terms and the terms of the Grant Agreement. The District understands and agrees that neither organization nor their employees, agents, servants or other personnel are City employees. The District shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the District, and any of their employees, agents, servants, contractors or other personnel performing services or work under this IGA, whether it be of a direct or indirect nature. Further, it is expressly understood and agreed that for such purposes, neither the District nor their employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, Workers' Compensation, retirement or any other benefits whatsoever.
12. **Severability.** If any provisions of this IGA shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this contract.
13. **Signatory.** Each of the undersigned represents that he or she has full authority to bind their respective entity with regard to the matters contained herein.
14. **Notice.**

Any notice provided in accord with this IGA will be in writing and will be sent by: delivery service, or mailed by certified mail, postage prepaid and return receipt requested to either Party's address as shown ("Notice"). Notice will be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.

FOR DISTRICT:
School District 12
Attention: Superintendent
1775 LaCleda Street
Colorado Springs, CO 80905

FOR CITY:
City of Colorado Springs Parks, Recreation and Cultural Services
Attention: Director
1401 Recreation Way
Colorado Springs, CO 80905

FOR SCHOOL DISTRICT 12:

By: _____ this _____ day of _____, 2020

Walt Cooper, Superintendent

FOR THE CITY OF COLORADO SPRINGS:

By: _____ this _____ day of _____, 2020

John Suthers, Mayor
City of Colorado Springs