

S5194OMP

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51
SUBJECT/PROJECT:	AN AGREEMENT TO PROVIDE THE CITY RIGHTS TO PURCHASE, AND AN OPTION TO LEASE THE PROPERTY AS A PUBLIC PARK LOCATED AT ORCHARD MESA MIDDLE SCHOOL – EAGLE RIM PARK
CITY DEPARTMENT:	PARKS AND RECREATION
YEAR:	1994
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

AGREEMENT

THIS AGREEMENT, made this 20th day of September, 1994, by and between THE CITY OF GRAND JUNCTION, a Colorado Home Rule City, hereinafter "City," and MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, a Colorado Public School District, hereinafter "District."

Recitals.

A. The District owns certain unimproved real estate in Mesa County, Colorado, being a part of the Orchard Mesa School site and more fully described in the attached Exhibit A, hereafter the "Property," consisting of approximately 9 acres.

B. The City and the District wish to cooperate such that the Property may be improved and put to joint use as a public park and school playground.

C. In furtherance thereof, and pursuant to C.R.S. §§ 22-32-110 (1)(e) and (f), 22-32-122 (1), the City's charter and other authorizing law, the District is willing to lease and dedicate the Property for use as a public park and for school purposes, and provide the City rights to purchase the Property, subject to the provisions hereof, and the City is willing to improve, operate and maintain the Property as a public park site and for school purposes, all as more fully set forth herein.

D. The City and the District have a long and successful history of cooperative efforts to provide joint use of school lands which have been improved and maintained by the City for the use of the public and for school purposes. The City and District personnel involved on-site and on a day-to-day basis have been able to cooperatively solve operational and scheduling issues. The parties desire that such operational cooperation and decision making continue and apply to the Property.

NOW, THEREFORE, in consideration of the recitals, the mutual covenants and conditions contained herein, and other valuable consideration, the parties by authority of their respective governing bodies, agree as follows:

1. The District, subject to the conditions contained herein, hereby grants and extends to the City an option to lease the Property for use by the City as a public park and for school purposes for a term of fifty (50) years. The City may exercise the option by giving the District written notice on or before June 1, 1997, provided that the parties have come to agreement upon a Park Development 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 Park Development Plan, but that approval thereof by the parties'

respective governing boards on or before June 1, 1997, will be a condition precedent to the City's right to exercise the option. Upon proper exercise of the option, the parties will cooperate in the preparation and execution of such documentation as may be required to place the City's interest of record.

2. Within a reasonable time after giving such notice, the City will, at its expense, construct and install the park and playground improvements in substantial conformity with the Park Development Plan. For the term of the lease the City will maintain the Property in a manner generally consistent with the Park Development Plan, any major deviations therefrom to be permitted only with the District's written consent; provided that such consent shall not be necessary as regards real and personal property improvements or alterations which, in the City's judgment, upgrade or enhance the quality of the Property as a public park and which it deems appropriate to improve, operate and maintain the Property as a public park facility. At a minimum, the City will keep, repair and maintain the park and playground improvements on a comparable basis with other City parks. Notwithstanding the foregoing, the District may from time to time, provide funds to be used by the City to operate, improve or maintain the Property.

3. The parties, through their designated representatives, shall determine schedules for usage, level of maintenance, and other operational questions, it being understood that reasonable efforts will be made to secure a priority use of the Property for school purposes during school hours.

4. This lease shall terminate at the end of the term or prior thereto upon the City's default for failure to substantially perform any material covenant or obligation hereunder. The District shall provide written notice of such default to the City Manager, and the City shall have sixty (60) days from and after receiving such notice to correct any such default. If the default is not timely corrected, the lease shall terminate. The City may within a six (6) month period following the termination date remove or relocate those real and personal property improvements (including water rights) and facilities it has provided and placed on the property or made appurtenant thereto subject, however, to the City's duty, if requested by the District, to return the site to a condition reasonably approximate to that prior to entry upon it by the City.

The District will, at the City's request made during such six (6) month period, execute those documents and applications required to restore to the City any water rights transferred to the Property, but the District does not warrant that restoration efforts will be successful, and will not be obligated to reimburse the City for any water rights which are not restored or for which restoration is not allowed by proper authority. Upon termination, the parties will execute and deliver such documentation and undertake such other necessary measures to remove any encumbrance occasioned by the lease from the Property's title and vest the

District with ownership of all improvements and appurtenances not removed by or restored to the City as allowed under this paragraph.

Except as otherwise provided herein, termination shall be the District's only remedy for default by the City and, subject to the District's right to employ such remedy, the City shall be free to allocate only such capital and operating resources as the City Council may desire to make available from time-to-time for the purposes of this agreement.

5. The District hereby grants to the City the first right to purchase the Property. Such right shall continue during the term of the lease and shall terminate upon expiration of the lease or termination in accordance with the terms hereof. The District, upon receipt of a *bona fide* offer to purchase the Property, and upon adoption by the Board of a resolution to accept the offer, shall give notice to the City that the City shall have twenty-two (22) calendar days to accept the terms of such *bona fide* offer. If the City gives notice that the City shall purchase the Property under the terms of the *bona fide* offer, the District shall have the right to sue for specific performance of the City's offer.

6. Upon termination of the lease and for a period of 30 days after the effective date of termination, the City shall have an option to purchase the property for its then fair market value. In order to exercise its option the City shall give the District written notice within the prescribed 30-day period along with a statement setting forth the City's opinion of Property's fair market value. The District shall have 30 days after receiving such notice to accept or reject the fair market value as set forth in the notice. If the stated value is accepted, City shall purchase the Property at such price. If the stated value is rejected, the price at which the City shall purchase the property shall be fixed by a dispute resolution process agreed to by the parties, and if agreement cannot be reached as to such a process, by a court of competent jurisdiction on application of either party. The City shall purchase the Property for the price thus determined.

7. 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.

8. 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 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 provision 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 or 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

By: Mike Thompson
Acting City Manager



ATTEST:

Stephanie Nye

City Clerk

MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51

By:

[Signature]

President

ATTEST:

Mary K. Kalenian

Secretary