

DDA02MOU

TYPE OF RECORD: ACTIVE /PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: DOWNTOWN DEVELOPMENT AUTHORITY

SUBJECT/PROJECT: MEMORANDUM OF UNDERSTANDING TO SET FORTH
BASIC PRINCIPLES OF THE DDA'S MISSION AND ITS LEGAL DUTIES
AND REPONSIBILITIES

CITY DEPARTMENT: DOWNTOWN DEVELOPMENT AUTHORITY

YEAR: 2002

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

MEMORANDUM OF UNDERSTANDING
Between the City of Grand Junction
And the
Grand Junction Downtown Development Authority

Recitals.

The Grand Junction Downtown Development Authority (DDA) was created in 1977 and its bylaws were adopted not long thereafter. Those bylaws are a part of the governing rules for the Board of Directors of the DDA (Board) but they have not been reviewed or amended since they were adopted.

In addition, because the relationship between the DDA and the City has not been formally examined since the inception of the DDA, the Board and the City Council believe that this memorandum of understanding (MOU) is necessary and beneficial.

One major purpose of this agreement is to set forth basic principles of the DDA's mission and its legal duties and responsibilities.

This MOU will provide an operating framework and address other matters deemed appropriate and necessary by the City Council and the Board.

Because an MOU is a form of contract, it serves to describe some rights, powers, duties, privileges and liabilities of the DDA and the City. Of course, the parties acknowledge that the City Charter, the City's ordinances, regulations, policies and practices and state and federal laws control as primary sources for those things.

Current laws and rules that apply to the DDA, give direction to the Board and the DDA employees and control the programs and efforts of the DDA are:

- (1) the statute that authorizes downtown development authorities. §31-25-801, *et seq.*, C.R.S.;
- (2) the City's ordinance that created the DDA in 1982 supplemented by the more detailed bylaws, adopted by the Board and the City Council in 1982;
- (3) the City and DDA ordinances and resolutions related to financial transactions such as bond issues, including limits and rules regarding expenditures and accounting.

The DDA can only act through a majority of a quorum of its board of directors. Acting together in two quite different roles, the board members:

- (1) Set policy and give guidance and direction for the DDA, in accordance with the policies and direction established by the City Council; and
- (2) Act as the supervisor and employer of the Director of the DDA.

Because local government decisions in Colorado can only be made in open meetings and consistent with principles of governance, the City and the Board acknowledge that each can only act as a majority of a quorum. Individual members of the Board and the Council have no authority or power; members only take action to the extent approved by the respective group.

Normally, the Board will act through its chairperson. Occasionally, the Board may act through another, for example, when the chair is in the minority or if the chair declines to act consistently with the Board's direction. Unless acting to carry out the Board's decision or direction, an individual board member is not authorized to direct or control the Director or other DDA employee.

Fundamental duties of each member (of the Board and the Council) are:

- (1) To act as a fiduciary, including oversight and management; and
- (2) To direct the DDA and expend its resources in accordance with the budget, applicable law and other requirements and policies.

While it is true that the real properties and businesses within the DDA boundaries generate the DDA's revenues, the Council pursuant to Colorado law reviews and approves the DDA budget. To that end the Council must assist the DDA in maintaining compliance and consistency with City, state and federal law and requirements, including but not limited to fiscal and budgetary regulations. The rules and regulations applicable to local governments (such as financial, accounting, open meetings and open records) are already inherent in the City's operations and are easily and readily applied to the DDA.

Based on the foregoing recitals, which are intended to be substantive provisions of this agreement, the City Council of the City of Grand Junction and the Board of Directors of the Grand Junction Downtown Development Authority (Board) **HEREBY AGREE and ENTER INTO THIS MEMORANDUM OF UNDERSTANDING**, as of the date of the last signature hereon.

1. Supplemental. This MOU supplements the DDA bylaws and rules, thus helping the DDA to accomplish its mission while allowing the Council to discharge its duties in assisting, managing and guiding the Board.
2. DDA Minutes. The DDA Director shall provide to the City Clerk minutes of the meetings of the DDA. Such minutes shall be of a style and quality equivalent to those provided by the City Clerk for City Council meetings. The Director shall provide minutes within fourteen (14) days of approval of the minutes by the Board.
3. Board Supervision of Director. The Board shall supervise, direct and oversee the Director. The Board is responsible for the hiring and day-to-day supervision, periodic evaluation and discipline, as necessary, of its employee, the DDA Director.

4. DDA Budget.

- (a) The Board and/or the Director as directed by the Board shall prepare and propose an annual budget to the City Council. The City Council will review the proposed DDA budget as a part of the City's budget and appropriation process. As a part of the evaluation and approval of the City's budget and appropriations, the Council shall approve, approve with detailed and/or general changes, or otherwise establish, a budget for the DDA.
- (b) The Director shall participate in the City budgeting process and shall abide by the City's rules and requirements including budgeting and accounting. Unless directed otherwise by the Board, the Director shall provide each member of the Board with a copy of all reports provided to the City.

5. DDA Director.

- (a) The DDA Director, who has been referred to as the *Executive Director* from time-to-time, is an at-will employee of the Board. In general, the DDA Director may be regarded as the chief executive officer of the DDA. The Director is responsible for the day-to-day implementation of the Board's direction, including oversight and supervision of the other DDA employees and operational performance and control of the DDA programs, activities and policies.
- (b) The Director shall hire, and act as the manager and supervisor of, the other DDA employees.
- (c) The Director shall keep each member of the Board informed of the Director's activities, decisions, the activities and programs and other functions of the DDA, as provided by the Board in writing from time-to-time.
- (d) The Director is responsible to see that the meetings, records and other activities of the DDA comply with applicable laws, including the open meetings act and open records act.
- (e) The Director shall inform the City Manager, the City Attorney and the HR Manager, as appropriate, regarding any concerns and/or possible liability arising out of this agreement, including employment law claims and notices of claim under the Colorado Governmental Immunity Act.

6. Director's Reports.

- (a) The Director shall prepare a written monthly report to the Board, with a copy to the City Manager. The report shall at least describe the financial condition of the DDA for the prior month and for the calendar year to date; and shall include a summary of ongoing projects and activities. Such reports shall be available to the public in accordance with the Open Records Act.

- (b) The Director's monthly report shall describe the efforts, staff time and resources given to and received by the DDA with regard to the Downtown Association, the Avalon and other DDA activities and relationships.
- (c) The Director shall provide such other reports, documents and information as the Treasurer, Human Resources Manager, City Attorney and/or City Manager require from time-to-time. The Director shall provide copies of all such reports to the Board.
- (d) On or before each March 1, the Director shall give the Board, with a copy to the City Manager, a written report of services or resources provided to the DDA during the preceding calendar year by any City department, division or employee. The purpose of this report is to identify the value, expense, benefit(s) and costs associated with providing such City services to, or at the direction of, the DDA. The Director shall include a separate written evaluation of such services in such, which shall be approved by the Chair of the Board and the City Manager before it is made available to the public.

7. DDA Employees.

- (a) DDA employees, including the Director, are not City employees. For convenience, however, the City may pay DDA employees as though the employees are City employees. In addition, a DDA employee may receive medical and other benefits provided by the DDA that are equivalent to those received by an equivalent City employee as directed and determined by the DDA. The City may perform payroll and benefit administration and services for the DDA in accordance with a contract for services pursuant to paragraph 11.
- (b) At least once each calendar year, the Director shall personally deliver a written notice to each DDA employee indicating to the employee that s/he is neither employed by the City nor entitled to any City employee benefits and/or protections.
- (c) Each DDA employee is employed as an at-will employee, unless the Board has determined otherwise, in writing, with regard to each specific individual. The Board shall maintain a copy of each such writing.
- (d) At least once each calendar year, the Director shall perform an oral and written evaluation of/with each DDA employee. The Director shall make each such written evaluation available to the Board in either summary or detailed form as determined by the Board. The Director shall maintain a copy of each such written evaluation.

8. Personnel policies.

- (a) The Director and other DDA employees shall be supervised in accordance with the City's most recent Personnel Policy Manual (PPM). The Director shall, at any time during which the City is contracted to provide human resources services in accordance with paragraph 11, seek direction and

guidance from the City in construing and applying the PPM as instituted herein.

- (b) The Board may vary how one or more of the provisions of the PPM apply to any particular DDA employee effective when the Board confirms the change or variance in writing. If the City is providing human resources services to the DDA in accordance with paragraph 11, each such change or variance shall only occur if the City's Human Resources Manager consents in writing.
- (c) For purposes of interpreting and applying the PPM only, the Director shall be deemed to be a City department head and the Board shall be deemed to be the City Manager.
- (d) If the Director and the HR Manager differ at any time regarding the PPM as it relates to the DDA and/or DDA employment matters, decisions, or policy interpretations, each shall inform the City Manager and the DDA Chair. The City Manager shall make a written decision on such matter, which shall be final except for all matters properly decided by the City Council.
- (e) The Director shall take no action to modify any salary, benefit, job duty, compensation or similar matter regarding any DDA employee, including the Director, without having first obtained the approval of the Board and after having first consulted with the City's HR Manager. A copy of any such action shall not be effective until it is provided to the HR Manager.
- (f) The City shall provide training to DDA employees on various employment policies and practices.
- (g) The City shall administer the benefits, compensation and the similar matters of the DDA employees on a basis substantially equivalent to those of City employees, unless directed otherwise in writing by the Board.

9. DDA Treasurer. (a) The City Finance Director is the treasurer of the DDA, unless the City Manager designates otherwise in writing with a copy to the Board, the Director and the City Council.


10. Legal Representation.

- (a) Unless the Board and the City Council both determine otherwise, the City's Attorney shall be the attorney for the DDA, pursuant to paragraph 11. Either the Council or the City Attorney may determine on a case-by-case basis that the DDA must obtain separate legal advice and/or representation.
- (b) The City Council may terminate the provision of the City Attorney's services to the DDA at any time in general or for particular/specific matters. The Council may terminate the provision of the City's Attorney services based on actual or perceived conflict of interest or without a reason being stated.

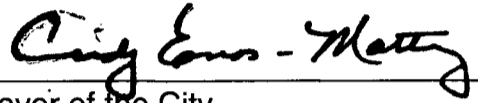
11. Other Services. The Council and the Board shall determine by separate agreement what if any other services the City shall provide to the DDA. DDA payment to the City shall be in accordance with the terms of any service(s) agreement(s).

12. DDA Payments to the City. The Council and the Board shall determine by separate agreement how, if and/or how much the DDA will pay to the City for the work and/or services provided to the DDA by the City.

13. Headings. Paragraph titles and headings are for convenience only and should not be used to understand the terms of this Memorandum of Understanding.



Chair of the DDA
Date: 7-25-02



Mayor of the City
Date: 7/24/02

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