

**INTERGOVERNMENTAL AGREEMENT BETWEEN MESA COUNTY  
AND THE MESA COUNTY FEDERAL MINERAL LEASE DISTRICT CONCERNING  
DISTRIBUTION OF NAVAL OIL SHALE REVENUES TO FUND CERTAIN  
PUBLIC IMPROVEMENTS**

This Intergovernmental Agreement is entered into by and between the **Board of County Commissioners of Mesa County, Colorado** (the "BOCC" or "County") and the **Mesa County Federal Mineral Lease District** (the "District") (collectively, the "Parties") for the purpose of addressing the distribution of revenues attributed to Naval Oil Shale Reserves (the "IGA" or "Agreement").

**RECITALS**

- A. The County is a political subdivision of the State of Colorado whose powers are exercised by BOCC as proscribed in §§ 30-5-125 and 30-11-103, C.R.S.
- B. The District is an independent public body politic and corporate pursuant to C.R.S. § 30-20-1305.5 (1).
- C. In accordance with section 35 of the federal Mineral Lands Leasing Act of February 25, 1920, as amended (the "MLLA"), the United States distributes to the State of Colorado its share of sales, bonuses, royalties, and rentals of public lands within the state for the benefit of specified entities, including political subdivisions, and for specifically defined purposes. *See* C.R.S. § 34-63-101.
- D. Upon receipt, these funds are allocated to the mineral leasing fund, from which they are further distributed in accordance with statute with priority given to, among others, those political subdivisions socially or economically impacted by the development, processing, or energy conversion of fuels and minerals leased under the MLLA. *See* C.R.S. § 34-63-102(1)(a)(II) and (1)(b).
- E. A portion of these funds are then credited to and distributed from the local government mineral impact fund in accordance with § 34-63-102(5.4)(c), C.R.S. to those counties from which the moneys were derived. Each county's respective share is determined by a series of statutorily defined factors. C.R.S. § 34-63-102(5.4)(c)(I)-(IV).
- F. In 2011, the Colorado general assembly authorized counties to create federal mineral lease districts to act as funding and service delivery mechanisms to promote the greatest use of financial resources for the greatest number of citizens, with priority given to those communities designated as impacted by the development of natural resources covered in the MLLA. *See* C.R.S. § 30-20-1302.

- G. The Mesa County BOCC elected to take advantage of this opportunity and adopted Resolution MCM-2011-050, thereby creating the Mesa County Federal Mineral Lease District. As a result, since June 25, 2012, revenues attributable to federal mineral lease activities on public lands in Mesa County have been distributed to the District by the State of Colorado pursuant to § 34-63-102(1)(a)(II), C.R.S.
- H. In 2018, revenues related to oil shale production on the Naval Oil Shale Reserves #1 and #3 in Garfield County, Colorado (“NOSRs”), as expressly distinguished by statute from revenues related to mineral leasing activities on public lands generally (*see* § 34-63-102(1)(a)(II)), were released to the State of Colorado pursuant to the MLLA. A portion of the funds from the NOSRs, following statutory direction, was attributed to oil shale production impacts within Mesa County. C.R.S. § 34-63-104. It is these funds to which this Agreement is intended to apply.
- I. Since November 1997, the funds from the NOSRs has been held by the Department of Interior pursuant to the federal “Transfer Act,” codified at 10 U.S.C. 7439, as amended. Among other things, the Transfer Act required that all receipts from NOSR leases be deposited into a Treasury account until the Secretaries of the Interior and Energy certified to Congress that the account balance was sufficient to reimburse the United States “for previous costs incurred relating to the ... lands and to provide for cleanup of the anvil points site at NOSR No. 3” (“Anvil Points”). C.R.S. § 34-63-104(3)(a)(III); *see also* 10 U.S.C. § 7439(f)(2).
- J. The requisite certifications were made to Congress on August 7, 2008. At that time, the Treasury account held approximately \$113,680,626.00 and “far exceeded the amount needed for the reimbursement and cleanup.” C.R.S. § 34-63-104(3)(a)(IV). As of December 2017, after covering the reimbursement and cleanup costs and other adjustments, the account balance was approximately \$37,230,119.00.
- K. In 2018, the Office of Natural Resources Revenue disbursed the remaining balance of the Treasury account in accordance with the MLLA. Of these funds, \$18,242,758.00 was paid to the State of Colorado. *See* 30 U.S.C. § 191.
- L. Colorado HB 18-1249, now § 34-63-104, C.R.S., directed the deposit of these released funds into a “separate special fund” and that they be appropriated “to state agencies, school districts, and political subdivisions of the state affected by the development and production of energy resources from oil shale lands for planning and, in the form of grants and loans, for providing facilities and services necessitated by such development and production and secondarily for other state purposes.” C.R.S. § 34-63-104(2).
- M. Ten percent of the money sent to the state was allocated to Mesa County. C.R.S. § 34-63-104(3)(b)(III). This ten percent is hereafter referred to as the “Anvil Points Money.” The Anvil Points Money was lawfully transferred to the District pursuant to C.R.S. § 34-63-104(3)(b)(c).

- N. In late 2018, the state treasurer released the Anvil Points Money in the amount of \$1,703,873.62 to the District. An additional release of Anvil Points Money in the amount of \$120,402.20 occurred in January, 2019.
- O. The Parties disagree about the legal authority of the District to appropriate the Anvil Points Money, but do agree that the County's intended use of the Anvil Points Money, as stated in Paragraph 3 herein, is a purpose that is consistent with the uses of funds obtained by the District from federal mineral lease activities as authorized pursuant to C.R.S. § 30-20-1301 et seq.
- P. The District is authorized to enter into grants and/or contracts with public entities for the purpose of alleviating social, economic, or public finance impacts resulting from the development of natural resources, and funding received by the District may be expended for i) planning; ii) construction and maintenance of public facilities; and iii) provision of public services. See C.R.S. § 30-20-1302(1); § 1305.5(2)(b) and (c); 30 U.S.C. § 191(a).
- Q. The Parties agree that all of monies collected and held under the Transfer Act, including the money that is now referred to as the Anvil Points Money, were generated and withheld prior to January 1, 2009 and, therefore, over two years before the creation of the District. The Parties differ, however, as to whether this fact is of any consequence.
- R. The Parties agree with the Colorado general assembly that between 1997 and 2008 Mesa County "made significant expenditures to address the impacts of the operation of the anvil points site and the mineral extraction from which the withheld money was derived, but [has] not received any state or federal money as reimbursement." C.R.S. § 34-63-104(3)(a)(IV) and (VII).
- S. The Parties further agree with general assembly that Mesa County, among others, was "instrumental in the release of the withheld money." C.R.S. § 34-63-104(3)(a)(VIII).
- T. As governmental entities, the Parties are authorized and encouraged to cooperate with each other to make the most efficient and effective use of their powers and responsibilities in accordance with Colo. Const. art. XIV, § 18(2) (a)-(c) and art. XI, § 2; C.R.S. § 29-1-201. Mesa County tendered a special grant request to the District seeking assistance in the funding of improvements to the Mesa County Detention Facility.
- U. As a result of the foregoing, the Parties hereby agree to conveyance of the funds specified below from the District to the County, subject to the terms of this Agreement.

NOW, THEREFORE, in consideration of mutual covenants and agreements, the Parties agree as follows:

## AGREEMENT

1. Incorporation of Recitals. The foregoing Recitals are incorporated here as if set forth in full.
2. Consideration. The District hereby agrees to convey to the County the sum of one million five hundred thousand dollars (\$1,500,000) of Anvil Points Money no later than thirty (30) days after execution of this Agreement, and the District agrees to convey the balance of \$324,000 if and when it is received by the District from future DOLA mineral lease funds (the Funds).
3. Use of Funds and Obligation Regarding Balance of Anvil Points Money. The County warrants and represents that the Funds shall be used and expended solely for the design and construction of improvements to be affixed to the Mesa County Detention Facility, located at 215 Rice Street, Grand Junction, CO 81501 (the Project). In connection with the Project the Funds may be used for planning or design services; acquisition of materials, fixtures, or equipment; or the construction of improvements. The parties acknowledge that they have differing opinions about what the District's legal obligations are concerning the distribution of the Anvil Points Money. Both parties agree to release their respective entities, board members, officers and staff, from any and all claims and causes of action of any nature whatsoever relating to or in connection with the Anvil Points Money, it being the intent of the parties that this Agreement shall completely resolve all disputes concerning the Anvil Points Money.
4. Accounting. The County shall keep complete and accurate records documenting that the Funds are expended conformity the purposes authorized by the enabling legislation of the District, and solely for the Project. Promptly upon request the County shall provide to the District copies of all accounting records and supporting documentation confirming the use of the Funds.
5. Legal Compliance. The County shall be solely responsible for compliance with all laws and regulations that may apply to public construction including, but not limited to, bidding and procurement laws; construction contracting; workplace safety laws and regulations; land use planning requirements; construction code requirements; environmental laws and regulations; and the like.
6. Contingencies. The parties acknowledge that the County has not secured sufficient financing to pay for the entirety of the Project. Therefore, there is no formal deadline for expenditure of the Funds.
7. No Joint Venture. Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee, agency, or other relationship between the Parties other than that of independent contracting parties. This Agreement does not create or establish a separate intergovernmental entity.
8. No Third-Party Beneficiary. No third party may enforce or rely upon this Agreement.

9. Counterparts. This IGA may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed the same instrument.

10. Governing Law, Venue and Survival. The laws of the State of Colorado shall govern the validity, performance and enforcement of this IGA. Should either party institute legal action for enforcement of this IGA, venue of such action shall be in the State District Court in Mesa County, Colorado. Any such dispute arising under this Agreement shall be decided by the court sitting without a jury, regardless of the denomination of any claims that may be brought.

11. Whole Agreement; Modification. This IGA sets forth the whole agreement of the Parties. No representations, either verbal or written, shall be considered binding on either party to the extent not set forth herein. This Agreement may only be modified in writing and a manner lawfully executed by both parties.

12. Authority; Effective Date. Each person signing this IGA represents and warrants that the individual is fully authorized to enter into and execute this IGA and to bind the Party it represents to the terms and conditions thereof. This Agreement is valid and effective as of the date of last execution, below (the Effective Date).

13. Notice and Representatives. All notices required under this IGA shall be transmitted in writing and shall be deemed duly given when hand-delivered or sent or by electronic communication, addressed to the following:

**The County:** The Mesa County  
Board of County Commissioners  
544 Rood Avenue, P.O. Box 20000  
Grand Junction, CO 81502

With a copy to: County Attorney  
544 Rood Avenue, P.O. Box 20000  
Grand Junction, CO 81502

**The District:** Mesa County Federal Mineral Lease District  
P.O. Box 3039  
Grand Junction, CO 81502

With a copy to: Christopher McAnany  
Dufford, Waldeck, Milburn & Krohn, LLP  
744 Horizon Court, Suite 300  
Grand Junction, CO 81506

14. Severability. Should any provision of this IGA be found to be in conflict with any law of the United States or the State of Colorado or to otherwise be unenforceable, the remaining provisions shall be deemed severable and the validity of such shall not be affected provided that

the remaining provisions can be construed in substance to constitute the agreement which the parties intended to enter into under this IGA.

IN WITNESS WHEREOF, the County and the District have executed this IGA to be effective as of the date of last signature, below.

**ATTEST:**

**BOARD OF COUNTY COMMISSIONERS OF  
MESA COUNTY, COLORADO**

  
Clerk to the Board

By:   
Rose Pugliese, Chair



6/17/19  
Date

**MESA COUNTY FEDERAL MINERAL  
DISTRICT**

By:   
Craig Springer, Board Chair

6/17/19  
Date

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