AGREEMENT

This agreement ("Agreement") by and between the City of Grand Junction ("City") and Mesa County Valley School District 51 ("District") is effective the __ day of September 2024 and is made and entered into between the City and the District on and in accordance with the following terms. Collectively the City and the District may be referred to as "Parties" or "the Parties."

Recitals:

A. Mesa County, the City, and the District were the parties to a 1982 agreement together with subsequent amendments ("1982 Agreement") concerning the operation and maintenance of the Orchard Mesa Community Center Pool ("OM Pool").

B. In 2014 the 1982 Agreement was restated and amended ("2014 Agreement"). The 2014 Agreement expired in December 2019. The 1982 Agreement and the 2014 Agreement are referred to collectively herein as the "Old Agreements."

C. The District and the City continued the relationship established by the Old Agreements; however, the County did not and on or about April 3, 2024, Mesa County terminated its involvement with the OM Pool under the Old Agreements by tendering $800,000 to the District.

D. The Old Agreements served the Parties well; however, since the expiration of the 2014 Agreement, the County's cessation of contributions to the City for the OM Pool, and the payment by the County to the District, the Parties have not had a clear understanding of a) the continued interim operations and maintenance of the OM Pool, and b) a method for determining the City's participation, if any, in the cost of the demolition of the OM Pool if/when it is closed.

E. The OM Pool has been an important amenity for residents of Orchard Mesa, the City, Mesa County, and District students. The OM Pool has reached the end of its useful life. The Parties agree that the provision of aquatic recreation is important to the public in general, and specifically to those persons utilizing the OM Pool and that the OM Pool should remain open as determined by the City until no

later than December 31, 2026[1]. However, to eliminate the opportunity for vandalism the District will demolish the entire structure north of the entrance to the OM Pool (generally referred to as the gym and band room) within 120 days of the date of this Agreement.

F. The Parties further understand and agree that with and after the execution of this Agreement certain of the assumptions of the Parties that inform this Agreement may change. Those assumptions ("Base Assumptions") include, but are not necessarily limited to, the City determining that it will conclude its operations of the OM Pool on or before December 31, 2026; that it may decide to acquire the OM Pool prior to December 31, 2026; or that a recreation district may be formed and a recreation district if formed, or another third-party, may determine that it will acquire the OM Pool from the District. In the event of any change to the Base Assumptions the Parties agree to amend or terminate this Agreement and to work in good faith to come to a timely solution concerning the future of the OM Pool. Furthermore, the Parties agree that if a recreation district is formed and the recreation district or another third-party acquires the OM Pool from the District that the City's escrowed funds as provided in paragraph 5 will be returned to the City in accordance with escrow instructions arising out of/under this Agreement.

G. With the essential understandings as stated herein the Parties individually and collectively by the signatures of those authorized to sign this Agreement, do express their present and future intentions regarding the OM Pool on the terms and conditions stated herein and do enter into this agreement as authorized by §18, Article XIV of the Colorado Constitution, §29-1-203, C.R.S., § 22-32-110(1)(f), C.R.S. and other applicable law.

NOW, THEREFORE, in consideration of the mutual covenants and conditions stated, and for other good and valuable consideration, the sufficiency of which is acknowledged for both the formation and enforcement of this Agreement, the Parties agree as follows:

1. This Agreement will commence with the signature of both Parties and end no later than December 31, 2026, or upon demolition of

[1] The City's new Community Recreation Center (CRC) is projected to open in early to mid-2026 and by the end of 2026 the City will have had opportunity to assess the impact of the CRC on the utilization of the OM Pool, and will, by no later than 12/31/26 determine the disposition of the OM Pool.

the OM Pool, ("Term") as provided herein unless the Agreement is sooner amended or terminated.

2. For the Term the City agrees to:

i) continue to occupy and operate the OM Pool without need or requirement of compensation to the District;

ii) the City will assume and pay the District's financial obligations arising out of or under the Old Agreements, including but not limited to, the payment of insurance, internet access [recurring charges and network connection(s) for use by the City for scheduling], all gas, and electric utilities, water, and trash service, so long as the OM Pool is open and operated by the City;

iii) the City will provide all required labor and pay as a recurring expense of the OM Pool all wages, salaries, benefits and workers' compensation insurance premiums and inter-fund charges for the operations of the OM Pool so long as the OM Pool is open and operated by the City;

iv) the City will as a recurring expense provide basic daily maintenance and janitorial services for the operations of the OM Pool so long as the OM Pool is open and operated by the City;

v) the City will manage the OM Pool for and schedule all open swim, swim lesson and special event participants, including for District sponsored uses. The City will collect the revenues generated by public swim, swim lessons, private parties and special events and concessions and the revenue shall be used to offset the expenses of the OM Pool. The District shall have no claim to any OM Pool revenue. Fees and charges for District sponsored uses (*i.e.*, physical education classes, swim team practice/meets, and District sponsored events) shall be without charge for those uses scheduled in advance and so long as the same, as reasonably determined by the City, do(does) not unreasonably interfere with use(s) by paying user(s).

vi) The City shall procure liability and casualty insurance for the use and operation of the OM Pool and the parking area used by and for the OM Pool. The City shall pay the liability and casualty insurance premiums, for coverage with limits to be determined by the City, but in any event in amounts no less than the most current limits established by the Colorado Governmental Immunity Act, 24-1-101 *et seq.*, C.R.S., for the Term unless the Agreement is sooner amended or terminated. The District shall be named as an additional insured. Such insurance will not include property loss coverage. The District may, in its discretion, provide property loss coverage for the OM Pool and OM Pool building during the term of this Agreement, if not sooner amended or terminated.

3. The OM Pool is located on District property ("OM Pool Property"). If the Agreement is terminated or the Term is accomplished, the District will retain ownership of the OM Pool and the OM Pool Property and the City shall have no claim and/or demand to the OM Pool or OM Pool Property or require that the District pay the City any portion of any proceeds that may result from the sale of the OM Pool Property, unless such is determined by amendment of this Agreement, or subsequent agreement upon termination of this Agreement.

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

5. This Agreement is contingent upon the Parties a) drafting mutually agreeable escrow instructions ("Instructions"); b) engaging a mutually agreeable escrow agent ("Escrow Agent") to hold funds for/in anticipation of the demolition of the OM Pool; and c) depositing with the Escrow Agent a total of $607,495.00 ("Stipulated Demolition Funds") in accordance with the Instructions. If the Parties cannot agree on escrow instructions, or an escrow agent, or failing to deposit the Stipulated Demolition Fund prior to September 25, 2024, then no Agreement shall exist between the Parties, and

neither party shall have any obligation(s) to the other under the Agreement. The Stipulated Demolition Fund is funded as follows: The City will deposit $200,000 ("City Funds") and the District will deposit $407,495 ("District Funds.").

If/when the OM Pool is demolished, should the Stipulated Demolition Fund exceed the actual cost of the demolition, the District shall pay for the cost of the demolition first from the District Funds and then from the City Funds .

6. The City will promptly notify the District if the physical condition of the OM Pool is not, in the City's sole and absolute discretion, conducive to the safely conduct any programmed activity in the OM Pool and/or if equipment failure(s) and maintenance requirement(s) impact the scheduling of activities in the OM Pool.

7. If/when the OM Pool is demolished, the District shall require its demolition contractor(s) to apply for and secure any and all City and/or State permit(s) prior to the demolition and shall conduct all operations in conformance with the permit(s). The District shall require its contractor(s) to name the City as an additional insured for the demolition and all asbestos/environmental remediation work reasonably necessary or required to demolish the OM Pool. The District shall require the debris to be removed from the OM Pool Property and leveling the site/site restoration as required by applicable City Code.

8. Neither Party may assign or delegate its obligations under this Agreement or any portion thereof without the prior written consent of the other Party

9. 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.

10. 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.

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

12. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation that either the City or the District has (or may have) to the other as provided in this Agreement.

13. The Parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted for mediation, and if the matter is not resolved through mediation, then the Parties may proceed to District Court. Venue for any action arising out of or occurring under this Agreement shall be in the District Court for Mesa County, Colorado. The Agreement shall be controlled by, construed, and interpreted in accordance with the law of the State of Colorado.

Dated this 25 day of September 2024.

CITY OF GRAND JUNCTION

By: _____
Abram Herman, President of the City Council

MESA COUNTY VALLEY SCHOOL DISTRICT 51

By: Andrea Haitz
Andrea Haitz, Chair of the Mesa County Valley School District 51 Board

MESA COUNTY ADMINISTRATION

P.O. Box 20000 ▫ 544 Rood Avenue ▫ Grand Junction, CO 81502-5001 ▫ FAX (970) 244-1639

04/03/2024
Dr. Brian Hill
Superintendent
School District 51
2115 Grand Ave, Grand Junction, CO 81501

Dear Brian
Enclosed please find the county's check for $800,000. This is provided to SD51 as the sole owner of the pool to close out Mesa County's long-standing commitment with regard to the Orchard Mesa Pool. The School Districts acceptance of this check releases Mesa County from any other fiscal responsibility related to or arising from the Orchard Mesa Pool.

Cc: Mr. Greg Caton
Mr. Todd Starr
Mr. John Shaver

Sincerely,

Peter M. Baier, P.E., M.P.A.
Mesa County Administrator