

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
DOUGLAS COUNTY SCHOOL DISTRICT RE. 1
AND
DOUGLAS COUNTY
FOR THE
ADMINISTRATION AND OPERATION
THE NORTHWEST JOINT USE FACILITY**

This Agreement is made between the Douglas County School District Re.1, a public school district organized under the laws of the State of Colorado (the "School District"), and the Board of County Commissioners of Douglas County, Colorado, a statutory county organized under the laws of the State of Colorado ("the County"). This Agreement is effective this 1st day of May, 2010 ("Effective Date").

I. RECITALS

A. The parties entered into a memorandum of agreement in July of 2002 identified as the Northwest Joint Use Facility. The purpose of the agreement was to develop, construct, own, and operate a Joint Service Facility located at 8117 Midway Drive in Littleton, Colorado.

B. The parties now desire to establish administration and operating procedures for the Facility.

II. TERM AND TERMINATION

A. This Agreement shall commence on the Effective Date and shall continue until December 31, 2011 ("Initial Term"), unless otherwise terminated as provided in this Agreement. Subject to such termination provisions, after the Initial Term, unless modified as provided in the next paragraph, this Agreement shall renew automatically upon the same terms and conditions, except that any renewal term shall be for a one-year period.

B. If the parties desire to modify this Agreement after the Initial Term or at any subsequent renewal, any modifications may be either incorporated herein by written amendment or set forth in a new written agreement.

C. Notwithstanding any other provision of this Agreement, this Agreement may be terminated as follows:

1. By mutual agreement, as evidenced by a written agreement to terminate; or

2. By any Party immediately for cause, upon written notice of termination to the other Party. For the purpose of this section, "cause" shall be construed to mean the failure of a Party to correct a material breach of its obligations under this Agreement within 60 days after notice of such breach is received from the other Party, unless such breach cannot, with due diligence, be corrected within such 60-day period and the Party notified of such breach is diligently pursuing correction of said breach.

III. MANAGEMENT RESPONSIBILITIES

A. Because the School District is the property owner it shall act as and fulfill the responsibilities of an Administrator, and as such, shall have the authority and responsibility for the day-to-day management decisions relating to the operation of the Facility; and

B. The duties of the Administrator include, but are not limited to, performance of the following services:

1. As needed, maintain and/or arrange for the maintenance of complete books of account of the Joint Use, classifying receipts and expenditures by governmental entity;

2. Provide for the maintenance and repair of the Facility, including keeping accurate records that reflect expenditures of time and money associated with such maintenance or repair;

3. Prepare or cause to be prepared a capital improvement plan and budget that records the present site layout and illustrates planned improvements such as additional parking, new buildings or additions and access enhancements, with projected costs and timing for construction;

4. Administrator shall maintain standard policies of insurance on the Facility, and each party shall maintain standard policies of insurance covering their contents and equipment with coverage types and limits ordinarily acceptable in the property management industry to protect the Joint Venture from loss resulting from destruction of the Parties' property, or resulting from liability for personal injury or property damage; provided, however, that each Party shall maintain a separate commercial general liability policy with limits of not less than \$150,000 per person/\$600,000 per occurrence, which policy shall name as additional insured's the other participants of the Agreement; and

5. Perform any other tasks reasonably necessary or desirable for the administration or operation of the Facility.

C. The School District, whether or not it is acting in the capacity of Administrator, shall purchase fuel supplies to service the vehicles of the School District and maintain the fuel system in compliance with all regulations.

D. The County shall maintain the on-site generator.

E. Should a dispute arise between any Party relating to this Agreement, the resolution of said dispute, shall be referred to the Chief Operating Officer for the School District and the Facilities Director for the County for appropriate consideration and action.

F. No Party shall obligate or otherwise create a liability of the Agreement or any other Party unless there is a budget and appropriation for the liability and there is the consent of a majority of the Parties or the individual Party in question.

G. The Parties shall meet annually, or more frequently as necessary, at a mutually convenient time and place to review any issues relating to the administration and operation of the Facility, including future capital improvements. Cost of capital improvements would be based on net exclusive benefit as determined by each of the Parties.

H. When the Initial Term ends, and thereafter at each annual renewal date, the parties shall meet for the purpose of reviewing past Repair and Operating Costs and the Capital Improvement Plan.

IV. ALLOCATION OF EXPENSES

A. Operating Costs

1. The term "Operating Costs" used with reference to any given portion of the Facility shall mean the expenses reasonably necessary or desirable for the day-to-day operation of the Facility, including, without limitation, custodial service and supplies, snow removal, trash pick-up, one telephone line, water, sewer, gas, electricity, and employee salaries and benefits.

2. Respective Operating Costs of the Facility shall be the responsibility of each Party to this Agreement for their Exclusive Facilities.

3. Snow removal shall be the responsibility of the District, with the County providing assistance in this task, when possible.

4. Landscape maintenance around facility will be responsibility of the District.

B. Repair Costs

1. The term "Repair Costs" used with reference to any given portion of the Facility shall mean the expenses reasonably necessary due to wear, periodic replacement, vandalism, damage, or catastrophic event of such portion of the Facility, specifically grounds and/or parking areas, and shall not include the day-to-day operating expenses. Facility repair costs shall be the responsibility of each Party for their respective buildings;

2. Any Repair Costs beyond normal wear and tear, proximately caused by the negligence or intentional misconduct of any agent or employee of the Party, shall be borne by Party to the extent insurance proceeds are inadequate to cover the incurred expenses.

3. Subject to paragraph 1, responsibility for the Repair Costs of the grounds and parking areas shall be accommodated among the parties as follows:

a. Unless the Parties agree otherwise in writing, the responsibility for all "Repair Costs," which shall mean Repair Costs of \$10,000 or more; shall be allocated among the Parties to the Agreement on a percentage basis. Usage is estimated to be School District 80%, County 20%.

C. Exclusive Facilities

Each Party shall be responsible for payment of the Operating Costs and Minor Repair Costs of those areas of the Facility designated below as its Exclusive Facilities of each Party:

1. The Exclusive Facilities of the School District consist of Building A and Building D as identified in Attachment A.

2. The Exclusive Facilities of the County consist of Building B and Building C as identified in Attachment A.

VI. LIABILITY

A. It is mutually understood and agreed that none of the Parties assumes any responsibility hereunder for the supervision of activities sponsored or conducted by any other Party at the Facility. During the period that any portion of the Facility is being used by any Party to the Agreement in a sponsored activity or program, the using entity in each instance shall be responsible for all necessary supervisory or instructional personnel required for such activity, shall bear the cost of all necessary supervisory and instructional personnel, and shall have in force at all times a valid property damage and public liability insurance policy, covering such areas and activities, in an amount at least equal to \$150,000 for injury to one person and \$600,000 for injury to two or more persons in any single occurrence.

B. The Parties agree that they are relying on and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations of, or any other rights, immunities, or protection provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the Parties, their officers, or their employees.

C. The covenants and agreements herein contained are for the benefit of the Parties only, and do not create any obligations or duties to persons not parties hereto.

D. It is the intention of the Parties to limit the Parties' liability toward persons entering the Facility for the purposes addressed in Exhibit 3, in the event that any or all of the parties would otherwise be liable, pursuant to C.R.S. § 33-41-101, *et. seq.*

E. Each Party shall notify the Administrator of any defects or potential defects, dangerous conditions or potential dangerous conditions, claims or potential claims from damage or injury that come to its attention in connection with its usage.

F. Neither Party shall:

1. Conduct on any portion of the Facility any activity that utilizes, requires storage of, or will produce any pollutant, contaminant, toxic or hazardous waste, or any other substance, the removal of which is required or the use of which is restricted, prohibited or penalized by any environmental law, except for such activities that are part of the ordinary course of the Parties' official duties, including without limitation, training activities, and which are conducted in accordance with all federal, state, and local laws and regulations relating to pollution or protection of the environment ("Environmental Laws").

2. Use any portion of the Facility in any manner the storage of any substances referred to in the previous paragraph, except for the temporary storage of materials used in connection with activities permitted under the previous paragraph, provided that the manner and location of such storage meets all Environmental Laws; or

3. Use any portion of the Facility as a landfill or dump.

G. To the extent permitted by law, but without waiving any of the protections afforded by the Colorado Governmental Immunity Act, or other state or federal laws or regulations, each Party shall bear its share of responsibility for any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto, including any costs of defense and which the Party or any other party(s) may incur, become responsible for, or pay out as a result of: death or bodily injury to any person; destruction or damage to any property; contamination of or adverse effects on the environment; or any violation of governmental laws, regulations, or orders. Each Party's obligation under this provision shall be limited to the degree or percentage of the negligence or fault attributable to said Party for causing the claimed damage or injury. Each Party's obligation under this provision is further limited to the sum that exceeds the amount of any applicable insurance proceeds.

VII. AMENDMENT

This Agreement is the entire Agreement of the parties and may not be amended except by a writing referencing this Agreement and signed by all Parties. All prior discussions and understandings of the respective Parties pertaining to the subject matter of this Agreement are hereby merged into this Agreement.

VIII: MISCELLANEOUS

A. Binding Effect. This Agreement shall be binding upon the Parties and their successors in interest.

B. Notice. Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be certified with return receipt requested and addressed to the following addresses:

Douglas County School District Re.1
Attention: Executive Director of Facilities Management
620 Wilcox Street
Castle Rock, Colorado 80104

Douglas County
Attn: Facilities Director
3026 N. Industrial Way
Castle Rock, Colorado 80109

With copies to general counsel for each Party:

Darci Mohr
Legal Counsel
Douglas County School District
620 Wilcox Street
Castle Rock, Colorado 80104

Lance J. Ingalls
Douglas County Attorney
100 Third Street
Castle Rock, Colorado 80104

Notice given by mail shall be effective three days after it is deposited in the United States mail depository with sufficient postage for delivery, and correctly addressed.

C. Governing Law. This Agreement and the rights and obligations of the Parties hereto shall be interpreted and construed in accordance with the laws of the State of Colorado and venue shall be proper only in the District Court in Douglas County, Colorado.

D. Authority of Signators. The Parties represent that the individuals signing this Agreement on behalf of the respective Parties possess full power and authority from their respective governing boards in compliance with the laws of the State of Colorado.

E. Nonwaiver. No waiver of any right under this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.

F. Further Assurances. Each Party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

G. Severability. Each provision of this Agreement shall be severable. If any provision is held invalid, contrary to, or in conflict with any law or regulation by a tribunal with competent jurisdiction, the remainder of this Agreement shall remain in effect.

H. Annual Appropriation: Any financial obligation of this Agreement outside the current fiscal year of either Party is subject to the multiple fiscal year obligation limitations of Article X, Section 20(4)(b) of the Colorado Constitution and/or § 29-10-110, C.R.S., and subject to annual appropriation of the parties as neither party has irrevocably pledged or intended to pledge adequate present cash reserves payment in all future years of this Agreement.

I. 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 County and the School District, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement.


DOUGLAS COUNTY SCHOOL DISTRICT RE. 1

BY: 
**William Moffitt, Executive Director
Of Facilities Management**

APPROVED AS TO CONTENT:

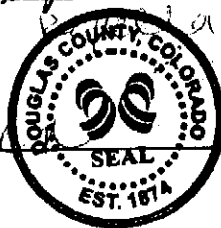

Darci Mohr, Legal Counsel

**THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF DOUGLAS, COLORADO**

BY: 
STEVEN A. BOAND, Chair

ATTEST:

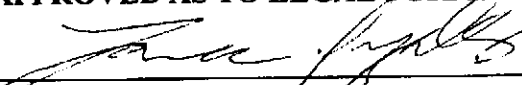

**MELISSA PELLETIER
Deputy Clerk**



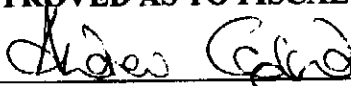
APPROVED AS TO CONTENT:


Douglas J. DeBord, County Manager

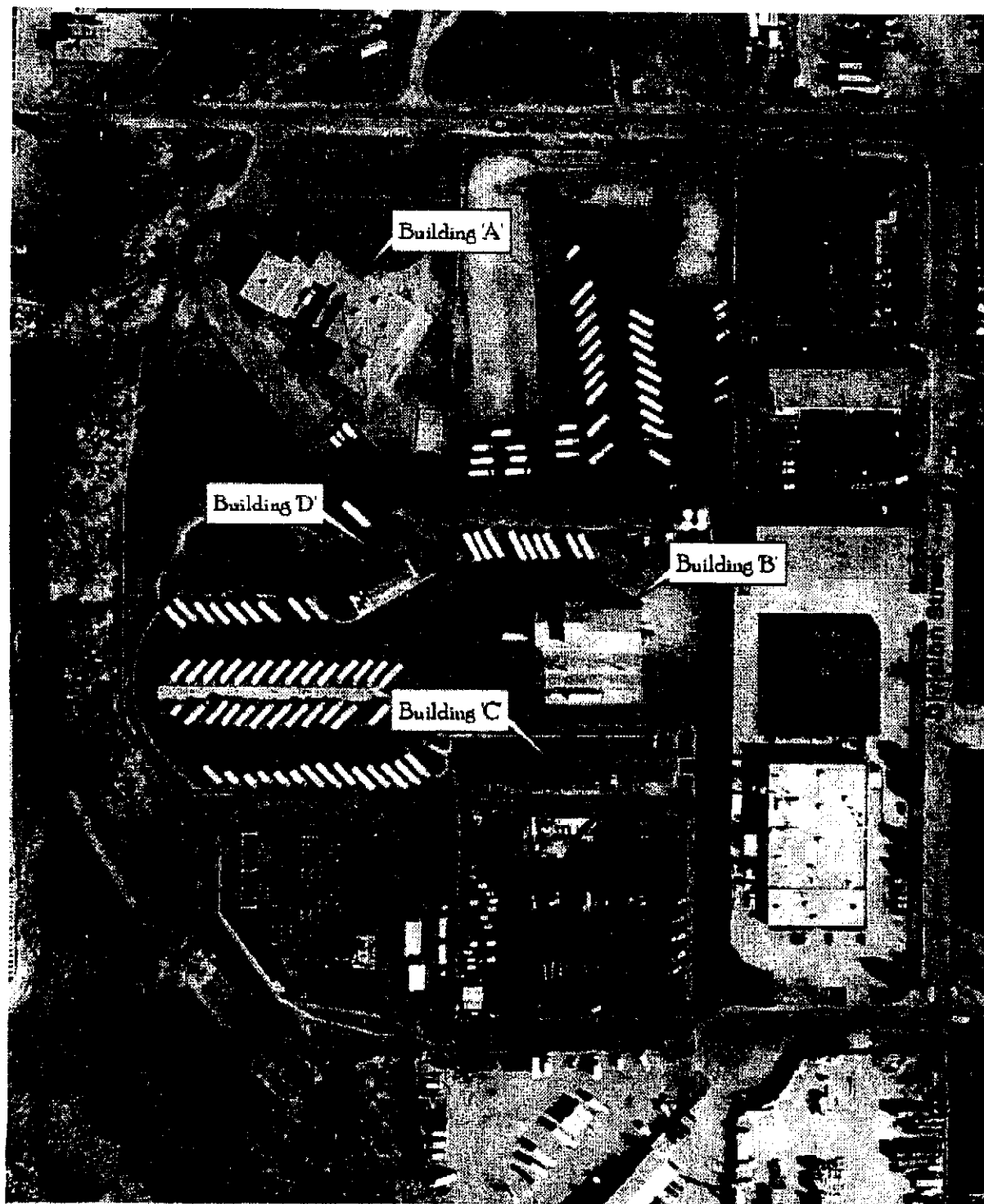
APPROVED AS TO LEGAL FORM:


Lance J. Ingalls, County Attorney

APPROVED AS TO FISCAL CONTENT:


Andrew Copland, Director of Finance

Attachment A



NW FACILITY AERIAL MAP - ATTACHMENT A

0 45 90 180 270 360 Feet