

**Ordinance Adopting and Implementing Text Amendments to  
the Zoning and Development Code**

ORDINANCE NO. 2886

An Ordinance adopting and implementing amendments to the Zoning and Development Code requiring dedication of sites and land areas for schools and fees in lieu thereof on residential subdivision development in the City of Grand Junction; making findings and conclusions stating the basis and authority for the ordinance and amendments; providing definitions; providing for the establishment of a trust fund for fees in lieu of land dedication collected by the City of Grand Junction for Mesa County Valley School District No. 51; providing for an intergovernmental agreement with the District regarding the management of the trust fund and regarding indemnification of the City; providing for ownership, earmarking and expenditure of monies in such trust fund; including a five year sunset provision; and providing for severability and for an effective date.

**WHEREAS**, on August 15, 1995, the Board of Education of Mesa County Valley School District No. 51 ("District") adopted a resolution requesting that the Board of County Commissioners of Mesa County ("Board") and other municipalities within the District impose by resolution and appropriate amendments to their land use and development codes a fee in lieu of school land dedication ("SLD Fee") upon new residential development; and

**WHEREAS**, pursuant to the District's request, the Board has adopted, by resolution dated November 14, 1995, land use code amendments imposing SLD Fees, and has entered into an intergovernmental agreement with the District regarding the collection of SLD Fees for residential subdivisions in the unincorporated areas around the City; and

**WHEREAS**, in accordance with its resolution the District has requested that the City of Grand Junction ("City") impose by ordinance and appropriate amendments to its Zoning and Development Code ("Code") an SLD Fee program similar in form and substance to that enacted by Mesa County, to apply to residential developments within the City's jurisdictional boundaries; and

**WHEREAS**, §31-23-101, C.R.S. *et. seq.*, the City Charter, Article 20, §6 of the Colorado Constitution and other law authorize the City to adopt subdivision and other regulations

requiring dedication of sites for schools, or payments of cash in lieu thereof, when such sites or fees are reasonably necessary to provide schools serving the proposed subdivision and its future residents; and

**WHEREAS**, the Colorado Constitution, in Article XIV, Section 18, provides that nothing in the constitution shall be construed to prohibit political subdivisions of the state from cooperating or contracting 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**, §29-1-203, C.R.S., authorizes cities, counties 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**, §22-32-122(1), C.R.S., grants to school districts the power to contract with a county 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, §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**, §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 November 7, 1995, after notice and a public hearing, the Grand Junction Planning Commission ("GJPC") recommended approval of proposed amendments to the Code regarding imposition of SLD Fees; and

**WHEREAS**, the District's resolution requesting imposition of SLD Fees, together with the proposed amendments to the Code and supporting documents, have been filed with the City Council; and

**WHEREAS**, the City Council scheduled a public hearing, preceded by published notice, for January 17, 1996, commencing at 7:30 p.m.; and

**WHEREAS**, at said public hearing the Council heard testimony and received evidence from representatives and patrons of the District, staff members of the City of Grand Junction Community Development Department and interested citizens; and

**WHEREAS**, the Council desires to implement, within the City, the provisions of the Board's resolution dated November 14, 1995, or equivalent provisions pursuant to the law applicable to the City, to the fullest extent so that a uniform system concerning school land dedications and SLD Fees is in effect throughout the District; and

**WHEREAS**, the City Council supports similar measures by the municipalities of Palisade and Fruita; and

**WHEREAS**, the City Council is prepared to make findings, to reach conclusions, and to adopt and implement amendments to the Code regarding the collection and expenditure of SLD Fees.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, FINDS AS FOLLOWS:

1. Based on census data obtained from the Colorado Division of Local Affairs, Mesa County (including the City) has experienced a ten percent (10%) increase in population during the last five years from a population of 93,775 in 1990 to a population of 103,002 in 1994.

2. The District experienced an eleven percent (11%) increase in overall enrollment during the five school year period ending with the 1994-95 school year.

3. The District forecasts enrollment growth in its schools at the average annual rate of approximately two percent (2%) for the next five (5) years.

4. The District's enrollment has already exceeded the designed capacity of some of its schools and is projected to create more severe shortages in space during the period from 1995 through 2000.

5. New residences place significant new demands and burdens on the District to provide new school facilities or to expand existing facilities for the education of the children residing within those residences. Due to a number of factors, including emerging trends in the delivery of educational services, increasingly mobile population bases, and the enactment of open enrollment laws, such demands and burdens are not limited to the school attendance or "feeder group" area in which the new residential development is located, but instead affect the availability and quality of educational services throughout the District's service area.

6. The Council finds that new residential subdivision developments are likely to generate, on average, .8 new public

school students per dwelling unit.

7. The District's Facility Planning Committee has performed an extensive analysis of growth projections and school educational capacities within the District, has considered expansion alternatives and implications, has assessed the attributes and deficiencies of these alternatives to address school facility capacity needs, has estimated expansion costs, and has involved citizens throughout the County.

8. The District must acquire additional lands in order to provide acceptable educational facilities for the current and future residents of the District, including those who reside in the City.

9. The Council finds that schools require .025 acres of land per student for new elementary schools, .0333 acres of land per student for new middle schools, and .0281 acres of land per student for new high schools. Thus, on average, school districts require approximately .0288 acres of land per student for school sites.

10. The Board of Education of the District has held public meetings, preceded by published notice, concerning its school facilities plan and the possibility of financing acquisition of school sites in part with fees in lieu of school land dedication, and as a result has approved the authorizing resolution attached hereto as Exhibit A.

11. The District has submitted to the Council proposed amendments to the Code. Such amendments:

- a. Require that the District request school land dedications and SLD Fees pursuant to the Code and enter into an intergovernmental agreement with the City regarding such dedications and fees;
- b. Expand the existing requirements for school land dedication with respect to new residential subdivision developments so as to require in most cases payment of a fixed SLD Fee for each new residential dwelling unit before a building permit may be issued for such unit;
- c. Provide for credits to developers desiring to donate other suitable school lands to the District in lieu of paying the SLD Fee;
- d. Allow developers to prepay SLD Fees at the time a development permit is issued and the plat filed for a residential subdivision;

e. Exempt housing for senior citizens, nursing and group homes, residential development on unsubdivided land, non-residential developments, and most alterations and additions to existing homes;

f. Require the Council to determine the amount of the SLD Fee after public hearing, giving due consideration to the amount previously established by the Board;

g. Provide a mechanism for review and modification of the SLD Fee structure and methodology on a periodic basis, based on changes in the average cost per acre of suitable school lands, and on other grounds;

h. Require that SLD Fees be refunded to the persons who paid them if the money is not used by the District within 5 years from the date of collection, with limited exceptions and a provision for a one-time 5 year extension at the District's request; and

i. Provide that the SLD Fees are collected in trust for the benefit of the District, but can be used only for purchase of real property needed by the District.

12. The District has expressed a willingness to enter into an indemnification agreement with the City to protect the City from any loss or legal expense in the event the SLD Fees collected by the City for the District are alleged or determined to be includable in the City's "fiscal year spending" under Article X, Section 20 of the Colorado Constitution.

13. The requested SLD Fees are necessary to finance the acquisition of school sites to accommodate students generated by new residential subdivisions within the City.

14. The imposition of SLD Fees is one method of insuring that new development bears a proportionate share of the cost of new school sites necessary to accommodate such development. Such fees promote and protect the public health, safety and welfare.

15. The average cost of "Suitable School Lands," as defined below, is currently \$12,680 per acre. The Council recognizes that at present few "Suitable School Lands" are located in the City, and that in most cases the acquisition of school sites outside the City will be less costly to City taxpayers. However, for the reasons stated above, the District needs to acquire such sites in part to accommodate enrollment growth from new residential development within the City.

16. The SLD Fees established by this Ordinance are derived from, based upon, and do not exceed the full market value of the

sites and land areas which would otherwise be dedicated pursuant to the statute applicable to the County, namely section 30-28-133(4), C.R.S.

BASED ON THE ABOVE FINDINGS, THE COUNCIL CONCLUDES AS FOLLOWS:

A. The Council has the authority to impose SLD Fees pursuant to the statutory scheme and other law authorizing and requiring cities and counties to regulate the development and use of land.

B. The proposed Code amendments are in conformity with applicable law.

C. The proposed Code amendments contain a reasonable and rational methodology for calculating the amount of SLD Fees to be charged pursuant to §30-28-133(4), C.R.S., or other authority of the City to like effect. The methodology takes into account the student generation rates of new development, the quantity of land required to build new schools on a per pupil basis, and the anticipated cost of suitable school lands within the boundaries of the District. The methodology has been developed in a manner so as to fairly apportion the cost of acquiring school lands needed on account of new residential development to each new dwelling unit constructed.

D. Under the District's proposal, there is a rational and reasonable connection between the amount of fees that would be collected from new residences and the cost of acquiring suitable school lands needed on account of new residential development.

E. Section 30-28-133(4) and (4.3), C.R.S., contemplate that land conveyed and funds paid as land dedications or fees in lieu thereof are not county assets or revenue, but rather are collected and held for distribution to the school district affected by the development. The Council adopts the rationale and analysis which applies to Mesa County.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION:

#### SECTION 1. SHORT TITLE AND APPLICABILITY

1. This ordinance shall be known and may be cited as the "School Land Dedication Fee Ordinance of the City of Grand Junction."

2. This ordinance shall apply in all areas of the City which are within the jurisdictional boundaries of the School District.

## SECTION 2. INTENTS AND PURPOSES

This ordinance is intended to implement the requirements of §30-28-133(4), and (4.3) C.R.S., supplemented by authority and law available to the City, and to regulate the use and development of land so as to assure that new residential subdivisions bear a proportionate share of the cost of acquiring and expanding sites for school facilities made necessary by residential growth.

## SECTION 3. DEFINITIONS

For purposes of this ordinance, the following definitions shall apply:

- A. "Board" means Mesa County Board of County Commissioners.
- B. "City" means the City of Grand Junction, Colorado.
- C. "City Manager" means the City Manager or the City employee he may designate to carry out the administration of this section.
- D. "Council" or "City Council" means the duly elected City Council of the City of Grand Junction.
- E. "County" means Mesa County, Colorado.
- F. "Board of Education" means the Board of Education of the Mesa County Valley School District 51 located in Mesa County.
- G. "County Administrator" means the county administrator or the county employee he or she may designate to carry out the administration of this section.
- H. "Mayor" means the President of the City Council.
- I. "School District" means Mesa County Valley School District No. 51.
- J. "SLD Trust Fund" means the separate account established and maintained for the use and benefit of a School District pursuant to this section.
- K. "Suitable School Lands" are tracts of vacant unsubdivided land lying within areas targeted for establishment of school sites in the School District's long range capital improvement plan and having characteristics rendering such tracts suitable or desirable for development as school sites and facilities, including, but not limited to, appropriate size and

dimensions, lack of geologic, environmental or topographic barriers to development, ready access to utilities (including irrigation water) and primary roads, compatible zoning, and proximity to other schools, school facilities and residential areas.

L. "SLD Fee" means the fee in lieu of school land dedication imposed pursuant to the Code amendments hereby adopted.

M. "Code" means the Grand Junction Zoning and Development Code.

#### SECTION 4. CODE AMENDMENTS

##### A. Adoption; Effective Date

These amendments to the Code attached as Exhibit B are hereby adopted, and shall become effective on the effective date of this ordinance.

##### B. Repeal

(1) With the exception of subsection 5-4-6.5 B(4), the amendments adopted hereby shall be repealed and no longer have any force or effect upon expiration of this ordinance.

(2) Upon expiration of this ordinance, the provisions of subsection 5-4-6.5 B(4) of the amendments hereby adopted pertaining to refunds shall remain in effect until fully implemented.

#### SECTION 5. INDEMNIFICATION

The City Attorney is authorized to negotiate and present to the Council for approval a form of indemnity agreement with the Board of Education of the School District to protect the City from any loss or legal expense in the event the SLD Fees collected by the City for the School District are alleged or determined to be includable in the City's "fiscal year spending" under Article X, Section 20 of the Colorado Constitution. Such indemnity agreement shall be incorporated in and made a part of the intergovernmental agreement between the City and the School District entered into pursuant to this ordinance and the Code amendments hereby adopted.

#### SECTION 6. SLD FEE AMOUNT

Based on the above findings and the formula set forth in subsection 5-4-6.6(c) of the Code as hereby amended, the SLD Fee imposed pursuant to such Code shall be in the amount of \$292 per Dwelling Unit until modified in accordance therewith.



## SECTION 7. SLD FEE TRUST FUND

### A. Creation

An SLD Trust Fund shall be established for the School District, and all SLD Fees collected by the City, pursuant to the Code, as hereby amended, for residential dwelling units in the City and within the boundaries of the School District shall be deposited in the School District's SLD Trust Fund. Such SLD Trust Fund shall be governed by the provisions of this ordinance, as supplemented by the terms of the intergovernmental agreement entered into between the City and the School District. Such agreement shall substantially comply with the requirements of this Section 7, and shall include, but need not be limited to, provisions regarding the following:

- (1) Maintenance and management of the SLD Trust Fund as a separate interest-bearing account described in §§24-75-601 to 605, C.R.S., apart from all other funds of the City, the funds in which are held in trust for the use and benefit of the School District pursuant to section 5-4-6.6 of the Code.
- (2) The powers and fiduciary obligations of one or more trustees named in the agreement with respect to the management of the SLD Trust Fund.
- (3) The retention of a specified portion of the SLD Fees collected by the City for the reasonable costs incurred by the City in the collection of said fees;
- (4) An accounting system to ensure that SLD Fees are expended for the provision of new or expanded school sites benefiting the School District from which such fees are paid;
- (5) An annual audit of the SLD fees collected and disbursed, with said audit to be in accordance with generally accepted accounting standards for governmental entities;
- (6) A periodic update of the School District's school facilities plan;
- (7) An agreement by the School District to submit an annual report to the City describing the School District's expenditure of SLD Fees during the preceding fiscal year;
- (8) An agreement by the School District to furnish, when requested by the City, an accounting from the chief financial officer of the District concerning the expenditure of the SLD Fees paid to the School District.

(9) An annual review by the City of the matters set forth in the report described in subsection 7(A)(7) above.

Any intergovernmental agreement entered into pursuant to this subsection 7(A) may contain terms permitting an SLD Trust Fund to be managed by one or more trustees in combination with other SLD Trust Funds established under provisions of comparable school site fee resolutions or ordinances adopted by the County or other municipalities within the County.

#### B. Ownership

The School District shall be beneficial owner of the funds in its SLD Trust Fund, but the signature of the chief financial officer of the School District, or his or her designee, and the signature of the City Manager or his or her designee, shall be required for the withdrawal of monies from such fund.

#### C. Earmarking And Expenditure Of SLD Fees

(1) All SLD Fees collected by the City shall be properly identified and promptly deposited in the SLD Fee Trust Fund, and shall not be withdrawn for any purpose except as authorized in accordance with this Ordinance, or the Code as hereby amended, and any applicable intergovernmental agreement;

(2) Each SLD Fee collected by the City pursuant to the Code, as hereby amended, shall be earmarked for the School District, and shall be expended only for the purposes set forth in Section 5-4-6.6 of the Code as hereby amended. Any changes to School District boundaries that would affect the expenditure of fees in lieu of land dedication must be reviewed by the City 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 School District 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 for the benefit of the School District.

3) Upon the written request of the School District or its authorized representative, the City Council or its authorized designee shall promptly notify the Board of Education of the amount of fees in lieu of dedication received and deposited in the SLD Fee Trust Fund for its benefit 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 School District may file with the Board a request for disbursement to such district of all or part of the fees and interest accumulated in its SLD Fee Trust Fund for purposes authorized by the Code.

4) Such 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.

(5) Such request shall be heard at a regular meeting of the City Council held within thirty (30) days after it is filed, at which time the School District, through its authorized representative, shall demonstrate to the City Council a need for the moneys requested to expend for purposes authorized by the Code as amended hereby. 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 and has been included and relied upon in its budget for the fiscal year in which the moneys are to be expended. Upon the City Council's approval, which shall not be unreasonably withheld, the requested funds shall be transferred to the School District's Capital Projects Fund.

#### SECTION 8. EXPIRATION

This Ordinance shall expire five years from the date of its adoption unless it is renewed or extended by the City Council upon the request of the School District.

#### SECTION 9. SEVERABILITY

If any subsection, paragraph, subparagraph, phrase, sentence, or portion of this resolution or the Code amendments hereby adopted is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this resolution or such amendments.

#### SECTION 10. EFFECTIVE DATE

This Ordinance shall become effective in accordance with the Charter of the City of Grand Junction.

INTRODUCED AND ORDERED PUBLISHED this 3rd day of January, 1996.

PASSED AND ADOPTED this 17th day of January, 1996, in the City of Grand Junction, Mesa County, Colorado.

/s/ Ron Maupin

ATTEST:

Mayor

/s/ Stephanie Nye

City Clerk

EXHIBIT "A"

MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51

RESOLUTION REQUESTING THE IMPOSITION  
OF SCHOOL IMPACT FEES

**WHEREAS**, the rapid rate of development and growth within the Mesa County Valley School District No. 51 over the past several years has caused significant increases in the School District's student enrollment which condition is expected to continue into the future; and

**WHEREAS**, the Colorado Division of Local Affairs, the State of Colorado, and Mesa County each forecast greater amounts of growth for the next ten years in Mesa County; and

**WHEREAS**, new residences place significant new demands on the School District to provide new school facilities or to expand existing facilities for the education of the children residing within said residences; and

**WHEREAS**, the volume and pace of residential land development in the County threaten the provision of adequate school facilities in the County; and

**WHEREAS**, the District has performed an analysis of growth projections and school educational facility capacities within the District, considered funding considerations and implications, assessed the attributes and deficiencies of alternatives to address school facility capacity needs, and involved citizens throughout the school community in public presentations and meetings held at various schools during the past year; and

**WHEREAS**, the enrollment has already exceeded the designed capacity at many of the District's schools and is projected to create even more severe shortages in space in the ensuing five years; and

**WHEREAS**, in order to promote and protect the public health, safety, and welfare, and accommodate the needs created by new development, the District must acquire more land to expand its educational facilities in order to maintain current and acceptable levels of educational service to its students; and

**WHEREAS**, the construction of additional school facilities has been traditionally financed through ad valorem tax revenues; and

**WHEREAS**, a relatively small population base is repeatedly being asked through school bond and mill levy elections to finance the cost of constructing new schools and expanding existing

schools for the new population entering the District; and

**WHEREAS**, section 30-28-133, C.R.S., requires counties to adopt and enforce subdivision regulations for all land in unincorporated areas of the county, and home rule cities and towns are similarly empowered; and

**WHEREAS**, under section 30-28-133, C.R.S., such subdivision regulations must include, at a minimum, provide for sites and land areas for schools and parks when such are reasonably necessary to serve the proposed subdivision and the future residents thereof, and may also include requirements for the dedication of such sites and land areas to the county or to the public or, in lieu thereof, payment of a sum of money not exceeding the full market value of such sites and land areas; and

**WHEREAS**, section 30-28-133, C.R.S., requires the board of county commissioners to hold dedicated land and fees collected in lieu of land dedications or funds paid to the board of county commissioners from the sale of such dedicated land for the acquisition of reasonably necessary sites and land areas for schools or parks; and

**WHEREAS**, section 30-28-133, C.R.S. permits the board of county commissioners to transfer such land and funds to the District upon request for the foregoing purposes; and

**WHEREAS**, the Mesa County Land Development Code currently requires developers to dedicate land for school purposes if the proposed development includes within it land which is necessary for implementing an adopted school plan; and

**WHEREAS**, the fee in lieu of such dedication currently in place in Mesa County for residential development is used for parks, roads, drainage and other non-school purposes, and the Board of Education believes that proper regulation of residential development requires the imposition of a fee to defray at least in part the costs of acquiring sites and land areas for new schools and school facilities made necessary by new residences; and

**WHEREAS**, there should be a reasonable connection between the fees collected for school sites and the cost of acquiring land for school facilities made necessary by new residences; and

**WHEREAS**, new residences are benefited from the expenditure of such revenues by defraying the cost of new or expanded school facilities across the District; 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 support to any political subdivision of the state as may be authorized by statute; and

**WHEREAS**, Article XIV, Section 18, of the Colorado Constitution provides that the state or any of its political subdivisions may cooperate or contract with each other to provide any

functions, service, or facility lawfully authorized to each; and

**WHEREAS**, Section 22-32-110(l)(a), C.R.S., authorizes the board of education of a school district to take and hold in the name of the district so much real and personal property as may be reasonably necessary for any purpose authorized by law; and

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

**WHEREAS**, Section 22-32-124(1), C.R.S., provides that prior to the acquisition of land or any contracting for the purchase thereof, a board of education shall consult with and advise in writing the planning commission, or governing body if no planning commission exists, which has jurisdiction over the territory in which the site is proposed to be located in order that the proposed site shall conform to the adopted plan of the community insofar as is feasible; and

**WHEREAS**, Section 22-32-122, C R.S., grants to school districts the power to contract with a county for the performance of any service, activity, or undertaking which any school district may be authorized by law to perform or undertaker and

**WHEREAS**, Section 29-1-203, C.R.S., authorizes political subdivisions of the state to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each such political subdivision; and

**WHEREAS**, Section 29-20-105(1), C.R.S., authorizes and encourages local governments to cooperate or contract with other units of government for the purposes of planning or regulating the development of land; and

**WHEREAS**, Sections 30-28-136(1)(a) and (2), C.R.S., additionally require that all preliminary subdivision plans be submitted to the appropriate school district for review and recommendations; and

**WHEREAS**, Section 30-28-136(2) C.R.S., requires that where a preliminary plan involves twenty or more dwelling units the school district within which the land is located must submit to the board of county commissioners specific recommendations with respect to the adequacy of school sites and school structures; and

**WHEREAS**, representatives from the District have attended meetings with, circulated draft proposals to and received recommendations and comments from the board of county commissioners, county planners, the City of Grand Junction, the home builders' association and representatives of such groups regarding imposition of a site fee in lieu of dedication of land in order to defray the cost of acquiring sites for new schools and school facilities; and

**WHEREAS**, as a result of the foregoing activities, the Board of Education desires to apply

to the board of county commissioners and other home rule municipalities to establish a school site fee in lieu of land dedication program having the following general features:

a. Payment of a site fee for each dwelling unit in each new development for which a development permit is issued, with the amount of the fee based on a methodology which takes into account the student generation rates of new development, the quantity of land required to build new schools on a per pupil basis, and the anticipated cost of suitable school lands in the District.

b. Collection of such fees by the county for deposit into a county trust fund dedicated for school site acquisition outlays within the District.

c. An intergovernmental agreement between the county, participating municipalities and the District regarding collection and expenditure of the trust funds pursuant to the District's adopted capital improvement plan, adhering to the notice, request and voting provisions of section 30-28-133(4.3), C.R.S.

d. An indemnification agreement to hold the county and participating municipalities harmless of and from any financial loss in the event of a judicial determination that any site fees must be included in the county's "fiscal year spending" for purposes of Article X, Section 20 of the Colorado Constitution (Amendment 1).

THEREFORE, BE IT RESOLVED, BY THE BOARD OF EDUCATION OF MESA COUNTY VALLEY SCHOOL DISTRICT NO. 51, AS FOLLOWS:

A. The Board of Education hereby officially requests the Board of County Commissioners of the County of Mesa, State of Colorado, impose by resolution and appropriate amendments to the text of the Mesa County Land Use Development Code, a school site fee in lieu of land dedication upon new residential development, in a form generally consistent with the Mesa County Planning Department's draft resolution and amendments attached as Exhibit A, and in an amount bearing a reasonable relationship to the cost of acquiring school sites to accommodate the anticipated District enrollment growth from such development. The general plan for collection, holding and expenditure of such fees described therein, is hereby approved, subject to such revisions or modifications as may be requested by the Board of County Commissioners, the county planning commission or department, or otherwise recommended to the Board of Education and which modifications and revisions are ratified and approved by the Board of Education.

B. The Board of Education also requests that other municipalities within the District, including the Fruita, Grand Junction, and Palisade, enact by ordinance or otherwise a school site fee in lieu of land dedication for developments within their jurisdictional boundaries which is in form and substance similar to the program described in Exhibit A.

C. The Superintendent and his designee(s) are hereby authorized to apply on behalf of the Board of Education to the board of county commissioners, county planning commission and other

local governmental entities and agencies as may be necessary to secure the adoption and establishment of the site fee program set forth above, to revise the attached Exhibit A as necessary to carry out the spirit and intent expressed herein, and to represent the Board of Education in all discussions, presentations, matters, hearings and other proceedings held or conducted in connection with the establishment of such program.

D. The Superintendent is further authorized to negotiate and present to the Board of Education for approval a form of intergovernmental agreement with the board of county commissioners and participating home rule municipalities concerning the collection, holding and disbursement of site fees.

E. The Superintendent is further authorized to negotiate and present to the Board of Education for approval a form of indemnity agreement with the board of county commissioners and other participating municipalities concerning the collection, holding and disbursement of site fees

F. It any section, paragraph, subparagraph, clause, or provision contained in this resolution shall be adjudged to be invalid or unenforceable by a court or competent jurisdiction, or by operation of any applicable law, such invalid or unenforceable section, paragraph, subparagraph, clause, or provision shall not affect the validity of this resolution as a whole, and all other sections, paragraphs, subparagraphs, clauses, and provisions shall be given full force and effect.

PASSED AND ADOPTED this \_\_\_\_\_ day of August, by the Board of Education of the Mesa County Valley School District No. 51 in Grand Junction, Mesa County, Colorado.

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*Mary K. Kalenian*  
*Secretary, Board of Education*

ACTION OF THE BOARD:

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EXHIBIT "A"

**DRAFT**

**Text Amendments and Resolution Establishing SLD Trust Fund**

3/31/95



#MCM 95-\_\_\_\_

**RESOLUTION**

The following resolution establishes the School Land Dedication Trust Fund, hereinafter referred to as SLD and identifies definitions; earmarking and expenditures of the fund; provides for an annual report, auditing and accounting procedures; and provides for annual review by the Board of County Commissioners.

**WHEREAS**, The SLD Fee Trust Fund was created in order to implement Section 4.3.6.A(2) of the Mesa County Land Development Code, adopted \_\_\_\_\_, 1995; and

**WHEREAS**, It is the intention of the Board of County Commissioners to enter into agreements with the various school districts in Mesa County; and,

**WHEREAS**, According to these regulations, the SLD trust Fund will consist of monies received for purposes defined herein,

for the use and benefit of each School District, to be maintained as a separate interest-bearing account authorized by Sections 24-75-601 to 605, C.R.S., apart from all other funds of the County; and

**WHEREAS**, All fees collected in lieu of school land dedication shall be properly identified and promptly deposited in the appropriate School District's SLD Fee Trust Fund, and shall not be withdrawn for any purpose except as authorized in accordance with this resolution;

**NOW LET IT THEREFORE BE RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF MESA**, the following will govern the SLD Fee Trust Fund:

**A. SLD Fee Trust Fund**

- 1) Each School District shall be beneficial owner of the funds in its account, but the signature of the chief financial officer of a School District, or his or her designee, and the signature of the county manager, or his or her designee, shall be required for the withdrawal of monies from the account;

- 2) The County shall be entitled to retain \_\_\_\_% of the funds collected to compensate it for its administrative expenses of collecting the fees and administering this Section;
- 3) Upon the written request of a School District or its authorized representative, the Board or its authorized designee shall notify such district within \_\_\_\_ days of the fees in lieu of dedication received and deposited in the SLD Fee Trust Fund for its benefit and the interest earned thereon, as of the end of the month immediately preceding the month in which the request was made. Within \_\_\_\_ days of the date of such notice, a School District may file with the Board a request for disbursement to such district of all or part of the fees and interest accumulated in its SLD Fee Trust Fund for purposes authorized by paragraph 5 of this subsection.
- 4) Such request 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.
- (5) Such request shall be heard at a regular meeting of the Board held within \_\_\_\_ days after it is filed, at which time requesting School District, through its authorized representative, shall demonstrate to the Board a need for the moneys requested to expend for purposes authorized by this section during the next following fiscal year. 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 requesting School District, and has been included and relied upon in its budget for the fiscal year in which the moneys are to be expended. Upon the Board's approval, which shall not be unreasonably withheld, the requested funds shall be transferred to the requesting School District's Capital Projects Fund.
- (6) The funds deposited in the SLD Fee Trust Fund with respect to a Dwelling Unit shall be expended solely to acquire real property or interests in real property reasonably needed for development or expansion of school sites and facilities within the District where such unit is located or to reimburse a District for sums expended to acquire such property or interests.

7) The SLD Fee shall then be set, by resolution of the Board, in accordance with the following formula:

$$\begin{array}{|c|} \hline \text{Cost per Acre} \\ \hline \text{of Suitable} \\ \hline \text{School Lands} \\ \hline \text{within each} \\ \hline \text{School District} \\ \hline \end{array} \times \begin{array}{|c|} \hline \text{Student} \\ \hline \text{Generation Fee} \\ \hline \text{Factor of .023} \\ \hline \end{array} = \begin{array}{|c|} \hline \text{SLD Fee Per} \\ \hline \text{Dwelling Unit} \\ \hline \end{array}$$

[For example, if the average cost of Suitable School Lands is \$15,000 per acre, the fee per Dwelling Unit would be \$15,000 X .023, or \$345.]

The student generation fee factor may also be modified at the hearing, provided that either the subject School District gives notice to the Board that it requests such a modification at least thirty (30) days prior to the hearing, or the Board adopts a motion providing for consideration of a modification of said fee factor and its hearing notice to the subject School District pursuant to this subsection so states. Said hearing shall consider the School District's school facilities plan currently in place, the methodology and data supporting the proposed modification, and any evidence, comments or recommendations submitted by the County Planning Department, the subject School District and interested members of the public.

## **B. Definitions**

(1) "Board" means Mesa County Board of County Commissioners.

(2) "County" means Mesa County, Colorado.

(3) "Board of Education" means the Board of Education of a public school district located

in Mesa County

(4) "County Administrator" means the county administrator or the county employee he or she may designate to carry out the administration of this section

(5) "School District" means a public school district located in Mesa County.

(6) "SLD Fee Trust Fund" means the separate account established and maintained by the County for the use and benefit of a School District pursuant to this section.

(7) "Suitable School Lands" are tracts of vacant unsubdivided land lying within areas targeted for establishment of school sites in a School District's long range capital improvement plan and having characteristics rendering such tracts suitable or desirable for development as school sites and facilities, including, but not limited to, appropriate size and dimensions, lack of geologic, environmental or topographic barriers to development, ready access to utilities (including irrigation water) and primary roads, compatible zoning, and proximity to other schools, school facilities and residential areas.

(8) "SLD Fee" means the fee in lieu of school land dedication imposed pursuant to this Section.

### **C. Earmarking and Expenditure of SLD Fee Funds**

1) All fees collected by the County pursuant to this resolution shall be earmarked for acquisition of real property or interests in real property reasonably needed for development or expansion of school sites and facilities within the School District where such unit is located or to reimburse such School District for sums expended to acquire such property or interests. Any changes to School District boundaries that would affect

the expenditure of fees in lieu of land dedication must be reviewed by the Board 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 School 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 for the benefit of the School District from which the fees are collected.

#### **D. Annual Report, Accounting, and Audit**

(1) Each School District shall submit an annual report to the Board describing its expenditure of SLD Fees during the preceding fiscal year. This report shall include:

- a. A review of the assumptions and data on which the SLD Fee methodology is based, including assessed value, student generation ratios, and attendance area boundaries.
- b. Alternative revenue sources for funding acquisition of new school sites made necessary by new development.
- c. Statutory changes or changes in County policies related to the acquisition of sites for educational facilities .
- d. Any new capacity enhancement policies or procedures adopted by such School District.
- e. Factors that have a substantial long-term effect on the growth rate of residential development in the County.

- f. An evaluation of data relative to growth absorption rates within special districts in the County.
- g. 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.

(2) Each School District shall establish an accounting system to ensure that all SLD Fees are expended for the provision of new or expanded school sites benefiting the students residing in the School District from which such fees were collected.

(3) Each School District and the County shall cause an audit to be performed annually of the SLD Fees collected and expended. The audit shall be conducted in accordance with generally accepted accounting principles for governmental entities. The cost of the audit shall be paid from each such School District's general fund.

(4) At any time deemed necessary, the Board may request an accounting from the chief financial officer of each such School District concerning the expenditure of the SLD Fees paid to the School District.

#### **E. Annual Review by the Board**

1) After receipt of the report required pursuant to subsection 4.3.7 J(1) above, the Board shall review the report and shall consider those matters listed in paragraphs a through g of said subsection. The Board shall complete its review on or before June 1.

#### **F. Severability**

If any subsection, paragraph, subparagraph, phrase, sentence, or portion of this resolution, or Sections 4.3.6.A(2) or 6.6 is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of said section.

**G. Effective Date**

This amended section 4.3.6 and section 6.6 shall become effective on the date and at the time of its adoption.

**H. Expiration**

(1) With the exception of subsection \_\_\_\_\_, this section 4.3.7 shall expire five years from the date of its adoption unless it is renewed or extended by the Board upon the request of the School Districts.

(2) Upon expiration of this section 4.3.6.A(2), the provisions of subsection 4.3.6.A(2)(c)i pertaining to refunds shall remain in effect until fully implemented.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 1994, in Grand Junction, Mesa County, Colorado

THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF MESA, COLORADO

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_, Chairman

\_\_\_\_\_  
\_\_\_\_\_, Clerk and Recorder

4.3.5

4.3.6

4.3.7 directly adjacent to land owned by the applicant.

4.3.6.A(1)d Standards for



EXHIBIT B

**Zoning and Development Code Text Amendments  
Establishing  
Standards for Fees in Lieu of School Land Dedications**

**STANDARDS FOR LAND DEDICATIONS AND FEES IN LIEU THEREOF**

I

**Sections 5-4-6.5 and 5-4-6.6 Amending the Grand Junction Zoning Development Code are hereby created, to read as follows:**

5-4-6.5 Standard for School Land Dedication. Dedication of Suitable School Lands for school purposes shall be required of any development if the School District determines that such development includes within it land which is necessary for implementing a school plan. In all other cases, the fee required under section 5-4-6.5 shall be paid in lieu of a school land dedication.

5-4-6.5(A) Standard for Fee in Lieu of School Land Dedication Except in cases where a school land dedication is required in accordance with section 5-4-6.5 above or is permitted under subsection 5-4-6.5(A)(3) below, or an exemption under subsection 5-4-6.5(A)(2) applies, all Residential Developments or Mixed Use Developments containing a Residential Development component shall be subject to fees in lieu of school land dedication (SLD Fee) in an amount per Dwelling Unit determined by resolution of the City Council. SLD Fees shall be collected by the City for the exclusive use and benefit of the School District in which such development is located, and shall be expended by the School District solely to acquire real property or interests in real property reasonably needed for development or expansion of school sites and facilities, or to reimburse the School District for sums

expended to acquire such property or interests. Revenues from such fees shall be used only for such purposes.

5-4-6.5(B)(1) Payment of SLD Fee

(a) No building permit shall be issued for a Dwelling, Multiple-Family Dwelling or Multi-Family Dwelling which is or contains one or more Dwelling Units until and unless the SLD Fee for such Dwelling Unit(s) in effect at the time such permit is applied for has been paid as required by this section. No SLD Fee shall be required or collected under this section with respect to any Dwelling Unit(s) for which a building permit has been issued or for which a building permit application is pending as of the effective date of this section.

(b) Nothing in part (a) of this subsection shall preclude a holder of a Development Permit for a Residential Development or Mixed Use Development containing a Residential Development component from prepaying the SLD Fees to become due under this section for one or more Dwellings, Multiple-Family Dwellings or Multi-Family Dwellings to be constructed in such Development. Such prepayment shall be made upon the filing of a final plat for a platted or unplatted Residential Development, at the SLD Fee rate then in effect and in the amount which would have been due had a building permit application for such dwelling(s) been pending at the time of prepayment. A subsequent building permit for a Dwelling, Multiple-Family Dwelling or Multi-Family Dwelling which is or contains one or more Dwelling Units for which the SLD Fees have been prepaid shall be issued without payment of any additional SLD Fees. However, if such permit would allow additional Dwelling Units for which SLD Fees have not been prepaid, such permit shall not be issued until the SLD Fees for such additional Dwelling Units have been paid at the rate per Dwelling Unit in effect at the time the building permit application was made.

(c) Any prepayment of SLD Fees in accordance with part (b) of this subsection shall be documented by a Memorandum of Prepayment which shall contain, at minimum, the following:

(1) The legal description of the real property subject to Residential Development for which an SLD Fee is being prepaid.

(2) A description of the development permit issued concerning such real property, and a detailed statement

of the SLD Fees owed pursuant to such permit which are being prepaid.

(3) The notarized signatures of the record owner(s) of the property or their duly authorized agents.

(4) The notarized signature: of the County Manager or his or her designee, indicating approval of the prepayment plan, if the fee was paid while the real property was outside the limits of the City; or if the fee was paid at the time the real property was within the limits of the City, of the City Manager or his designee, indicating approval of the prepayment plan.

5-4-6.5(B) (2) Exemptions.

The following shall be exempted from payment of the SLD Fee:

(a) Alterations or expansion of an existing building except where the use is changed from non-residential to residential and except where additional Dwelling Units result.

(b) The construction of accessory buildings or structures.

(c) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use.

(d) The installation of a replacement mobile home on a lot or other parcel when a fee in lieu of land dedication for such mobile home has previously been paid pursuant to this section or where a residential mobile home legally existed on such site on or before the effective date of this section.

(e) Non-residential buildings, non-residential structures, or non-residential mobile homes.

(f) Nursing homes, Adult Foster Care Facilities, or Specialized Group Facilities.

(g) City or County approved planned Residential Developments that are subject to recorded covenants restricting the age of the residents of said Dwelling Units such that the Dwelling Units may be classified as "housing for older persons" pursuant to the Federal Fair Housing Amendments Act of 1988.

5-4-6.5(B) (3) Credits.

(a) An applicant for a development permit (or a holder of

such a permit) who owns other Suitable School Lands within the School District in which the development is located may offer to convey such lands to the School District in exchange for credit against all or a portion of the SLD Fees otherwise due or to become due. The offer must be in writing, specifically request credit against fees in lieu of school land dedication, and set forth the amount of credit requested. If the City and the School District accept such offer, the credit shall be in the amount of the value of the Suitable School Lands conveyed, as determined by written agreement between the City, the School District and the permit holder or applicant.

(b) Credit against SLD Fees otherwise due or to become due will not be provided until good and sufficient title to the property offered under this subsection is conveyed to and accepted by the School District. Upon such conveyance, the School District and the City shall provide the applicant with a letter or certificate setting forth the dollar amount of the credit, the reason for the credit, and a description of the project or development to which the credit shall be applied.

(c) Credits shall not be transferable from one project or development to another.

5-4-6.5(B) (4) Refund of Fees Paid

(a) Any SLD Fee which has not been expended by the School District within five years of the date of collection shall be refunded, with interest at the rate of five (5) percent per annum compounded annually, to the person who paid the fee. Prior to such refund, such amount shall be reduced by an amount equal to three percent (3%) of the principal amount to be refunded, for the costs incurred by the City in the refund of such fee. The City shall give written notice by first class mail to the person who paid the fee at his or her address as reflected in the records of the Mesa County Clerk and Recorder. If such person does not file a written claim for such refund with the City within ninety days of the mailing of such notice, such refund shall be forfeited and shall be retained and used for the purposes set forth in this section 5-4-6.5(B).

(b) City Council may, upon the School District's request, extend the five-year period of time specified in part (a) of this subsection above upon a showing that such extension is reasonably necessary in order for the School District to complete or close a purchase transaction entered into in

writing by such district prior to expiration of such period, or to give the School District an opportunity to exercise a purchase option it acquired prior to expiration of such period. Such request shall be made at a public hearing of the City Council. In no event shall any extension of time exceed an additional five (5) year period.

5-4-6.6 Fees in Lieu of School Land Dedication (SLD Fees)

(a) SLD Fees shall be collected and held in trust for the use and benefit of the School District containing the Residential Development for which the fee is collected. Such fees shall be expended by the School District to acquire additional real property for expansion of school facilities and construction of new school facilities necessitated by new Residential Development in the School District, or to reimburse the School District for sums expended to acquire such property. The amount of the SLD Fee shall be based on a methodology which takes into account the student generation rates of new Residential Development, the quantity of land required to build new school facilities on a per pupil basis, and the anticipated cost of acquiring Suitable School Lands in the School District to expand existing school facilities and construct new school facilities to accommodate new Residential Development without decreasing current levels of educational services.

(b) At the time SLD Fees are initially adopted and once every five (5) years thereafter, the City Council shall determine the average cost per acre of Suitable School Lands, after a public hearing. The City shall give the School District sixty (60) days' prior written notice of the hearing. Such hearing shall consider the School District's long range capital improvement plans and any other evidence, comments or recommendations submitted by the School District and the public in making such determination.

(c) The SLD Fee shall then be set, by resolution of the City Council, in accordance with the following formula:

Cost per Acre of Suitable School Lands within the School District	X	Student Generation Fee Factor of .023	=	SLD Fee Per Dwelling Unit
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[For example, if the average cost of Suitable School Lands is \$15,000 per acre, the SLD Fee per Dwelling Unit would be \$15,000 X .023, or \$345.]

The student generation fee factor may also be modified at the hearing, provided that either the School District gives notice to the City Council that it requests such a modification at least thirty (30) days prior to the hearing, or the City Council adopts a motion providing for consideration of a modification of said fee factor and its hearing notice to the School District pursuant to this subsection so states. Said hearing shall consider the School District's school facilities plan currently in place, the methodology and data supporting the proposed modification, and any evidence, comments or recommendations submitted by the County Planning Department, the City's Community Development Department, the School District and interested members of the public.

## II

**Chapter 12 of the Grand Junction Zoning Land Development Code is hereby amended by the addition of the following definitions:**

### **City Manager**

Means the City Manager or the City employee he may designate to carry out the administration of this section.

### **Council or City Council**

Means the duly elected City Council of the City of Grand Junction.

### **County Administrator**

The county administrator or the county employee designated by the Board.

### **School District**

As used in Chapter 5 of this Code, "School District" means a public school district located in the City whose governing board has made a formal request to the City Council for school land

dedications or fees in lieu of such dedications pursuant to this Code and related County and City resolutions and ordinances, and has entered into an intergovernmental agreement with the City regarding the implementation and administration of such dedications and fees.

**SLD Fee**

The fee in lieu of school land dedication imposed pursuant to this Code.

**Suitable School Lands**

Tracts of vacant unsubdivided land lying within areas targeted for establishment of school sites in the School District's long range capital improvement plan and having characteristics rendering such tracts suitable or desirable for development as school sites or facilities, including but not limited to, appropriate size and dimensions, lack of geologic, environmental or topographic barriers to development, ready access to facilities (including irrigation water) and primary roads, compatible zoning, and proximity to other schools, school facilities and residential areas.