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| TYPE OF RECORD:     | PERMANENT   |
| CATEGORY OF RECORD: | CONTRACT  |
| NAME OF CONTRACTOR: | MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51                     |
| SUBJECT/PROJECT:    | PEAR PARK ELEMENTARY GYMNASIUM<br>INTERGOVERNMENTAL AGREEMENT |
| CITY DEPARTMENT:    | PARKS & RECREATION  |
| YEAR:               | 2006  |
| EXPIRATION DATE:    | NONE  |
| DESTRUCTION DATE:   | NONE  |

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into as of the 21st day of February, 2006, by and between THE CITY OF GRAND JUNCTION, a Colorado Home Rule City, hereinafter called "City," and MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, a Colorado Public School District, hereinafter called "District;" collectively the "Parties."

### R E C I T A L S

The District is the owner of real property situated in Mesa County, Colorado, known as Pear Park Elementary School ("School") site. The school land is Located at 30 1/4 and D 1/2 as shown on Exhibit A attached hereto. The property is currently being developed and the District is planning for construction of the School in 2006, with a target date for completion in August of 2006.

In 2002, the City adopted a ten (10) 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 recreational development when deemed in the best interest of the Parties.

In support of the City's Strategic Plan initiatives and the District's desire to make facilities available for public use, the District has altered its construction plans to provide a gymnasium larger than originally designed, the City agrees to pay for the costs of the expansion, and the parties agree to a joint use arrangement of the gymnasium (herein the "Gymnasium") for recreation programming and activities as more fully described herein. In furtherance of the allowed recreation uses at the Gymnasium, the City agrees to provide for the landscape maintenance and upkeep of the entire Pear Park Elementary School grounds once the Gymnasium is completed for the term of this Agreement.

The Gymnasium will be dedicated to public use pursuant to an arrangement for shared use and with the objective of maximizing public access consistent with the Parks

and Recreation Master Plan and the City's Strategic Plan and with its primary function as a public educational and recreational facility, as is more fully described herein.

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 ninety-nine (99) years, beginning with the opening date of the Gymnasium and ending December 31, 2105, subject to termination only as provided in paragraphs 7 and 8.

2. The District will erect the enlarged Gymnasium (designed and bid as an alternate to the original project design) as part of the School bond construction project. The increased cost of the alternate over and above the cost of the original gymnasium design, presently estimated to be \$507,843.00, shall be borne by the City.

3. During the term of this IGA the District will, at its own expense, operate, repair and maintain the Gymnasium and its amenities to standards observed by the District in maintenance and operation of other District facilities to include, without limitation, all utilities and custodial services.

4. The District shall have priority use of the Gymnasium during school hours and for District-wide basketball and volleyball tournaments (on at least six (6) months' advance notice to the City's Parks and Recreation Director and/or designee). The City's Parks and Recreation Director and/or designee will be responsible for the scheduling, supervision, use and operation of the Gymnasium during periods not reserved for School use. The parties, through their designated representatives, shall mutually agree upon fee schedules for non-Party users of the Gymnasium. All fees shall inure to the benefit of the District. Community use and recreational activities scheduled for the City's Parks and Recreation Department when the Gymnasium is not reserved for School use shall have priority over all other uses; however, with City approval, which shall not be unreasonably

withheld, and on at least 48 hours' notice, at times when the Gymnasium is not otherwise reserved for School, community or City use, the District shall be free to use the Gymnasium for its after-school educational, extracurricular and co-curricular activities, without charge. With District Approval, which shall not be unreasonably withheld, and on at least 48 hours' notice, the District will allow the City priority use of the Gymnasium during school hours and on days when school is not in session and in accordance with existing District Building Use Policies, but without charge. The City will be responsible for extraordinary cleanup and repair necessitated by its usage and by community users occupying the Gymnasium under City authorization.

5. In order to preserve the tax exempt status of District General Obligation Bonds, the City agrees to make the Gymnasium available to the general public, to not grant any long-term contracts on the Gymnasium, to not engage private management firms for its portion of the occupancy and to allow only limited private business use of the facility.

6. Except as provided in paragraph 7, from and after five years from the date hereof either party may terminate this IGA on not less than twelve (12) months' written notice to the other party. Such notice shall set a termination date not less than 12 months from the date of the notice. Termination shall free the Parties their obligations hereunder from and after the termination date, provided that if the District elects termination and termination is without cause, the District shall pay the City as follows:

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| If termination is after February 21, 2011, but before February 21, 2012 | The District will Pay the City \$338,563.00 |
| If termination is after February 21, 2012, but before February 21, 2013 | The District will Pay the City \$304,707.00 |
| If termination is after February 21, 2013, but before February 21, 2014 | The District will Pay the City \$270,851.00 |
| If termination is after February 21, 2014, but before February 21, 2015 | The District will Pay the City \$236,995.00 |

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| If termination is after February 21, 2015,<br>but before February 21, 2016 | The District will Pay the City \$203,139.00 |
| If termination is after February 21, 2016,<br>but before February 21, 2017 | The District will Pay the City \$169,283.00 |
| If termination is after February 21, 2017,<br>but before February 21, 2018 | The District will Pay the City \$135,427.00 |
| If termination is after February 21, 2018,<br>but before February 21, 2019 | The District will Pay the City \$101,571.00 |
| If termination is after February 21, 2019,<br>but before February 21, 2020 | The District will Pay the City \$67,715.00  |
| If termination is after February 21, 2020,<br>but before February 21, 2021 | The District will Pay the City \$33,859.00  |
| After February 21, 2021  | The District will Pay the City \$0.00       |

Upon termination the Gymnasium improvements, as then existing, together with fixtures associated therewith shall become the property of the District. All Gymnasium moveable equipment purchased or provided by the City shall then remain the property of the City.

7. 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 forty-five (45) days from receiving such notice. Failure to perform shall entitle the non-defaulting party to terminate this IGA or to pursue any other remedy in law or equity to enforce the terms hereof. In the event of termination, all Gymnasium improvements, as then existing, together with fixtures associated therewith, shall remain the property of the District. All Gymnasium moveable equipment purchased or provided by the City shall then remain the property of the City.

8. Nothing contained herein shall be construed as a limitation upon the District's right to construct, maintain, continue or discontinue the use of the 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 School site for school purposes subject to the limitations set forth in paragraph 4; provided, however, that any such change in use which materially alters or interferes with City's landscape maintenance and repair functions as set forth in paragraphs 3 and 4 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 twelve (12) month notice shall be given to the City in the event the District wishes to substantially modify or expand the Gymnasium.

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

10. 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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12. General Provisions

a. Entire Agreement – Merger – Modifications – No Waiver.

This IGA 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 IGA. This IGA 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 IGA, 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 IGA.

c. Governing Law. This IGA 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 IGA 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 IGA shall not be affected thereby.

e. Captions. Article titles and paragraph titles or captions contained in this IGA are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this IGA 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.

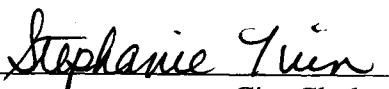
g. Attorney's fees. If, on account of any breach or default by a Party hereto under the terms and conditions hereof, it shall become necessary or appropriate for the other Party to employ or consult with an attorney concerning the enforcement of defense of its rights or remedies hereunder, the Party breaching or in default hereunder shall pay all reasonable attorney's fees so incurred by the other Party.



CITY OF GRAND JUNCTION, COLORADO

BY   
City Manager

ATTEST:

  
City Clerk

MESA COUNTY VALLEY SCHOOL  
DISTRICT NO. 51

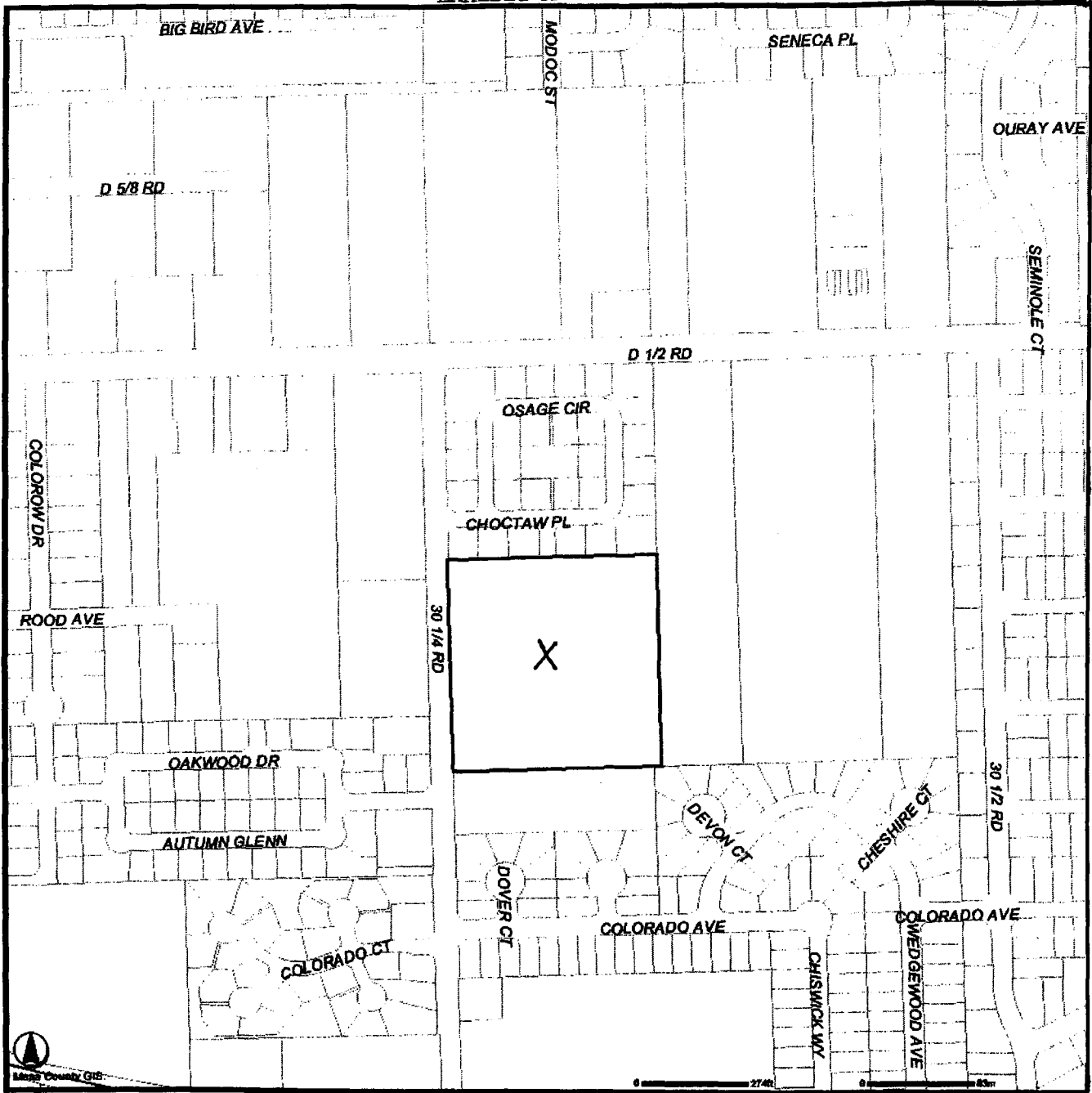
By *Ron Rowley*  
Ron Rowley, President

ATTEST:

*Jamie Sidanys*  
*Secretary, Board of Education*



EXHIBIT A



A tract of land in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of Section 16, Township 1 South, Range 1 East of the Ute Meridian, described as follows:

Beginning at a point from whence the Northwest Corner of the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  of said Section 16 bears North 0 degrees 07' East 515.0 feet; thence East 563.75 feet; thence South 0 degrees 07' West 541.0 feet; thence West 563.75 feet; thence North 0 degrees 07' East 541.0 feet to the Point of Beginning, EXCEPT the West 30.0 feet for road right-of-way, Mesa County, Colorado

also known as 432 30 $\frac{1}{4}$  Road, Grand Junction, Colorado 81504