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A RESOLUTION OF THE BOARD OF
 COUNTY COMMISSIONERS OF PITKIN COUNTY, COLORADO,
 ADOPTING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF
 ASPEN FOR SMUGGLER MOUNTAIN SUPERFUND SITE MANAGEMENT
 Resolution # 2001-182

RECITALS

1. Pitkin County and the City of Aspen wish to enter into an IGA to properly manage the Smuggler Mountain Superfund Site (Site). A copy of this IGA is attached. The proposed IGA would define respective roles of each government necessary to maintain compliance with Consent Decree requirements. The Consent Decree was entered into by US Environmental Protection Agency and Pitkin County on September 24, 1995, providing stringent guidance to protect the environment and public health on the Site.
2. When the Aspen/Pitkin Environmental Health Department split into separate City and County Departments, management of the Site became divided between the two political entities. It is the desire of both governments to assign responsibilities within the Site boundary to staff from the City and County respectively. To provide an orderly transfer of assignments and assure proper compliance with required protocol established by the Consent Decree, a formalized IGA is the instrument best suited to serve the purpose.
3. It is in the best interest of the governments to pursue adoption of an IGA to add clarity to all concerned (citizens, staff, consultants, builders, excavators, banking institutions, etc.). The IGA will also institutionalize commitments from the governments to abide by obligations created by signing the document.

Now therefore be it resolved by the Board of County Commissioners of Pitkin County, Colorado, that the attached Intergovernmental Agreement with the City of Aspen for Web Site Development be approved.

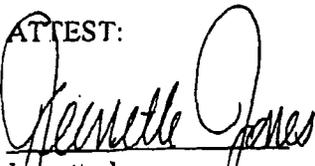
Introduced, First Read and Set For Public Hearing on October 10, 2001.

Notice of Public Hearing Published in the Weekend Edition of the Aspen Times on October 13, 2001.

Approved on 2nd Reading at a Public Hearing on October 24, 2001.

Published after Adoption in the Weekend Edition of the Aspen Times on November, 2001.

ATTEST:


 Jeannette Jones
 Deputy Clerk & Recorder

BOARD OF COUNTY COMMISSIONERS
 OF PITKIN COUNTY, COLORADO

By Patti Kay-Clapper (for)
 Mick Ireland, Chair

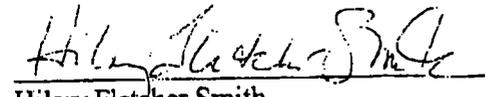
Date:

APPROVED AS TO FORM:

MANAGER APPROVAL:



John Ely
County Attorney



Hilary Fletcher Smith
County Manager

RESOLUTION # 100

(Series of 2001)

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF ASPEN, COLORADO, AND PITKIN COUNTY, SETTING FORTH THE TERMS AND CONDITIONS REGARDING AND AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT

WHEREAS, there has been submitted to the City Council an intergovernmental agreement between the City of Aspen, Colorado, and Pitkin County, a copy of which agreement is annexed hereto and made a part thereof, and

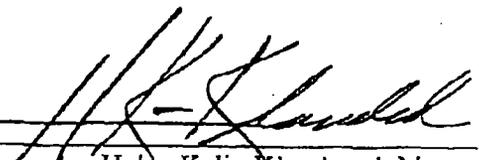
WHEREAS, a portion of the Smuggler Superfund Site is located in the city limits of the City of Aspen,

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

Section 1

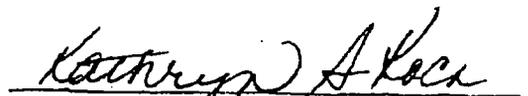
That the City Council of the City of Aspen hereby approves that agreement between the City of Aspen, Colorado, and Pitkin County regarding management of the Smuggler Superfund Site and compliance with federal requirements for the site, a copy of which is attached hereto, and does hereby authorize the City Manager of the City of Aspen to execute said agreement on behalf of the City of Aspen.

Dated: November 5, 2001



Helen Kalin Klanderud, Mayor

I, Kathryn S. Koch, duly appointed and acting City Clerk do certify that the foregoing is a true and accurate copy of that resolution adopted by the City Council of the City of Aspen, Colorado, at a meeting held on October 22, 2001.



Kathryn S. Koch, City Clerk

DRAFT

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (the "Agreement") is made this 24th day of October 2001 by and between the Board of County Commissioners of Pitkin County, Colorado, ("County") whose address is 530 E. Main Street, Aspen, Colorado and the City of Aspen ("City"), whose address is 130 South Galena Street, Aspen, Colorado. The County and City are sometimes collectively referred to as the "Governments".

RECITALS

1. This Agreement is entered into pursuant to. Inter alia, C.R.S. 29-1-201, et seq. and Article XIV, Section 18 of the Colorado Constitution.
2. The Governments are duly constituted governmental entities, governed by Boards or Councils elected by qualified electors of the County and City mentioned above, both of which are located in Colorado.
3. The purpose of this Agreement is to set forth the respective responsibilities and obligations of the Governments relating to enforcement of the Smuggler Mountain Superfund Site (Site) Consent Decree and related documents as instituted to manage obligations at the Site.
4. The Board of County Commissioners' Consent Decree agreement with the United States Environmental Protection Agency (USEPA) entered into Federal Court in Denver, Colorado on March 24, 1995 is the governing document directing all action and responsibilities of the Governments in this matter.
5. The Board of County Commissioners' Ordinance # 94 -15 establishing Institutional Controls specific to the Site, and the Aspen City Council Ordinance # 25 Series of 1994 establishing Institutional Controls specific to the Site hold both Governments respectively accountable for compliance with conditions of the Ordinances within their political boundaries.
6. The US Environmental Protection Agency has stated emphatically that they will not entertain any effort to repeal the Institutional Control Ordinances by the Governments.

7. Section XII of the Consent Decree titled "Reporting Requirements" defines in detail the required frequency of reporting and the required content of the report. Attached Appendix "A" copied from the Consent Decree is exact language that dictates specific action required by the Governments.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and agreements of the parties and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the parties agree as follows.

1. Pitkin County will abide by all conditions of the Consent Decree in areas of the Smuggler Mountain Superfund Site that are in unincorporated Pitkin County. This will include required reporting to USEPA and enforcement of Institutional Controls previously adopted by the County. The County will submit reports to USEPA on or before September 24th and March 24th of each year.
2. The City of Aspen will abide by all conditions of the Consent Decree in areas of the Smuggler Mountain Superfund Site that are within the Aspen City Limits. This will include adequate and proper record keeping of actions within the Site, forwarding these adequate and proper records to Pitkin County on or before September 10th and March 10th of each year, and enforcement of Institutional Controls previously adopted by the City.
3. Pitkin County will continue to act as primary contact with USEPA as defined in the Consent Decree, and will be held responsible for reviewing accounting from the City of Aspen, incorporating this information into a standard reporting format, and submitting the required report to USEPA following instructions in the Consent Decree.
4. Should either of the Governments fail in their obligation defined in this Agreement or related documents (Institutional Controls), immediate notice will be given to the delinquent government that failure to comply has been noted. Also, USEPA will be notified of failure to comply. All notifications will be made by and communicated to parties listed below.
5. USEPA will be requested to intervene as a third party should the dispute between the Governments not be able to be resolved in a timely manner.
6. Modification. This Agreement may be changed or modified only in writing by an Agreement approved by the respective Boards of the Governments and signed by authorized officers of each party.

7. Severability. Should any one or more sections or provisions of this Agreement be judicially adjudged invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining provisions of this Agreement, the intention being that the various sections and provisions hereof are severable.

8. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified regular mail, postage pre-paid to the addresses of the parties as follows. Either party by notice sent under this paragraph may change the address to which future notices should be sent.

Notice to Pitkin County:

Pitkin County Board of County Commissioners
c/o Pitkin County Manager
530 East Main Street, Third Floor
Aspen, Colorado 81611

Notice to the City of Aspen:

City of Aspen
c/o Aspen City Manager
130 South Galena Street
Aspen, Colorado 81611

The foregoing Agreement is approved by the Board of County Commissioners of Pitkin County at a regular meeting held on the 31st day of October, 2001 and by the City Council of the City of Aspen at a regular meeting held on the 22nd day of November, 2001.

BOARD OF COUNTY COMMISSIONERS
PITKIN COUNTY, COLORADO

By: Mick Ireland - Clapper (for)
Mick Ireland, Chair

ATTEST:

Jeanette Jones
Jeanette Jones, Deputy Clerk

CITY OF ASPEN

By: Helen Kalin Klanderud
Helen Kalin Klanderud, Mayor

ATTEST:

Kathryn Koch
Kathryn Koch, City Clerk

~~The United States may, as it deems appropriate, assist Settling Defendant in obtaining access.~~

~~42. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.~~

XII. REPORTING REQUIREMENTS

43. In addition to any other requirement of this Consent Decree, during the construction of the Work, Settling Defendant shall submit to EPA, the State and the Smuggler Caucus 2 copies of written semi-annual progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous six months; (b) include a summary of all results of sampling and tests and all other data received or generated by Settling Defendant or its contractors or agents in the previous six months; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous six months; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next reporting and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts, if necessary; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those

47. Upon the occurrence of any event during performance of the Work that Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Settling Defendant shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region VIII, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

48. Within 20 days of the onset of such an event, Settling Defendant shall furnish to the United States a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Settling Defendant shall submit a report setting forth all actions taken in response thereto.

49. In the event that Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendant shall reimburse EPA for all costs of the response action not inconsistent with the NCP.

50. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take or order such response actions.