

## Intergovernmental Agreement

This Intergovernmental Agreement ("Agreement") is made and entered into this 28<sup>th</sup> day of July, 2016 by and between the City of Dacono, Colorado, a municipal corporation ("City") and the Carbon Valley Park and Recreation District, a Colorado special district ("District"). The City and the District are collectively referred to as the "Parties".

### 1.0 Recitals

- 1.1. The City and the District are desirous of affecting a cooperative relationship which will achieve maximum community benefits while avoiding duplication of services, expenses, and efforts wherever possible as more fully set forth below.
- 1.2. The District acknowledges that the City has expertise in the areas of park, trail, open space, and athletic field and turf maintenance, and as such, it is appropriate for the District to rely upon the City's expertise in said areas.
- 1.3. The City acknowledges the expertise of the District in the areas of recreation programming, scheduling and management, as well as athletic infield maintenance and, therefore, it is appropriate for the City to rely upon the expertise of the District in such areas.
- 1.4. The City acknowledges and specifically encourages the role the District plays in the management of recreational activities. The City recognizes the benefits to the public of the on-going viability of the District, and the City acknowledges that it does not intend to be actively involved in recreation management, scheduling, or administration in the areas that include, but are not limited to youth, senior, and adult recreation programming.
  - A. The District was duly formed to provide recreation facilities and services to the City of Dacono, Town of Firestone and the Town of Frederick, and is duly authorized by state law to provide such facilities and services.
  - B. Areas of the City are included within the boundaries of the District.
  - C. The City is authorized by state law to provide recreation facilities and services, and owns and continues to actively plan and develop a comprehensive park and trail system for the benefit of the City and its residents.
  - D. The District is authorized by state law to provide recreation facilities and services and has been actively planning, constructing and maintaining, in conjunction with the City, a BMX facility for the purpose of bicycle moto-cross races and programs for the benefit of the City and its residents.

- E. The District has the financial ability to contribute toward improvements and provide for basic maintenance of the BMX facility.
- F. The City has the financial ability to contribute toward improvements and assist with major maintenance of the BMX facility.
- G. The City shall continue its policy of requiring that all new annexations to the City or developments within the City petition for inclusion into the District.
- H. The Parties find that it is in the best interests of the residents of the City and of the District that the Parties enter into this Agreement to set forth certain mutual understandings with respect to the provision of recreational facilities and services.
- I. Pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and C.R.S. section 29-1-201, et seq., the City and the District may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each.
- J. The City finds that it has the authority to enter into the agreements set forth herein, and the District finds that it has the authority to enter into the agreements set forth herein.
- K. The Parties find that it is beneficial to the taxpayers and residents of the Parties to cooperate with respect to the provision of recreation facilities and services, and that such cooperation will enhance efficient provision of such facilities and services.
- L. The Parties find that the efficient provision of such facilities and services will be enhanced through this Agreement.
- M. The Parties intend that this Agreement replace in its entirety that Intergovernmental Agreement previously entered into between the Parties dated November 28, 2001.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City and the District agree as follows:

## **2.0 Scope of Agreement**

This Agreement is intended to set forth certain general understandings of the Parties regarding their relationship and their provision of recreation facilities and services to residents within the City and the District. This Agreement is also intended to set forth the Parties' specific responsibilities concerning the use, management, operation and maintenance of certain City-owned parks that are jointly used for recreation services. This Agreement is not intended to preclude additional agreements between the Parties, subsequent to this Agreement.

## **3.0 General Responsibilities of the City**

The City will have the following general responsibilities with respect to the following matters of mutual interest to the City and the District:

- 3.1 The City will use its best efforts to add a condition of approval to any Resolution or Ordinance approving a development application for property that is not within the District requiring a valid petition for inclusion be submitted to the District for any property that is not already included within the District. Such best efforts shall not require that the City commence or join in any litigation regarding the enforcement of this provision.
- 3.2 So that the District will have the opportunity to comment on development proposals, the City will (or require the applicant to) mail to the District a referral package on all new developments within the City no later than fifteen (15) days prior to the Planning Commission's consideration of such development proposal. However, if the City or applicant inadvertently fails to mail such referral it shall not constitute a breach of this Agreement. Nor will the City be required to delay or cancel any scheduled Planning Commission or associated City Council public hearing.
- 3.3 The City will own and develop neighborhood, community and regional parks and trails within the City.
- 3.4 The City will continue to pay for the watering of City-owned regional parks.

#### **4.0 General Responsibilities of the District**

The District will have the following general responsibilities with respect to the following matters of mutual interest to the City and the District:

- 4.1 The District will provide and maintain a current contact list for the City's Public Works Manager and Chief of Police with current contact information for a District representative to be contacted in the case of emergency related to any District activity or event within the City. The District shall notify the Public Works Manager and Chief of Police in writing of any change of designated representative or such representative's contact information.
- 4.2 Representatives of the District shall provide the City Council with quarterly updates that include information on current and planned services and facilities, and other issues related to implementation of this Agreement, and other matters of mutual interest.
- 4.3 The District shall update its service plan or other necessary filings, as may be necessary to assure that it can include properties into the District that may annex into Dacono.
- 4.4. The District shall only include property within the District that are within the City of Dacono, the Town of Frederick or the Town of Firestone.
- 4.5 The District shall not enter into any agreement with City of Dacono, Town of Firestone or Town of Frederick or properties in unincorporated Weld County to provide specific facilities or services that are inconsistent with the Master Plan approved by the District.

#### **5.0 Terms of Joint Use for Parks**

- 5.1. Parks and Uses. The provisions of this Section 5 are intended to govern the Parties' use, management, operation and maintenance of certain City-owned parks that are to be utilized jointly by the District and City for the provision of District-scheduled recreation activities, City events, and other uses. Such parks include, and the provisions of this Section 5 apply to, all City parks for appropriate use by the District, with the exception of Centennial Field and the Splash Pad located at Clem DuFour Park.

- 5.2. Regular District Uses Scheduling. The District shall be entitled to program and use the Parks for scheduled Regular District Uses and non-District uses which shall consist of repetitive, on-going programs and uses throughout typical sports seasons. The District shall provide to the City full season schedules for all Regular District Uses on all Parks. Full season schedules will designate which events are District and non-District uses. Proposed schedules shall be provided to the City at least thirty (30) days in advance of the commencement of the season. The District shall provide the schedules in electronic format. The schedules shall indicate the type of District Use as well as the specific dates and times thereof. Within seven (7) days of receipt of the schedule, the City will advise the District of any City-planned events or activities and the District upon receipt of such information will adjust its schedules to include and provide for the City-planned events and activities. The District shall notify the City seven (7) days in advance of any proposed changes in the schedules, unless the change is due to inclement weather. Further, the City shall have the right with sixty (60) days written notice to add a City event or activity to the schedule, in which case the District shall adjust the schedules and/or field assignments to include and provide for the City event or activity.
- 5.3. City Uses Scheduling. For Centennial Field, the City will limit District programming and use before and after the annual Music & Spirits Festival, which takes place on the first Saturday in August. The City will coordinate with the District annually to block out specific dates of use of the Field so the City can perform necessary care and maintenance before and immediately after the event. Because the City prohibits renting or reserving the Splash Pad at Clem DuFour Park, the District will not be allowed to rent or reserve that amenity.
- 5.4. Field Allocation and Rental. The District shall utilize a Field Allocation and Rental Policy and Procedure for the permitting of Park use and the collection of fees for various regular uses by non-District parties including by not limited to recognized and non-recognized sports associations for athletic purposes. Under the terms of this agreement, all such rental revenues will be retained by the District, unless a separate agreement between the City and the District is executed for specific events.
- 5.5. Concessions. Until such time as permanent concession facilities are built, the District shall be permitted to operate concessions at the BMX Facility. Such concessions shall be limited to food and beverages and merchandise directly related to the District Uses. District concessions shall be operated only when scheduled District Uses are being conducted. Concessions will be offered at the sole discretion of the District. The District shall be solely responsible for compliance with all federal, state, county and local health and other regulations related to its operation of the concessions, including the collection of applicable sales tax. Under the terms of this agreement, all revenues from the sale of concessions will be retained by the District, unless a separate agreement between the City and the District is executed for specific events.

- 5.6 Night BMX Facility Use. No night practices or races at the BMX Facility shall commence later than 9:00 p.m.; further, all night practices and races shall end, and the track shall be vacated and lights turned off, no later than 10:00 p.m.
- 5.7 Restroom Facilities. The District may at no cost to the City arrange and be responsible for the placement, operation, maintenance and upkeep of port-a-lets at Parks used for District Uses. The port-a-lets shall be placed in locations designated by the City.
- 5.8 Site Supervisor. The District may, at no cost to the City, provide a site supervisor for District Uses at the BMX Facility and City parks. The site supervisor shall be an employee or contractor of the District. The site supervisor shall be responsible for locking/unlocking facilities and fields where required, trash pick up and general maintenance after each function. The site supervisor and other District employees or contractors shall be easily identifiable during District functions conducted on City-owned fields. The District shall be solely responsible for the hiring, supervision and evaluation of the site supervisor and all District employees while utilizing the Parks for District purposes, including without limitation the provision of all compensation and all workers compensation and other coverages. No employment relationship, express or implied, shall exist between the City and such persons.
- 5.9 Field Maintenance. The City shall provide for general field maintenance for the Parks, to include mowing, watering, fertilization, and provision of necessary utilities.
- A. Level of Service – Field Maintenance. It is the desire of the District to identify the need for an increase in the service level on game fields. To properly maintain safe playing conditions, level of service standards must be established and adhered to by the Parties. Level of Service Standards would address issues such as proper mowing heights and surface conditions – eliminate low spots, fill in slide areas, and back fill pitching mounds. To establish the level of service standards the Parties shall work jointly together to implement the increased level of service on the athletic fields. As athletic fields and parks in the City are developed, the Parties will identify those facilities that are to be utilized as “game” facilities and those that are primarily used as “practice” facilities.
- 5.10 District Equipment. Any District equipment proposed to be stored at the Parks shall be stored in facilities and locations approved by the City. The City shall have no responsibility, liability, or obligation with respect to the safety or security of any stored District equipment or other District property placed or located on, at, or in the Parks, it being acknowledged and understood by the District that the safety and security of any such property is the sole responsibility and risk of the District.

Banners, flyers and signs may be installed only upon prior approval of the City and in locations designated by the City.

- 5.11 Capital Improvements. The District shall not make any capital improvements to the Parks without the prior written consent of the City, as evidenced by a writing signed by the City Mayor or City Administrator upon approval of City Council. The City and District may utilize addenda to this Agreement to memorialize City consent for and the Parties agreement concerning the completion, ownership and financing of any capital improvements. Unless otherwise provided in such an addendum, all capital improvements shall be owned by the City. If agreed to by the City, such an addendum may also provide for a credit against the annual maintenance fee for District costs incurred for a capital improvement to be owned by the City. Nothing herein shall be construed to require the granting of any such credit or the execution of any capital improvement addenda or letter.
- 5.12 Capital Improvements Planning. The District and the City will meet during annual budget preparation to discuss any planned capital improvement projects for the following year. Any projects discussed that require joint funding shall be subject to approval by both the City and District during their respective budget approval process.
- 5.13 Grant Applications and Awards. The District and the City will make its best efforts to coordinate grant applications to assist with any planned capital improvements. The District will first obtain City approval before submitting any grant application to any organization or agency if any part of awarded funds will be used for programming or capital improvements in the City of Dacono. The City may choose to partner or support grant applications on a case-by-case basis.
- 5.14 Rules of Use of Parks. During District Uses, District staff and its contractors shall make reasonable efforts to ensure the Parks are used in compliance with applicable rules. Incidents of vandalism or other conduct that may be in violation of law or use rules shall be reported to the City Manager, Chief of Police or Public Works Manager, as appropriate.
- 5.15 Insurance. The District and City agree each shall carry and maintain throughout the term of this Agreement public entity liability insurance in an amount of not less than \$1,000,000 combined single limit for bodily injury and property damage.
- 5.16 One-Day Events and Tournaments. One-day events and tournaments shall be subject to the following additional requirements; in the event of any conflict between the provisions of this Subsection and the other provisions of Section 5, this Subsection shall control:
  - A. For all one-day events and tournaments, the District will be responsible for communicating the use schedule to the City's field maintenance supervisor within an agreeable timeframe. Under the terms of this agreement, all

revenues will be retained by the District, unless a separate agreement between the City and the District is executed for specific events.

- B. For all one-day events and tournaments, there shall be paid field rental fees at rates established by the District and made payable to the District. Under the terms of this agreement, all revenues will be retained by the District, unless a separate agreement between the City and the District is executed for specific events.
- C. For one-day events and tournaments held on a weekday (Monday-Friday), District staff shall provide one field prep per field each day. Any further field preparation on weekdays—for example, raking or re-chalking fields—shall also be the responsibility of the District.
- D. For one-day events and tournaments held on weekends (Saturday-Sunday), District staff shall provide at least one field prep per field each day. Any further field preparation on weekends—for example, raking or re-chalking fields—shall also be the responsibility of the District.
- E. A tournament for the purposes hereof means any series of games other than Regular District Uses, and includes without limitation events such as Triple Crown, USSSA or Little League baseball and softball tournaments, soccer tournaments and similar events, whether or not the District is a sponsor.
- F. A one-day event for the purposes hereof means any series of games held within one day other than Regular District Uses.
- G. Notice of all one-day events and tournaments will be provided to the City at least fifteen (15) days in advance.

## **6.0 Terms of Use of BMX Facility**

- 6.1 The BMX Facility is owned by the City. Any movable equipment or items purchased by the District shall remain the property of the District.
- 6.2 The City is responsible for contributing to improvements, such as the periodic re-building of the turns at the BMX Facility. The City shall work with the District to schedule said improvements at a time that does not interfere with recreational programs or scheduled races.
- 6.3 The District is responsible for contributing to improvements found to be necessary to the safe-operation of the facility other than the periodic re-building of the turns at the BMX Facility. Routine maintenance, other than major improvements, shall be the responsibility of the District.



- 6.4 The City grants the District the right to use the BMX Facility. Participants in District programs have the exclusive right to the BMX Facility during races and recreational programs that are scheduled in advance. The District shall provide the City with a schedule of events in advance of activities developed by the District or other affiliated sanctioning organizations. In addition to the advance schedule, any special regional, State or national events will also be separately communicated to the City at least fifteen (15) days prior to such event. It is understood that such schedule may be modified occasionally as circumstances arise at which time the District will provide the City with at least seven (7) days' notice of said changes.
- 6.5 The City shall have exclusive use of the BMX Facility at times when the facility is not in use by the District. These periods of time shall be referred to in this Agreement as "City Usage".
- 6.6 The District shall have the right during District programs and District affiliated races to charge fees in connection with recreational programs utilizing the BMX Facility and retain all revenues related to track operations, unless a separate agreement between the City and the District is executed for specific events.

## **7.0 Liability**

- 7.1 To the extent permitted by law, the City agrees to indemnify and hold harmless the District, agents and employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the City's use, operation, maintenance or management of City Parks or other City-owned facilities pursuant to this Agreement or which are caused by, or claimed to be caused by, the act, omission, or other fault of the District, its agents and employees.
- 7.2 To the extent permitted by law, the District agrees to indemnify and hold harmless the City, and its officers, agents and employees, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with the District's use, operation, maintenance or management of City Parks or other City-owned facilities pursuant to this Agreement or which are caused by, or claimed to be caused by, the act, omission, or other fault of the District, its officers agents and employees.

## **8.0 Term.**

This Agreement is subject to annual review but will remain in effect until December 31, 2019, unless sooner terminated by mutual written agreement or as provided in this Section. Either party may terminate this Agreement upon sixty (60) days' prior written notice in the event of a material breach if such breach is not cured within sixty (60) days of written notice of breach. Any notice of breach

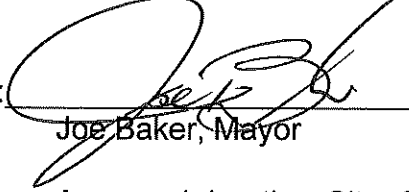
shall state with particularity the alleged breach, and the applicable cure period may run concurrently with the 60-day period for notice of termination.

**9.0 Miscellaneous Provisions.**

- 9.1. This Agreement is made solely for the benefit of the Parties hereto and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as parties hereto.
- 9.2. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- 9.3. The City and the District shall comply with any and all otherwise applicable and valid state, federal or local laws or regulations in relation to this Agreement.
- 9.4. If any provision of this Agreement is finally held invalid or unenforceable by a court of competent jurisdiction as to either party or as to both Parties, such invalidity and unenforceability shall not affect the other provisions of this Agreement, except that any similar right or obligation of the other party shall be deemed invalid and unenforceable. Further, with respect to any provision so held or deemed invalid or unenforceable, the Parties agree to take such actions as may be necessary to achieve to the greatest degree possible the intent of the affected provision.
- 9.5. This Agreement may be amended in writing only by mutual agreement of the governing bodies of the Parties.
- 9.6. This Agreement is not intended and shall not be construed to create any debt or multiple fiscal-year obligations of either of the Parties, or to require or compel the appropriation of funds of either of the Parties.
- 9.7. The District shall make every reasonable effort to implement the Carbon Valley Recreation District Master Plan and its recommendations forthwith and shall pursue reasonable necessary community and ballot initiatives as is required.
- 9.8. The District shall not construct or operate recreation facilities in unincorporated areas of the County.
- 9.9. The Agreement between the Parties dated November 28, 2001 is hereby terminated and of no further force or effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed.

CITY OF DACONO, COLORADO

By:  \_\_\_\_\_  
Joe Baker, Mayor

Approved by the City Council of the City of  
Dacono the 25th day of July,  
2016

ATTEST:

  
\_\_\_\_\_  
Valerie Taylor, City Clerk

CARBON VALLEY PARK AND RECREATION  
DISTRICT

By: \_\_\_\_\_  
Roger Wingerberg, President

Approved by the Board of Directors of the  
Carbon Valley Park and Recreation District the  
\_\_\_\_\_ day of \_\_\_\_\_, 2016

ATTEST:

\_\_\_\_\_  
Cody Childers, Secretary