

**GRANT AGREEMENT BETWEEN MESA COUNTY FEDERAL MINERAL LEASE
DISTRICT AND CITY OF GRAND JUNCTION**

CONTRACT NUMBER: 2020-ST-03
PROJECT NAME: Police Firing Range Improvements
GRANT: \$150,000
AWARD DATE: May 20, 2020
COMPLETION DATE: December 31, 2021

RECITALS

- A. The Mesa County Federal Mineral Lease District (Grantor or MCFMLD) is an independent public body politic and corporate formed pursuant to the Colorado Federal Mineral Lease District Act, C.R.S. § 30-20-1301 *et seq.* (the Act), and governed by a Board of Directors (the Board).
- B. The City of Grand Junction (Grantee) is a home rule Colorado municipality and local government subdivision of the State of Colorado. Grantee is eligible to receive grant funding from Grantor under the Act and 30 U.S.C. §191.
- C. Grantee submitted a grant application (Grant Application) in response to Grantor's **Spring, 2020 Grant Cycle** Grant Program.
- D. Grantor approved Grantee's Grant Application for a Traditional Grant on **May 20, 2020**, conditioned on the execution of this Grant Agreement (the Agreement).
- E. The Grand Junction Police Department Firing Range Improvement Project (the Project), as described in the Grant Application, qualifies for MCFMLD funding as either (1) the construction and maintenance of public facilities, or (2) the provision of public services.

AGREEMENT, TERMS, AND CONDITIONS

NOW, THEREFORE, for and in consideration of the mutual promises or covenants exchanged herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor and Grantee agree as follows:

- 1. *Incorporation of Recitals.* The Recitals set forth above are hereby incorporated into the terms of this Agreement.
- 2. *Representations and Warranties of Grantee.*

- a. Grantee has full and lawful authority to enter into, and comply with the terms of, this Agreement.
 - b. Grantee warrants that all statements and representations including all sources and uses of funds made in the Grant Application are true and correct, and that the Grant Application including all attachments and exhibits thereto is incorporated by this reference into this Agreement. A copy of the Grant Application is attached as **Exhibit A**.
 - c. The City of Grand Junction, City Council, has authorized entering into this Agreement as evidenced by the resolution attached as **Exhibit B**.
 - d. Grantee has sufficient funds (either alone or in combination with the grant specified in this Agreement) available and committed for the completion of the Project.
3. *Representations and Warranties of Grantor.*
- a. Grantor has full and lawful authority to enter into, and comply with the terms of, this Agreement.
 - b. Grantor represents and warrants that as of the date of execution of this Agreement it has available sufficient funds necessary to fully fund the amount of the Grant set forth herein.
 - c. The Board has authorized its President to sign this Agreement.
4. *Grant and Project.* Subject to the terms and conditions set forth in this Agreement, the Grantor awards to Grantee a sum **one hundred fifty thousand dollars (\$150,000)** (the Grant). The Grant shall be used by Grantee solely to complete the Project, in substantial conformity with the final plans, specifications, designs and uses approved by Grantor and in conformity with the Grant Application.
5. *Project Scope.* Grantee shall not materially modify the Project or the Project budget (attached as **Exhibit C**, the Budget) without the prior written approval of the Grantor, and such approval shall be in Grantor's sole discretion. Any material modification to the Project undertaken without Grantor's prior written consent may be deemed a breach of this Agreement, entitling Grantor to all remedies available under this Agreement. If Grantee determines with reasonable probability that the Project will not or cannot be completed as reflected in the Grant Application, Grantee will promptly advise the Grantor, and cooperate in good faith to seek a resolution before any further funds are advanced. If the project will not be completed Grantee shall return any remaining grant funds forwarded by Grantor.
6. *Grantee Efforts.* Grantee shall complete the Project in a timely fashion, in a good and workmanlike manner, and consistent with this Agreement and Grantor's approvals related to the Project.

7. *Completion Date.* As a result of additional negotiations between the parties, it is agreed that Grantee shall complete the Project and submit its Final Report no later than **December 31, 2021** (the Completion Date). Requests for extension of the Completion Date are discouraged but should be directed in writing to the Grantor. This Completion Date supersedes anything to the contrary in submittals by Grantee.
8. *Disbursement of Funds.* The Grant is subject to the following requirements and conditions:
 - a. The Grant shall be used only for (1) planning, (2) construction and maintenance of public facilities, or (3) provision of public services and consistent with Grantee's representations in the Grant Agreement. Determinations on eligible and ineligible costs are in Grantor's sole discretion.
 - b. Disbursement of Grant funds shall be made on the basis of costs actually incurred by Grantee and supported by written documentation (in the form receipts, invoices, and the like). Grantor may, in its discretion, depending on the nature of the Project, require documentation of mechanics lien waivers or waivers of claims to public project performance bonds as a precondition to any disbursement under this Agreement.
 - c. Except as otherwise agreed to in advance by Grantor in accordance with the terms of this Agreement, no material modifications may be made to the Project. Material modifications to the Project to which Grantor has not agreed may result in a reduction in the Grant. "Material modifications" may include, but are not necessarily limited to, a reduction in the total cost of the Project or any other variance from the Project as presented in the Grant Application. It is the sole responsibility of Grantee to inform Grantor of any such modifications to the Project. Grantor strongly encourages Grantee to contact Grantor in writing when it becomes aware of or wishes to make any such modifications, however seemingly minor, to the Project.
 - d. In the event that the entire Grant will not be expended on the Project Grantee shall notify Grantor and all unexpended funds shall be retained by Grantor or, if disbursed to the Grantee, refunded to the Grantor.
9. *Project Operation and Maintenance.*
 - a. As applicable to the construction and maintenance of public facilities, Grantee shall operate, manage, and maintain the Project in a reasonable state of repair for the purposes specified in the Grant Application for a period of 25 years from the date of completion of the Project or the useful life of the Project, whichever is less, in accordance with product warranties and/or generally accepted standards applicable to the Project. Grantee shall provide and maintain access to the Project and to the Property, regardless of the Property's ownership.

- b. Failure to comply with the provisions of Paragraph 9(a) may be deemed a breach by Grantee under Paragraph 19, below.
 - c. Grantor shall not be liable for any cost of maintenance, management, or operation of the Project.
 - d. Within 60 days of a reasonable request by Grantor, Grantee will provide Grantor with adequate records reflecting the operating and maintenance costs of the Project and provide the Board with such other information concerning the use of the Project by the public, if applicable, and the impact of the Project.
10. *Public Access.* If appropriate, Grantee agrees to allow reasonable public access to the Project for the term specified in Paragraph 9. Grantee may temporarily close such public access for construction, maintenance, emergency situations, or other reasonable purposes.
11. *Compliance with Regulatory Requirements and Federal and State Mandates.* Grantee assumes responsibility for compliance with all legal requirements for public construction including, but not limited to, nondiscrimination, worker safety, local labor preferences, preferred vendor programs, equal employment opportunity, use of competitive bidding, building permits, approvals, environmental laws and regulations, and other similar requirements.
12. *Nondiscrimination.* During the performance of this Agreement, Grantee and its contractors, subcontractors and agents shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex, or any other basis prohibited by local, state or federal law. Grantee and its contractors shall ensure that the treatment of their employees and applicants for employment are free of such discrimination. Further, during the performance of this Agreement, Grantee and anyone acting on behalf of Grantee shall not engage in any unlawful discrimination in permitting access and use of the Project.
13. *Publicity and Project Information.* Grantee agrees to acknowledge the assistance of the Mesa County Federal Mineral Lease District in a manner appropriate to the Project.
14. Grantee agrees to erect and maintain signage at prominent locations on the Project site during construction, and Grantor will provide such signs at no cost to Grantee. Grantee shall prominently display an indoor plaque or other suitable marker acknowledging the assistance of the Mesa County Federal Mineral Lease District. Grantor will provide such plaque or marker at no cost to Grantee. The plaque or marker shall be displayed in Grantee's principal place of business or other logical location (such as the Project) as mutually agreed.
15. Additional terms:

- a. Grantee shall acknowledge MCFMLD funding in all publicity issued by it concerning the Project.
 - b. Grantee shall give the MCFMLD the right and opportunity to publicize or otherwise use information gained from the Project.
 - c. Grantee shall give the MCFMLD reasonable advance notice of any Project grand openings, dedications, or other events.
 - d. Grantee shall provide suitable digital photographs (or printed photographs, if unable to provide digital photographs) of the completed Project with the Final Report, or upon request of Grantor.
 - e. At no time shall Grantee represent in any manner to the public or to any party that it is affiliated with the MCFMLD or acting for or on behalf of the MCFMLD.
16. *Liability.* The Grantor and Grantee acknowledge that each is subject to the constitutional prohibitions against indemnification pursuant to Colorado Constitution Article XI, § 1 and that as governmental entities, neither party can agree to indemnify the other. Nothing herein shall be deemed a waiver of the Colorado Governmental Immunity Act for or by either party. C.R.S. § 24-10-101 *et seq.*, as amended.
17. *Audits and Accounting.* Grantee shall maintain standard financial accounts, documents, and records relating to the construction, use, management, and operation of the Project and the expenditure of the Grant. The accounts, documents, and records related to the Project shall be retained by Grantee for not less than five (5) years following the date of disbursement of funds under this Agreement. Grantor, or its designated agent, shall have the right, upon reasonable notice to Grantee, to audit the books and records of Grantee, which pertain to the Project and to the use and disposition of the Grant. Grantee shall use reasonable and appropriate accounting systems in maintaining the required records.
18. *Inspection.* Throughout the term of this Agreement, Grantor shall have the right to inspect the Project and Project records to ascertain compliance with this Agreement.
19. *Breach; Withdrawal of Board Funding; Termination of Agreement.* Anything else in this Agreement or otherwise to the contrary notwithstanding, Grantor may withdraw, in whole or in part, the Grant and/or terminate this Agreement, if the Board determines in its discretion that:
- a. facts have arisen or situations have occurred that fundamentally alter the expectations of the parties or make the purposes for the Grant as contemplated infeasible or impractical;

- b. any material modifications in the scope or nature of the Project have occurred from that which was presented in the Grant Application and such material modifications have not received the prior written approval of Grantor;
- c. any statement or representation made by Grantee in the Grant Application, this Agreement, the Advance Payment documentation, the Progress Report, the Final Report, or otherwise is untrue, inaccurate, or incomplete in any material respect;
- d. the results of Grantor's review of the Advance Payment documentation, the Progress Report, or the Final Report are not acceptable to Grantor with respect to material representations;
- e. the Project will not or cannot be completed by the Completion Date or any extensions granted thereto or delays in the implementation of the Project have occurred which, in Grantor's sole judgment, make the Project impracticable;
- f. the Project will not or cannot be completed within the Budget or any approved modifications, or the total Project cost and/or Grantee's matching funding are reduced;
- g. title to or encumbrances against the subject Property are or become such that Grantee is unable to complete the Project, or the Project and/or the Property are or become unavailable for public use; or
- h. the Project would constitute an unlawful use of MCFMLD grant funding.

20. Remedies.

- a. In the event that Grantee breaches any of the terms, covenants, representations, or conditions of this Agreement, Grantor may elect to enforce any and all remedies available at law or in equity, including without limitation, any of the following:
 - i. Prior to payment of Grant:
 - A. Withdraw the Grant and terminate this Agreement; and
 - B. Deny Grantee eligibility for participation in future MCFMLD grants, loans or projects.
 - ii. After payment (in whole or in part) of the Grant:
 - A. Deny Grantee eligibility for participation in future MCFMLD grants, loans or projects;
 - B. Obtain specific performance of Grantee's obligations under this Agreement;

- C. Obtain reimbursement in full of all sums paid under the Grant.
- b. The foregoing remedies are cumulative and may be exercised independently or in combination and are not exclusive to one another or to any other remedies available at law or in equity. If Grantor invokes its remedies under this Agreement it shall be entitled to recover its reasonable attorney fees and court costs, in addition to any damages or other form of relief.
21. *Good Faith.* There is an obligation of good faith on the part of both parties, including the obligation to make timely communication of information which may reasonably be believed to be material to the other party.
22. *Assignment.* Grantee may not assign its rights under this Agreement without the prior written consent of Grantor, which consent may be withheld in the sole discretion of Grantor. Any assignment shall require that, at a minimum, the assignee is eligible to receive grants from Grantor and assumes all of Grantee's ongoing obligations under this Agreement.
23. *Applicable Law, Venue, Jury Waiver.* This Agreement shall be governed by the laws of the State of Colorado and applicable federal law. The exclusive venue for any dispute arising under this Agreement in the 21st Judicial District Court, State of Colorado, in Mesa County, Colorado. Any proceeding arising under this Agreement shall be decided by the Court sitting without a jury, regardless of the denomination of the legal claims in any such action.
24. *No Joint Venture.* Nothing in this Agreement shall be construed to create a joint venture, partnership, employer/employee, agency, or other similar relationship between the parties, other than independent contracting parties. Except as permitted under the remedies provisions hereunder, neither party shall have the express or implied right to act for, on behalf of, or in the name of the other party.
25. *Severability.* If any provision of this Agreement is found to be invalid or unlawful it shall be stricken, and the remainder of this Agreement shall remain in full force and effect.
26. *Time is of the Essence.* Time is of the essence in this Agreement.
27. *Survival.* The terms and provisions of this Agreement and the parties' covenants shall survive the funding of the Grant and the completion of the Project.
28. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by electronically as if they were original signatures.

29. *Third Party Beneficiary.* Grantor and Grantee hereby acknowledge and agree that this Agreement is intended only to cover the relative rights and obligations between Grantor and Grantee, that no third party beneficiaries are intended, and that no third parties shall have any rights under this Agreement.
30. *Construction.* Each party hereto has contributed to the drafting of this Agreement, and therefore, any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement.
31. *Waiver.* The failure of any party to enforce a term shall not be deemed a waiver of such term or right of enforcement as to that breach or any subsequent breach of the same, similar, or different nature. No waiver shall be enforceable hereunder unless signed by the party against whom the waiver is sought to be enforced.
32. *TABOR.* No provision of this Agreement shall be construed or interpreted: i) to directly or indirectly obligate either party to make any payment in any year in excess of amounts appropriated for such year; ii) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever within the meaning of Article X, Section 6 or Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision; or iii) as a donation or grant to or in aid of any person, company or private corporation within the meaning of Article XI, Section 2 of the Colorado Constitution.
33. *Entire Agreement.* Except as expressly provided herein or below, this Agreement constitutes the entire agreement of the parties. No oral understanding or agreement not incorporated in this Agreement shall be binding upon the parties. No changes to this Agreement shall be valid unless made as an amendment to this contract, approved by the Board, and signed by the parties.

Exhibit A – Grant Application

Exhibit B – Resolution Approved by Grantee, City of Grand Junction's Governing Body Authorizing Execution of this Agreement

Exhibit C – Project Budget

34. *No Later Than Start Date.* Part of the MCFMLD's mission is the expeditious distribution of funding, which means the projects it funds are started and completed in a timely manner. A "no later than start date" is Grantee's good faith estimate of the date by which the Project will commence. This date varies depending on the type of project and is used by the Board for informational and tracking purposes only. Indicate this date below, and briefly describe the action(s) Grantee considers "starting" the Project. Examples: bid award date, groundbreaking, execution of construction contract, date of first program, etc. This date does not alter the Completion Date in paragraph 7 above.

No Later Than Start Date: August 31, 2020;

Description: Solicitation or Bids.

35. *Execution.* To be eligible for the Grant, Grantee shall fully execute the original Agreement and deliver the same to Grantor no later than the close of business on June 30, 2020. Thereafter, Grantor will execute the Agreement and retain the original in the MCFMLD offices, returning a copy to Grantee.

The parties, by signature below of their authorized representatives after obtaining all lawful authority, execute this Agreement effective as of the date(s) set forth below.

GRANTOR:
MESA COUNTY
FEDERAL MINERAL LEASE DISTRICT

GRANTEE:
CITY OF GRAND JUNCTION

By: 
Craig Springer
President

By: 
Greg Caton
City Manager

Date: 8/20/20

Date: 8/17/2020