

52108SWM

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT (IGA)
NAME OF CONTRACTOR:	5-2-1 DRAINAGE AUTHORITY
SUBJECT/PURPOSE:	FOR PROVISION OF COLORADO PERMIT SYSTEM (CDPS) MUNICIPAL SEPARATE STORM SEWER STORMWATER PHASE II PERMIT SERVICES AKA STORMWATER MANAGMENT
CITY DEPARTMENT:	UTILITIES AND STREET SYSTEMS
YEAR:	2008
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

INTERGOVERNMENTAL AGREEMENT
FOR PROVISION OF COLORADO DISCHARGE PERMIT SYSTEM (CDPS)
MUNICIPAL SEPARATE STORM SEWER (MS4)
STORMWATER PHASE II PERMIT SERVICES

THIS SERVICES AGREEMENT is made and entered into this 17th day of Nov, 2008 by and between the 5-2-1 DRAINAGE AUTHORITY, a political subdivision of the State of Colorado, (hereinafter referred to as "Authority") and the CITY OF GRAND JUNCTION, a political subdivision of the State of Colorado, by and through its City Council, with its principal office located at 250 N. 5th Street, Grand Junction, Colorado 81501, (hereinafter referred to as "city" or "the City").

RECITALS:

WHEREAS, Authority was created by an Intergovernmental Agreement on June 14, 2004, pursuant to CRS 29-1-204.2, as amended, by and between Mesa County, the Town of Palisade, the City of Grand Junction, the City of Fruita and the Grand Valley Drainage District referred to as "Contracting Parties," to provide storm water related services within and across their respective jurisdictions, and

WHEREAS, Colorado law allows the Authority to accept responsibility for compliance with Federal and State Stormwater Phase II permits and procedures on behalf of the Contracting Parties, and

WHEREAS, it is consistent with the intent and purposes of the Authority to provide consolidated services to entities within its jurisdictional boundaries which hold individual Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System (MS4) Stormwater Phase II discharge permits, including both the individual Contracting Parties of the Authority as well as others that may desire similar services from the Authority on a fee-for-service basis, and

WHEREAS, all of the areas subject to CDPS MS4 Stormwater Phase II discharge permitting within the jurisdictional boundaries of the City, as identified by the Bureau of the Census and the Colorado Department of Public Health and Environment ("CDPHE") lie within the jurisdictional boundaries of the Authority, and

WHEREAS, the City currently holds a CDPS MS4 Stormwater Phase II discharge permit from CDPHE, and is desirous to have the permit replaced by, and the program elements of the permit administered by, the Authority and

WHEREAS, the City has placed a high priority on functional stormwater management and stormwater quality and is desirous of obtaining a consolidated Grand Valley CDPS MS4 Stormwater Phase II Discharge Permit Services Agreement with the Authority and Authority is desirous of providing the same.

NOW, THEREFORE, in consideration of the recitals, terms, conditions and mutual benefits herein contained, the Authority and the City agree as follows:

1. Duties of the Authority. The Authority shall provide CDPS MS4 Stormwater Phase II permit services on behalf of the City upon terms and conditions hereinafter set forth. The Authority will provide for the City the Services stated in the scope of work attached hereto as Exhibit A and incorporated by this reference as if fully set forth.

2. Duties of the City
 - A. The City agrees to reasonably assist the Authority with the performance of the Authority's duties as defined in Exhibit A of this Agreement by:
 - i. Providing accurate records, files, mapping, mailing lists and other documents and information necessary to establish the jurisdictional boundaries, type and ownership of properties within the jurisdictional boundaries, and physical facilities of the City for which the Authority will be providing services, and shall reasonably provide any updates or changes to this information as needed.
 - ii. Assisting with public education and participation activities performed on behalf of the City, as part of Authority's duties listed under Section A.i. and A.ii. of the Scope of Work.
 - iii. Providing assistance with scheduling and coordinating training sessions for City staff, and audits of City facilities as required by Sections B.i.d. and e., and Sections B.ii.a. and b. of the Scope of Work.
 - B. The City agrees to reasonably assist the Authority with the consolidated permit submittal as defined in Exhibit A to this Agreement by: providing documentation such as current permit program descriptions and annual reports, existing ordinances and resolutions, and other technical data necessary for the consolidated permit application preparation and submittal process; passing or adopting new ordinances, resolution, or policies needed to meet State approval criteria.
 - C. The City shall inform Authority, and provide a duplicate copy of, any permit related correspondence with regulatory agencies which may affect Authority's performance of its duties under Section 1 of this Agreement.

3. Term. The Authority and City agree that their respective duties under this agreement shall commence by December 01, 2008 and continue for a period concurrent with the life of the City's CDPS MS4 Phase II Stormwater permit, subject to the following:
 - A. The parties mutually agree that the City shall maintain responsibility for stormwater management reviews, approvals, permits, and inspections for all projects and development accepted into the City review process prior to December 01, 2008.
 - B. The parties mutually agree that either party may initiate a review and negotiated modification of this agreement on a yearly basis, beginning no sooner than October 1st of each calendar year, to take affect January 1st of the

subsequent year. Amendments or modifications of this Agreement shall require written agreement executed by the parties hereto.

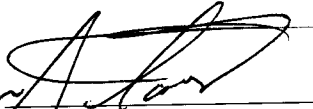
- C. Notwithstanding any provision herein contained, either party to this agreement may terminate the Agreement upon written notification to the remaining party ninety (90) calendar days in advance of such termination date. Upon termination or expiration of this Contract, Authority shall immediately cease service work, and deliver to the City all documents, keys, papers, calculations, notes, reports, drawings, or other technical papers prepared by or provided to Authority under the terms of this Contract.
 - D. It is understood that if a consolidated, valley-wide permit is obtained by the Authority consistent with the provisions of Section C of the attached Exhibit A, this Agreement may need significant amendment or modification, or replacement with a new agreement. Pending execution of an amendment, modification, or replacement agreement, Authority and the City agree to perform, or continue to perform their respective duties as identified under this agreement.
4. Fee for Service. By virtue of their status as an original contracting party of the Authority and their continued annual financial contributions thereto, commensurate with the services rendered to City by the Authority as identified in Exhibit A, no specific fees for specific services shall apply to City under this Agreement.
 5. Relationship between Parties. Authority is contracted only for the purpose and to the extent set forth in this agreement, and its relationship to the City shall be that of independent contractor.
 6. Indemnification Reciprocal. To the extent authorized by law the City shall indemnify and hold the Authority harmless against any loss or liability resulting from any claim asserted against the Authority by reason of its acting pursuant to and in accordance with the terms, provisions and conditions of this agreement.
 7. Assignment. Neither party shall assign such party's rights or interest under this agreement without the prior written consent of the other.
 8. Entire Agreement. This agreement shall constitute the entire agreement between the Authority and the City. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding on either party except to the extent incorporated in this agreement.
 9. Amendment. Any modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if in writing signed by each party or an authorized representative of each party.
 10. Non-Waiver. The failure of either party to this agreement to insist on the performance of any of the terms and conditions of this agreement or the waiver of any breach of any of

the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.


11. Attorney Fees and Costs. This agreement shall be formed in accordance with laws of the State of Colorado and venue for any action here under shall be in the District Court of Mesa County, Colorado. In the event any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees and costs, including the value of in-house Counsel.
12. Agreement Revisions Severable. If any of the provisions of this agreement are deemed to be invalid or unenforceable, such provisions shall be deemed severable from the remainder of this agreement and shall not cause the invalidity or unenforceability of the remainder of this agreement. If any provisions shall be deemed invalid because of its scope, this provision shall be deemed valid to the extent of the scope permitted by law.
13. Standard of Care. The Authority shall fully and faithfully perform the work required under this Agreement in accordance with the appropriate standards of care, skill, training, diligence and judgment provided by contractors who perform work of a similar nature to the work described in this Agreement.
14. Dispute Resolution. Disputes arising under or related to this Agreement or the work which is the subject of this Agreement shall be first addressed by mediation. If mediation is unsuccessful, the parties expressly reserve the right to arbitrate or file a cause of action pursuant to the Colorado Rules of Civil Procedure. The parties hereto agree that a final determination from mediation shall be a precondition to other action being taken.

END OF AGREEMENT

5-2-1 DRAINAGE AUTHORITY

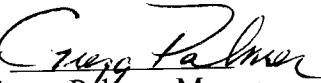
By 
Jim Doody, Chairman

ATTEST:

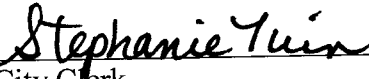

Richard Bowman, Secretary

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CITY OF GRAND JUNCTION

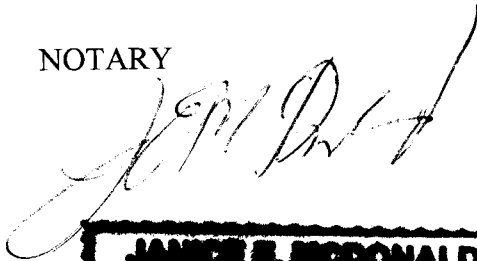
By 
Gregg Palmer, Mayor

ATTEST:


City Clerk

[Corporate Seal affixed here]

NOTARY



JANICE E. McDONALD
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires Sept. 08, 2012



EXHIBIT A
SCOPE OF WORK

- A. Authority shall budget for, administer, coordinate, and perform all the following program elements shown as Minimum Control Measures (MCM's) within the City's current CDPS MS4 Phase II Stormwater Management Program Description (attached) no later than December 01, 2008, subject to the specific terms of the Agreement.
- i. All Public Education and Outreach activities described under MCM1 within the City's Stormwater Phase II Program Description, as approved by the State of Colorado.
 - ii. All Public Participation and Involvement activities described under MCM2 within the City's Stormwater Phase II Program Description, as approved by the State of Colorado.
 - iii. Construction program activities as described under MCM4 within the City's Phase II Stormwater Program Description, as approved by the State of Colorado, specifically including review and approval of Construction Site Stormwater Management Plans (CSWMPs), issuance of Construction Stormwater Permits, and associated construction related inspection and auditing activities, and specifically excluding certain enforcement activities as further delineated in section v. below.
 - iv. Post-Construction program activities as described under MCM5 within the City's Phase II Program Description, as approved by the State of Colorado, specifically including: review and approval of Post Construction BMPs contained within Final Drainage Reports or other applicable documents; associated post-construction inspection and auditing activities; and specifically excluding certain enforcement activities as further delineated in section v. below.
 - v. As part of its duties under section 1.a.iii and iv. above, Authority shall work directly with developers and/or property owners of sites that require Construction Stormwater Permits and Post-Construction BMPs to maintain sites in compliance with stormwater quality requirements contained within the City's CDPS MS4 Stormwater Phase II discharge permit, without involvement of the City. If continued non-compliance, or blatant disregard of stormwater requirements is documented by the Authority, or work is being done without appropriate approval and further enforcement steps are needed, the Authority and the City understand and agree that the Authority has no independent ability to enforce and sanction compliance with construction and post construction related requirements without the support and involvement of the City. The Authority and the City therefore agree it is Authority's affirmative responsibility to make appropriate referrals to the City. The Authority and the City therefore agree that the Authority is responsible for performing the following

pre-enforcement activities: a) identification and documentation of continued non-compliance or blatant disregard for stormwater requirements, b) communication, via a written compliance advisory to the developer, contractor, property owner and/or other responsible party for the site that requires a Construction Stormwater Permit and/or Post-Construction BMPs, describing the nature of the violation(s), and time frame for correction, and submitting a copy of this advisory along with a request for enforcement action to City, c) providing documentation and field support as needed to City, and d) providing testimony, or other support, as needed, for legal actions initiated by City.

- vi. Authority and City jointly understand and agree that enforcement provisions and processes described in paragraph A.v. above may require re-adoption or modification, if so mandated by State requirements as part of obtaining the Valley-wide MS4 permit identified in Section C below.

B. To the extent allowed by law, the Authority shall budget for, administer, coordinate and perform the following tasks, associated with program elements shown as Minimum Control Measures (MCM's) within the City's current CDPS MS4 Phase II Stormwater Management Program Description no later than December 01, 2008:

- i. Illicit Discharge Detection and Elimination (IDDE) activities specifically identified below and described under MCM3 within the current City's Phase II Program Description, as approved by the State of Colorado.
 - a. Operation of the 5-2-1 Hotline.
 - b. Coordination and performance of storm drain system mapping efforts.
 - c. Continuation of pollution awareness efforts, such as the billboard campaign, and distributing items such as brochures pencils, magnets, and stickers with the Hotline phone number.
 - d. Coordinate training activities for City's field staff to ensure compliance with City's MCM4 Program Description.
 - e. The Authority shall audit the City's IDDE program on an annual basis to ensure compliance with the CDPS MS4 Stormwater Phase II discharge permit requirements. The Authority shall submit a detailed audit report to the attention of Grand Junction staff for corrective actions.
- ii. Pollution Prevention and Good Housekeeping for Municipal Operations activities specifically identified below and described

under MCM6 within the current City's Phase II Program Description, as approved by the State of Colorado.

- a. Coordinate training activities for City's staff to ensure compliance with City's MCM6 Program Description.
 - b. The Authority shall audit the City's Pollution Prevention and Good Housekeeping for Municipal Operations program on an annual basis to ensure compliance with the CDPS MS4 Stormwater Phase II discharge permit requirements. The Authority shall submit a detailed audit report to the attention of City staff for corrective actions.
- C. The Authority shall diligently pursue, and apply for a Grand Valley wide CDPS MS4 Phase II Stormwater Permit, to be held by the Authority, consistent with State of Colorado regulations and approval criteria, to include the City as an entity covered under said Permit. Authority shall coordinate with CDPHE on the type and extent of required submittals, accumulate existing documents and/or prepare or coordinate creation of new documents as required for the permit submittals.
- i. It is understood that the transfer of responsibility, administration, and management of the existing permit from the City to the Authority will be contingent on State approval. Authority agrees to apply for said permit no later than April 01, 2009 with the intent of receiving CDPHE approval within 12 months. City shall be provided the opportunity to review and approve application for said permit prior to submittal. To achieve the specified April 01, 2009 submittal date, Authority shall provide the final submittal package to the City for review and approval no later than March 01, 2009.
 - ii. Authority shall administer, maintain, prepare annual reports for, and renew the Phase II permit once obtained.
 - iii. Authority may pursue State approval and/or designation as a qualified local program for the construction permitting program if such designation is the best interest of the City.
 - iv. Nothing in this section is intended to force Authority to obtain, hold, or continue to hold a CPDS MS4 Stormwater Phase II Permit on behalf of the City in violation of State approval criteria or in violation of applicable law. It is understood that the State retains the right to rescind Authority's ability to hold the CPDS MS4 permit on behalf of City if future conditions so warrant.
- D. Authority shall establish a Technical Advisory Committee (TAC), chaired by the Authority Manager, and comprised of staff representatives from all parties represented on the Board of the Authority. Staff representatives to the TAC shall be determined solely by their respective entities and shall be the primary conduit for communicating information between their organization and the Authority. The general role of the TAC is to provide recommendations and

advice to the Authority Board and Authority Manager on technical, strategic planning, and permit compliance issues, in order to assist the Authority in performing its duties identified in the Agreement(s).

- i. The Authority Manager shall hold TAC meetings at least monthly, or at such other frequency as determined by the TAC members.
- ii. The Authority Manager is responsible for ensuring the Board is kept informed of issues being discussed by the TAC, transmitting recommendations and advice from the TAC to the Authority Board, and for transmitting information from the Board to the TAC.
- iii. The Authority Manager shall apprise TAC members and seek recommendations from the same before seeking board decisions or implementing activities directly associated with the CDPS MS4 permit compliance commitments of the contracting parties. For Board decisions or implementation activities directly associated with MS4 permit compliance commitments of an individual party, individual TAC members shall identify to the Authority Manager any areas of disagreement or discussion they wish to be included in the information transmitted by the Authority Manager to the Board.

END OF EXHIBIT A