

MCS04WIN

TYPE OF RECORD: PERMANENT

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

NAME OF CONTRACTOR: MESA COUNTY SCHOOL DISTRICT NO 51

SUBJECT/PROJECT: WINGATE ELEMENTARY SCHOOL PARK 351 S CAMP
ROAD

TAX PARCEL#: 2947-351-00-942

CITY DEPARTMENT: PARKS AND RECREATION

YEAR: 2004

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, made and entered into this 19th day of May, 2004, by and between THE CITY OF GRAND JUNCTION, a Colorado Home Rule City, hereinafter called "City," and MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, hereinafter called "District;" collectively the "Parties."

RECITALS

The District is the owner of real property situated in Mesa County, Colorado, known as Wingate Elementary School. The school land is more fully described on Exhibit A attached hereto. Certain portions of the Wingate Property are unimproved or improved only to the extent that they have irrigation facilities situated thereon.

In 1995 the City received a donation of real property for open space and park purposes. The City's land is adjacent to the District's Wingate Elementary School property (Wingate Property) and is more fully described on Exhibit B attached hereto. At the time of the donation the City also obtained from the District an easement to access the donated land over and across the Wingate Property. The City's land is presently unimproved.

In 2002, the City adopted a ten year Strategic Plan with a goal of supporting the Comprehensive Parks and Recreation Master Plan. Strategic Plan objectives support the development of neighborhood parks and specifically school /park development when deemed in the best interest of the City and the District. The development of Wingate Park and the execution of this instrument are consistent with the Parks Master Plan and the City's Strategic Plan.

The Parties wish to utilize the City's land and part of the Wingate Property for the purpose of constructing and maintaining a park (herein "Park"), the legal description for that part of the Wingate Property to be used for the Park is attached hereto as Exhibit C. The land comprising Exhibits B and C will be referred to herein as the "Park Property." The City is willing to construct certain improvements on the Park Property inuring to the benefit of the District, Wingate School and the general public, according to a Park Development Plan as described herein.

The City and the School District wish to establish an arrangement for the shared use and operation of the Park Property with the objective of maximizing public access consistent with its primary function as a public educational facility.

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. This Intergovernmental Agreement (herein "IGA") shall be for a term of 99 years, subject to termination as provided in paragraphs 7 and 8, and contingent upon agreement by the Parties on a Park Development Plan (herein "Plan") which, at a minimum will include a site design for shelters, restrooms, traffic and pedestrian access, security lighting, pathways, playground areas and equipment location, irrigation, trees, shrubbery and grass. It is understood that the District will be allowed to participate in the formulation of the Plan, but that approval thereof, as required by the City and the District, in the form necessary by each respectively, will be a condition precedent to this IGA. Upon such approval the Parties will cooperate in the preparation and execution of such documentation as may be required to place their respective interests of record.

2. On or prior to November 30, 2004, the City shall, at its expense, construct the Park improvements, to include but not be limited to grass, shrubbery, irrigation facilities (which may incorporate/utilize the existing system on the Park site), roads and walkways, restrooms, necessary water taps, and playground equipment, all of which shall be set forth more specifically in the Plan. The City will be allowed to use the existing irrigation facilities located on Exhibit C. The District shall make repairs as necessary to make the irrigation facilities serviceable for existing school improvements and compatible with the park.

3. During the term of this IGA the City will, at its own expense and except as otherwise provided herein, maintain and operate the Park and Park amenities to standards observed by the City in maintenance and operation of its other park facilities;

4. During the school year on days when school is in session the District shall be responsible for snow removal from the parking lots and school sidewalks; on other days the City will be responsible for snow removal;

5. With City approval, which shall not be unreasonably withheld, the District will have priority use subject to previous scheduling of the Park and Park facilities for its educational, extracurricular and co-curricular activities. The School District's priority for use shall include school days from 7:00 a.m. until 6:00 p.m. and at other times for which the City is given at least 48 hours notification in advance and in accordance with City park use policies. The District will undertake responsibility for cleanup and repair necessitated by such usage. The City will have a priority of use of the Park and Park facilities and the right to schedule activities at the Park at all other times. With District approval, which shall not be unreasonably withheld, the District will allow the City priority use subject to previous scheduling of the Wingate School facilities, without

charge on at least 48 hours notice and in accordance with existing District Building Use Policies. The City will undertake responsibility for cleanup and repair necessitated by such usage. The City's use shall include days when school is not in session and after school on days when school is in session.

6. Except as expressly provided herein, neither party shall charge the other for the services/use of Wingate School or the Park under this Agreement.

7. The City may notify the District of its intention to abandon the Park. Such notice shall be in writing and shall set a date for abandonment no less than 12 months from the date of the notice. Abandonment shall free the City from its obligation to maintain the park and shall terminate the City's rights of usage hereunder. All Park improvements and equipment located on Exhibit B shall then become the property of the City. All Park improvements and equipment located on Exhibit C shall then become the property of the District.

8. 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 45 days from receiving such notice. Failure to perform shall entitle the nondefaulting party to terminate this agreement or to pursue any other remedy in law or equity to enforce the terms hereof. All Park improvements and equipment located on Exhibit B shall then become the property of the City. All Park improvements and equipment located on Exhibit C shall then become the property of the District.

9. Nothing contained herein shall be construed as a limitation upon the District's right to construct, maintain or continue the use of the Wingate Elementary School site as an educational facility, nor shall anything herein be construed as a limitation upon the District's right to utilize any portion of the Park site for school purposes subject to the limitations set forth in paragraph 5; provided, however, that any such change in use which materially alters or interferes with City's maintenance and repair functions as set forth in Paragraph 3 shall free the City from any such functions as applies to that portion of property subjected to any such change in use; and provided further that a 12 month notice shall be given to the City in the event the District wishes to modify or expand the Wingate School site. Should the District determine that the Wingate School site is no longer suitable for school purposes it may abandon the Park site and dispose of the Wingate School property, provided that the City shall have the first option of purchasing the Park site by meeting a bona fide, acceptable offer of purchase or as may be agreed upon between the City and the District.

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

11. The City's rights and obligation 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.

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9. 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, it shall become necessary or appropriate for the other Party to employ or consult with an attorney concerning the enforcement of defense of its rights

or remedies hereunder, the Party breaching or in default hereunder shall pay all reasonable attorney's fees so incurred by the other Party.



CITY OF GRAND JUNCTION, COLORADO

BY *[Signature]*
City Manager

ATTEST:

[Signature]
Deputy City Clerk

MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51

By *[Signature]*
Ron Rowley
President, Board of Education

ATTEST:

[Signature]
Mary K. Kalenian
Secretary, Board of Education
Dixie A. Cloyd
Assistant Secretary, Board of Education

EXHIBIT A

Legal Description of the Wingate School Property

Commencing at the Northeast corner of Tract 39, Section 35, Township 11 South, Range 101 West of the 6th Principal Meridian and considering the line from the Northeast corner of said Tract 39 to the Northeast corner of Section 35 to bear North 00°02'00" East with all other bearings contained herein relative thereto;

thence South 89°54'21" West 30.00 feet to the True Point of Beginning, said point being on the West right-of-way of South Camp Road and the Westerly right-of-way of Buffalo Road;

thence along said Westerly right-of-way of Buffalo Road by the following two (2) courses and distances:

1) along the arc of a curve to the right whose radius is 60.58 feet and whose long chord bears South 22°43'00" West 46.72 feet;

2) South 45°24'00" West 129.01 feet;

thence South 89°54'21" West 542.44 feet;

thence North 00°02'00" East 133.50 feet;

thence South 89°54'21" West 23.68 feet;

thence North 00°02'42" West 845.97 feet to a point on the centerline of the Redlands Water and Power Company 3rd Lift Canal;

thence South 86°43'14" East along said centerline 678.19 feet to the West right-of-way of South Camp Road;

thence South 00°02'00" West along said West right-of-way 806.06 feet to the True Point of Beginning;

EXCEPT all that portion as conveyed to the City of Grand Junction by instrument recorded November 9, 2000 in Book 2769 at Page 845.

End of Exhibit A

EXHIBIT B

Legal Description of the City Property

Lot 2 in Block 4 of CANYON VIEW SUBDIVISION – PHASE III;
TOGETHER WITH Ingress and Egress easement as described in Agreement recorded
June 26, 1995 in Book 2153 at Page 877.

End of Exhibit B

Exhibit C

Depiction of Portion of Wingate School Property to be used as Park Property

