

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this 12<sup>th</sup> day of December, 2013, by and between MESA COUNTY, hereinafter called "County" and THE CITY OF GRAND JUNCTION, a Colorado Home Rule City, hereinafter called "City," collectively the "Parties."

### RECITALS

The County is the owner of real property situated at 3117 F Road, in Mesa County, Colorado, known as Long Family Memorial Park, hereinafter called "Park".

The City and the County agree that the provision of recreation programs is important to the public in general and specifically to those persons utilizing Long Family Memorial Park.

In support of the Park, the City and County agree that the City will schedule all recreation activities at Long Family Memorial Park.

An Intergovernmental agreement for such purpose 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 term of this Agreement will be for five years, commencing January 1, 2014 and ending December 31, 2018, and may be extended for an additional term upon mutual agreement.

2. The City agrees to provide programming for the Park. Programming for purposes of this Agreement is the scheduling and management of all organized, recreational activities at the Park, including but not limited to, youth and adult sports, recreation events and other organized and scheduled sporting events and activities. The County agrees that the standard and customary City/County recreation rules and regulations shall be applied to the programming of the Park. For purposes of scheduling maintenance, the City will provide the County seasonal schedules, with weekly updates, for all City scheduled and programmed activities in the Park. The County acknowledges that the schedule may be subject to change. The City shall provide the County with its schedule via e-mail or fax on a day and time agreed upon by both parties. The County reserves the right to review scheduling and use of the Park and recommend changes in City programming from time to time.

3. As owner of the Park, County agrees to be responsible for maintenance of the Park. Without limiting the generality of that responsibility, the County shall repair and/or replace parking lot improvements, irrigation lines, pump(s) and sprinklers, fences, lights, restrooms, shelters, tables, benches, playground equipment, sign(s), trash receptacles and any other feature, facility or installation of the Park. Furthermore, the County shall mow, water, fertilize, spray, stripe, aerate and maintain all turf grass and playing fields on a schedule and to a condition mutually determined by the City and County.

The cost to maintain the Park, including repairs, upkeep and utilities shall be the sole expense and liability of the County.

4. The County and City agree to promptly notify each other should the physical condition of the Park not be conducive to the safe conduct of any programmed activity, event or recreation in the Park and/or if maintenance practices may impact in any way, the scheduling of activities in the Park.

5. The City will collect all fees paid to the City by users of the Park. The City agrees that it shall report quarterly to the County in a form mutually determined by the City and County. The City and County agree that for purposes of this Agreement the City's annual expenses are estimated to be \$28,613.00 for the subsequent years. The City shall be entitled to retain that amount as compensation for its services. Any funds collected in excess of that amount belongs to the County. Should collected funds fall below the annual amount, the County shall owe the City the difference which the City will bill the County by December 31. In the event the City's annual expense exceeds the annual amount, the City and County may renegotiate the base amount based on the City's actual cost.

6. The County understands and agrees that it may not reserve, schedule or hold any activity at the Park, for itself or for any other person or entity, without securing the prior written permission of the City's Director of Parks and Recreation or his or her designee. Such permission shall not be unreasonably withheld.

7. The City and the County will set the fees and charges for Park usage and programming in accordance with the prevailing City or County rates in effect as of the date of this Agreement. Fees and charges shall be reviewed annually based on activity level, park wear and tear. All fees collected by the City shall belong to the City as compensation for the services provided and will be reconciled per the provisions of Paragraph 5 herein.

8. The Parties understand and agree that both the City and the County may be protected by and will rely on and do not waive or intend to waive by any provision of this Agreement the monetary insurance limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, 24-1-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available.

9. The County agrees to indemnify and hold harmless the City and its officers and its employees, from and against all liability, claims, demands and expenses, including court costs and attorney fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with the maintenance work to be performed by the County under this Agreement, if such injury, loss or damage is caused by, or is claimed to be caused by, the act, omission or other fault of the County or any officer or employee of the County.

The City agrees to indemnify and hold harmless the County and its officers and its employees, from and against all liability, claims, demands and expenses including court costs and attorney fees, on account of any injury, loss or damage, which arise out of or are in any manner connected with the programming work to be performed by the City under this agreement, if such injury, loss or damage is caused by, or is claimed to be caused by, the act, omission, or other fault of the City or any officer or employee of the City.

10. Any persons employed by either the City or the County for the performance of work hereunder shall be employees of the respective party and not agents or employees of the other.

11. Neither party may assign or delegate this Agreement or any portion thereof without the prior written consent of the other Party.

12. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement; such party may be declared in default.

13. This Agreement may be terminated by either party for material breach, default of the Agreement by the other party not caused by any action or omission of the other party, or for no reason, by giving the other party written notice of at least thirty (30) days in advance of the termination date. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.

14. The Parties shall reasonably comply with the applicable provisions of the American with Disabilities Act of 1990 and any and all other applicable federal, state or local laws and regulations.

15. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. Only an instrument in writing signed by the parties may amend this Agreement.

16. The traditional rule that ambiguities shall be construed against the drafter is waived.

17. Venue for any action arising out of or occurring under this Agreement shall be Mesa County, Colorado. The agreement shall be controlled by, construed and interpreted in accordance with the law of Mesa County and State of Colorado.

**MESA COUNTY, COLORADO  
BOARD OF COMMISSIONERS**

Steven Acquafresca . 12/12/13 .  
Steven Acquafresca, Chairman Date  
Finance Director .

**CITY OF GRAND JUNCTION, COLORADO**

Sam Susuras 10-23-13  
Sam Susuras, Mayor Date