

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF GRAND JUNCTION
AND
WEST JUNCTION METROPOLITAN DISTRICT**

THIS AGREEMENT is made and entered into effective June 1, 2022 by and between the **City of Grand Junction**, a municipal corporation of the State of Colorado ("**City**"), and **West Junction Metropolitan District**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**").

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District's Service Plan approved by the City on August 5, 2020 ("**Service Plan**"); and

WHEREAS, the Service Plan requires the execution of an intergovernmental agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in their best interests to enter into this Intergovernmental Agreement ("**Agreement**").

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

COVENANTS AND AGREEMENTS

1. Service Plan Provisions. The District agrees to comply with all provisions of the Service Plan, as stated below:

DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Service Plan Amendment.

The District shall have the power and authority to provide for the acquisition, design, finance, construction, installation, repair and replacement of Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the state constitution, subject to the limitations set forth herein. The Capital Cost Estimate attached as Exhibit C to the Service Plan lists the anticipated types of Public Improvements the District may provide with estimated costs in current dollars. The exact design, phasing of construction and location of the Public Improvements will

be determined at the time of and pursuant to City approval of Approved Development Plans and such decisions shall not be considered material modifications of the Service Plan. The District shall be authorized to finance and construct such Public Improvements without the necessity to seek an amendment of this Service Plan.

1. General Powers.

Streets. Streets, curbs, gutters, culverts, other drainage facilities, sidewalks, bridges, parking facilities, paving, lighting, grading, monumentation, signage, streetscapes and related landscaping and irrigation improvements, together with all necessary, incidental and appurtenant facilities, equipment, land and easements and extensions of and improvements to such facilities.

Traffic and Safety Controls. Traffic and safety protection facilities and services provided through traffic and safety controls and devices on streets, highways and at railroad crossings, including traffic signals and signage, striping, area identification signs, directional assistance, driver information signs, lighting, and related landscaping and irrigation improvements, together with all necessary, incidental and appurtenant facilities, equipment, land and easements, and extensions of and improvements to such facilities.

Water. Potable domestic water supply system, including water rights, storage facilities, transmission and distribution lines, fire hydrants, meters, facilities, and equipment, together with all necessary, incidental and appurtenant facilities, equipment, land and easements, and extensions of and improvements to such facilities.

Nonpotable irrigation water supply system, including water rights, storage facilities, transmission and distribution lines, meters, facilities, equipment, and related landscaping improvements, together with all necessary, incidental and appurtenant facilities, equipment, land and easements, and extensions of and improvements to such facilities.

Storm and Sanitary Sewer. Storm and sanitary sewer collection and transmission improvements, including storage facilities, collection mains and laterals, transmission lines, storm sewer, flood and surface drainage facilities and systems, and related landscaping and irrigation improvements, together with all necessary, incidental and appurtenant facilities, equipment, land and easements and extensions of and improvements to such facilities.

Parks and Recreation. Public park, open space, and recreation facilities and services, including a recreation facility with a fieldhouse, pool, and other amenities, parks, bike paths, pedestrian ways, signage, monumentation, playground areas, public area landscaping and weed control, streetscaping, perimeter fencing, outdoor lighting of all types, and related landscaping and

irrigation improvements, together with all necessary, incidental and appurtenant facilities, equipment, land and easements, and extensions of and improvements to such facilities.

2. Operations and Maintenance. The District shall be authorized to operate and maintain Public Improvements not conveyed to the City, Water District, CDOT or other governmental entity having proper jurisdiction. It is anticipated by the City and Developer that the District will own, operate and maintain certain parks, trails, open space and common areas, and the District will own a multi-purpose recreation facility designed in collaboration with the City's Parks and Recreation Department to be operated by the City through a separate intergovernmental agreement, and providing a separate tier schedule and pricing structure for District residents and taxpayers.

3. Construction Standards Limitation. The District will ensure that the Public Improvements it finances, designs, installs and constructs are built in accordance with the applicable standards and specifications of the City, including without limitation any development improvement agreements or to the standards and specifications of other governmental entities having proper jurisdiction. All Public Improvements conveyed or otherwise dedicated to the City, Water District or CDOT shall be free and clear of any lien, claim, encumbrance or demand and shall be subject to the applicable jurisdiction's acceptance and warranty procedures.

4. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt to the Project Developer or its affiliated entities, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the District's Service Plan. We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

5. Inclusion/Exclusion Limitation. The District shall not include additional property within its Boundaries without the prior written consent of the City given by the City Council. For any proposed exclusion, the District shall give the City Attorney thirty (30) days advance written notice of any proposed exclusion hearing. City approval of the exclusion may be given by the City Manager and any action on such exclusion shall be completed promptly by the City Attorney following the hearing at which the District considers the exclusion.

6. Total Debt Issuance Limitation. The District shall not issue Debt, collectively, in excess of Sixty-Five Million Dollars (\$65,000,000), and the District may issue Debt on a schedule and in such year or years as the District determines and phased to serve development as it occurs. Refunded Debt shall not count against the Total Debt Issuance Limitation.

7. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other grant funds available from or through governmental or non-profit entities that the City is eligible to apply for and has applied for, except pursuant to approval of the City.

8. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy have been established under the authority of the City to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

- a. Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and
- b. Are, together with all other requirements of Colorado law, including in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

9. Service Plan Amendment Requirement. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for amendment. Actions of the District which violate the Service Plan shall be deemed to be material modifications to this Service Plan and the City shall be entitled to all remedies available under state and local law to enjoin such actions of the District, and to seek other remedies provided in law or in equity. The Financial Plan and specific Public Improvements presented herein are estimates only and are subject to change due to market conditions at the time of issuance. Any such change, within the limitations of this Service Plan, shall not constitute a material modification of the Service Plan.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the financing, planning, design, acquisition, construction, installation and maintenance of the Public Improvements within and without the Boundaries of the District, as more specifically defined by

Approved Development Plans. Such Public Improvements will benefit District taxpayers and residents through the provision of financing shared transportation access, water, wastewater, storm water systems and recreation facilities. A description of the Public Improvements necessary for the Project and eligible for District financing was prepared based upon a preliminary capital cost estimate of Sixty-Five Million Two Hundred and Eight Thousand Eight Hundred Sixty-Nine Dollars (\$65,208,869), as shown in Exhibit C to the Service Plan. The Public Improvements and associated costs shown in Exhibit C are subject to change based on future development approvals and market costs at the time of construction and any such variations from Exhibit C shall not constitute a material modification of this Service Plan.

All Public Improvements shall meet the standards and specifications adopted and/or required by the City, Water District, CDOT or other governmental entity having jurisdiction over such Public Improvements.

FINANCIAL PLAN

A. General.

The District shall be authorized to finance the planning, design, acquisition, construction, and/or installation of the Public Improvements from any lawful revenue source, including but not limited to the proceeds of Debt to be issued by the District. A Financial Plan, attached as Exhibit D to the Service Plan, includes the estimated indebtedness, timing, and interest rates of Debt anticipated to be issued by the District. The Financial Plan is one projection of Debt to be issued by the District, and it is expected that the terms of Debt when issued by the District may vary from the Financial Plan based on market conditions and other factors at the time of issuance. Such variations shall not constitute a material modification of this Service Plan. The total Debt that the District shall be permitted to issue shall not exceed the Total Debt Issuance Limit and shall be permitted to be issued on a schedule and in such year or years as the District determines and phased to serve development as it occurs; provided, however, refundings shall not count against the Total Debt Issuance Limit. All Bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general *ad valorem* taxes and Fees to be imposed upon all Taxable Property of the District. The District may also rely upon various other revenue sources authorized by law. These may include, but not be limited to, revenues from fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1)(j), C.R.S. It is anticipated that the Developer of the Project and/or other parties may incur costs for Public Improvements, either in the form of direct payments for such costs, or by means of advances to the District; these direct payments and/or advances shall be reimbursable by the District from Debt, contractual reimbursement agreements and/or any legally available revenue source.

B. Maximum Voted Interest Rate and Maximum Underwriting

Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The proposed maximum interest rate on any Debt may not exceed twelve percent (12%). The maximum underwriting discount will not exceed three percent (3%). Debt, when issued, will comply with all relevant requirements of this Service Plan and state and Federal law.

C. Maximum Debt Mill Levy.

The Maximum Debt Mill Levy shall be fifty (50) mills, provided that if, on or after January 1, 2020, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2020, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Prior to the issuance of Debt, the District shall obtain an opinion of an underwriter, if the District has engaged an underwriter for the proposed Debt transaction, and an opinion of a nationally recognized bond counsel. All issuances of general obligation Bonds shall be deemed to be in compliance with the Financial Plan so long as the Minimum Criteria, as hereinafter defined, have been met. "Minimum Criteria" shall mean that the general obligation Bonds are: (1) subject to the Maximum Debt Mill Levy, if required by this Service Plan; (2) together with other outstanding general obligation Bonds of the District, not in excess of the Total Debt Issuance Limitation set forth in this Service Plan, as may be amended; (3) together with other outstanding general obligation Bonds of the District, not in excess of the general obligation debt authority provided by the District's electorate; and (4) issued in compliance with the applicable requirements of Section 32-1-1101(6), C.R.S. Any issuance of general obligation Bonds that does not satisfy the Minimum Criteria shall constitute a material modification of this Service Plan.

The costs of constructing the Public Improvements may be paid from available District mill levy revenues, Debt and/or advances from the Developer of the Project. The District shall be authorized to reimburse Developer advances, if any, with interest at a market reasonable rate from District mill levy revenues and/or proceeds from Debt privately placed with the Developer, and other legally available revenues of the District. Any such privately placed Debt shall be subject to the limitations set forth in Section V.A.4. and the Minimum Criteria.

In the event that the District determines that it is in the best interests of the District and its taxpayers to issue general obligation Bonds to parties other than the

Developer to: (i) reimburse the Developer for Developer advances; (ii) refund or restructure Debt previously placed with the Developer; or (iii) finance Public Improvements, the District shall prepare a plan of finance for the purpose of determining whether the proposed issuance satisfies the Minimum Criteria. The plan of finance will include the amount of Bonds to be issued, uses of proceeds therefrom (including, if any, capitalized interest and costs of issuance), sources of revenues securing repayment of the Bonds and the repayment schedule for the Bonds. At least thirty (30) calendar days prior to any such issuance, the District shall submit the plan of finance together with an opinion of an underwriter or bond counsel to the City for review to determine whether the proposed issuance satisfies the Minimum Criteria. If the City does not provide the District with written objections to the proposed issuance concerning conforming to the Minimum Criteria within the thirty (30) day review period, City consent to the proposed issuance shall be deemed given.

Any Debt issued by the District with a pledge or which results in a pledge that exceeds the Maximum Debt Mill Levy shall be deemed a material modification of this Service Plan pursuant to Section 32-1-207, C.R.S. 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.

D. Security for Debt.

The District shall not pledge any revenue or property of the City or infrastructure to be conveyed to the City by the District, as security for the indebtedness set forth in this Service Plan. Approval of this Service Plan shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

E. TABOR Compliance.

The District will comply with the provisions of TABOR.

F. District Operating Costs and Operating Mill Levy.

The first year's operating budget is estimated to be \$100,000, which is anticipated to be derived from other District revenues (including Developer advances or other payments). The first year's operating budget is an estimate only, and variations from this estimate shall not be considered a material modification of this Service Plan.

In addition to the Maximum Debt Mill Levy applicable to the District's debt service mill levy, an Operating Mill Levy will be imposed by the District to fund administrative, operating, and facilities maintenance expenses, including the

repayment of any advances provided to the District for such purposes, as shown in Exhibit D to the Service Plan.

ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager no later than August 1st of each year following the year in which the Order and Decree creating the District has been issued.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following as of December 31st of the prior year:

1. Boundary changes made to the District's Boundaries.
2. Intergovernmental agreements with other governmental entities entered into.
3. A list of all facilities and improvements constructed by the District that have been dedicated to and accepted by the City or other governmental entity.
4. The assessed valuation of the District for the current year.
5. Current year budget including a description of the Public Improvements to be constructed in such year.
6. Audit of the District's financial statements, for the year ending December 31 of the previous year, prepared in accordance with generally accepted accounting principles, if required by law, or an Audit Exemption.
7. Notice of any uncured events of default by the District under any Debt instrument, which continue beyond a ninety (90) day period.
8. Summary of any litigation where the District is a party (including a list of the parties or anticipated parties, claims or anticipated claims, etc.).

DISSOLUTION

The District is not intended to dissolve because it will continue to own and maintain certain park and recreation Public Improvements. However; upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file a petition in the appropriate District Court for dissolution, pursuant to §§ 32-1-701, et seq., C.R.S. In no event shall a dissolution occur until the District has provided for the

payment or discharge of all of its outstanding indebtedness and other financial obligations as required by the Special District Act and that any ownership, operations, maintenance, repair and replacement obligations for District owned and/or operated Public Improvements have been conveyed to another public entity.

DISCLOSURE TO PURCHASERS

In addition to recording the Court Order and Decree forming the District against all property within the District boundaries, the District will use reasonable efforts to assure that property owners provide written notice to initial end user purchasers regarding the Maximum Debt Mill Levy, as well as a general description of the District's authority to impose and collect rates, fees, tolls and charges. The form of notice shall be filed with the City, which filing shall be deemed satisfied upon the filing of the annual disclosure form (§ 32-1-809, C.R.S.) with the Division of Local Government.

INTERGOVERNMENTAL AGREEMENTS

Upon District formation, the District and City shall execute multiple intergovernmental agreements (the "City IGAs") for the purposes of: (1) creating a contractual relationship between the parties; (2) addressing the terms of the operation and maintenance of the recreation facility; and (3) a cost allocation and district financing reimbursement agreement using City fee revenue sharing to complete in a timely manner and finance City obligation street improvements required by City Ordinance #4878. The District shall not incur any Debt or impose any taxes or fees until its Board has approved and executed the City IGAs, as applicable.

2. Enforcement. The parties agree that this Agreement may be enforced in law, or in equity for specific performance, injunctive, or other appropriate relief. The parties also agree that this Agreement may be enforced pursuant to Section 32-1-207, C.R.S. and other provisions of Title 32, Article 1, C.R.S., granting rights to municipalities or counties approving the service plan of a special district.

3. Entire Agreement of the Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior written or oral agreements, negotiations, or representations and understandings of the parties with respect to the subject matter contained herein.

4. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the parties hereto.

5. Governing Law; Jurisdiction; Venue. The laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement, without giving effect to choice of law or conflict of law principles. The parties hereby submit to the jurisdiction of and venue of the District Court in Mesa County, Colorado. In any proceeding brought to enforce the provisions of

this Agreement, the prevailing party therein shall be entitled to an award of reasonable attorneys' fees, actual court costs and other expenses incurred.

6. Beneficiaries. Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between the named parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties.

7. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, such portion shall be deemed severable and its invalidity or its unenforceability shall not cause the entire agreement to be terminated.

8. Assignability. Neither the City nor the District shall assign their rights or delegate their duties hereunder without the prior written consent of the other party.

9. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by hand, overnight courier delivery, mailed by first-class mail postage prepaid, or delivered electronically (upon confirmation) and addressed to the following addresses or at such other address as any party hereto shall designate in writing to the other party:

City of Grand Junction:

City of Grand Junction
Attn: City Manager
250 N. 5th Street
Grand Junction, CO 81501
citymanager@gjcity.org

District:


Fritsche Law, LLC
Attn: Joan Fritsche
3900 E Mexico Avenue, Suite 300
Denver, CO 80203
720-833-4223
joan@fritschelaw.com

10. Successors and Assigns. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the date first written above.

WEST JUNCTION METROPOLITAN DISTRICT

BY: 
Chairman/President

ATTEST:
By: 
Secretary

CITY OF GRAND JUNCTION, COLORADO

By: 
President of City Council

ATTEST:
By: 
City Clerk

