

RESOLUTION NO.68-17

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS AND SCHOOL DISTRICT ELEVEN FOR THE SCHOOL YARD INITIATIVE GRANT ON BEHALF OF THOMAS EDISON ELEMENTARY

WHEREAS, the City of Colorado Springs (City), as an incorporated municipality that receives Conservation Trust Fund moneys is an eligible applicant for Great Outdoors Colorado (GOCO) School Yard Initiative grant opportunities; and

WHEREAS, to support partnerships with local schools and subject to an intergovernmental agreement (IGA) regulating the responsibilities of the City and the school responsible for fulfilling the grant's objectives and requirements, the City applied to GOCO and the application resulted in an award of a School Yard Initiative Grant; and

WHEREAS, an IGA between the City of Colorado Springs and School District Eleven is necessary for the administration of the grant funds; and

WHEREAS, pursuant to Colorado Revised Statute § 29-1-203, the City Council has the authority to approve an IGA between the City of Colorado Springs and School District Eleven.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. The IGA between the City of Colorado Springs and School District Eleven pertaining to sponsorship of a Great Outdoors Colorado School Yard Initiative Grant on behalf of Thomas Edison Elementary, a copy of which is attached as Exhibit "A" and incorporated herein by reference, is hereby approved.

Section 2. The Council President is authorized to execute the IGA on behalf of the City.

Section 3. The Mayor or the Mayor's designee is authorized to administer the IGA on behalf of the City.

Dated at Colorado Springs, Colorado this 27<sup>th</sup> day of June, 2017.

ATTEST

  
Sarah B. Johnson, City Clerk

  
\_\_\_\_\_  
Council President

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

INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement, dated for reference this \_\_ day of \_\_\_\_\_, 2017 is made by and between the City of Colorado Springs, a Colorado municipal corporation and home rule city ("City") and School District Eleven ("District") for the School Yard Initiative grant at Thomas Edison Elementary. 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 Thomas Edison Elementary, 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; where the City will be the submitting entity through which Thomas Edison Elementary will receive the benefit of the grant
4. The District understands and acknowledges that it will be bound to the obligations of the grant agreement and shall be responsible for performance of 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 when the grant is awarded on \_\_\_\_\_, 2017 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 Thomas Edison Elementary 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 a 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.
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. **Nonwaiver of Rights.** 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.** 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.

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. **Waiver and Indemnification.** 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. **Notice.**  
FOR DISTRICT:  
School District 11  
Attention: Superintendent  
1115 North El Paso Street  
Colorado Springs, CO 80903

**FOR CITY:**

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

Any notice to the Parties under this Agreement shall be in writing, delivered to the person designated above, who shall act as a point of contact at the indicated address unless otherwise designated in writing. Only United States Mail delivery shall be utilized.

**FOR SCHOOL DISTRICT 11:**

By: N. Gledich this 27 day of April, 2017

Dr. Nicholas Gledich, Superintendent

**FOR THE CITY OF COLORADO SPRINGS:**

By: Richard Skorman this 3 day of August, 2017

Richard Skorman, President  
Colorado Springs City Council