

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF JOHNSTOWN AND
WELD COUNTY SCHOOL DISTRICT RE-5J FOR
JOINT USE OF PIONEER RIDGE DISC GOLF COURSE**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement” or “IGA”) is made and entered into this ___ day of _____, 2022, by and between the TOWN OF JOHNSTOWN, a home rule municipality and political subdivision of the State of Colorado (“Town”), and the WELD COUNTY SCHOOL DISTRICT RE-5J, a political subdivision of the State of Colorado (“School District”), for the purpose of jointly using and operating a disc golf course on the Town property adjacent to Pioneer Ridge Elementary School (“Pioneer Ridge”). The Town and the School District may be collectively referred to as “Parties” and each individually as “Party.”

RECITALS

WHEREAS, the Town owns certain real property adjacent to Pioneer Ridge, commonly known as 2290 Cinnamon Teal Ave, Johnstown, CO, and more particularly described on **Exhibit A**, primarily operated as a public park (the “Property”); and

WHEREAS, certain School District students at Pioneer Ridge have designed a disc golf course for installation on the Property and use by Pioneer Ridge students and members of the public, at designated times (the “Disc Course”); and

WHEREAS, the Town has agreed to allow the Disc Course to be installed on the Property and this Agreement is intended to define the relationship of the parties and the joint use of the Disc Course; and

WHEREAS, the Parties recognize the benefit of working collaboratively to promote ingenuity in School District students and to provide outdoor activities for students and members of the public; and

WHEREAS, intergovernmental agreements between political subdivisions of the State of Colorado to provide functions and services including the sharing of costs of such services or functions are specifically authorized by C.R.S. § 29-1-203; and

WHEREAS, the Parties find that it is in the best interests of the Town and the School District to enter into this cooperative Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants and obligations expressed herein, it is hereby agreed by and between the Town and the School District as follows:

1. DUTIES RELATED TO INSTALLATION AND MAINTENANCE; LICENSE

A. Duties of the School District. The School District shall be solely responsible for the

purchase and installation of the equipment necessary to construct and operate the Disc Course. The School District shall install disc baskets, concrete tee pads for nine (9) disc golf holes and hole signage (the "Equipment"). The School District may, at its discretion, install a disc golf house to make discs available for public use. The School District, however, understands and agrees that, if the School District provides discs for public use, the Town shall not be obligated to maintain, repair or replace such discs.

- B. Duties of the Town.** Upon completion of construction of the Disc Course: (i) the Disc Course shall be owned, operated and maintained by the Town and the School District shall have no further rights and obligations, except for the right to use the Disc Course as provided in Paragraph 2(A); and (ii) the Town shall install signage containing the rules and regulations regarding the use of the Disc Course.
- C. License to School District.** The Town hereby grants a limited license, for the duration of this Agreement, to the School District to enter upon the Property, install the Equipment on the Property and use the Disc Course as provided herein.

2. **JOINT USE**

- A. School District Use.** The School District shall be permitted to exclusively use the Disc Course during regular school hours, between 8:00 a.m. and 4:00 p.m., when school is in session ("School Day"). Members of the public shall not be permitted to use the Disc Course during a School Day.
- B. Town Use.** The Town shall be entitled to permit open public use of the Disc Course on the weekends and any other time that is not a School Day, including after 4:00 p.m. on a School Day.
- C. Liability Coverage.** The Parties shall maintain general liability coverage in the minimum amounts of the per occurrence and aggregate liability limits of the Colorado Governmental Immunity Act, for protection from claims for bodily injury, death, property damage, or personal injury which may arise through the performance of this Agreement. Neither Party shall be liable for any damage, injury, or death related to the other Party's permitted use of the Disc Course.

3. **TERM, RENEWAL AND TERMINATION OF AGREEMENT; NOTICE**

- A. Term; Renewal.** The term of this Agreement shall commence on June 1, 2021 and shall continue in full force and effect until terminated by either party pursuant to Paragraph 3(B).
- B. Termination.** On or after five years from the completion of the construction of the Disc Course, upon written notice to the School District, the Town shall be entitled to terminate this Agreement and remove the Disc Course and any or all Equipment

installed on the Property if they are in a dilapidated condition as determined by the Town as long as the dilapidated condition was not the result of a breach of the Town's obligation to maintain the Disc Course. If the dilapidated condition was not caused by a breach of the Town's obligation to maintain the Disc Course, in response to the written notice, the School District may elect to repair the Disc Course and this Agreement shall be extended for a period of at least 5 years, subject to a future determination under this paragraph 3(B) based on the condition of the Disc Course following the minimum 5-year extension.

- C. **Notice.** Any notice required or permitted by this Agreement shall be in writing and shall be deemed given seventy-two (72) hours after the same has been deposited, certified mail, in any post office or postal box regularly maintained by the United State Postal Service addressed to the School District Superintendent at 110 South Centennial Dr., Ste. A, Milliken, CO 80543, and to the Town Clerk of the Town of Johnstown, 450 S. Parish Avenue, P.O. Box 609, Johnstown, Colorado 80543. A Party may change these addresses at any time by similar notice. Notwithstanding the foregoing, either Party may provide notice via electronic mail ("e-mail") on the condition that the receiving Party acknowledges receipt of the e-mail and does not, upon receipt, object to the form of notice.

4. MISCELLANEOUS PROVISIONS

- A. **Governmental Immunity.** Nothing in this Agreement shall be construed: (i) as a waiver by either Party of immunity provided by common law or by statute, specifically including the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S., as it may be amended from time to time; (ii) as creating an assumption of any duty or obligation with respect to any third party where no such duty previously existed; or (iii) as creating any rights enforceable by such third parties.
- B. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.
- C. **Relationship of the Parties.** It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed as in any way establishing the relationship of co-partners or a joint venture between the Town the School District, or as construing the School District, including its officers, agents, volunteers and employees, as an agent of the Town, or as construing the Town, including its officers, agents, volunteers and employees, as an agent of the School District.
- D. **No Third-Party Beneficiaries.** It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, are strictly reserved to the Parties and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. It is the express intention of the parties that no person and/or entity, other than the undersigned parties, receiving services or benefits under this Agreement shall be deemed any more than an

incidental beneficiary only.

- E. No Waiver of Rights.** No waiver of any right under this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.
- F. Article X, Section 20 of the Colorado Constitution.** The Parties understand and acknowledge that each of the Parties is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all obligations herein are expressly dependent and conditioned upon the continuing availability of funds beyond the term of each Party’s current fiscal period. Obligations payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available in accordance with the rules, regulations, and resolutions of each of the Parties and other applicable law. Notwithstanding any other provision to the contrary, continuation of this Agreement beyond the end of a calendar year is dependent upon the Parties appropriating sufficient funds for payment of the fees due under this Agreement or necessary to perform the Services for such subsequent fiscal year.
- G. Governing Law, Venue and Enforcement.** The terms of this Agreement shall be governed by and construed in accordance with Colorado law. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, Colorado. To reduce the cost of dispute resolution and expedite the resolution of disputes under this Agreement, the Parties waive any and all rights to request a jury trial in any civil action relating primarily to enforcement of this Agreement.
- H. No Presumption.** Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- I. Assignment.** Neither Party shall have the right to transfer or assign, in whole or in part, any or all of its rights, duties or obligations under this Agreement without the prior written consent of the other Party.
- J. Amendment.** This Agreement may not be amended or modified except by a

subsequent written instrument signed by both Parties.

K. Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect.

L. Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

M. Counterparts. This Agreement may be executed in multiple counterpart originals and in such case this Agreement shall have the same force and effect as if all signatures appeared on the same original. An executed copy shall be considered an executed original.

IN WITNESS WHEREOF, the above parties hereto have caused this Agreement to be executed the day and year first above written.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

WELD COUNTY REORGANIZED SCHOOL DISTRICT RE-5J

ATTEST:

By: _____
Sara Hall, Secretary

By: _____
Michael Wailes, Board of Education President

EXHIBIT A
(Legal Description of Property)

A tract of land in the Section 20, Township 4N, Range 67W, Town of Johnstown, County of Weld, State of Colorado, identified as:

JOH 3SF TRACT C STROH FARM FG #3

also known as: Weld County Parcel Number 105920126017

commonly known as: 2290 Cinnamon Teal Avenue, Johnstown, CO