

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF GRAND JUNCTION, COLORADO
AND THE
LOWELL VILLAGE METROPOLITAN DISTRICT

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made and entered into as of the 7 day of July 2020 by and between the CITY OF GRAND JUNCTION, a home rule municipal corporation of the State of Colorado ("City" or the "City") and the LOWELL VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("District" or the "District"). The City and the District are sometimes individually referred to as a "Party" and collectively as the "Parties."

RECITALS

- A. Colorado law, specifically C.R.S. § 29-1-203, authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide.
- B. The District was organized to provide certain services and to exercise powers as are more specifically set forth in the District Service Plan approved by the City on March 21, 2018 pursuant to Resolution No. 19-18 (the "Service Plan").
- C. To fully provide those services and a means to pay for those services, the Parties have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this IGA.
- D. For purposes of this IGA, any term not specifically defined herein shall have the meaning set forth in the Service Plan.

THEREFORE, in consideration of the covenants and mutual agreements in this IGA, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

TERMS

- 1. Geographic Area. This IGA pertains to the Service Area depicted on the District Boundary Map, as it may be amended as provided in the Service Plan.
- 2. Purpose. The purpose of this IGA is to set forth the obligations of and benefits to the Parties in relation to maintenance activities associated with Public Improvements located within the Service Area. The Parties recognize that the public rights-of-way and private property within the District Boundaries are also within the City. This IGA identifies the specific services and maintenance obligations within the Service Area that will be provided by the District.

3. Operations and Maintenance. A primary purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate, maintain, and finance certain Public Improvements. Approval of the Service Plan by the City Council constitutes the City's agreement that the District may perform the operation and maintenance functions described in this Agreement. Those services will be within a defined and described geographic boundary, which consists of the Service Area on the date of this Agreement.
4. City Services. The City agrees to perform all services typically provided by the City, except those to be provided by the District in accordance with this IGA, in a manner and frequency consistent with similar services provided by the City throughout the City. The District understands and agrees that the City's practices throughout the City may be changed at the discretion of the City from time to time.
5. District Failure to Serve. In the event that the District fails to adequately perform its obligations under this IGA, the City may perform maintenance and take any other actions the City deems appropriate to protect the health, safety and welfare of the public if the District has failed to rectify its obligation within fourteen (14) days after written notice from the City, or has failed to commence actions to rectify its obligation if, by its nature, the obligation requires more than fourteen (14) days to rectify.
6. Street Improvements. The District agrees that all streets, drives and alleys within the Service Area will have public access and are Public Improvements that will be maintained by the District and not be maintained by the City. Accordingly, the District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain street, drive and alley improvements including, but not limited to, related landscaping, curbs, gutters, sidewalks, culverts and other drainage facilities, pedestrian ways, bridges, overpasses, interchanges, signage, median islands, alleys, parking facilities, paving, lighting, grading and irrigation structures, and fiber optic cable conduit, together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facilities.
7. Safety Protection Improvements. In conjunction with its obligations set forth in Section 6, the District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain traffic and safety controls and devices on streets, drives and alleys including, but not limited to, parking enforcement, signalization, signage and striping, together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facilities. It is anticipated that safety protection improvements not conveyed to the City or other appropriate jurisdiction may be owned and maintained by the District.
8. Water Improvements. The District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain potable and non-potable water systems including, but not limited to, transmission lines and distribution mains and laterals, together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facilities.

9. Sanitation Improvements. The District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain sanitation improvements including, but not limited to, sanitary sewer collection and transmission lines, storm drainage collection and transmission lines and detention/retention ponds, and inflow and outlet works together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facilities.
10. Landscaping, Community Gardens and Public Open Space. The District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, procure, contract for, operate and maintain landscaping, community gardens, and public open space within the District boundaries and at other locations outside District boundaries, together with all necessary, incidental and appurtenant facilities (specifically including irrigation facilities), land and easements, and all extensions of and improvements to such facilities subject to a Revocable Permit to be approved by the City. Certain landscaping areas adjacent to and within public rights-of-way for City streets include bio-swale stormwater detention areas which shall be maintained by the District.
11. Stormwater Detention. The District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain a stormwater detention facility(ies) within the District boundaries and at other locations outside District boundaries including within the adjacent public right-of-way , together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facility(ies) subject to a Revocable Permit to be approved by the City.
12. Community Event Space. The District shall have the obligation, power and/or authority to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain a community event space within the District boundaries, together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facility.
13. Trash Removal. The District shall have the obligation, power and/or authority to procure, contract for, operate and maintain trash removal service within the District boundaries. The City shall not provide this service within the District boundaries.
14. Optional Additional Services. The District shall have the power and authority, but not the obligation, to plan, design, acquire, construct, install, relocate, redevelop, procure, contract for, operate and maintain any other facilities not specifically addressed in this IGA that may be provided by metropolitan districts under Colorado law, and provide any other services, together with all necessary, incidental and appurtenant facilities, land and easements, and all extensions of and improvements to such facilities.
15. Covenant Enforcement and Design Review Services Limitation. In accordance with the Declaration of Covenants, Conditions, Restrictions and Easements for Lowell Village recorded in the real property records of Mesa County, Colorado, the District shall have the obligation and authority to take actions affecting the real property located within the District boundaries and the owners of that real property, as further provided therein.

16. Sources of Funds. The District may impose mill levies on taxable property within its boundaries as a primary source of revenue for repayment of debt service, capital improvements, administrative expenses, and operations and maintenance of Public Improvements. The District may also rely upon various other revenue sources authorized by law, including loans from the Developer. At the District's discretion, it may assess Fees that are reasonably related to the costs of operating and maintaining District services and facilities. The District is permitted to pledge revenues from capital improvement Fees to the payment of Debt.
17. Pledge in Excess of Maximum Debt Mill Levy – Material Modification. Any Debt incurred with a pledge or which results in a pledge that exceeds the Maximum Debt Mill Levy shall be deemed a material modification of the Service Plan pursuant to C.R.S. § 32-1-207 and a breach of this IGA, and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Service Plan Amendment.
18. Overlap of Special District. To the extent prohibited by C.R.S. § 32-1-107, the District shall not duplicate the services provided by any existing metropolitan or special district in any area of overlap except as may be consented to by such existing district. The City shall be held harmless if any existing metropolitan or special district refuses to authorize services and from any claims brought by such district for improvements constructed or installed or services provided prior to receiving any required consent.
19. Term. This IGA shall be in full force and effect and be legally binding upon final approval of the governing bodies of the Parties. The provisions of this IGA shall each constitute covenants, running with the land included within the Service Area, binding the Parties and the owners of property within the Service Area for a period of twenty (20) years from the date executed by the last Party to sign, which shall be automatically extended for successive periods of twenty (20) years each, without action by or notice to any person or entity unless amended in accordance with Section 23. No Debt shall be issued by the District until after the date in the introductory paragraph.
20. Breach. In the event of a breach or default under this IGA by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages.
21. Notices. All notices, demands, requests or other communications to be sent by one Party to the other or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the address of the receiving Party below or by courier delivery, via FedEx or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District:

Lowell Village Metropolitan District
c/o Rob Breeden, Nvision Design
677 25 Road

Grand Junction, CO 81505

With a copy to:

Dufford Waldeck
Attn: Michael A. Kuzminski
744 Horizon Court, Suite 300
Grand Junction, CO 81506

To the City:

City of Grand Junction
Attn: City Manager and City Attorney
250 N. 5th Street
Grand Junction, Colorado 81501

All notices, demands, requests or other communications shall be effective upon personal delivery or one (1) business day after being deposited with FedEx or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other Party at least ten (10) days written notice in accordance with this Section 21, each of the Parties shall have the right to change its address.

22. Assignment. No Party may assign any of its rights or obligations in this IGA to any person or entity without the consent of the other Party.
23. Amendment. This IGA may be amended from time to time by written amendment, duly authorized and signed by representatives of the Parties.
24. Severability. If any section, subsection, paragraph, clause, phrase or other provision of this IGA shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phrase or other provision shall not affect any of the remaining provisions of this IGA.
25. Counterpart and Additional Documents. This IGA may be executed in two (2) counterparts, either of which shall be regarded for all purposes as one original. Each Party agrees that it will execute any and all deeds, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this IGA
26. Waiver. No waiver by either Party of a term or condition of this IGA shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this IGA.
27. Applicable Law and Venue. This IGA shall be governed and construed in accordance with the laws of the State of Colorado. Venue for all actions brought hereunder shall be in the District Court in and for Mesa County.

28. Successors and Assigns. Subject to the restrictions on assignment in Section 22, each of the terms, covenants and conditions in this IGA shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
29. Headings. Section headings or captions contained in this IGA are inserted only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this IGA or the intent of any provision.
30. Construction. Whenever required by the context of this IGA, the singular shall include the plural, and vice versa; and the masculine gender shall include the feminine and neuter genders, and vice versa. The provisions of this IGA have been independently, separately and freely negotiated by the Parties as if drafted by both of them. The Parties waive any statutory or common law presumption that would serve to have this IGA construed in favor of or against either Party
31. No Third-Party Beneficiaries. No person or entity who or which is not a Party to this IGA will have any right of action under this IGA.
32. Merger. This IGA merges with and supersedes all prior negotiations, representations, and agreements between the Parties relating to its subject matter and constitutes the entire agreement between the Parties concerning its subject matter; provided, however, that this IGA does not modify, affect, or limit the City's or any other party's right of action to enforce the provisions of the Service Plan separately from this IGA.

IN WITNESS WHEREOF, this IGA is executed by the City and the District as of the date first above written.


[signature page follows]

CITY OF GRAND JUNCTION, COLORADO



Mayor

ATTEST:



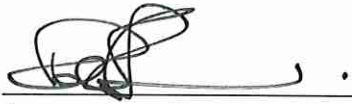
City Clerk

LOWELL VILLAGE METROPOLITAN DISTRICT



President

ATTEST:



Secretary