

MES05BMS

TYPE OF RECORD: ACTIVE NON-PERMANENT

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

NAME OF CONTRACTOR: MESA COUNTY VALLEY SCHOOL DISTRICT #51

SUBJECT/PROJECT: CONSTRUCT A GYMNASIUM AND TERMS OF USE

LOCATION: BOOKCLIFF MIDDLE SCHOOL

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 2005

EXPIRATION DATE: 8/9/2104

DESTRUCTION DATE: 1/2111

## INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT, made and entered into this 9<sup>th</sup> day of August, 2005, 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."

### R E C I T A L S

The District is the owner of real property situated in Mesa County, Colorado, known as Bookcliff Middle School. The school land is more fully described on Exhibit A attached hereto. The District is currently in the process of replacing the Bookcliff Middle School improvements with funds derived from the proceeds of the District's 2004 General Obligation Bond Issue.

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 recreational development when deemed in the best interest of the City and the District.

The City and the District have discussed and agreed to construct a gymnasium (herein the "Gymnasium," the location and design of which is attached hereto as Exhibit B) as a part of the new Bookcliff Middle School project, the cost of which will be reimbursed by the City, and dedicate the Gymnasium to public use pursuant to an arrangement for shared use and with the objective of maximizing public access consistent with the Parks Master Plan and the City's Strategic Plan and with its primary function as a public educational facility, all as 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 99 years, subject to termination only as provided in paragraphs 7 and 8.

2. The District will construct the Gymnasium as Alternates #5 and #6 to the current contract for general construction of the new Bookcliff Middle School Project according to the plan and design referenced in Exhibit B. The City will reimburse the District for the cost of constructing the Gymnasium the sum of \$1,134,200.00, plus any markups for additional or extra work approved in advance by the City, as follows:

On July 1, 2006, \$525,000.00, together with interest on the unpaid balance at the rate of 4% per annum from the completion date; and

On July 1, 2007, \$500,000.00, together with interest on the unpaid balance at the rate of 4% per annum from the completion date; and

On July 1, 2008, the entire unpaid balance of said amount, together with interest on the unpaid balance at the rate of 4% per annum from the completion date.

It is understood and agreed that the District's sole remedy for the City's nonperformance of the reimbursement obligations set forth above will be termination of this Agreement and repossession of the Gymnasium under Paragraph 8.

3. During the term of this IGA the City will, at its own expense, operate, repair and maintain the Gymnasium and its amenities to standards observed by the City in maintenance and operation of other City recreational facilities, to include, without limitation, all utilities and services, except custodial services, which will be provided by the District. The City will also provide for the maintenance to City standards of landscaping of the entire Bookcliff Middle School facility.

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 as is necessary for the operation of the Gymnasium.

5. The City's Parks and Recreation Director and/or designee will be responsible for the scheduling, supervision and use and operation of Gymnasium. Fee schedules for non-educational users of the Gymnasium shall be determined by the City's Parks and Recreation Director and/or designee. Except as otherwise provided herein, community use and recreational activities scheduled for or by the City's Parks and Recreation Department shall have priority over all other uses. The District shall be free to use the Gymnasium for its educational programs, without charge, when the Gymnasium is not scheduled for use by the City's Parks and Recreation Department, provided that the District shall have priority use of the Gymnasium for District-wide Middle School basketball and volleyball tournaments on at least six months advance notice in to the City's Parks and Recreation Director and/or designee. With City approval, which shall not be unreasonably withheld, the District may use the Gymnasium for its educational, extracurricular and co-curricular activities. The District shall be responsible for cleanup and repair necessitated by its usage. With District approval, which shall not be unreasonably withheld, the District will allow the City priority use of Bookcliff Middle School facilities, without charge on at least 48 hours notice and in accordance with existing District Building Use Policies. The City will be responsible for cleanup and repair necessitated by such usage. The City's right to use Bookcliff Middle School shall include days when school is not in session and after school on days when school is in session.

6. The city will make or allow no use of the Gymnasium that will adversely affect the tax characteristics of the District's General Obligation Bonds, Series 2004A, proceeds of which will be used to construct the Gymnasium. By way of illustration only, the City will not allow any "private business use" of the facility, such as a non-qualified management agreement, multi-year lease arrangements, or calculating user fees as a share

of a user's net profits. The City accepts sole responsibility for obtaining advice from qualified tax counsel as needed to comply with its obligations hereunder.

7. The City may abandon the Gymnasium on no less than 12 months written notice to the District. 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 Gymnasium and Bookcliff Middle School landscaping, and shall terminate the City's rights of usage hereunder. The Gymnasium improvements as then existing together with fixtures associated therewith shall be the property of the District. All Gymnasium moveable equipment purchased or provided by the City shall then remain the property of the City.

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. Except as provided in Paragraph 2 with respect to reimbursement by the City for Gymnasium construction costs, 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. In the event of termination, the Gymnasium improvements as then existing together with fixtures associated therewith shall be the property of the District. All Gymnasium moveable equipment purchased or provided by the City shall then remain the property of the City.

9. Nothing contained herein shall be construed as a limitation upon the District's right to construct, maintain or continue the use of the Bookcliff Middle 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 Gymnasium for school purposes subject to the limitations set forth in paragraphs 5 and 6; provided, however, that any such change in use which materially alters or interferes with City's operational, maintenance or 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 Bookcliff Middle School site. Should the District determine that the Bookcliff Middle School site is no longer suitable for school purposes it may abandon the school site and dispose of the Bookcliff Middle School property, provided that the City shall have the first option of purchasing the entire school 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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13. 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.

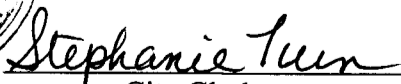
g. Attorney's fees. If, on account of any breach or default by a Party hereto under the terms and conditions hereof, it shall become necessary or appropriate for the other Party to employ or consult with an attorney concerning the enforcement of defense of its rights or remedies hereunder, the Party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

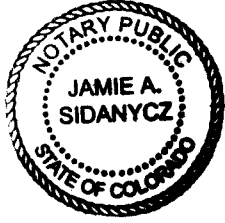
CITY OF GRAND JUNCTION, COLORADO

BY

  
City Manager



  
City Clerk



MESA COUNTY VALLEY SCHOOL  
DISTRICT NO. 51

By Ron Rowley

ATTEST:

Jamie Sidanycz

**Exhibit "A"**

**2943-083-00-942**

**DESCRIPTION OF BOOKCLIFF MIDDLE SCHOOL PROPERTY**

A tract of land lying in the Northeast Quarter of the Southwest Quarter (NE1/4 SW1/4) of Section 8, Township 1 South, Range 1 East of the Ute Principal Meridian, County of Mesa, State of Colorado and being more particularly described as follows:

The West One-half of the NE1/4 SW1/4 of said Section 8, except the North 30 feet thereof.

CONTAINING 19.564 acres, more or less, as described.

Prepared by:  
Michael Grizenko  
Real Estate Technician  
City of Grand Junction  
250 N 5th Street  
Grand Junction, CO 81501

**EXHIBIT B**

**Gymnasium Alternate - Description**

New Bookcliff Middle School Bid Alternate #5, "Construct City Gym" as shown on Drawings A-810, A-811, A-812, A-813, and A-814, as prepared by AndersonMasonDale Architects, P.C., dated June 6, 2005.

and

New Bookcliff Middle School Bid Alternate #6, "City Gym Small Gym Divider Curtain" as shown perpendicular to Grid Line 20 on Drawings, as prepared by AndersonMasonDale Architects, P.C., dated June 6, 2005.