

FRITSCHÉ LAW

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October 18, 2023

Niki Galehouse, AICP
Planning Supervisor
City of Grand Junction
250 N. 5th Street
Grand Junction, CO 81501

Re: West Junction Metropolitan District – IGA Addendum

Dear Niki:

Please see the enclosed Addendum to Intergovernmental Agreement between the City of Grand Junction and West Junction Metropolitan District Concerning Roadway Construction Financing, with original District signatures.

Please return a fully-executed copy to our office. You may email the fully-executed version to me at mandi@fritschelaw.com.

Thank you for your assistance.

Sincerely,

FRITSCHÉ LAW LLC



Mandi Kirk

**ADDENDUM TO
INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF GRAND JUNCTION
AND
WEST JUNCTION METROPOLITAN DISTRICT
CONCERNING ROADWAY CONSTRUCTION AND FINANCING**

THIS ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT (“**Addendum**”) is made and entered into effective June 21, 2023 by and between the **City of Grand Junction**, a Colorado home-rule municipality (“**City**”), and **West Junction Metropolitan District**, a quasi-municipal corporation and political subdivision of the State (the “**District**”). The City and the District are collectively referred to as the “**Parties**”.

RECITALS

WHEREAS, the Parties entered into that certain Intergovernmental Agreement Concerning Roadway Construction and Financing (“**IGA**”), effective June 1, 2022; for roadway improvements in connection with the Mesa Trails Subdivision, as provided in the IGA, and,

WHEREAS, capitalized terms herein shall have the meanings and definitions of the same terms as defined in the IGA; and,

WHEREAS, the Mesa Trails Subdivision is located within the City and within the District; and,

WHEREAS, the District has agreed to finance the cost of designing, constructing and installing the Developer Street Obligations and the City Street Responsibilities related to the Mesa Trails Subdivision, pursuant to the terms of the IGA and subject to the District’s Service Plan authorization, the City’s prior approval of construction plans, voter authorized debt, and financing capacity including TCP fee revenue sharing as provided in the IGA; and,

WHEREAS, as a political subdivision of the State, the District is required to follow state laws regarding public works contracting.

NOW, THEREFORE, the Parties agree as follows:

1. Public Improvements Construction Contract Bidding, Contracting and Payment Requirements.
 - a. The District shall design, construct and install sanitary sewer, water, street, traffic and safety, and storm sewer improvements, including public area landscaping (“**Public Improvements**”), to City or other appropriate governmental entity standards and specifications. Prior to performing work, the District will obtain the City or other appropriate governmental entity’s written approval of construction plans and will obtain all applicable permits for

construction and installation of the Public Improvements, pursuant to the IGA and City Code.

- b. The District must appropriate the full contract amount prior to letting a public improvements construction contract (“**Public Improvements Contract**”), pursuant to § 24-91-103.6, C.R.S.
 - c. The District shall secure performance and payment bonds from the selected contractor issued by a company(ies) licensed to do business in Colorado equal to 100% of the Public Improvements Contract price and warranty bonding equal to 20% of the Public Improvements Contract price, pursuant to §§ 38-26-105 and 106, C.R.S.
 - d. The Public Improvements Contract shall specify withholding 5% retainage of the Public Improvements Contract price until final payment is made, pursuant to § 24-91-103(1)(a), C.R.S. Retainage shall be withheld in the amount of 10% of approved pay applications until the work under the Public Improvements Contract is 50% complete. The total retainage withheld shall equal five percent (5%) of the Public Improvements Contract price.
 - e. The District shall secure a warranty bond from the selected contractor issued by a company(ies) licensed to do business in Colorado with coverage equal to twenty percent (20%) of the Public Improvements Contract price for correction of defective workmanship and/or materials for a period of one year after initial written acceptance of the Public Improvements by the City or other appropriate governmental entity.
2. City Bonding Requirements for Subdivision Improvements.
- a. The City requires a development improvements agreement and guarantee (“**DIA**”) pursuant to GJMC 21.02.070 (m) in an amount equal to 120% of the cost of the improvements in the approved construction plan that shall be sufficient to cover all promises and conditions contained in the DIA.
3. Agreement Concerning Collateralization/Surety Coverage of District Constructed Public Improvements.
- a. Upon verification of the following terms and documents required by and under the District let Public Improvement Contract(s) for the Mesa Trails Subdivision, the City shall not require collateralization of Public Improvements constructed and installed by the District.
 - b. Prior to issuing a Notice to Proceed under a Public Improvements Contract, the District shall coordinate with the City Public Works Director or his designee to verify:

- District Public Improvement Contract(s) funding in place.
- The selected contractor's performance bond and labor and materials payment bond are equal to 100% of the Public Improvements Contract(s) price with the City named as a dual-obligee.
- The selected contractor's warranty bond equaling 20% of the Public Improvements Contract(s) price with the City named as a dual-obligee.
- The Public Improvements Contract(s) requires withholding 5% retainage of the contract price until final payment.
- The Public Improvements Contract(s) requires final payment to be made following statutory publication requirements.

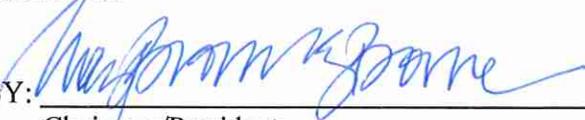
4. The terms hereof only apply to Public Improvement Contract(s) let by the District.

5. The terms of the IGA remain in full force and effect, except as amended by this Addendum.

[Signature Page to Follow]

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

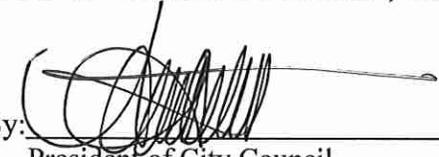
WEST JUNCTION METROPOLITAN DISTRICT

BY: 
Chairman/President

ATTEST:

By: 
Secretary

CITY OF GRAND JUNCTION, COLORADO

BY: 
President of City Council

ATTEST:

By: 
City Clerk

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF GRAND JUNCTION
AND
WEST JUNCTION METROPOLITAN DISTRICT
CONCERNING ROADWAY CONSTRUCTION AND FINANCING**

THIS AGREEMENT is made and entered into effective June 1, 2022 by and between the **City of Grand Junction**, a Colorado home-rule municipality ("**City**"), and **West Junction Metropolitan District**, a quasi-municipal corporation and political subdivision of the State (the "**District**"). The City and the District are collectively referred to as the "**Parties**".

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as more specifically set forth in the District's Service Plan, approved by City Resolution 49-20 on August 5, 2020 ("**Service Plan**"); and

WHEREAS, the District boundaries are co-terminus with the development known as Three Arrows Mixed-Use Development (the "**Development**"), located entirely within the City boundaries; and

WHEREAS, the property owner and developer of the Development is Foothills Housing 2, LLC, a Colorado limited liability company ("**Developer**"); and

WHEREAS, as Colorado local governments, the Parties may contract with each other to provide any function, service or facility lawfully authorized to each of the Parties, pursuant to § 29-1-203, C.R.S.; and

WHEREAS, a primary purpose of the District is to plan, design, acquire, construct, install and finance necessary public infrastructure including but not limited to street, traffic and safety controls, potable and non-potable water, storm and sanitary sewer, and park and recreation improvements; and

WHEREAS, the Development is subject to the Grand Junction Circulation Plan, as adopted in the 2020 Comprehensive Plan and the 2001 Urban Trails Plan, codified in the Grand Junction Municipal Code ("**GJMC**") in Chapter 31.08. A vicinity map from the Circulation Plan is attached hereto as **Exhibit A**.

WHEREAS, the City's street construction policy adopted in October 2019 as Ordinance No. 4878 - Impact Fee Ordinance, codified in the GJMC at § 21.06, and § 21.11 ("**Impact Fee Ordinance**"), requires a developer to construct minimum internal street improvements, local streets, alleys, sidewalks, trails and bike paths and pay an impact fee ("**TCP**"); and

WHEREAS, § 21.11.030 (b) (3) (1) (b) of the Impact Fee Ordinance (now codified at GJMC § 21.06.010 (b) (3) (i) (B)) requires that "any unbuilt street that is designated in the Grand

Junction Circulation Plan as a Collector or Arterial and is internal to the development shall be constructed to a Local Street standard by the Developer”; and

WHEREAS, the Impact Fee Ordinance and City regulations require a developer to construct street improvements including curb, gutter, sidewalk and at least 20 feet of asphalt on the portion of an external roadway adjacent to the Development. Developer’s Internal and Adjacent Street Improvement Obligations are collectively defined as “**Developer Street Obligations**”; and

WHEREAS, pursuant to the Impact Fee Ordinance and City regulations, the City agrees as provided for in this Agreement, to design and construct roadway improvements within the District that are not Developer Street Obligations (the “**City Street Responsibilities**”), subject to annual appropriation of financial resources, as the same will be determined in the sole discretion of the City; and

WHEREAS, the Parties recognize that significant efficiencies and cost savings will benefit the Development, the City, and the community as a whole by constructing complete street and related storm drainage infrastructure for internal and perimeter streets to the Development, including the City’s Street Responsibilities, at the time of initial construction by the Developer or coordinated with the Developer; and

WHEREAS, the City required a traffic impact study to determine future traffic volume, conditions and impacts on internal and adjacent collector and arterial streets associated with and/or caused by the Development and to determine the traffic volume, conditions and impacts associated with or caused by the Development on the intersection of Hwy 6 & 50 and F 1/2 Road be provided by the Developer; and

WHEREAS, the Traffic Impact Study prepared by Turnkey Consulting, LLC for Three Arrows Mixed Use Development Master Plan, dated October 25, 2021 (“**Traffic Study**”), as may be amended, has been provided to the City; and

WHEREAS, development within the District’s boundaries is subject to payment of various City permit fees, impact fees, and charges, including the TCP fee as required in the GJMC; and

WHEREAS, the District is willing to finance the cost of designing, constructing and installing the City’s Street Responsibilities for the streets depicted on **Exhibit B**, Project Site Plan Concept diagram, pursuant to the terms hereof and pursuant to the District’s Service Plan authorization, the City’s approval, if at all, of the plan for the Development, voter authorized debt, and financing capacity through TCP fee revenue sharing as outlined in this Agreement.

WHEREAS, respective Developer Street Obligations and City Street Responsibilities are stated on **Exhibit C**, attached hereto and incorporated herein by this reference; and

WHEREAS, the Developer agrees to dedicate at no cost to the City and free and clear of all encumbrances, all right-of-ways for public streets as shown on Exhibit B; and

WHEREAS, the Parties agree that entering into a revenue sharing agreement between the City and District, allocating TCP revenue generated from properties within the District's boundaries to the District after collection by the City ("**TCP Revenue Sharing**") is an efficient, fair and suitable means to finance the City's Street Responsibilities; and

WHEREAS, the City and the District wish to set forth their respective rights and obligations as the same arise out of or under this Agreement with regard to financing and payment of the costs of City Street Responsibilities.

NOW, THEREFORE, in consideration of the covenants and agreements set forth below, and the Recitals above, the Parties agree as follows:

COVENANTS AND AGREEMENTS

1. Roadway Responsibility Allocations.

- a. The Developer and City are responsible for the design, installation and construction of public streets to City standards and specifications as outlined in Exhibit C, and in accordance with the requirements set forth in the GJMC and any approved development plan. Prior to performing work, the District will obtain the City's approval of engineering plans and will obtain all applicable permits for construction and installation of public streets, sidewalks, curb and gutter and all related improvements. All work shall be subject to City inspection and acceptance if the work meets or exceeds City standards.
- b. The Parties agree that the allocation of the cost for roadway improvements to the intersection of Hwy 6 & 50 and F 1/2 Road shall be shared 50% as a Developer Street Obligation and 50% as a City Street Responsibility.
- c. In exchange for the TCP Revenue Sharing, the District agrees to design, construct, install and finance City Street Responsibilities, as delineated in Exhibit C.

2. TCP Revenue Sharing. The Parties have determined and agreed that 100% of the TCP Revenue collected by the City solely from development within the District boundaries shall be allocated to the District for repayment of City Street Responsibilities until the District is fully reimbursed all costs and expenses associated with City Street Responsibilities as shown on Exhibit C.

3. Calculation and Distribution of TCP Revenue.

- a. The City shall create a spreadsheet of each lot within the boundaries of the District, Building Permit No., Date of Issuance, and TCP payment.
- b. Within the first ten days of each month, the City shall forward to the District's accountant an updated spreadsheet along with payment of TCP Revenue collected in the prior month.

- c. On a quarterly basis, the City and District shall reconcile TCP Fees imposed and collected by the City and paid to the District.
- d. No later than February 28th of each year, the Parties shall reconcile City TCP Revenue payments due and paid to the City and transmitted to the District in the prior year.

4. Cost of Financing. At the time the District issues general obligation debt, the District's underwriter shall calculate the City's proportionate share of the costs of issuance and interest payments to be included in the City's Street Responsibility costs. The District shall use its best efforts to obtain the most favorable interest rate and debt terms available in the market at the time of debt issuance. The City's proportionate share of the total costs of issuance shall not exceed 3% of the total costs of issuance.

5. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor. An External Financial Advisor is a consultant that (1) advises Colorado Government entities on matters related to the issuance of securities by Colorado governmental entities; (2) is an underwriter, investment banker, or other individual listed as a public finance advisor in the Bond Buyer's Municipal Marketplace; and (3) is not an officer of the District. The certification shall read substantially as follows:

We are [I am] an External Financial Advisor within the meaning of this Agreement.

We [I] certify that (1) the net effective interest rate (calculated as defined in § 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.

6. Term of Agreement. This Agreement shall terminate upon a determination by the Parties that either: (1) the City has repaid all costs incurred by the District for designing, constructing, installing and financing the City Street Responsibilities; or (2) all TCP Revenue due and owing from properties within the District has been collected by the City and transferred to the District.

7. District Pledge of TCP Revenue Sharing. The District shall restrict all revenue received from the City under this Agreement to debt service payments for District issued general obligation debt, for which the City assumes no liability.

8. Non-Appropriation. The City's performance under this Agreement is expressly conditioned upon the appropriation of funds by the City Council in its annual budget for the purposes described herein. To the extent that this Agreement constitutes a multiple fiscal year

debt or financial obligation, it shall be subject to annual appropriation pursuant to Article X, Section 20 of the Colorado Constitution.

It is understood by the Parties that the City's obligation to share TCP Revenue with the District is conditioned upon the City issuing Planning Clearances and collecting TCP Revenue from properties located within the boundaries of the District as the same develop.

9. Entire Agreement of the Parties. This Agreement, including the Recitals hereto, 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.

10 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.

11. Governing Law; Jurisdiction; Venue. The laws of the State of Colorado and the City of Grand Junction 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.

12. 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.

13. 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.

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

15. 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 with confirmation and addressed to the following addresses or at such other address as either party hereto shall designate in writing to the other party:

City: City of Grand Junction
Attn: John Shaver, City Attorney
250 N. 5th Street
Grand Junction, CO 81501
cityattorney@gjcity.org

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

16. 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.

[Signature Page Follow]

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



Exhibit C: Street Responsibilities

ID	STREET SEGMENT	DEVELOPER RESPONSIBILITY	CITY RESPONSIBILITY
1	F 1/2: I-70 B to 23 3/4	Construct to Local Commercial Street standards (7' monolithic curb, gutter, and sidewalk on both sides and 36' of asphalt), appropriately sized roundabout for a Local Commercial Street Section at 23 1/2 Road subject to City approval, and piping of open drain along F 1/2 Road Parkway right-of-way.	Any enhancements including the oversizing of the roundabout.
2	F 1/2: 23 3/4 to 24	None.	All.
3	23 1/2: F 1/2 to F 3/4	Curb and gutter on the east and west, 10' detached trail on the west, 7' detached sidewalk on the east, and 36' of asphalt.	8' of asphalt to achieve 44' asphalt width.
4	23 1/2: F 3/4 to unnamed Private Street (south of hospital)	Curb and gutter on the west, 10' detached trail on the west, and at least 20' of asphalt.*	Balance of street to achieve 44' of asphalt, curb, gutter, and 7' detached sidewalk on the east side.
5	23 1/2: unnamed Private Street (south of hospital) to G	East side of street is existing. Curb and gutter on the west, 10' detached trail on the west, and at least 20' of asphalt as necessary to complete the street to 44' of asphalt.	None.
6	23 3/4: Leland to F 1/2	7' monolithic curb, gutter, and sidewalk on the west and at least 20' of asphalt.*	Balance of street to achieve 36' of asphalt; curb, gutter, and sidewalk on the east side.
7	23 3/4: F 1/2 to F 3/4	7' monolithic curb, gutter, and sidewalk on the west and at least 20' of asphalt.*	Balance of street to achieve 44' of asphalt; and curb, gutter, and sidewalk on the east side.

Exhibit C: Street Responsibilities (continued)

8	23 3/4: F 3/4 to unnamed Private Street (south of hospital)	None	All. †
9	F 3/4: 23 1/4 to 23 1/2	7' monolithic curb, gutter, and sidewalk on both sides and 36' of asphalt.	8' of asphalt to achieve 44' asphalt width.
10	F 3/4: 23 1/2 to 23 3/4	7' monolithic curb, gutter, and sidewalk on the south and at least 20' of asphalt.*	Balance of street to complete 44' of asphalt; curb, gutter, and sidewalk on the north side.
11	G	A 7' detached meandering sidewalk to match improvements in front of Community Hospital.	Curb and gutter on the south, asphalt to achieve a 44' width.
12	I-70 B and F 1/2 Intersection	50% of the design and construction of standard intersection with signal.	50% of the design and construction of standard intersection with signal.

Notes

City is responsible for financing the construction of off-site improvements including the 23 1/2 Road and G Road roundabout, dual northbound turn lanes at 24 Road and F 1/2 Road, and expansion of the 24 Road and G Road roundabout.

* Asphalt may need to be wider than 20' for street to meet traffic demands and function properly.

† Will likely be built when Community Hospital develops the adjacent parcel.