

RMM09IGA

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT (IGA)
NAME OF CONTRACTOR:	REDLANDS MESA METROPOLITAN DISTRICT
SUBJECT/PROJECT:	APPROVING THE SERVICE PLAN WHICH INCLUDES FINANCING OF IMPROVEMENTS ON APPROXIMATELY 65 ACRES IN REDLANDS MESA
CITY DEPARTMENT:	ADMINISTRATION
YEAR:	2009
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

Intergovernmental Agreement Between the District and Grand Junction

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION, COLORADO AND REDLANDS MESA METROPOLITAN DISTRICT

THIS AGREEMENT is made and entered into as of this 13th day of February, 2009, by and between the CITY OF GRAND JUNCTION, a home-rule municipal corporation of the State of Colorado ("City"), and REDLANDS MESA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (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 are more specifically set forth in the District's Service Plan approved by the City on August 18, 2008 ("Service Plan"); and

WHEREAS, the Service Plan makes reference to 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 the best interests of their respective taxpayers, residents and property owners to enter into this Intergovernmental Agreement ("Agreement").

NOW, THEREFORE, 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. Operations and Maintenance. The District shall dedicate the Public Improvements (as defined in the Service Plan) to the City or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code.

The District is expected to undertake all ownership, operations and maintenance responsibilities for the Public Improvements that are not conveyed to the City or other governmental entities as appropriate, and will do so either itself or by contract with owner associations as noted above. If the District operates the facilities, revenue to pay the expenses of operations may be obtained from fees legally imposed by the District or other legally available revenues of the District. Whether the facilities are operated directly by District, or are operated by the associations, user fees may be obtained by the District to offset the expenses. User fees for use of recreational facilities may be different for residents of the District than for outside users. Approval of the Service Plan by the City constitutes the City's agreement that the District may perform these functions.

2. Acquisition of Land for Public Improvements and Easements. The District agrees to acquire by easement or plat dedication, or cause the dedication to the City of, all land required by the City for construction of public improvements being provided by the District that will be conveyed to the City. Exceptions must be approved by the City in writing. Failure to comply with this provision shall be deemed to be a material modification of the Service Plan. The District agrees to acquire all land needed by the City for construction of normal street improvements required by the City through dedication by the District's developers. Exceptions must be approved by the City in writing. Failure to acquire all land needed by the City for such construction of street improvements shall be deemed to be a material modification of the Service Plan.

3. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction and in accordance with the requirements of the Approved Development Plan. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

4. 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 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. The District shall not include within its boundaries any property outside the Service Area (as defined in the Service Plan) without the prior written consent of the City Council.

6. Monies from Other Governments/Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

7. Total Debt Issuance. The District shall not issue Debt in excess of \$10,000,000.

8. Consolidation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the City.

9. 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:

(1) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(2) Are, together with all other requirements of Colorado law, included 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 nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt issued 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.

10. Dissolution. 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 the applicable State statutes. 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 pursuant to State statutes.

11. Disclosure to Purchasers. The District will use reasonable efforts to assure that all developers of property located within the District provide written notice to all purchasers of property in the District 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.

12. Service Plan Amendment Requirement. Actions of the District which violate the limitations set forth in the Service Plan or this Agreement shall be deemed to be material modifications to the Service Plan and breaches of this Agreement and the City shall be entitled to all remedies available at law or in equity under State and local law.

13. Annual Report. The District shall be responsible for submitting an annual report to the City Attorney’s office no later than August 1st of each year.

I. Report Contents.

The annual report shall include information as to any of the following:

A. Boundary changes made or proposed to the District’s boundary as of December 31st of the prior year;

B. Agreements with other governmental entities, either entered into or proposed as of December 31st of the prior year;

C. A list of all facilities and improvements constructed or acquired by the District and those that have been dedicated to and accepted by the City as of December 31st of the prior year;

D. Audit of the District's financial statements for the year ending December 31st of the previous year prepared in accordance with generally accepted accounting principles or audit exemptions, if applicable;

E. Notice of continuing disclosure undertaking for events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and

F. Any inability of the District to pay its obligations as they come due in accordance with the term of any Debt instruments, which continue beyond a ninety (90) day period.

14. **Regional Improvements.** The District shall be authorized to coordinate with the City for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Regional Improvements. The District shall also be authorized to contribute a portion of the capital costs and/or operation and maintenance costs of the Regional Improvements, in amounts as will be agreed upon and set forth in an intergovernmental agreement to be entered into between the District and the City.

15. **Maximum Debt Mill Levy.** The "Maximum Debt Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District for payment of Debt, and shall be determined as follows:

(3) For any portion of the District's aggregate Debt which exceeds fifty percent (50%) of the District's assessed valuation, the Maximum Debt Mill Levy for such portion of Debt shall be fifty (50) mills less the number of mills necessary to pay unlimited mill levy Debt described in Section VII.C.2 of the Service Plan; provided that if, on or after January 1, 2008, 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 are 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, 2008, 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.

(4) For any portion the District's aggregate Debt which is equal to or less than fifty percent (50%) of the District's assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

(5) For purposes of the foregoing, once Debt has been determined to be within Section VII.C.2 of the Service Plan, so that the District is entitled to pledge to its payment an unlimited *ad valorem* mill levy, the District may provide that such Debt shall remain secured by such unlimited mill levy, notwithstanding any subsequent change in the District's Debt to assessed ratio. All Debt issued by the District must be issued in compliance with the requirements of Section 32-1-1101, C.R.S., and all other requirements of State law.

To the extent that the District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

16. Debt Instrument Disclosure Requirement. In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Service Plan for creation of the District. Similar language describing the limitations in respect to the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

17. Security for Debt. The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in the Service Plan. Approval of the Service Plan and this Agreement 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 or this Agreement 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.

18. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Redlands Mesa Metropolitan District
c/o MaryAnn McGeady
McGeady Sisneros, P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203

To the City: City of Grand Junction
c/o City Attorney
250 N. 5th Street
Grand Junction, CO 81501

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

19. 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 and without amendment to the Service Plan.

20. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

21. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

22. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado.

23. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

24. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

25. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and

the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

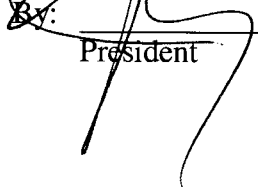
26. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

27. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.


28. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

29. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

REDLANDS MESA
METROPOLITAN DISTRICT

By:  _____
President

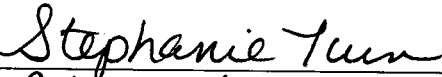
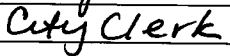
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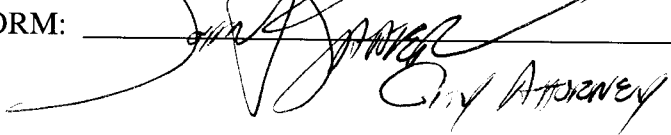
 _____
Secretary

CITY OF GRAND JUNCTION, COLORADO

By:  _____
Mayor

Attest:

By:  _____
Its:  _____
City Clerk

APPROVED AS TO FORM:  _____
City Attorney