

RESOLUTION NO. 77-03

**A RESOLUTION AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF GRAND JUNCTION AND MESA COUNTY REGARDING THE
PERFORMANCE OF CONSTRUCTION USE TAX AUDITS.**

RECITALS:

The City of Grand Junction has been auditing the Sales & Use Tax collectors in the City of Grand Junction since the creation of a full time Internal Auditor position in 1991. The City audits both retail businesses for proper collection and remittance of Sales & Use Tax and construction contractors/developers for the proper payment of Sales Tax or Use Tax on the building material portion projects.

On the other hand Mesa County's Sales Tax is collected and remitted to them by the State of Colorado by State Law. The County's building material Use Tax is not collected by the State and the County has no internal auditor to assist with enforcement.

The City and County staff have concluded that it is in our best interests for the City to conduct a Mesa County Use Tax Audit while performing the City Audits of major construction projects within the City. The County agreed to pay one-half our cost of joint audits.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO, that:

- a. The Intergovernmental Agreement (IGA) attached hereto and which outlines the process whereby the City will perform construction Use Tax audits for Mesa County in compensation with the City's audits is hereby approved.

PASSED AND ADOPTED this 20th day of August, 2003

CITY OF GRAND JUNCTION, COLORADO

/s/ Harry Butler
President of the Council Pro Tem

ATTEST:

/s/ Stephanie Tuin
City Clerk

**Intergovernmental Agreement
Between the City of Grand Junction and Mesa County, Colorado
for Construction Project Auditing**

The City of Grand Junction, acting through its City Council (“City”) and the Board of County Commissioners of Mesa County acting for Mesa County (“County”) hereby enter into this Intergovernmental Agreement for the reasons and purposes set forth below and as authorized by 29-1-201, *et seq.* C.R.S.

A. Introduction, Goals and Purposes.

- [i] Both the City and the County impose sales and use tax on the purchase and use of building materials. Given the significant growth in the construction industry and the number of new housing starts and commercial and industrial development that is occurring in Grand Junction and the urban areas of unincorporated Mesa County, the County has determined that it may benefit from having a program to audit building material use tax compliance.
- [ii] For over a decade the City has had a sales and use tax auditor and audit program. The City has found that the audit program increases awareness among taxpayers of the requirements of the sales and use tax laws. That increased awareness results in equity among the local and out of town businesses and contractors by reducing the number of non-filers and those that under report taxable transactions.
- [iii] The County and the City cooperate in many ways to enhance the efficiency of government. The cooperative arrangement provided by this Agreement is one such example. In accordance with the terms of this agreement the City will act to increase the efficiency of the determination of local use tax due to the County on construction and development projects. The City and the County agree that cooperative auditing can maximize efficiency for them as well as for the contractors, building tradesmen and material suppliers.
- [iv] This Agreement and the actions taken under or arising out of it are intended to implement the City and County’s efforts to establish an ongoing method for the determination of use tax obligations and compliance with local tax laws.
- [v] The City and County expect that the auditor will implement a review of building permits and proactively audit projects on a selective basis and determine the taxes due on the same.

B. The City and County enter into this Agreement to:

- [i] Allocate responsibility for the scheduling and completion of compliance auditing. The City is not providing any collection, enforcement or legal services to the County;
- [ii] Describe how the use tax auditing will be done and will be paid for; and
- [iii] Address necessary contract provisions.

Now therefore, the City and the County agree as follows:

1. The paragraphs labeled “Introduction, Goals and Purposes” numbered i through v, inclusive, are substantive and necessary terms hereof.
2. Reports: The City Auditor will provide monthly reports to the County. . . A report will detail the future use tax audits planned by the City. Another report shall be given to the County which details the results of completed audits. That report shall be given as audits are completed, rather than on a monthly basis.
3. Audit Requests: The County may request specific audits. The requests shall be in writing and on no more than a monthly basis by and through the County Treasurer and addressed to the City Finance Director. The County agrees that the requested audits shall be more than \$150,000 in stated permit value except in circumstances where there is a compelling reason, including, but not limited to a showing of fraud or a pattern of other criminality. Once the request has been received by the City, the City Auditor may perform those audits in conjunction with City audits as scheduled/determined by the City.
4. Industry Audits: The City Finance Director may schedule audits of industries or audits on a project by project basis. Prior to the County being responsible for payment of any industry audit, the County must agree to the industry audit prior to the commencement of the audit.
5. Fees: The parties contemplate two different types of audits: those that are performed within the City limits; and, those performed outside the City limits.
 - a. Within City limits: When specific audits are requested within the City limits, the County shall pay for the services of the City Auditor at one-half of the City’s fully burdened cost (salary of the City Auditor, plus benefits, plus overhead at a rate 5% of the salary and benefits) on a per hour basis. In order for the County to issue payment, the City must provide a detailed statement which itemized the hours worked

- on each project. The current total City cost is \$31.50/hour; the City will notify the County as that cost changes.
- b. Outside the City limits: Audits performed outside the City limits shall be requested in the same manner as set out in paragraph 3 above. However, the audits shall be performed by the City as time allows. The cost for the outside the City limits audits shall be determined at full cost reimbursement.
6. The City Auditor shall be deemed to be an independent contractor for the County; no employment relationship is intended, implied or created with the County.
 7. If the County disputes the cost of any audit, the County shall notify the City in writing. The dispute shall be referred to the City's Director of Finance who shall review the auditor's time records and either equitably adjust the billing or shall resubmit the pay request to the County Treasurer. If the County continues to dispute the pay request then the matter shall be submitted to mediation as a precondition to litigation.
 8. The County agrees that the City will schedule, perform, manage and administer any and all audits in accordance with generally accepted governmental auditing and accounting principles. If deemed necessary or appropriate by the Auditor, the City may obtain any forensic auditing or accounting service or product necessary or required to perform the audit. The cost of the forensic auditing or accounting service or product necessary or required to perform the audit shall be borne by the City. Prior to any obligation on the part of the County, the County must expressly agree in writing. In no event shall the County's obligation exceed its proportional amount of the time that the auditor spending on the County portion of the audit.
 9. **The County shall not expect or require any guarantee of collectibility of any tax found to be due; the City makes no guarantees, warranties or representations that the County will be able to collect any taxes determined to be due,** however, City personnel shall be available for collection actions as required by the County. The City shall reasonably provide documentation, work papers, calculations and attend any hearing or other judicial or quasi-judicial proceeding. Reimbursement for the City's participation in County collection proceedings shall be at the same rate stated above.
 10. In the event that the auditor makes an error any and all direct and indirect consequences thereof shall be borne by the County for the County's portion of the audit and by the City for the City's portion of the audit and the parties agree that they will not look to each other for

indemnification, claim, demand or reimbursement of any direct or indirect costs.

11. Each January while this Agreement (and/or any amendments hereto) is in effect the City will provide an accounting/audit summary.
12. Any amount of money due the City will be paid within 30 days of the completion of any audit when the audit is shown as being complete on the monthly report. If this agreement is terminated or expires payment for services rendered prior to termination or expiration shall be paid in full within 30 days with the exception of any disputed amounts which shall be paid within 30 days of the conclusion of the dispute.
13. The City's auditing and document review and preparation standards shall apply.
14. Either party may terminate this Agreement upon 30 days written notice to the other party, subject to duties, liabilities and obligations pursuant to law and this Agreement. Any such notice to the City shall be to the City Director of Finance and Administrative Services and such notice to County shall be to the County Treasurer.
15. Each party shall hold the other harmless from claims and actions from any third party arising out of or relating to or arising out of or under this agreement.
16. This Agreement is effective on the date that both parties have signed.

MESA COUNTY

CITY OF GRAND JUNCTION

Date: _____

Date: _____