

## CONTRACT TO EXCHANGE REAL ESTATE

THIS CONTRACT TO EXCHANGE REAL ESTATE ("Agreement" or "Contract") and/or rights in real estate is entered into by and between Mesa County Valley School District 51, herein "District" and the City of Grand Junction, a Colorado home rule city, hereinafter "City."

1. The District agrees to convey to the City, by special warranty deed, the following real property in the County of Mesa, State of Colorado, to wit, hereinafter "District Property" or "Parcel 1."

Legal description:

(a) a parcel of land presently owned by Mesa County Valley School District 51 and located south of Fire Station 3 at 582 25 ½ Road, Grand Junction, Mesa County, Colorado. Parcel 1 is and will be legally described with the recordation of a plat as Lot 1, Pomona Fire Station Three Subdivision, City of Grand Junction, Mesa County Colorado with an area of 1.40 acres (60,920 square feet).

2. The City agrees to convey to the District by special warranty deed, the following real properties in the City of Grand Junction, Mesa County Colorado, to wit, hereinafter "City Property" or "Parcel 2."

Legal description:

(a) a parcel of land with an area of 1.1 acres (48,010 square feet) located at 582 25 ½ Road that is presently used for Fire Station 3 and legally described as beginning at a point 870 feet South and 50 feet East on the North one quarter corner of Section 10 of Township 1 South of Range 1 West of the Ute Meridian, thence East 240 feet, thence South 200 feet, thence West 240 feet, thence North to the point of beginning, which parcel will become with the recordation of a plat, a portion of Lot 2, Pomona Fire Station Three Subdivision, City of Grand Junction, Mesa County Colorado; and,

(b) an unaddressed .2-acre (9,583 square feet) parcel of land located on West Main Street, Grand Junction, Mesa County, Colorado with Mesa County tax parcel number 2945-154-58-001 and also known as and legally described as Lot 1 JB Subdivision in the City of Grand Junction, Mesa County Colorado, to wit, hereinafter "City Property" or "Parcel 3."

3. Conveyance of the District Property to the City and the City Properties to the District, shall be free and clear of all taxes, special assessments, liens, mortgages and encumbrances; the conveyance of the City West Main property to the District is subject to any and all easements of record. The conveyances and/or transfers also recognize and include, as consideration, the sufficiency of which is adequate to support the making of this Agreement:

- a. the City's continued maintenance of parking and landscaping of Parcel 2 after improvements are constructed;
- b. the City paving of parking spaces on Parcel 2 for the use and benefit of the District;
- c. the preparation of the survey and plat to create Parcel 1;
- d. the relocation of necessary utilities to serve the reconstructed Fire Station
- e. the City removing the current Fire Station 3 from Parcel 2.

The District specifically releases the City from the obligations, requirements and responsibilities of that certain agreement by and between the District and the City dated July 30, 1974 and recorded in the Mesa County land records at Book 1021, Page 81.

4. Conveyance of Parcel 1, Parcel 2, and Parcel 3 shall be free and clear of all taxes, special assessments, liens, mortgages and encumbrances. Parcel 1 has historically been used for ingress, egress and parking for Pomona Elementary School and Parcel 2 has historically been used for the Fire Station 3. In accordance with this Agreement, Parcel 1 will be used for construction/relocation of City Fire Station 3 as shown on Exhibit A (Pomona Fire Station Three Subdivision Plat) and Parcel 2 will be used for parking for Pomona Elementary School. The District and the City acknowledge and agree to the changes of use of the respective properties and waive any rights or claims that each may now have to the current location of the parking, access to the parking or the construction of the Fire Station.

5. On or before March 31, 2022, the City shall remove the current Fire Station 3 from Parcel 2. The Fire Station will be reconstructed on Parcel 1 as provided herein and as otherwise determined by separate agreement of the Parties.

6. Each party agrees to waive a current commitment for title insurance policy covering the respective property to be conveyed by such party. The parties stipulate and agree that Parcel 2 has been continuously owned by the City since 1974 and that Parcel 1 is being newly created and described out of a property that has been continuously owned by the District. Accordingly, Title Insurance is waived by mutual agreement.

7. The date of closing shall be the date for delivery of deeds as provided below. The hour and place of closing shall be designated by mutual agreement between the parties hereto, in Grand Junction. Changes in time, place and date may be made with the consent of both parties. Each party shall pay its respective closing costs at closing, except as otherwise provided herein. Each party shall sign and complete all customary or required documents at or before closing. Fees for real estate closing and settlement services shall be paid by the City. The parties designate Colorado Title and Closing Services as Closing Agent.

8. Subject to full and complete compliance by both parties with the terms and provisions hereof, closing and possession shall occur on or before February 15, 2021 or, by mutual agreement, at an earlier date. The Parties acknowledge and agree that each shall convey its interest to the other for \$10.00 and other good and valuable consideration which is adequate and the parties agree supports the making and enforcement of this agreement.

9. Each party shall have the right to access the other party's property to be conveyed pursuant to this Agreement, and to make inspections thereof. Such inspections shall include, but not be limited to, boundary surveys, geological surveys and studies, and environmental surveys and studies. Said permitted access shall be for a period commencing the day after this Agreement is signed by both parties and ends on January 31, 2021. The party making a physical inspection of the other party's property is responsible and shall pay for any damage that occurs to the other party's property as a result of such inspections.

- (a) If written notice by either party of any unsatisfactory physical condition is given to the other party during the Inspection Period, and if the parties have not reached

a written agreement in settlement thereof within a week after the expiration of the Inspection Period, this Agreement shall then terminate.

- (b) If any material regulated by state or federal law as a hazardous, regulated, dangerous or contaminated substance, material or residue, is discovered on either Property, the party to convey such property shall be obligated to fully and completely remove the same before closing, or provide for adequate security, to be agreed upon by the receiving party, for the other party to do so after closing.
- (c) Except as provided in the preceding sub-paragraph, if either party fails to give notice of any unsatisfactory physical condition during the term of the Inspection Period, then the party failing to give such notice shall be deemed to have accepted the physical condition of the other party's property, as is, in its present condition.
- (d) Each party represents that it, he or they have no knowledge that his, their or its property before conveyance (including land, surface water, ground water and improvements) is contaminated by or contains, whether or not visible: (i) any "hazardous waste," "medical waste," "solid waste," "underground storage tanks," "petroleum," "regulated substances" or "used oil" as defined by the Solid Waste Disposal Act (42 U.S.C. § 6901, *et seq.*), as amended, and the Resource Conservation and Recovery Act (42 U.S.C. § 6991, *et seq.*), as amended, or by any regulations promulgated thereunder; (ii) any "hazardous substance" or "pollutant or contaminant" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601, *et seq.*), as amended, or by any regulations promulgated thereunder; (iii) any "regulated substance", as defined by the Underground Storage Tank Act, C.R.S., § 25-18-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (iv) any "hazardous waste" as defined by C.R.S., § 25-15-101, *et seq.*, as amended, or by any regulations promulgated thereunder; (v) any substance the presence of which on, in, under or about the property, is prohibited by any law similar to those set forth above; and (vi) any other substance which by law, regulation or ordinance requires special handling in its collection, storage, treatment or disposal.

11. The City shall demolish, remove and/or dispose of the existing Fire Station structure and any and all other buildings or structures situated upon Parcel 2 upon completion of the replacement Fire Station. If any material regulated by state or federal law as a hazardous, regulated, dangerous or contaminated substance, material or residue is discovered by the City in demolition of the existing Fire Station, the City shall fully remediate such hazardous materials at its expense before construction of the parking lot. The City shall leave the ground adjacent to and under the removed structure(s) in a clean, neat, safe and level condition and prepare the same for construction of a paved parking area of a yet to be determined number of spaces for the District's use. Construction of the parking is an express term and condition of this Agreement. Construction of the parking spaces shall be completed by July 31, 2022.

12. At closing, District shall execute and deliver a Special Warranty deed to the City and the City shall deliver a Special Warranty Deed to the District. Each party shall deliver possession of such party's property to the other party, free and clear of:

- (a) all taxes;
- (b) all liens for improvements installed as of the date of closing, whether assessed or not;
- (c) all liens, mortgages and encumbrances;
- (d) all fees and charges for utilities, association dues, water rents and water assessments; and
- (e) all tenancies and/or leasehold estates.

13. Time and full performance are of the essence hereof. If any obligation hereunder is not performed as herein provided, the non-defaulting party shall have the following specified remedies, except as otherwise provided in this Agreement: to treat this Agreement as being in full force and effect together with the right to an action for specific performance, but no damages shall be recoverable.

14. If a party engages or pays for an attorney to pursue any remedy hereunder, such party shall pay for its own attorney's fees and charges.

15. The parties represent to each other that the exchange of these Properties was brought about without the efforts of any brokers or agents and that neither party has dealt with any brokers or agents in connection with the exchange of the Properties. Each party agrees to defend, indemnify and hold the other harmless from any claim for real estate brokerage commissions or finder's fees asserted by any third party as a result of the sale or exchange pursuant to this Agreement.

16. All notices and communications required or regarding this Agreement shall be in writing delivered to the parties by first class United States mail, certified with return receipt requested, and shall be deemed served upon the receiving party as of the date of receipt shown on the return receipt, addressed as follows:

To the City: Grand Junction Fire Department  
6255 Ute Avenue  
Grand Junction, CO 81501-2668

With a copy to: John Shaver  
City Attorney  
250 North 5th Street  
Grand Junction, CO 81501-2668

To District: Phil Onofrio and John Williams  
2115 Grand Avenue  
Grand Junction, CO 81501

The parties may, by notice as provided above, designate a different address to which notice shall be given.

17. This Contract embodies the complete agreement between the parties hereto and cannot be changed or modified except by a written instrument subsequently executed by the parties hereto. No spoken or oral promises or changes to this Agreement will apply or be

enforced. This Contract and the terms and conditions hereof apply to and are binding upon the heirs, successors and assigns of both parties.

18. This Agreement shall be governed and construed by the laws of the State of Colorado. Venue for any action shall be in Mesa County, Colorado.

19. Each party has obtained the advice of its own legal and tax counsel and, therefore, the rule of construing ambiguities against the drafter shall have no application to this Agreement.

20. The promises, agreements to pay money, liabilities and other agreements herein that must be performed after the closing shall remain enforceable despite the transfer of title. The doctrine of merger shall not apply.

MESA COUNTY VALLEY SCHOOL DISTRICT 51:

CITY OF GRAND JUNCTION:

By: Phil Onofrio

Phil Onofrio, Chief Operations Officer

By: Greg Caton

Greg Caton, City Manager

Attest: Wanda Winkelmann,  
City Clerk

Wanda Winkelmann  
January 25, 2021

