

MCS04POM

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT (INTERGOVERNMENTAL AGREEMENT)**

NAME OF CONTRACTOR: MESA COUNTY SCHOOL DISTRICT 51

SUBJECT/PROJECT: CONSTRUCTION OF PARKING LOT AT POMONA
ELEMENTARY SCHOOL

CITY DEPARTMENT: PUBLIC WORKS AND UTILITIES

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

INTERGOVERNMENTAL AGREEMENT

~~July~~ ^{AUGUST} 20 2004, by and between the CITY OF GRAND JUNCTION ("City") and MESA COUNTY SCHOOL DISTRICT 51 ("District.").

RECITALS

- A. The Colorado Constitution, in Article XIV, Section 18, permits political subdivisions of the state to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units, including the sharing of costs, the imposition of taxes, or the incurring of debt; and
- B. Section 29-1-203, C.R.S., authorizes cities and school districts, as political subdivisions of the state, to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each; and
- C. Section 22-32-122(1), C.R.S., grants to school districts the power to contract with a city for the performance of any service, activity, or undertaking which any school district may be authorized by law to perform or undertake; and
- D. Article XI, Section 7, of the Colorado Constitution permits the state or any political subdivision of the state to give direct or indirect financial support to any political subdivision of the state as may be authorized by statute; and
- E. The City is currently reconstructing 25 1/2 Road (said reconstruction shall be referred to herein as the Project) and, as part of the Project, the District has proposed that the City construct certain off-street parking lot facilities and improvements on District property at or near Pomona Elementary School, 588 25 1/2 Road, Grand Junction, Colorado (such improvements shall be referred to herein as the "Reimbursable Work;" and
- F. The Reimbursable Work will benefit the users of Pomona Elementary School as well as adjacent City parks and recreation facilities, and therefore the City and the District have agreed to share in the responsibility for and cost of constructing the Reimbursable Work as set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the promises contained herein, the parties hereto mutually covenant and agree as follows:

- 1. The City agrees to construct the Reimbursable Work in conformity with the plans and specifications approved by both parties and attached hereto as Exhibit A. Such construction shall be at the City's initial expense, except for engineering and

design costs paid for by the District as set forth in Paragraph 3 and subject to reimbursement to the City by the District, as provided in Paragraph 2 of this Agreement.

2. The District agrees to reimburse the City for no less than 75% of the cost of construction of the Reimbursable Work, without markup, administrative overhead or construction management charges by the City, provided that the city does not incur or spend in excess of \$200,000.00 to complete the Reimbursable Work under this agreement. The City shall bear the remaining 25% of the actual cost of construction of the improvements. For the purposes of this paragraph, "construction" means and includes all costs and expenses of any and all labor, equipment and materials, including but not limited to asphalt, concrete, landscaping as approved by the District, lighting and reconstruction of displaced park facilities, including but not limited to picnic shelters, but shall exclude interest and the cost of engineering, design and survey work supplied by the parties in accordance with paragraphs 3, 4 and 5 below.

3. The District shall, at its sole cost and expense, provide the services of a Colorado registered professional engineer to design the Reimbursable Work and to serve as the District's representative in connection with the construction of same. The District shall cause said engineer to prepare and submit to the City construction plans and specifications to City standards of and for the Reimbursable Work.

4. The City shall perform, at its sole cost and expense, all survey work reasonably necessary for the completion of the Reimbursable Work, including initial topographical and construction surveys.

5. The District shall reimburse the City as provided in Paragraph 2 above in accordance with the following payment schedule:

(a) The District shall pay an initial installment of \$50,000.00 within 14 days of the date of Substantial Completion of the Reimbursable Work. Substantial Completion shall be determined by the City at its sole discretion.

(b) If the District is authorized to incur additional debt or increase taxes for capital construction at the general election scheduled for November 2004, then the remaining balance of the District's share of the Reimbursable Work shall be paid in full on or before July 1, 2005. If the District is not successful with the bond vote, the District shall pay such remaining balance on or before January 15, 2006 together with interest at the rate of 4%.

(c) Nothing in this paragraph shall be construed to require the District to place a measure authorizing it to incur additional debt or increase taxes on the November 2004 ballot.

6. Upon the District's request, the City shall forward copies of construction invoices and/or copies of checks or other evidence of the payments by the City for the Reimbursable Work. If the District objects to any part of any invoice it shall state its

objection(s) in writing, addressed to the City, citing its objection(s) with reasonable particularity. If the District does not object in writing within seven business days of the city's mailing, the invoice(s) shall be deemed approved.

7. Any and all construction shall comply with City standards. The District designates the City as its agent to coordinate, supervise and inspect the performance of the Reimbursable Work using and to the specifications prepared in accordance with paragraph 3; to require certifications and to otherwise take reasonable or necessary action(s) to ensure that the Reimbursable Work is in conformance with City standards. The City has the right to reject non-conforming work on its own behalf or on behalf of the District.

8. The District agrees that the City shall review and approve all material orders and contracts for construction involving the Reimbursable Work. The material orders and contracts shall be submitted to Mike McDill, City Engineer and shall be deemed approved if not rejected in writing within seven (7) business days of submittal.

9. The City shall enter into a written contract with its contractor(s) to perform the Reimbursable Work. The City represents and warrants that it has made a full and lawful appropriation for the Reimbursable Work and that its contracts with such contractor(s) shall at all times conform to the requirements of section 24-91-103.6, C.R.S. The City agrees to indemnify and hold harmless the District from and against any claims, losses, expense, damages, including attorneys' fees, arising out of or in any way related to the City's nonpayment or nonappropriation of sums due or claimed to be due to the contractor(s) or other third parties pursuant to such contract(s). In addition, such contract shall provide that time is of the essence for the completion of the grading, concrete and asphalt elements of the Reimbursable Work. Although the City does not guarantee that such elements of the Reimbursable Work will be completed prior to August 22, 2004, in the event such elements are not substantially completed by this date, the City will work in cooperation with the District to provide traffic control and related services to minimize disruption and inconvenience to Pomona Elementary School students, parents and staff caused by the Reimbursable Work.

10. The City shall include in its contracts with each contractor, materialmen, vendor, supplier, installer and/or contractor providing materials, equipment and/or labor in connection with the Reimbursable Work that the District shall be a third party beneficiary of all warranties provided to the City concerning or relating to the material and labor provided in connection with the Reimbursable Work. All warranties shall be for a minimum of one year from the date of final acceptance by the City and District in accordance with Paragraph 11 below.

11. Final acceptance of the work shall not occur or be deemed to have occurred until the City and the District jointly accepts, in writing, the Reimbursable Work.

12. This Agreement supercedes all prior discussions and agreements of the parties and may not be amended except in writing duly executed by the parties.

13. Agreement may not be assigned and is binding upon and inures to the benefit of the parties hereto.

14. The District's fiscal obligations under this Agreement shall be subject to the following provisions and limitations:

(a) As prescribed by Colorado law, it is understood and agreed this Agreement is dependent upon the continuing availability of funds beyond the term of the District's current fiscal period ending upon each succeeding June 30, as financial obligations of a political subdivision of the State of Colorado payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Further, the parties recognize that the act of appropriation is a legislative act; however the District hereby covenants to take such action as is necessary under the laws applicable to the District to timely properly and zealously propose a budget, request of, seek and pursue full appropriation of funds from the District's Board of Education, which if appropriated will permit the District to perform its obligations hereunder. In the event there shall be no funds made available, this Agreement may terminate at the end of the then current fiscal year, with no penalty or additional cost as a result thereof to the District.

(b) It is the understanding of the parties that this Agreement will extend beyond the District's current fiscal year. The District and the City understand and intend that the obligation of the District to perform financial obligations hereunder constitutes a current expense of the District payable exclusively from District's funds and shall not in any way be construed to be a general obligation indebtedness of the District within the meaning of any provision of Article XI of the Colorado Constitution, or any other constitutional or statutory limitation or requirement applicable to the District concerning the creation of indebtedness. Neither the District nor the City on its behalf has pledged the full-faith and credit of the District to the payment of the obligations hereunder, and this Agreement shall not directly or contingently obligate the District to apply money from, or levy or pledge any form of taxation to, the payment thereof.

(c) With such limitations in mind, the District has reason to believe that sufficient funds will be available to discharge its obligations under this Agreement. If the District's Board of Education does not appropriate funds for any fiscal period beyond the one in which this Agreement is entered into then this Agreement may terminate as provided in 14(a). In such event the District shall notify the City that the District shall not be obligated beyond that period. Written notice from the District forty-five (45) days prior to the effective date of the termination shall be provided.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year above written.


"CITY"

CITY OF GRAND JUNCTION

By: 
Kelly E. Arnold
City Manager

" DISTRICT"

MESA COUNTY VALLEY
SCHOOL DISTRICT NO. 51

By: 
Ron Rowley
President, Board of Education

ATTEST:

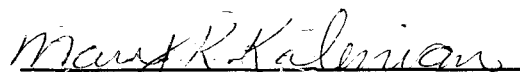

Mary K. Kalenian
Secretary, Board of Education

Exhibit A

