

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”), is made and entered into this 7 day of May 2019, by and between THE CITY OF GRAND JUNCTION, a Colorado home rule municipality, hereinafter called “City,” and MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, a Colorado Public School District, hereinafter called “District;” collectively the “Parties.”

R E C I T A L S

A. The District is the owner of real property situated in Mesa County, Colorado, known as Nisley Elementary School located at 543 28 ¾ Road, Grand Junction, Colorado (herein, the “Property”); and

B. Pursuant to City Council Resolution No. 79-18 entitled “A Resolution Supporting The Grant Application For A School Yard Grant From The State Board Of The Great Outdoors Colorado Trust Fund For Nisley Elementary School,” the City applied for and was awarded a \$110,000 grant (the “Grant”) from The State Board of the Great Outdoors Colorado Trust Fund (“GOCO”) for the refurbishment of the playground on the Property (the “Project”); and

C. The District is an ineligible recipient of the Grant and the Parties desire the City to be the conduit through which the District will receive the benefit of the Grant; and

D. In order to obtain and pass through the grant funds to the District and complete the Project, the City must complete and sign a grant agreement with GOCO in substantially the form attached to this Agreement as Exhibit “A” (the “Grant Agreement”); and

E. The City and the District desire to enter into this Agreement to set forth their agreement concerning the terms and conditions of the City’s execution of the Grant Agreement and pass-through of the Grant funds to the District and to clarify the parties’ rights and obligations regarding the Project and the Grant Agreement; and

F. An intergovernmental agreement is authorized pursuant to Section 18, Article XIV of the Colorado Constitution, Section 29-1-203, C.R.S., Section 22-32-110(1)(f), C.R.S., and other applicable laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other valuable consideration the sufficiency of which is acknowledged, the Parties agree as follows:

1. The District hereby covenants and agrees to assume all of the City's obligations under the Grant Agreement, including, but not limited to, contribution of the matching cash and/or in-kind contributions up to \$48,470 for the Project as reflected in the Project budget and as required by GOCO policy, and shall provide such evidence of the same as GOCO may require.

2. In furtherance of this Agreement, the District shall cause the playground improvements to be constructed and installed on the Property as described in the Project Application submitted to GOCO in connection with the Grant (herein "Improvements"). The City does not and shall not be required to assume any obligation to the District to construct, operate, or maintain the Improvements encompassed within the Project or contemplated by the Grant. The District and the City further agree that the City will have no financial obligations under the Grant and/or the Grant Agreement with respect to construction of the Project. The District shall be responsible for paying all Project construction costs as they come due. City hereby covenants and agrees to submit to GOCO reimbursement requests or progress reports, together with any supporting documentation, prepared or provided by the District for funds expended on the Project and to remit to the District the Grant proceeds, including any Grant progress payments it receives prior to completion of the Project, upon receipt thereof from GOCO pursuant to the Grant Agreement until the full amount of the Grant has been received and remitted to the District. In the event the Grant Agreement sets forth a different method for distribution of Grant funds, the parties agree to abide by the terms of the Grant Agreement.

3. The City shall use its best efforts to fulfill all of the conditions precedent to obtaining the Grant, including execution and delivery of the Grant Agreement. The District will cooperate with the City and provide all documents necessary for the City to fulfill the conditions precedent, if any.

4. Subject to annual appropriation, the District will, at its own expense, operate, repair and maintain the Project Improvements to the same standards observed by the District in maintenance and operation of other District outdoor facilities for the useful life of the Improvements.

5. The City will assist with the administration of the Grant, including but not limited to preparing and submitting any and all reports required by the Grant Agreement.

6. The District shall have exclusive use of the Improvements during school hours and priority use for school-sponsored educational, extracurricular and co-curricular events and activities at other times. The Improvements shall otherwise be open to use by the public or other community groups, subject to such restrictions as the District may determine are reasonably necessary for the protection of the Property or public safety, or the proper maintenance and operation of the Improvements.

7. The District agrees to involve a representative from the City's Parks and Recreation Department in the decision-making process involving alterations, if any, to the Improvements on the Property that materially affect the City's obligations under the Grant Agreement.

8. This Agreement shall not terminate until the Grant Agreement is fully performed and satisfied as required by the Grant Agreement. Upon termination, the Improvements shall be and remain the property of the District.

9. Should either party fail to substantially perform its obligations hereunder, the other party may give written notice of the exact nature of the default. The party in default shall correct the default or provide written schedule of when and how the default will be corrected within fifteen (15) days from receiving such notice. Failure to perform shall entitle the non-defaulting party to pursue any other remedy in law or equity to enforce the terms hereof.

10. Nothing contained herein shall be construed as a limitation upon the District's right to make additions to the Property or any portion thereof, so long as such is done as required by the Grant Agreement and the changes do not materially interfere with the public's right to use the Improvements as specified in Paragraph 5 above.

11. This Agreement shall be binding upon and inure to the benefit of the successors in interest of the respective parties.

12. The City's rights and obligations hereunder may not be assigned without the District's written consent, and any attempt to do so will be deemed a default by the City for failure to substantially perform a material covenant and obligation hereunder.

13. The District's rights and obligations hereunder may not be assigned without the City's written consent, and any attempt to do so will be deemed a default by the District for failure to substantially perform a material covenant and obligation hereunder.

14. General Provisions.

a. Entire Agreement – Merger- Modifications – No Waiver. This Agreement contains the entire understanding of the Parties and is intended as a complete and final expression of their agreement and of the terms thereof. All prior statements and representations, including those which may have been negligently made, and all prior understandings and agreements are merged herein. The Parties specifically waive any claims they may have for negligent misrepresentations in the formation of this Agreement. This Agreement shall not be modified except by a writing signed by the Parties hereto or their duly authorized representatives. No waiver by either Party of any default shall be deemed a waiver of any subsequent default.

b. Time of the Essence. Time is of the essence of this Agreement, and in the event of the failure of either Party to perform any term or condition hereof, including but not limited to terms pertaining to delivery and payment, such party shall be in default and the other party shall be entitled to all remedies provided by law and the terms of this Agreement.

c. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Grand Junction, State of Colorado. Venue for all actions connected herewith shall be in Mesa County, State of Colorado.

d. Invalidity. If any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the other terms and provisions of this Agreement shall not be affected thereby.

e. Captions. Article titles and paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions thereof.

f. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

g. Attorney's fees. If, on account of any breach or default by a Party hereto under the terms and conditions hereof, any judicial proceeding shall be commenced to enforce any provision(s) of this Agreement, the substantially prevailing party shall (in addition to other relief granted) be awarded all reasonable attorneys' fees and costs resulting from such litigation to the extent permitted by law.

h. No Third Party Beneficiaries. This Agreement does not create any rights in any individual or entity not a party to this Agreement.

i. TABOR. No provision of this Agreement shall be construed or interpreted: 1) to directly or indirectly obligate either Party to make any payment in any year in excess of amounts appropriated for such year; 2) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution (TABOR) or any other constitutional or statutory limitation or provision; or 3) as a donation or grant by any Party in aid of any person, company or corporation under applicable Colorado law.

CITY OF GRAND JUNCTION

By


Greg Caton
City Manager

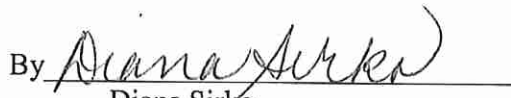
ATTEST:


Wanda Winkelmann
City Clerk

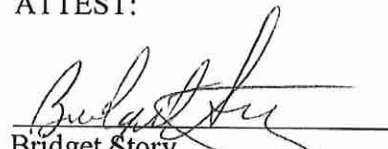


MESA COUNTY VALLEY
SCHOOL DISTRICT NO. 51

By


Diana Sirko
Superintendent of Schools

ATTEST:


Bridget Story
Assistant Secretary of The Board of Education

GRANT AGREEMENT

Project Name: Nisley Playground Project
Project Completion Date: March 6, 2021
Great Outdoors Colorado
Contract No.: 19448

PARTIES TO AGREEMENT

Board/GOCO: The State Board of the Great Outdoors Colorado Trust Fund
Address: 1900 Grant Street, Suite 725
Denver, CO 80203

Telephone: (303) 226-4520
Contact name: Matt Brady

Grantee: City of Grand Junction
Address: 1340 Gunnison Ave., Grand Junction, CO 81501-2668

Contact name: Traci Wieland

Date: April 11, 2019

EXHIBITS

Exhibit A Project Summary
Exhibit B Resolution
Exhibit C Approved Budget
Exhibit D Intergovernmental (or other) Agreement (if required)

RECITALS

A. The State Board of the Great Outdoors Colorado Trust Fund (“GOCO” or “Board”) is a political subdivision of the State of Colorado, created by Article XXVII of the Colorado Constitution, adopted at the November 1992 General Election, which article appropriates a portion of the net proceeds of the Colorado Lottery to GOCO and directs GOCO to invest those proceeds in the state’s parks, wildlife, open space, and recreational resources.

B. In 1994, GOCO created a statewide grant program pursuant to which eligible entities could apply for grants for local government parks and outdoor recreation projects. Grantee listed above (“Grantee”) submitted a detailed project application (“Project Application”) that contemplates the execution of the project entitled above and described in GOCO’s project summary (“Project Summary”), attached and incorporated as Exhibit A (“Project”). GOCO approved Grantee’s Project Application, which is incorporated into this Agreement by reference, on March 6, 2019, subject to the execution of a detailed grant agreement. GOCO and Grantee each have on file a copy of the Project Application.

C. The parties intend this agreement to be the detailed grant agreement required by GOCO (“Agreement”).

AGREEMENT

NOW, THEREFORE, in consideration of the parties’ mutual covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

SECTION 1 – PROJECT

1. Incorporation of Recitals. The Recitals set forth above are incorporated into this Agreement.
2. Representations and Warranties of Grantee. Grantee is a Municipality, duly organized in accordance with the laws of Colorado and has full and lawful authority to enter into, and comply with the terms of, this Agreement. Grantee’s governing body has authorized entering into this Agreement as evidenced by the resolution attached and incorporated as Exhibit B.
3. Grant and Project. GOCO awards to Grantee a grant in the amount not to exceed \$110,000.00 (“Grant”), subject to the terms and conditions set forth in this Agreement. The Grant shall be used by Grantee solely to complete the Project in substantial conformity with the final plans, specifications, designs, and uses approved by GOCO. In the event of a conflict between the Project Application and the Project Summary, the parties shall resolve the conflict by mutual agreement.

4. Project Scope. Grantee shall not materially modify the Project without the prior written approval of the Executive Director of GOCO (“Executive Director”) or the Executive Director’s designee, such approval to be in GOCO’s sole discretion. Any material modification to the Project undertaken without GOCO’s prior written consent may be deemed a breach of this Agreement, entitling GOCO to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as approved by the Board, Grantee will promptly so advise the Board and cooperate in good faith to seek a resolution before any further funds are advanced.

5. Grantee Efforts. Grantee agrees to use its best efforts to complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and GOCO’s approvals related to the Project.

6. Approved Budget. Grantee has completed a detailed budget that reflects all anticipated sources and uses of funds for the Project, including a detailed accounting of Grantee’s anticipated direct costs associated with the Project, a copy of which is attached and incorporated as Exhibit C (“Budget”). Eligible costs are described in Paragraph 10 of this Agreement. The Project Application contains a budget that may not match the approved version attached as Exhibit C and which, therefore, shall not be relied upon by GOCO or Grantee. Where discrepancies exist, the approved Budget in Exhibit C shall control until such time as GOCO approves the final version.

7. Property Ownership. Grantee does not own the property or properties on which the Project is to be located (the “Property”). Therefore, the agreement attached hereto as Exhibit D between Grantee and the Property’s owner continues in effect and unmodified throughout the term of this Agreement.

8. Waiver. Prior to the disbursement of funds, the Executive Director in his or her discretion may waive certain conditions set forth in this Agreement. Anything else to the contrary notwithstanding, the exercise by GOCO staff (“Staff”), the Executive Director, or GOCO of any right or discretion reserved to them under this Agreement shall not be deemed a waiver. Furthermore, no waiver by them under this Agreement shall constitute a waiver of any other requirements, actions, or conditions, nor shall any waiver granted be deemed a continuing waiver. No waiver by the Staff, the Executive Director, or GOCO shall be effective unless in writing executed by them. Additionally, any failure by the Staff, the Executive Director, or GOCO to take any actions as set forth in this Agreement shall have no legal effect on the contractual duties of Grantee. Further, no waiver with respect to this Project, Grant, or Agreement shall constitute a waiver in any other GOCO-funded project.

9. Project Operation and Maintenance.

A. Subject to annual appropriations, Grantee shall operate, manage, and maintain the Project in a reasonable state of repair for the purposes specified and for the useful life of the Project stated in the Project Application, in accordance with product warranties and/or the generally accepted standards in the parks/recreation community. Grantee has estimated a useful life of 25 years in the Project Application. Grantee also shall provide and maintain access to the

Project and to the Property, regardless of the Property's ownership. Failure to comply with this paragraph may be deemed a breach by Grantee under Paragraph 20 below.

B. GOCO shall not be liable for any cost of maintenance, management, or operation of the Project.

C. Within 60 days of a reasonable request by the Board, Grantee will provide the Board with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public and the impact of the Project.

D. Grantee's staff shall request during the Grantee's annual budget process an appropriation sufficient to meet the financial obligations of Grantee under this Agreement. Grantee will use its best efforts to fully consider such appropriation. The parties understand that the Board is relying upon fair and full consideration of annual appropriation in its decision to extend its resources and the Grant and to enter into this Agreement. In the event that Grantee fails to appropriate sufficient funds to meet the obligations of this Agreement, Grantee shall provide notice to the Board of the specific reason(s) for any decision not to appropriate funding. Grantee's staff shall notify the Board of any recommendation not to fund or to partially fund the annual appropriation necessary to fulfill Grantee's obligations under this Agreement.

10. Public Access. Grantee agrees, for itself and its successors in interest, to allow reasonable public access to the Project for the term specified in Paragraph 8.A. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.

11. Insurance. Grantee shall maintain general liability insurance or self-insure for the entire period of the Project for protection in the event of injury and/or damage. The insurance limits shall not be less than \$1,000,000 per occurrence and \$2,000,000 aggregate. If the Grantee contracts with another organization to complete the Project, it is the responsibility of the Grantee to ensure its contractor carries insurance that fulfills this requirement.

12. Future Funding. This Agreement and the Grant only apply to the Project specifically described in this Agreement. GOCO makes no representations regarding future funding for future phases of the Project, whether or not described in the Project Application, Project Summary, or otherwise.

SECTION 2 – GRANT PAYMENT

13. Eligible Costs. The Grant and all matching funds shall be used only for the cost of fixed assets, including construction of new facilities and enlargement or renovation of existing facilities; these costs are eligible for reimbursement on the basis of costs actually incurred by Grantee and supported by written documentation (receipts, bills, etc.). The Grant and all matching funds may not be used to pay for maintenance costs, administrative costs (such as

salaries associated with administering the Grant, office supplies, telephone, or travel expenses), non-fixed assets (such as athletic or maintenance equipment), or any other costs deemed to be ineligible by the Board, at the Board's sole discretion.

14. Payment of Grant.

A. *Progress Payment.* Grantee may opt to receive a portion of the Grant after starting but prior to completing work on the Project ("Progress Payment"). Grantee shall provide GOCO with a progress report detailing expenditures and progress made to date ("Progress Report"). The Progress Report must be submitted using GOCO's Progress Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation to support making a Progress Payment. A Progress Payment shall not exceed 50% of the Grant or the maximum percentage of funds GOCO can expend for the project to date based on the program's matching requirements, whichever is less. A Progress Payment shall be considered a loan until the Project is complete and Final Payment (as defined below) has been made.

B. *Final Payment.* Grantee shall submit a final report to GOCO detailing the accomplishments of and expenditures related to the Project and its completion ("Final Report"). The Project is "complete" when all facilities, trails, or other improvements included in the GOCO-approved Project scope have been built and are ready for their intended use. The Final Report must be submitted using GOCO's Final Report form (available at www.goco.org or by contacting GOCO). GOCO may, in its discretion, request additional documentation before its approval of the contents of the Final Report. Upon GOCO's review and approval of the Final Report, GOCO shall pay the outstanding balance on the Grant ("Final Payment"), subject to any reductions contemplated by any provision of this Agreement.

C. *GOCO Review.* GOCO shall have 30 days to review any Progress Report and Final Report and respond to Grantee.

D. *Waivers of Liens and Claims.* GOCO may, in its discretion, depending on the nature of the Project, require documentation of mechanics' lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.

E. *Modifications.* Payment of the Grant is subject to the Project being completed with no material modifications made, except as otherwise agreed to in advance by GOCO in accordance with this Agreement. The Grant will not be increased, but GOCO may reduce the Grant if the Project changes in any way that GOCO deems material. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project, a reduction in the size or number of recreational development components to be constructed, changes to the nature of the recreational development components to be constructed, or any other variance from the Project as presented in the Project Application. It is the sole responsibility of Grantee to inform GOCO of any such modifications to the Project. GOCO strongly encourages Grantee to contact GOCO in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.

F. *Net Lottery Proceeds.* Payment of the Grant is also subject to GOCO's determination in its sole discretion that it has received and has available sufficient net lottery proceeds to fund the Grant. In determining the sufficiency of net lottery proceeds, GOCO may consider all facts and circumstances as it deems necessary or desirable, including but not limited to adequate reserves, funding requirements, and/or commitments for other past, current, and future grants, and past, current, and future GOCO operating expenses and budgetary needs.

15. Withdrawal of GOCO Funding; Termination of Agreement. Anything in this Agreement to the contrary notwithstanding, with prior notice to Grantee, GOCO reserves the right to withhold or withdraw all or a portion of the Grant, to require a full or partial refund of the Grant, and/or to terminate this Agreement if GOCO determines in its sole discretion that:

A. *Altered Expectations.* Facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Project or the Grant as approved by GOCO infeasible or impractical;

B. *Material Project Changes.* Material changes in the scope or nature of the Project have occurred from that which was presented in the Project Application, approved by GOCO and reflected in the Project Summary, without prior written approval of the Executive Director;

C. *Inaccuracies.* Any statement or representation made or information provided by Grantee in the Project Application, this Agreement, the Progress Report, the Final Report, or otherwise is untrue, inaccurate, or incomplete in any material respect;

D. *Reporting.* The results of GOCO's review of the Progress Report or the Final Report are not acceptable to GOCO;

E. *Conditions Precedent Not Fulfilled or Unsatisfactory.* Any of the conditions precedent to funding listed in Section 3 below is not fulfilled by Grantee or is unsatisfactory to GOCO, in its sole discretion;

F. *Delays.* The Project will not or cannot be completed by the Completion Date or any extensions granted, or delays in the implementation of the Project have occurred that make the Project impracticable in the Board's judgment;

G. *Costs.* The Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced;
or

H. *Property.* Title to or encumbrances against the Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use.

SECTION 3 – CONDITIONS PRECEDENT

16. Completion Date. Grantee shall complete the Project and submit its Final Report no later than March 6, 2021 (“Completion Date”), which is 24 months after the date of GOCO’s approval of the Project. Grantee may request an extension of the Completion Date in compliance with GOCO’s *Overdue Grants* procedure, as may be amended from time to time by GOCO in its sole discretion. GOCO may elect to terminate this Agreement and deauthorize the Grant in the event this Completion Date is not met and/or Grantee fails to comply with the *Overdue Grants* procedure.

17. Conditions Precedent to Funding. Anything else in this Agreement or otherwise to the contrary notwithstanding, the Grant is expressly conditioned upon Grantee’s fulfillment of all terms and conditions of this Agreement to GOCO’s satisfaction in its sole discretion, including but not limited to the following:

A. *Matching Funds.* Matching funds in the minimum amount required by GOCO policy or procedure and as set forth in the approved Budget, or as modified and approved in compliance with GOCO procedures, must have been received by Grantee, or the status of efforts to secure matching funding was disclosed and has been deemed satisfactory by Staff. Grantee shall provide evidence of matching funds as GOCO may require in its reasonable discretion.

B. *GOCO Policies and Procedures.* The Project must comply with all of GOCO’s policies and procedures, which may be amended from time to time by GOCO in its sole discretion, and must meet any special Board conditions as listed in the attached Project Summary (Exhibit A).

SECTION 4 – OTHER PROVISIONS

18. Publicity and Project Information. GOCO has the right and must be provided the opportunity to use information gained from the Project; therefore, Grantee shall acknowledge GOCO funding in all news releases and other publicity issued by Grantee concerning the Project. If any events are planned in relationship to the Project, GOCO shall be acknowledged as a contributor in the invitation for the event. GOCO shall be notified of any such events 30 days in advance. Grantee shall cooperate with GOCO in preparing public information pieces, providing access to the Property for publicity purposes, and providing photos or other imagery of the Project from time to time, which GOCO reserves the right to use and duplicate in any print or electronic publication or platform for publicity, illustration, advertising, web content, and other purposes at any time without the need to seek pre-approval from Grantee. Grantee shall give timely notice of the Project, its inauguration, significance, and completion to the local members of the Colorado General Assembly and members of the board of county commissioners of the county or counties in which the Project is located, as well as to other appropriate public officials. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with GOCO or acting on behalf of GOCO.

19. Signage. Grantee shall erect one or more signs at a prominent location(s) on the Project site acknowledging the assistance of Great Outdoors Colorado and the Colorado Lottery. GOCO will provide such signs at no cost to Grantee. Alternatively, GOCO will provide reproducible samples of its logo to Grantee for custom signs. GOCO shall approve in advance the design of any permanent sign materially varying from the signs provided by GOCO. To obtain such approval, Grantee shall submit to GOCO plans describing the number, design, placement, and wording of signs and placards prior to completion of the Project. The Board may withhold Final Payment pending evidence of placement of permanent signage.

20. Liability.

A. *Indemnity*. To the extent allowed by law, Grantee shall be responsible for and shall indemnify, defend, and hold harmless GOCO, its officers, agents, and employees from any and all liabilities, claims, demands, damages, or costs (including reasonable attorneys' fees) resulting from, growing out of, or in any way connected with or incident to Grantee's performance of this Agreement. Grantee waives any and all rights to any type of express or implied indemnity or right of contribution from the State of Colorado, GOCO, its members, officers, agents, or employees for any liability resulting from, growing out of, or in any way connected with or incident to this Agreement. Grantee acknowledges that Grantee is the owner of the Project and the Property upon which it is located, or has control of the Project and the Property, and that GOCO neither possesses nor controls the Project, the Property, nor the operations of the Project.

B. *No CGIA Waiver*. No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of any of the immunities, rights, benefits or protections provided to GOCO under the Colorado Governmental Immunity Act as amended or as may be amended in the future (including without limitation any amendments to such statute, or under any similar statute that is subsequently enacted) ("CGIA"). This provision may apply to Grantee if Grantee qualifies for protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. GOCO and Grantee understand and agree that liability for claims for injuries to persons or property arising out of the negligence of GOCO, its members, officials, agents, and employees may be controlled and/or limited by the provisions of the CGIA. The parties agree that no provision of this Agreement shall be construed in such a manner as to reduce the extent to which the CGIA limits the liability of GOCO, its members, officers, agents, and employees.

C. *Compliance with Regulatory Requirements and Federal and State Mandates*. Grantee assumes responsibility for compliance with all regulatory requirements in all applicable areas, including but not limited to nondiscrimination; worker safety; local labor preferences; preferred vendor programs; equal employment opportunity; use of competitive bidding; permits; approvals; local, state, and federal regulations and environmental laws; and other similar requirements. To the maximum extent permitted by law, Grantee agrees to indemnify, defend, and hold harmless GOCO, Executive Director, and Staff from any cost, expense, or liability for any failure to comply with any such applicable requirements.

D. *Nondiscrimination.* During the performance of this Agreement, Grantee and its contractors, subcontractors, and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, or any other basis prohibited by local, state, or federal law. Grantee and its contractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Further, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.

21. Audits and Accounting Records. Grantee shall maintain standard financial accounts, documents, and records relating to the use, management, operation, and maintenance of the Project. Grantee shall retain the accounts, documents, and records related to the Project for five years following the date of disbursement by GOCO of the Grant funds, and they shall be subject to examination and audit by GOCO or its designated agent during this period. While Grantee is not required to use GAAP (Generally Accepted Accounting Principles), Grantee shall use reasonable and appropriate accounting systems in maintaining the required records under this Agreement.

22. Inspection. Throughout the term of this Agreement, GOCO shall have the right to inspect the Project to ascertain compliance with this Agreement.

23. Breach. In addition to other remedies available at law or in equity, in the event that Grantee breaches any of the terms or conditions of this Agreement, GOCO shall have the following non-exclusive remedies:

A. *Prior to Payment of Grant.* GOCO reserves the right to withdraw funding, terminate this Agreement, and/or deny Grantee eligibility for participation in future GOCO grants, loans, or projects.

B. *After Any Payment of Grant.* GOCO reserves the right to seek specific performance of Grantee's obligations under this Agreement, receive reimbursement in full of any disbursements made under the Grant, including in the event that Grantee does not fulfill its obligations under Paragraph 8 due to lack of annual appropriations, and/or deny Grantee eligibility for participation in future GOCO grants, loans, or projects.

In the event GOCO must pursue any remedy under this Agreement and is the substantially prevailing party, GOCO shall be awarded its costs and reasonable legal fees, including costs of collection.

24. GOCO Policies and Procedures. With regard to all named GOCO policies and procedures referenced in this Agreement, Grantee acknowledges it has received a copy of the policies and procedures or otherwise has access to the documents in connection with this Agreement and is familiar with their requirements.

25. Miscellaneous Provisions.

A. *Good Faith.* Both parties have an obligation of good faith, including the obligation to make timely communication of information that may reasonably be believed to be of interest to the other party.

B. *Assignment.* Grantee may not assign its rights or delegate its obligations under this Agreement without the express written consent of the Executive Director, who has the sole discretion to withhold consent to assign. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from the Board and assumes Grantee's ongoing obligations under this Agreement.

C. *Applicable Law.* Colorado law applies to the interpretation and enforcement of this Agreement. Venue for any dispute under this Agreement shall lie exclusively in the state courts of the City and County of Denver.

D. *No Joint Venture.* Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee, or other relationship between the parties other than independent contracting parties. Except as permitted under the remedies provisions of this Agreement, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.

E. *Status of Grantee.* The parties acknowledge that GOCO lacks the power and right to direct the actions of Grantee. Grantee acts in its separate capacity and not as an officer, employee, or agent of GOCO or the State of Colorado.

F. *Time is of the Essence.* Time is of the essence in this Agreement.

G. *Survival.* The terms and conditions of this Agreement, including but not limited to Grantee's obligations, shall survive the funding of the Grant and the completion of the Project.

H. *Fax and Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one agreement. In addition, the parties agree to recognize signatures to this Agreement made electronically and transmitted electronically or by facsimile as if they were original signatures.

I. *Third-Party Beneficiary.* GOCO and Grantee acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between GOCO and Grantee and that no third-party beneficiaries are intended.

J. *Notice.* Any notice, demand, request, consent, approval, or communication that either party desires or is required to give the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the addresses shown on Page 1 of this Agreement.

K. *Construction; Severability.* Each party has reviewed this Agreement, and therefore any rules of construction requiring that ambiguities be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid. If any provision of this Agreement is declared void or unenforceable, it shall be deemed severed from this Agreement, and the balance of this Agreement shall otherwise remain in full force and effect.

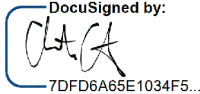
L. *Entire Agreement.* Except as expressly provided, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes in this Agreement shall be valid unless made in writing and signed by the parties to this Agreement.

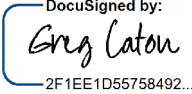
M. *Termination of the Board.* If Article XXVII of the Colorado Constitution, which established GOCO, is amended or repealed to terminate GOCO or merge GOCO into another entity, the rights and obligations of GOCO under this Agreement shall be assigned to and assumed by such other entity as provided by law, but, in the absence of such direction, by the Colorado Department of Natural Resources or its successor.

IN WITNESS WHEREOF, the parties by signature below of their authorized representatives execute this Agreement effective as of .

STATE BOARD OF THE GREAT
OUTDOORS COLORADO TRUST FUND

GRANTEE:
City of Grand Junction

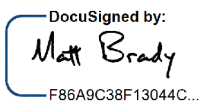
By: 7DFD6A65E1034F5...

By: 2F1EE1D55758492...

Chris Castilian
Executive Director

Title: City Manager

GOCO Program Staff:
Route Grant Agreement to
Executive Director for signature:

F86A9C38F13044C...

NOTE Signee should be the same individual authorized to sign the grant agreement per Grantee's resolution

EXHIBIT A
Project Summary

Rank: 6	Overall Score: 88	GOCO Staff Score: 89.5	Reviewer Average: 86.5
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Applicant: City of Grand Junction
Project Title: Nisley Playground Project
County: Mesa
Log #: 19448

<u>Funding Summary:</u>	Applicant Funding		
	Partner(s) Funding		\$48,470
	GOCO Grant Amount		\$110,000
	Total Project Cost		\$158,470

Project Description:

Nisley Elementary in partnership with the City of Grand Junction are seeking funds to make improvements to their 61-year-old playground. Improvements include removing pea-gravel, adding swings, accessible ramps, sensory panels, landscaping, and fitness stations.

Staff and Peer Reviewer Comments:

Nisley is a Title I school and 90% of students qualify for free and reduced lunch. The need to provide this population with a safe, accessible and engaging place to play that is close to home is compelling.

Staff and reviewers were compelled by the need to replace the 61-year-old equipment that is in poor condition and too outdated to find replacement pieces and is not ADA accessible.

The project components proposed directly tie to the feedback from the students and community members.

EXHIBIT B
Resolution

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. 79-18

**A RESOLUTION SUPPORTING THE GRANT APPLICATION FOR A SCHOOL YARD
GRANT FROM THE STATE BOARD OF THE GREAT OUTDOORS COLORADO
TRUST FUND FOR NISLEY ELEMENTARY SCHOOL**

Recitals:

Parent Teacher Organization (PTO) and faculty from Nisley Elementary School, a school operated by Mesa County Valley School District No. 51 ("District"), requested sponsorship from the City of Grand Junction for support of the Nisley Elementary School ("Project").

The Project plan depends in significant part on receipt of funding in the amount up to \$110,000 from a Great Outdoors Colorado ("GOCO") grant, and in order for the grant application to be made the City must agree to sign the grant application and serve as the grantee of the grant.

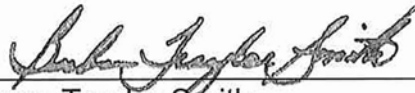
After due consideration the City Council of the City of Grand Junction supports the Project and desires the City to assist the District's efforts to submit a GOCO grant application to obtain the necessary funding for the Project, and if the grant is awarded, to enter into such further agreements as are necessary and proper to obtain and pass through the grant funds to the District and complete the Project.

**NOW, THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF
THE CITY OF GRAND JUNCTION THAT:**

- 1: The City Council of the City of Grand Junction strongly supports the application to GOCO to obtain funds needed to complete the Project. The City Manager is authorized and directed to work with the District to review, finalize and timely submit such GOCO grant application.
- 2: If the grant is awarded, the City Council of the City of Grand Junction strongly supports the completion of the Project, and authorizes the City Manager to sign an appropriate grant agreement on behalf of the City as grantee of the GOCO grant.
- 3: If the grant is awarded, the City Council of the City of Grand Junction further authorizes the City Manager to negotiate and sign an intergovernmental agreement between the City and the District regarding the GOCO grant. Such agreement shall provide for, but may not be limited to—

- a. Pass-through to the District of GOCO grant funds received by the City for the Project;
 - b. The District's assumption of the City's obligations under the GOCO grant agreement,
 - c. Confirmation that the District has raised and set aside sufficient funds to satisfy GOCO's matching funds requirement(s) for the Project;
 - d. The District's payment of Project construction costs as they come due; and
 - e. The District's agreement to maintain the Project in high quality condition once it is complete and during its useful life, subject to annual appropriation.
- 4: This Resolution shall be in full force and effect from and after its passage and adoption.

Passed and adopted this 5th day of December, 2018.



Barbara Traylor Smith
President of the City Council

ATTEST:



Wanda Winkelmann
City Clerk



EXHIBIT C
Approved Budget

Nisley Elementary School - Project Budget

Nisley Elementary School - Project Budget									
	Source of Funds	Date Secured		GOCO Grant Request	Applicant Match (\$)	Partner Match (\$)	Total Funding (\$)		
CASH									
	GOCO Grant Request	Spring 2019		110,000.00			\$110,000.00		
	Nisley PTO - Past Fundraising	Nov-18			17,000.00		\$17,000.00		
	Nisley PTO - Future Fundraising	Apr-19			7,000.00		\$7,000.00		
	Academy Bank	Nov-18				1,000.00	\$1,000.00		
	Alpine Bank	Dec-18				500.00	\$500.00		
	Western Rockies Federal Credit Union	Nov-18				500.00	\$500.00		
	Mesa County Valley School District 51	Dec-18				5,000.00	\$5,000.00		
	Pacific Steel and Recycling	Jan-19				750.00	\$750.00		\$143,306.00
	Goodwin Septic Tank Services	Jan-19				500.00	\$500.00		
	GoFundMe	Jan-19				1,036.00	\$1,036.00		
	Miss Mayo	Nov-18				20.00	\$20.00	Total Cash	\$33,306.00
IN-KIND									
	Mesa County Valley School District 51	Dec-18				1,000.00	\$1,000.00		
	Delta Timber	Jan-19				8,494.00	\$8,494.00		
	Polaris Survey	Dec-18				250.00	\$250.00		
	Bobcat of the Rockies	Dec-18				2,045.00	\$2,045.00		
	Goodwin Septic Tank Services	Dec-18				175.00	\$175.00		
	Rocky Mountain Sanitation	Dec-18				200.00	\$200.00		
	Home Depot	Dec-18				3,000.00	\$3,000.00	Total InKind	\$15,164.00
TOTAL SOURCE OF FUNDS				\$110,000.00	\$24,000.00	\$24,470.00	\$158,470.00	Total Match	\$48,470.00
	Use of Funds	Number of Units	Cost Per Unit	GOCO Funds	Applicant Funds	Partner Funds	Total Funding (\$)		
CASH									
FINAL DESIGN									
	Ciavonne, Roberts and Assc	Final design work for drainage	5 HR	100.00		500.00	\$500.00		
SITE PREPARATION/CONSTRUCTION									
	Construction Fencing	Construction window	1 EA	930.00		930.00	\$930.00		
PLAY AREA									
	Contractor	Installation of play equipment	1 EA	25,264.50	25,264.50		\$25,264.50		34100
	Contractor	Shipping of equipment to site	1 EA	5,384.00	5,384.00		\$5,384.00		
	Contractor	Kids' choice ADA accessible structure	1 EA	46,172.00	46,172.00		\$46,172.00		
	Contractor	Swings with 5 belt swings and 1 ADA swing	1 EA	7,074.00	7,074.00		\$7,074.00		
	Contractor	Concerto Tall Chimes	1 EA	4,169.00	4,169.00		\$4,169.00		
	Contractor	Concerto Vibes	1 EA	4,154.00	4,154.00		\$4,154.00		
	Contractor	Concerto 3-Congas	1 EA	2,030.00	2,030.00		\$2,030.00		
	Contractor	Fitness Stations	2 EA	1,000.00	2,000.00		\$2,000.00		
SURFACING									
	Delta Timber	Engineered Wood Fiber Delivery	1 EA	300.00	300.00		\$300.00		

Contractor	Geotextile Weed Barrier	98 CY	4.75	465.50			\$465.50		
Contractor	Sub-base Installation	2,639 SF	5.00	6,070.00		7,125.00	\$13,195.00		
Contractor	Poured in Place Surfacing	2,639 SF	12.00	6,917.00	24,000.00	751.00	\$31,668.00		
USE OF FUNDS - CASH SUBTOTAL					\$110,000.00	\$24,000.00	\$9,306.00	\$143,306.00	\$0.00
IN-KIND	Use of Funds	No. of Units / Hours / Acres	Cost Per Unit / Hour / Acre	GOCO Funds	Applicant Funds	Partner Funds	Total Funding (\$)		
DEMOLITION/EXCAVATION/CONSTRUCTION									
Bobcat of the Rockies	Demolition and disposal of play equipment	1 EA	2,045.00			2,045.00	\$2,045.00		
Rocky Mountain Sanitation	Dumpster for demolition	1 EA	200.00			200.00	\$200.00		
PLAY AREA									
Mesa County Valley School District 51	Installation of engineered wood fiber	20 HR	50.00			1,000.00	\$1,000.00		
Delta Timber	Engineered Wood Fiber	1 LS	8,494.00			8,494.00	\$8,494.00		
Polaris Survey	Survey work for installation	4 HR	62.50			250.00	\$250.00		
Goodwin Septic Tank Services	Restroom for construction period	1 EA	175.00			175.00	\$175.00		
Home Depot	10 trees, wood, grass seed	1 EA	3,000.00			3,000.00	\$3,000.00		
SUBTOTAL					\$0.00	\$0.00	\$15,164.00	\$15,164.00	
<i>Contingency 10% (not required, cannot be GOCO funds)</i>							\$0	\$0	
TOTAL PROJECT COST					\$110,000.00	\$24,000.00	\$24,470.00	\$158,470.00	
Remember: the Total Project Cost row must equal the Total Source of Funds row above									

CALCULATION OF MATCH REQUIREMENTS

Item	Explanation	Requirement	Actual	Meets Requirement?
Minimum Match	25%/Total Costs	\$39,618	\$48,470	Yes
Minimum Cash Match	10%/Total Costs	\$15,847	\$33,306	Yes

CALCULATION OF GOCO %

GOCO % of Total Costs	69.41%
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EXHIBIT D
Intergovernmental (or other) Agreement (if required)

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”), is made and entered into this 7 day of May 2019, by and between THE CITY OF GRAND JUNCTION, a Colorado home rule municipality, hereinafter called “City,” and MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, a Colorado Public School District, hereinafter called “District;” collectively the “Parties.”

R E C I T A L S

A. The District is the owner of real property situated in Mesa County, Colorado, known as Nisley Elementary School located at 543 28 ¾ Road, Grand Junction, Colorado (herein, the “Property”); and

B. Pursuant to City Council Resolution No. 79-18 entitled “A Resolution Supporting The Grant Application For A School Yard Grant From The State Board Of The Great Outdoors Colorado Trust Fund For Nisley Elementary School,” the City applied for and was awarded a \$110,000 grant (the “Grant”) from The State Board of the Great Outdoors Colorado Trust Fund (“GOCO”) for the refurbishment of the playground on the Property (the “Project”); and

C. The District is an ineligible recipient of the Grant and the Parties desire the City to be the conduit through which the District will receive the benefit of the Grant; and

D. In order to obtain and pass through the grant funds to the District and complete the Project, the City must complete and sign a grant agreement with GOCO in substantially the form attached to this Agreement as Exhibit “A” (the “Grant Agreement”); and

E. The City and the District desire to enter into this Agreement to set forth their agreement concerning the terms and conditions of the City’s execution of the Grant Agreement and pass-through of the Grant funds to the District and to clarify the parties’ rights and obligations regarding the Project and the Grant Agreement; and

F. An intergovernmental agreement is authorized pursuant to Section 18, Article XIV of the Colorado Constitution, Section 29-1-203, C.R.S., Section 22-32-110(1)(f), C.R.S., and other applicable laws.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and other valuable consideration the sufficiency of which is acknowledged, the Parties agree as follows:

1. The District hereby covenants and agrees to assume all of the City's obligations under the Grant Agreement, including, but not limited to, contribution of the matching cash and/or in-kind contributions up to \$48,470 for the Project as reflected in the Project budget and as required by GOCO policy, and shall provide such evidence of the same as GOCO may require.

2. In furtherance of this Agreement, the District shall cause the playground improvements to be constructed and installed on the Property as described in the Project Application submitted to GOCO in connection with the Grant (herein "Improvements"). The City does not and shall not be required to assume any obligation to the District to construct, operate, or maintain the Improvements encompassed within the Project or contemplated by the Grant. The District and the City further agree that the City will have no financial obligations under the Grant and/or the Grant Agreement with respect to construction of the Project. The District shall be responsible for paying all Project construction costs as they come due. City hereby covenants and agrees to submit to GOCO reimbursement requests or progress reports, together with any supporting documentation, prepared or provided by the District for funds expended on the Project and to remit to the District the Grant proceeds, including any Grant progress payments it receives prior to completion of the Project, upon receipt thereof from GOCO pursuant to the Grant Agreement until the full amount of the Grant has been received and remitted to the District. In the event the Grant Agreement sets forth a different method for distribution of Grant funds, the parties agree to abide by the terms of the Grant Agreement.

3. The City shall use its best efforts to fulfill all of the conditions precedent to obtaining the Grant, including execution and delivery of the Grant Agreement. The District will cooperate with the City and provide all documents necessary for the City to fulfill the conditions precedent, if any.

4. Subject to annual appropriation, the District will, at its own expense, operate, repair and maintain the Project Improvements to the same standards observed by the District in maintenance and operation of other District outdoor facilities for the useful life of the Improvements.

5. The City will assist with the administration of the Grant, including but not limited to preparing and submitting any and all reports required by the Grant Agreement.

6. The District shall have exclusive use of the Improvements during school hours and priority use for school-sponsored educational, extracurricular and co-curricular events and activities at other times. The Improvements shall otherwise be open to use by the public or other community groups, subject to such restrictions as the District may determine are reasonably necessary for the protection of the Property or public safety, or the proper maintenance and operation of the Improvements.

7. The District agrees to involve a representative from the City's Parks and Recreation Department in the decision-making process involving alterations, if any, to the Improvements on the Property that materially affect the City's obligations under the Grant Agreement.

8. This Agreement shall not terminate until the Grant Agreement is fully performed and satisfied as required by the Grant Agreement. Upon termination, the Improvements shall be and remain the property of the District.

9. Should either party fail to substantially perform its obligations hereunder, the other party may give written notice of the exact nature of the default. The party in default shall correct the default or provide written schedule of when and how the default will be corrected within fifteen (15) days from receiving such notice. Failure to perform shall entitle the non-defaulting party to pursue any other remedy in law or equity to enforce the terms hereof.

10. Nothing contained herein shall be construed as a limitation upon the District's right to make additions to the Property or any portion thereof, so long as such is done as required by the Grant Agreement and the changes do not materially interfere with the public's right to use the Improvements as specified in Paragraph 5 above.

11. This Agreement shall be binding upon and inure to the benefit of the successors in interest of the respective parties.

12. The City's rights and obligations hereunder may not be assigned without the District's written consent, and any attempt to do so will be deemed a default by the City for failure to substantially perform a material covenant and obligation hereunder.

13. The District's rights and obligations hereunder may not be assigned without the City's written consent, and any attempt to do so will be deemed a default by the District for failure to substantially perform a material covenant and obligation hereunder.

14. General Provisions.

a. Entire Agreement – Merger- Modifications – No Waiver. This Agreement contains the entire understanding of the Parties and is intended as a complete and final expression of their agreement and of the terms thereof. All prior statements and representations, including those which may have been negligently made, and all prior understandings and agreements are merged herein. The Parties specifically waive any claims they may have for negligent misrepresentations in the formation of this Agreement. This Agreement shall not be modified except by a writing signed by the Parties hereto or their duly authorized representatives. No waiver by either Party of any default shall be deemed a waiver of any subsequent default.

b. Time of the Essence. Time is of the essence of this Agreement, and in the event of the failure of either Party to perform any term or condition hereof, including but not limited to terms pertaining to delivery and payment, such party shall be in default and the other party shall be entitled to all remedies provided by law and the terms of this Agreement.

c. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the City of Grand Junction, State of Colorado. Venue for all actions connected herewith shall be in Mesa County, State of Colorado.

d. Invalidity. If any clause or provision of this Agreement be determined to be illegal, invalid or unenforceable under present or future laws, then it is the intention of the parties that the other terms and provisions of this Agreement shall not be affected thereby.

e. Captions. Article titles and paragraph titles or captions contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provisions thereof.

f. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the person, persons, entity or entities may require.

g. Attorney's fees. If, on account of any breach or default by a Party hereto under the terms and conditions hereof, any judicial proceeding shall be commenced to enforce any provision(s) of this Agreement, the substantially prevailing party shall (in addition to other relief granted) be awarded all reasonable attorneys' fees and costs resulting from such litigation to the extent permitted by law.


h. No Third Party Beneficiaries. This Agreement does not create any rights in any individual or entity not a party to this Agreement.

i. TABOR. No provision of this Agreement shall be construed or interpreted: 1) to directly or indirectly obligate either Party to make any payment in any year in excess of amounts appropriated for such year; 2) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution (TABOR) or any other constitutional or statutory limitation or provision; or 3) as a donation or grant by any Party in aid of any person, company or corporation under applicable Colorado law.

CITY OF GRAND JUNCTION

MESA COUNTY VALLEY
SCHOOL DISTRICT NO. 51

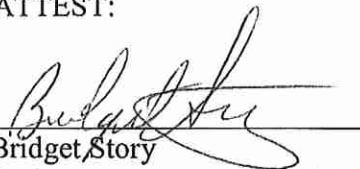
By 
Greg Caton
City Manager

By 
Diana Sirko
Superintendent of Schools

ATTEST:

ATTEST:


Wanda Winkelmann
City Clerk


Bridget Story
Assistant Secretary of The Board of Education

