

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

THIS SERVICES AGREEMENT ("Agreement") is made and entered into this 14<sup>th</sup> day of ~~December~~, 2009 by and between the 5-2-1 DRAINAGE AUTHORITY ("Authority"), a political subdivision of the State of Colorado, and the CITY OF GRAND JUNCTION ("City"), a political subdivision of the State of Colorado, by and through its City Council, with its principal office located at 250 N. 5<sup>th</sup> Street, Grand Junction, Colorado 81501.

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 (formerly known as Grand Junction 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 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 necessary for compliance with Colorado Discharge Permit System (CDPS) Municipal Separate Storm Sewer System (MS4) Stormwater Phase II regulations, 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 has placed a high priority on functional stormwater management and stormwater quality and is desirous of obtaining a consolidated CDPS MS4 Stormwater Phase II Discharge Permit Services Agreement with the Authority and Authority is desirous of providing the same, and

WHEREAS, in order to provide the community with the best service possible, Authority commits to being cooperative, helpful, and responsive to the developers and/or property owners of sites that require oversight, and

WHEREAS, the Authority has submitted a Permit Application to CDPHE for a consolidated, MS4 permit to be held by the Authority and under which the City will obtain and receive future MS4 permit coverage, thereby terminating the responsibility, administration, and management of the existing MS4 permit held by the City.

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. On the effective date of the CDPS MS4 Permit issued to the Authority by CDPHE, Authority shall exercise full responsibility for the administration and management of CDPS MS4 Program compliance for the City as an entity covered under the MS4 Permit held by Authority.
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 as part of Authority's duties listed under Section A.i. and A.ii. of Exhibit A.
    - 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 Exhibit A.
    - iv. Identifying the Authority as an external review agency for projects subject to Authority Construction Stormwater Management Plan review and Stormwater Construction Permit activities.
    - v. Requiring City capital projects disturbing equal to or greater than 1 acre within the MS4 Permit jurisdiction of the Authority be subject to Authority Construction Stormwater Management Plan review and Stormwater Construction Permit provisions.

- vi. Authorizing the Authority to issue a Notice of Violation (NOV) to a Stormwater Construction Permit holder and/or property owner for violation of the Mesa County / Grand Junction Stormwater Management Manual and/or Colorado Law concerning CDPS MS4 permit requirements, pursuant to Authority duties under Section A.iii., A.iv., and A.v. of Exhibit A.
  - vii. Providing City legal and technical staff assistance to the Authority for enforcement activities associated with the provisions of paragraph A.iv above.
  - viii. Maintaining an effective Illicit Discharge Detection and Elimination (IDDE) Program for facilities owned and operated by the City, compliant with CDPHE regulations and MCM 3 of the Authority CDPS MS4 Program Description, which is on file with the Authority.
  - ix. Maintaining an effective Pollution Prevention and Good Housekeeping Practices for Municipal Operations Program for facilities owned and operated by the City, compliant with CDPHE regulations and MCM6 of the Authority CDPS MS4 Program Description, which is on file with the Authority.
- B. The City agrees to reasonably provide current and historic documentation such as previous permit program descriptions and annual reports, current resolutions, current construction and post-construction permit files, and other technical data necessary for the Authority to maintain an MS4 permit.
- 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.
- D. The City agrees to take no intentional actions or perform any activity that can reasonably be foreseen to jeopardize the compliance status of the Authority's MS4 permit with the CDPHE.
- i. The City agrees that if the Authority is found to be in violation of its CDPS MS4 Permit by CDPHE, and the violation can be attributed to an action on the part of the City, the City shall be liable for any associated fee, fine, compliance order or penalty incurred by the Authority and shall assist the Authority in addressing, mitigating, or responding to the violation.
  - ii. The City agrees that it retains liability for findings by CDPHE of non-compliance against the CDPS MS4 Permit previously held by the City (COR -090077), and any associated fee, fine, compliance order, or penalty charged thereto.

3. Term. The Authority and City agree that their respective duties under this agreement shall commence on the effective date of the Authority's CDPS MS4 Phase II Stormwater Permit issued by CDPHE, and continue for a period concurrent with the life of the Authority's CDPS MS4 Phase II Stormwater permit, subject to the following:
  - A. Beginning on the effective date of the Authority CDPS MS4 Permit, the Authority shall administer all remaining permit activities, including inspections and eventual permit inactivation for all remaining active construction sites originally permitted by the City.
  - B. Either party may initiate a review and negotiated modification of this agreement on a yearly basis, beginning no sooner than October 1<sup>st</sup> of each calendar year, to take effect January 1<sup>st</sup> 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 may terminate the Agreement upon written notification to the remaining party One Hundred twenty (120) calendar days in advance of such termination date. Upon receipt of a notice of intent to terminate, both parties are individually responsible for informing the State of the future change in permit coverage. 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.
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. The parties to this Agreement agree that each party shall bear responsibility for its own negligence and neither shall be responsible for indemnifying the other pertaining to the subject matter of this agreement. Notwithstanding the foregoing provision, the Authority agrees and commits to keep in full force and effect a general operations liability policy in an amount not less than \$1,000,000.00 for a single occurrence. Nothing herein shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act ("GIA") as now exists, or as may be hereafter

amended, as pertains to limits on liability by governmental entities for claims or injuries to persons or property. Liability for damages for activities conducted by either party via this contract shall be controlled and limited in accordance with the GIA notwithstanding any provision of this Agreement.

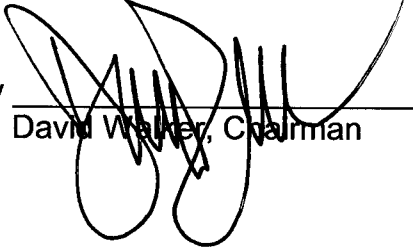
7. Assignment. Neither party shall assign such party's rights or interest under this agreement without the prior written consent of the other.
8. Entire Agreement. This agreement shall constitute the entire agreement between the Authority and the City. Any prior understanding or representation of any 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. Venue. This agreement is formed in accordance with laws of the State of Colorado and venue for any action hereunder shall be in the District Court of Mesa County, Colorado.
12. 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.
13. Dispute Resolution. Disputes arising under, out of or related to this Agreement or the work which is the subject of this Agreement shall be first addressed by informal means by and among technical staff and management of the parties to the Agreement. If informal means are unsuccessful disputes shall be mediated using an independent third party. . If both informal means and mediation are unsuccessful, the parties expressly reserve the right to arbitrate or file a cause of action pursuant to the Colorado Rules of Civil Procedure under CRS 13-22-201. The parties hereto agree that attempts at informal resolution and mediation shall be a precondition to other action being taken.

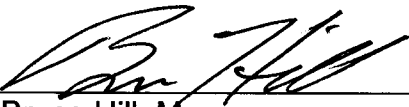
14. Cooperation with City. In providing services in regards to the subject matter of this agreement, the board of Directors of the Authority shall work cooperatively and in good faith with the City.
  
15. Agreement Provisions Severable. If any of the provisions of this agreement are deemed to be invalid 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.

END OF AGREEMENT

5-2-1 DRAINAGE AUTHORITY

CITY OF GRAND JUNCTION

By   
David Walker, Chairman

By   
Bruce Hill, Mayor

ATTEST:  
  
Richard Bowman, Secretary

ATTEST:  
  
Stephanie Tuin, City Clerk

[Corporate Seal affixed here]

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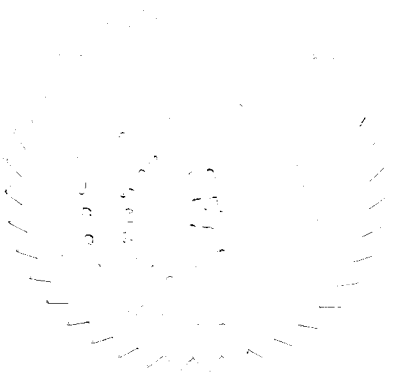


EXHIBIT A  
SCOPE OF WORK

- A. Authority shall budget for, administer, coordinate, and perform all the following program elements shown as Minimum Control Measures (MCM's) within the Authority's CDPS MS4 Phase II Stormwater Management Program Description (attached) beginning on the effective date of the Authority Permit, subject to the specific terms of the Agreement.
- i. All Public Education and Outreach activities described under MCM1 within the Authority's Stormwater Phase II Program Description, as approved by the CDPHE.
  - ii. All Public Participation and Involvement activities described under MCM2 within the Authority's Stormwater Phase II Program Description, as approved by CDPHE.
  - iii. Construction program activities as described under MCM4 within the Authority's Phase II Stormwater Program Description, as approved by CDPHE, 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.
  - iv. Post-Construction program activities as described under MCM5 within the Authority's Phase II Program Description, as approved by CDPHE, 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.
  - v. Authority shall work directly with developers and/or property owners of sites that require Stormwater Construction Permits and Post-Construction BMPs to maintain sites in compliance with stormwater quality requirements contained within the Authority's CDPS MS4 Stormwater Phase II discharge permit, without involvement of the City, per standard Authority procedures. If continued non-compliance, or blatant disregard of stormwater requirements is documented by the Authority, or work is being done without appropriate approvals and permits and enforcement actions are necessary, then it shall be Authority's responsibility to initiate enforcement actions pursuant to the authority granted to the Authority's staff as described under Section 2, Paragraph A.vi. of the Agreement. Upon initiation of enforcement activities, the Authority shall provide documentation, field support, testimony, or other support as needed, for legal actions initiated by City.



- vi. Authority and City agree they have mutual and individual obligations under the Agreement to initiate and perform enforcement activities in order to maintain compliance with the CDPS MS4 permit provisions.
- 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 Authority's CDPS MS4 Phase II Stormwater Management Program Description.
- i. Illicit Discharge Detection and Elimination (IDDE) activities specifically identified below and described under MCM3 within the Authority Phase II Program Description, as approved by CDPHE.
    - 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.
  - ii. The Authority shall audit the City's IDDE program on an annual basis to ensure City is maintaining an effective program in compliance with Authority's CDPS MS4 Permit and program description.
  - iii. Pollution Prevention and Good Housekeeping for Municipal Operations activities specifically identified below and described under MCM6 within the Authority Phase II Program Description, as approved by the State of Colorado.
    - a. Coordinate training activities for City's staff to ensure compliance with Authority'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 City is maintaining an effective program in compliance with the Authority's CDPS MS4 Permit and program description.
- C. The Authority shall inform the City, and provide a duplicate copy of, any permit related correspondence with regulatory agencies which may affect the City's operations or the City's performance of its duties under Section 2 of this Agreement.

- D. The Authority shall diligently maintain the Grand Valley-wide CDPS MS4 Phase II Stormwater Permit, held by the Authority, consistent with State of Colorado regulations and approval criteria, to ensure continued coverage of the City as an entity covered under said Permit. Authority shall coordinate with CDPHE on the type and extent of any submittals required, accumulate documents and/or prepare or coordinate creation of new documents as required for the submittals.
- i. Authority shall administer, maintain, prepare annual reports for, and renew the Phase II permit.
  - ii. Authority may pursue CDPHE approval and/or designation as a qualified local program for the construction permitting program for implementation within the Permit Area.
  - iii. Nothing in this section is intended to force Authority to continue to hold a CPDS MS4 Stormwater Phase II Permit on behalf of the City in violation of CDPHE approval criteria or in violation of applicable law. It is understood that the CDPHE retains the right to rescind Authority's ability to hold the CPDS MS4 permit on behalf of City if future conditions so warrant.
- E. Authority shall maintain 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, the Authority Manager shall forward to the Board for consideration any areas of disagreement or discussion as requested by any TAC member.

END OF EXHIBIT A