

MCS96SLD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: MESA COUNTY VALLEY SCHOOL DISTRICT
NO. 51

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: RECITALS FOR
SCHOOL LAND DEDICATIONS AND ASSOCIATED FEES

CITY DEPARTMENT: ADMINISTRATION

YEAR: 1996

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

FEB 23 1996

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT is made and entered into this 20th day of February, 1996, between the CITY COUNCIL OF THE CITY OF GRAND JUNCTION, hereinafter referred to as the "City," and MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, hereinafter referred to as the "District."

RECITALS

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, 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

WHEREAS, Section 22-32-110(1)(y), C.R.S., authorizes the board of education of a school district to accept gifts, donations, or grants of any kind; and

WHEREAS, on January 17, 1996, the City enacted the School Land Dedication Fee Ordinance of the City of Grand Junction ("Ordinance"), which adopts and implements amendments to the City of Grand Junction Zoning and Development Code (Code) to provide for school land dedications and the collection of fees in lieu of school land dedication (SLD Fees) in trust for the benefit of the District; and

WHEREAS, the District's board of education has made a formal request to the City for school land dedications or SLD Fees pursuant to the Code as amended; and

WHEREAS, the City and the District desire to enter into an agreement regarding the implementation and administration of such dedications and SLD Fees pursuant to the Ordinance and Code amendments; and

WHEREAS, the parties intend that the SLD Fees will be the District's revenue only, and wish to ensure that the City not sustain any loss in the event any SLD Fees are alleged or determined to be includable in the City's "fiscal year spending" under Article X, Section 20 of the Colorado Constitution (referred to herein as "Amendment 1");

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the parties agree as follows:

1. School Land Dedications.

(A) In the event that the District determines that any proposed development includes within it land which is necessary for implementing a school plan, the District shall include such determination in its written recommendations regarding the concept plan, preliminary subdivision plan or plat for such development, or other official development plan, whichever is the first development permit application step referred by the City to the District for review and recommendations. Upon receipt of such recommendations and determination, the City shall require dedication of suitable school lands within such development to the District as a condition of subdivision approval in accordance with the Code.

(B) The parties agree that for all school land dedications required or permitted in accordance with Code sections 5-4-6.5 or 5-4-6.5(B)(3), respectively, the City shall, prior to recording of the final subdivision plat, require the development permit holder or applicant to convey the property to be dedicated directly to the District by deed in a form acceptable to the District, and the City, upon such conveyance, shall have no legal or equitable interest in or title to such property.

2. Collection of SLD Fees. The City agrees to collect SLD Fees in the form of cash payments, pursuant to and in the manner provided by Section 5-4-6.5(A) and (B) of the Code, commencing on the effective date of this Agreement, and continuing so long as the Ordinance is in effect, or until this Agreement is terminated as provided in Paragraph 10 below. It is understood and agreed that the Code provisions requiring payment of SLD Fees shall apply to all residential building permit applications submitted on or after said effective date with respect to all existing residential developments (or mixed use developments containing a residential development component) within the boundaries of the District, except those residential developments or portions thereof for which a final subdivision plat was recorded in the office of the Mesa County Clerk and Recorder before the effective date of this Agreement.

3. Trust Fund Creation. The City shall establish, as a separate account apart from all other funds of the City, a Mesa County Valley School District No. 51 SLD Fee Trust Fund (referred to herein as the "Trust Fund"). The Trust Fund shall be governed by the provisions of this Agreement, but in the event of any conflict between the terms contained in this Agreement and the Code, the latter shall be controlling. All SLD Fees collected by the City pursuant to the Code and this Agreement with respect to residential developments (or mixed use developments containing a residential development component) within the boundaries of the District shall be properly identified and promptly deposited into the Trust Fund. The District shall account for the funds so deposited as revenue of the District pursuant to Article X, Section 20 of the Colorado Constitution.

4. Management of Trust Fund. The City Council (Council) of the City shall maintain and manage the Trust Fund, as trustee, for the exclusive use and benefit of the District. All funds in the Trust Fund shall be invested or deposited in conformity with the City's Revised Investment Policy as adopted by the Council in Resolution 70-95 on July 19, 1995, and in a manner which will accomplish the following objectives: to insure the safety of the funds, to insure that the funds are available for disbursement to the District within thirty (30) days following the filing of a request pursuant to paragraph 6(C) of this Agreement, and to earn a rate of return on the funds in the Trust Fund available for investment which is the same as the rate of return earned on investments of other City funds. So long as the other requirements of this Paragraph and Paragraph 3 are met, funds in the Trust Fund may be pooled or co-mingled with other City funds for investment purposes. Subject to the requirements of part 7 of article 75 of title 24, C.R.S., the Trust Fund may also be managed in combination with or as part of other SLD Fee trust funds established for the benefit of the District under provisions of comparable school site fee resolutions or ordinances adopted by Mesa County or other municipalities within Mesa County.

5. Ownership. The District shall at all times be beneficial owner of the funds in the Trust Fund, but the signature of the chief financial officer of the District, or designee, and the signature of the City Manager, or designee, shall be required for the withdrawal of monies from such fund.

6. Expenditure Of SLD Fees.

(A) The City shall not withdraw, refund or pay out funds from the Trust Fund for any purpose except as authorized in accordance with this Agreement or the Code as amended by Ordinance 28-86;

(B) Except for the amounts retained by the City to defray administrative expenses as provided in Paragraph 7 below, each SLD Fee collected by the City for the District pursuant to the Code, as amended, shall be expended only to acquire real property or interests in real property reasonably needed for development or expansion of school sites and facilities within the District or to reimburse the District for sums previously expended to acquire such property or interests. Any changes to District boundaries which would affect the expenditure of fees in lieu of land dedication must be reviewed by the Council prior to the implementation of such changes. Such fees shall not be used to pay general obligation bonds, or to compensate for costs incurred by the District in which the development is located for costs incurred to upgrade existing educational facilities, unless such fees are expended for the purpose of increasing the site or land area for such existing facilities.

(C) Upon the written request of the District, the City Manager shall promptly notify the District's Board of Education of the amount of fees in lieu of dedication received and deposited in the Trust Fund and the amount of interest earned thereon, as of the end of the month immediately preceding the month in which the request was made. Upon receipt of such notice, the District may file with the City Manager a request for disbursement to the District of all

or part of the fees, interest and earnings accumulated in the Trust Fund, less administrative fees owed to the City pursuant to Paragraph 7 below.

(D) The request for disbursement shall be in writing, set forth the amount of funds needed, and contain a brief description of the purposes for which the funds will be used.

(E) The request for disbursement shall be heard at a regular meeting of the Council held within thirty (30) days after it is filed, at which time the District, through its authorized representative, shall demonstrate to the Council a need for the funds requested. Such demonstration shall be deemed sufficient if it is shown that the request is in furtherance of an existing capital improvement or site acquisition plan duly adopted by the Board of Education of the District, that the requested funds will be expended for purposes authorized by the Code, and that such funds have been included and relied upon in the District's budget for the fiscal year in which they are to be expended. Upon the Council's approval, which shall not be unreasonably withheld, the Council shall cause the requested funds to be transferred to the District's Capital Projects Fund.

7. Administrative Fee. The City is authorized to pay itself an administrative fee, from funds collected pursuant to this Agreement, equal to three percent (3%) of each SLD Fee collected, or the City's actual cost to collect such SLD Fees, whichever is greater. The parties agree that such payment shall be reasonable compensation to the City for its administrative and overhead expenses and other costs in collecting SLD Fees, and for its management of the Trust Fund pursuant to this Agreement.

8. Annual Report, Accounting, and Audit.

(A) The District shall submit an annual report to the Council describing its expenditure of SLD Fees during the preceding fiscal year. This report shall include:

(1) A review of the assumptions and data upon which the SLD Fee methodology is based, including assessed value, student generation ratios, and attendance area boundaries;

(2) Alternative revenue sources for funding acquisition of new school sites made necessary by new development;

(3) Any new capacity enhancement policies or procedures adopted by the District, including any update or amendment of the District's site acquisition and facilities plan; and

(4) Any recommended modifications to the methodology used in setting the amount of the SLD Fee.

This report shall be submitted on or before March 31.

(B) The City shall cause an audit to be performed annually of the SLD Fees collected and expended. The audit shall be conducted as part of the City's general annual audit, and in accordance with generally accepted accounting principles for governmental entities. At the City's request, the District shall pay, out of funds available in the District's general fund, for the incremental cost to the City of conducting the SLD Fee audit pursuant to this subparagraph.

(C) At any time deemed necessary, the Council may request an accounting from the chief financial officer of the District concerning the expenditure of the SLD Fees paid to the District.

9. Agency and Succession.

(A) The Council may, with the written consent of the District which shall not be unreasonably withheld, enter into an agreement with the Board of County Commissioners of Mesa County (Board) appointing or designating Mesa County as its agent for collection of the SLD Fees and managing the Trust Fund pursuant to this Agreement. Such agreement may provide for payments to or sharing with Mesa County of all or part of the administrative fees provided for in Paragraph 7 above, but in no event shall administrative fees in excess of the maximum allowed under said paragraph be paid from funds on hand in the Trust Fund.

(B) The City may resign as trustee of the Trust Fund by giving sixty (60) days' written notice to the District effective at the end of sixty (60) days. In the event the Council gives such notice, the parties shall jointly select and appoint a successor managing agent within such sixty (60) day period. If no agreement is reached regarding the appointment of a successor managing agent within such sixty day period, or if such successor shall not accept or agree to be bound by the terms of this Agreement, then the Chief Judge of the District Court in and for the County of Mesa, State of Colorado shall appoint by a writing a successor managing agent following a hearing at which either party may appear and present such evidence and argument as the Court may deem relevant. The Council shall in all cases continue to act as managing agent of the Trust Fund until its successor has been duly appointed by a writing and has accepted and agreed to be bound by the terms of this Agreement. Upon such appointment and acceptance, all SLD Fees collected by the City shall be promptly remitted to the successor managing agent.

10. Term.

(A) This Agreement shall be effective upon the date this Agreement is fully executed by the parties, and unless sooner terminated pursuant to subparagraph (B) of this paragraph, shall remain in force and effect so long as the Ordinance shall remain in force and effect, and shall be automatically renewed or extended upon the Council's renewal or extension of such Ordinance.

(B) Either party shall have the right to terminate this Agreement upon sixty (60) days advance written notice to the other party of the occurrence of any one of the following:

(1) The other party's violation of this Agreement or failure to discharge any of its duties or obligations imposed upon it by this Agreement, if such party has not cured the violation, or undertaken all reasonable efforts necessary to cure the violation, within thirty (30) days after written notice was given to such party of the specific breach or failure;

(2) Any material change, alteration, amendment or repeal of or to section 30-28-133, C.R.S., the Ordinance, or any section of the Code applicable to school land dedications or SLD Fees;

(3) Any other occurrence or change in the law or circumstances which substantially defeats or frustrates the purposes and objects of this Agreement or the reasonable expectations of the parties hereunder, or which renders the expenses of administration in continuing the Trust Fund to be greater than the Trust Fund assets warrant, or which renders this Agreement unnecessary; or

(4) The District's withdrawal of its request to the City for school land dedications and SLD Fees.

(C) Anything in this Agreement notwithstanding, the provisions hereof relating to the administration of and disbursements from the Trust Fund, including, but not limited to, paragraphs 3, 4, 5 and 6 above, shall survive any termination or expiration of this Agreement with respect to all SLD Fees collected or paid into the Trust Fund prior to the date of such termination or expiration, and shall remain in full force and effect until all such funds, including any interest or earnings thereon, have been distributed to the District or are refunded in accordance with this Agreement and the Code.

11. Reports. The City shall issue periodic reports to the District showing all the receipts, disbursements and distributions during the period and assets then held by or in the Trust Fund, which reports shall be rendered not less frequently than annually. The records of City with respect to SLD Fees and the Trust Fund shall be open at all reasonable times to the inspection of the District and its authorized representatives.

12. Indemnification. The District shall indemnify and hold harmless the City and its officers and employees from and against any and all claims, actions or suits to compel a refund of SLD Fees on the ground that the City has collected, kept or spent such fees in violation of the revenue and spending limitations set forth in Section 20(7) of Amendment 1, but such indemnification shall be limited to the following:

(A) the amount of SLD Fees actually received by the District from or through the City which is determined to have been collected, kept or spent in violation of Section 20(7) of Amendment 1;

(B) the amount of interest owed pursuant to Section 20(1) of Amendment 1 on SLD Fees determined to have been collected, kept or spent in violation of Section 20(7) of said Amendment 1;

(C) any amount of SLD Fees collected by the City and held in trust for the District and not actually received by the District which are determined to have been collected, kept or spent in violation of Section 20(7) of said Amendment 1, to the extent that the City is unable to refund such SLD Fees because of the District's failure or refusal to absolve or release the City of and from the City's trust obligations to deliver such fees to the District; and

(D) the amount of any costs and attorneys' fees awarded to the plaintiffs pursuant to Section 20(1) of Amendment 1 in connection with such action or suit.

In the event the City is compelled by a final judgment of a court of competent jurisdiction, after exhaustion of all judicial remedies, to refund any excess SLD Fees under Section 20(7) of Amendment 1, the City shall consult with the District and shall devise a reasonable method of refunding such excess in the next succeeding fiscal year unless voters approve a revenue change as an offset. The City shall at all times exercise best efforts in good faith to mitigate the financial impact of such refunding so as to reduce the District's indemnification obligations under this Paragraph 12. Such efforts may include, but shall not be limited to, referral of revenue changes for voter approval, refunding SLD Fees in the Trust Fund not yet disbursed to the District, or issuing or establishing temporary SLD Fee reductions or credits. The City shall, at the District's request, seek voter approval of a revenue change to permit collection and/or retention of SLD Fees for the District, and the District shall be responsible for and pay the actual costs of the election, regardless of the outcome, but such payment obligation shall not include the usual costs of maintaining the office of the City Clerk, such as overhead costs and personal services costs of permanent employees, unless such costs are shown to be directly attributable to conducting the election regarding the revenue change. If approval of such revenue change is sought at a coordinated election, the cost of the election shall be shared pursuant to section 1-7-116, C.R.S.

13. Defense Costs. In the event the City, its officers or employees is named as a defendant in any legal action to which the District's duty to indemnify under Paragraph 12 above may apply, the following provisions shall govern:

(A) The District shall provide for and direct the defense of said action, including the prosecution or defense of any appeal, and any costs and fees incurred in connection with such defense, including the cost of any supersedeas bond, shall be borne by the District. In the event the District deems it necessary or appropriate to select and employ additional special counsel or experts to assist in the defense of said action, the reasonable attorneys' fees,

consultant or expert fees, costs, and expenses incurred for said additional joint counsel and experts shall be paid by the District.

(B) The City shall cause its officers, employees and agents, including the City Attorney, to cooperate in the defense of the action as requested by the District, and any costs or fees incurred for their time or assistance in connection therewith shall be borne by the City.

(C) The City shall not compromise or settle said action without the written consent of the District.

14. Cash Reserve Requirement. The District shall at all times keep on hand cash reserves not dedicated or pledged for any other purpose in an amount sufficient to cover any indemnity amount contemplated by subparagraph 12(A) above together with a reasonable estimate of any indemnity amount contemplated by subparagraphs 12(B), 12(C), 12(D) and 13(A) above.

15. No Limitation of Authority. No provision or term of this Agreement is intended or shall be construed to be a restriction upon or limitation of the City's powers or authority to require school land dedications or payments of money in lieu thereof pursuant to section 30-28-133, C.R.S. or other applicable law.

16. No Third Party Beneficiaries. The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the City and the District, and nothing contained in this Agreement shall give any third person any claim or right of action to enforce this Agreement. It is the express intention of the City and the District that any other person, organization or entity receiving any benefits from this Agreement shall be deemed to be incidental beneficiaries only.

17. No Waiver of Immunity. Nothing contained in this Agreement shall be construed as a waiver by the City or the District of any immunity from suit under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*

18. Interpretation.

(A) Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

(B) The captions are inserted in this Agreement for convenience only and in no way define, limit, or describe the scope or intent of this Agreement, or any provisions hereof, nor in any way affect the interpretation of this Agreement.

19. Integration. This Agreement constitutes the entire agreement of the parties, and there are no representations, inducements or other provisions other than those expressed herein. No alterations, deletions, amendments, changes or modifications to this Agreement shall be valid unless they are contained in an

instrument which is executed by all the parties with the same formality as this Agreement.

20. Notices. Any notice required to be given pursuant to this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, postage prepaid, to the respective addresses below, or at such other address as City or District may specify from time to time by written notice to the other given in accordance herewith:

District:

George Straface, Superintendent
Mesa County Valley School District No. 51
2115 Grand Avenue
Grand Junction, Colorado 81501

City:

Mark Achen, City Manager
City of Grand Junction
250 North Fifth Street
Grand Junction, Colorado 81501
(with copy to: Dan E. Wilson, City Attorney)

21. Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not, unless otherwise specified herein, affect the validity or enforceability of any other term or provision.

22. Choice of Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for all actions connection herewith shall be in Mesa County, State of Colorado.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the day and year first written above.

MESA COUNTY VALLEY SCHOOL
DISTRICT NO. 51

CITY COUNCIL OF THE CITY OF
GRAND JUNCTION, COLORADO

By Debbie Johns
Debbie Johns
President, Board of Education

By Linda Afman
Ron Marpin, Mayor Pro Tem
Linda Afman

ATTEST:

Mary K. Kalenian
Mary Kalenian



Stephanie Nye
Stephanie Nye