

CITY OF GRAND JUNCTION, COLORADO

RESOLUTION NO. 14-19

**A RESOLUTION AUTHORIZING AN AGREEMENT BETWEEN  
POWDERHORN SKI COMPANY, LLC AND THE CITY OF GRAND JUNCTION  
FOR THE LEASE OF CERTAIN CITY WATER FOR SNOWMAKING**

**RECITALS:**

On February 20, 2019 the City Council considered a proposed agreement by and between the Powderhorn Ski Company, LLC and the City for the lease of certain City water to Powderhorn for snowmaking. The proposed lease supersedes a similar agreement from 2012 that was for a variety of reasons never carried out.

Powderhorn has recently announced that it has renewed interest in and will make significant investment in snowmaking for the Powderhorn resort. The City's water aggregation system on the slopes of Grand Mesa has sufficient capacity to lease up to 140 acre feet of water for Powderhorn's proposed use. City Utility Director Kim, Water Services Manager Ritterbush, City Manager Caton and City Attorney Shaver have negotiated with Powderhorn and have informally come to terms.

The negotiating team recommends approval of the agreement.

**NOW, THEREFORE, BE IT RESOLVED THAT:**

The City, by and through the City Council and the signature of its President, does hereby approve, authorize and ratify the terms, covenants, conditions, duties and obligations to be performed by the City and Powderhorn in accordance with the attached agreement and does direct that the City perform under and according to the terms of the agreement.

DATED this 20<sup>th</sup> day of February 2019.

  
\_\_\_\_\_

City Council President *pro tem*

Attest:



Wanda Winkelmann  
City Clerk



AGREEMENT BETWEEN THE CITY OF GRAND JUNCTION  
AND POWDERHORN SKI COMPANY, LLC

This Agreement is made and entered into by and between the City of Grand Junction, hereinafter referred to as the "City" and Powderhorn Ski Company, LLC, hereinafter referred to as "Powderhorn." Collectively the City and Powderhorn may be referred to as the Parties.

A. PURPOSES:

1. Formalize the collaboration and agreement between the Parties for the use by Powderhorn of a maximum of 140, non-interruptible as that concept is defined herein, acre feet per year of the City's municipal water supply for snowmaking, which may be referred to as the Project.
2. Develop and implement a mechanism for continued communication and consultation between the Parties in the processes and practices of drawing and using the water for the Project for the purposes of and in accordance with this Agreement; and
3. The Parties desire to ensure an appropriate level of continued involvement by each party in Project planning and development and compensation to the City.

B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS:

1. The Parties are committed to working together, not as legal partners or joint venturers but as collaborators, to develop the Project that will serve to draw, transport and apply the water, as established by this Agreement, to beneficial use.
2. The Parties recognize and agree that use/development decisions made by one party affect decisions by the other and that in order to accomplish the Purposes of this Agreement, each party will be presumed and reasonably required to act to benefit the other.
3. The Parties further recognize and agree that communication from one party to the other is key to the success of the Project.

C. POWDERHORN SHALL:

1. Use the water supplied pursuant to this Agreement for snowmaking at the Powderhorn ski area. When the approximate locations of the snowmaking equipment are identified, provide a map thereof to the City.
2. Design and construct a pump station, pipeline and other means of drawing and conveying the water from the Anderson Reservoir No. 2. The approximate location of the pump station and pipeline are shown on Attachment A.
3. Pay the cost of construction, installation, operation and maintenance of the necessary pump station, pipeline, electrical service, and other means of drawing, conveying, consuming and as applicable storing the water. Powderhorn shall purchase



and pay the cost of installation of a meter(s) that meets City specifications; after installation and acceptance of the meter by the City, the meter shall be and become City property.

4. Powderhorn shall design, construct and install, or cause at its own expense the design, construction and installation of those on-site and off-site improvements necessary or required for the Project. The improvements are set forth in paragraph 6 below (the "Improvements"). The Parties stipulate and agree that the Improvements are not a complete or exhaustive list and shall be amended upon completion of final design.

5. The scope of this Project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Powderhorn agrees to pay such costs, in addition to all others for which Powderhorn is responsible hereunder; provided, however; inspection service(s) fees shall be reviewed and approved by Powderhorn prior to engagement of consultants. Consultant service(s) shall not start until agreement has been reached on the costs(s) of the consultants. The City agrees that it will use consultant services only as reasonably necessary.

6. If Powderhorn desires to obtain the snowmaking water provided hereunder, Powderhorn shall commence work on the below described Improvements within 36 months from the execution date of this Agreement ("Commencement Date"). The deadline will be extended should Powderhorn be delayed by the U.S. Forest Service or other state or federal regulatory agencies by 12 months past the date of final regulatory approval.

a. Pump station at Anderson Reservoir No. 2, including the connection and valving at the outlet pipe at the base of the dams.

b. Supply line from Anderson Reservoir No. 2 to the top of chair #1, the Flattop Flyer.

c. Electrical service from the Grand Valley underground power line running through the U.S. Forest Service managed property, in the same trench as the water line, to the Powderhorn Anderson Reservoir pump house.

d. Snowmaking distribution line with hydrants from the top of chair #1 down Bill's Run to a connection on the lower mountain to the existing snowmaking system servicing Lower Bill's Run, Lower Peacemaker and the Easy Rider beginner area.

e. Electrical operating power service along the Bill's Run distribution line including the Easy Rider trails in the beginner area.

7. If Powderhorn commences work on the above described Improvements within 36 months from the Commencement Date, Powderhorn shall complete these Improvements by the end of eighteen months from the Commencement Date; that date is known as the "Completion Date." This time period should account for adverse weather warning of an early winter and still allow enough time the next summer to complete the Project.

8. Reclaim/revegetate the City-provided temporary construction easement/material storage area upon completion of construction. The City, in consultation with Powderhorn, shall prepare the reclamation/ revegetation plan for Powderhorn's use.

9. At all times use good land stewardship practices, including dust mitigation, erosion control and noxious weed control, on City property that is used by Powderhorn.

10. Notify the City by May 30th of each year, in writing to the person and at the address shown herein, of the acre feet of water that it desires to be stored and it intends to purchase for the Project for the subsequent snowmaking season ("Storage Notice"). In order to ensure availability of water for the Project, Powderhorn may at its option request that the City annually hold up to 140 acre feet of water for Powderhorn's use and benefit.

11. Upon the City's receipt of Powderhorn's Storage Notice by May 30th of each year, the City agrees to store for Powderhorn's use in the subsequent snowmaking season, for a fee of \$60.00 per acre foot per year, the amount of water designated by Powderhorn. Stored water, if any, shall be made available for Powderhorn's use for the subsequent snowmaking season as otherwise provided by this Agreement. Powderhorn's failure to notify and/or pay the City the storage fee, shall relieve the City from any obligations to store water for the Project as described in this paragraph.

12. Payments to the City for water stored in accordance with the Storage Notice (as provided in paragraph C-11-13) will be made with the Storage Notice or in any event by May 30th of each year for the amount of water designated by Powderhorn for the snowmaking season to which the Storage Notice pertains. The first payment shall be made in the year the pipeline and pump house are substantially complete and operational.

13. In addition to the storage fee, pay a per acre foot charge for each and every acre foot of water obtained from the Anderson Reservoirs. The charge per acre foot for the initial year (2019) of the contract will be \$168.56. All payments to the City for water used for snowmaking will be made November 1st of each year for the amount of water utilized by Powderhorn. The first year's payment shall be made in the year the pipeline and pump house are substantially complete and operational. Flow meter(s) shall track the water taken from the Anderson Reservoirs to the nearest gallon.

For each subsequent year, the charges to be paid by Powderhorn for the water obtained from the Anderson Reservoirs shall be adjusted each year by 50% of the Denver-Aurora-Lakewood CPI/U.

D. CITY SHALL:

1. Provide a use easement for the term of this Agreement for the pipe and a temporary construction easement/material storage area for construction staging/construction management ("Easement.") City will also provide a lay down area for construction of the pump house and pipeline which area will be returned to the City in a clean and seeded condition.



To the extent possible, subject to U.S. Forest Service approval, Powderhorn will design and construct the Easement with the Powderhorn Plunge Connector mountain bike trail. Powderhorn agrees to, during construction and subsequent maintenance of the Easement and infrastructure therein, minimize environmental impact to the surrounding terrain.

2. The water for the Project shall be first made available by the City by October 15 and end on or before April 15 of each year.

3. Volume and dates of availability of water for the Project are assumed and agreed as follows: a) up to 140 acre feet as build out of the snowmaking system; b) build out is not anticipated for ten years; and c) at completion of the first phase of the snowmaking system on or about November 2019, Powderhorn will require approximately 60 acre feet.

4. Prior to May 30th of each year, the City shall provide an annual reconciliation of the amount of water use paid for (the payment therefor in the previous November) with the actual amount of water consumed during the prior snowmaking season. Such reconciliation shall be made based on the City's flow meter data and will be provided to Powderhorn on or before May 1st of each year. If there is a 1,000 gallon or greater difference between the amount of water consumed by Powderhorn, with consumption determined at meter, and the amount of water paid for by Powderhorn in the previous November, the City will provide a credit for each 1,000 gallon difference against the payment for storage for the subsequent snowmaking season. In the event Powderhorn disputes the City data/reconciliation for any year Powderhorn's remedy shall be prospective in application: Powderhorn may, at its cost, retain a third party testing and verification of the City meter with the results of the testing being provided to the City in the same form as provided to Powderhorn. In the event of a greater than 1,000 gallon discrepancy between the City meter data and the third party verification, City will issue a credit for the difference.

E. BOTH PARTIES SHALL:

1. Cooperate in Project construction decision making especially when the decision(s) has or may have an impact on water quality. That cooperation shall be made and/or given in a manner consistent with the responsibilities and authorities assigned by this Agreement or other applicable law or policy.

2. Work together to achieve maximum benefits from available resources while safeguarding the City's water quantity and quality. Efficiency and effectiveness toward attaining that goal can be made by a reduction in the duplication of effort and working to attain better overall coordination of land and ecosystem management.

3. Make available, upon request, survey, topography and construction drawings and documentation.

4. During the non-snowmaking months, April 15 through October 15, the Parties may by separate agreement provide for the development of a "pumpback" to, if constructed, provide opportunity to pump water from Powderhorn back to the Anderson Reservoirs, for storage for snowmaking purposes. Any such pumpback would be



credited against Powderhorn's non-interruptible reserve. The Parties have not had the opportunity to fully study the pumpback but believe it could benefit them by reducing the amount of water that would need to be reserved for Powderhorn during drought years. The City and Powderhorn agree that the pumpback concept will be studied further and if it is of economic benefit to both entities then this Agreement may be modified to provide a credit against the annual water consumption fee or other mutually agreeable consideration all as determined by separate agreement.

F. IT IS MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES TO:

1. COLORADO OPEN RECORDS ACT (CORA). Any information furnished to the City under or pursuant to this Agreement is subject to disclosure to others under or in accordance with the Open Records Act.
2. NON-EXCLUSIVE USE. This Agreement in no way limits or restricts the City from participating in similar water use projects or activities with other public or private agencies, organizations or persons.
3. COMMENCEMENT/EXPIRATION/TERMINATION. This Agreement takes effect upon the signature of Powderhorn and the City and shall remain in effect for forty (40) years from the date of execution. This Agreement may be extended or amended in writing with assent to the extension or amendment requiring the same approval/formality as was required at the inception of the agreement.

Termination of this Agreement shall occur only for and in the advent of a breach of a material term of this Agreement as the same is defined herein. Each and every term and condition of sections C, D and E (1), (2) and (3) hereof shall be deemed to be a material term. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default. If a default is declared, notice shall be given by the non-defaulting party to the defaulting party as provided in section 5. After a notice of default is given the defaulting party shall have a reasonable period of time to cure the default. The Parties stipulate and agree for a claimed default that does not credibly present an imminent life, health or safety hazard a reasonable cure period shall be not more than 6 months. In the event the default does credibly present an imminent life, health or safety hazard the cure period shall be as agreed upon by the Parties but in any event not more than 72 hours.

In the event of termination Powderhorn shall be allowed to remove its pump, pump house, pipeline and other Improvements and upon removal shall restore the City property to the condition it existed prior to installation.

4. RESPONSIBILITIES OF PARTIES. Powderhorn and the City and their respective officers, employees and agents shall be responsible for the administration of their activities and the utilization of their resources dedicated to the completion of the Project by and with the expenditure of their own funds. Each party shall carry out its separate activities in a coordinated and mutually beneficial manner.

5. PRINCIPAL CONTACTS. The principal contacts for this instrument are:

City of Grand Junction  
City Manager, Greg Caton  
City of Grand Junction  
250 N. 5th Street  
Grand Junction, Colorado 81501  
970-244-1508

Powderhorn  
General Manager, Andy Daly  
Powderhorn Ski Co., LLC  
P.O. Box 250  
Mesa, Colorado 81643  
970-331-8245

These shall be the persons contracted for purposes of any notice provided for in this Agreement.

6. NON-FUND OBLIGATING DOCUMENT. Nothing in this Agreement shall obligate the City to obligate, appropriate or transfer any funds. Specific work projects or activities that involve the transfer or expenditure of funds will require separate budget approval and be contingent upon the appropriation of funds.

7. AUTHORIZED REPRESENTATIVES. By signature below, the Parties certify that the signatories to the document are authorized to act in all matters related to, arising out of or under this Agreement.

8. ASSIGNABILITY. Powderhorn may assign the rights provided in this Agreement to any successor as owner and/or operator of Powderhorn with the understanding that the new owner or operator must abide by all terms and conditions of this Agreement. Powderhorn shall notify the City in writing of any assignment.

THE PARTIES HERETO have executed this instrument this \_\_\_\_ day of February, 2019.

CITY OF GRAND JUNCTION

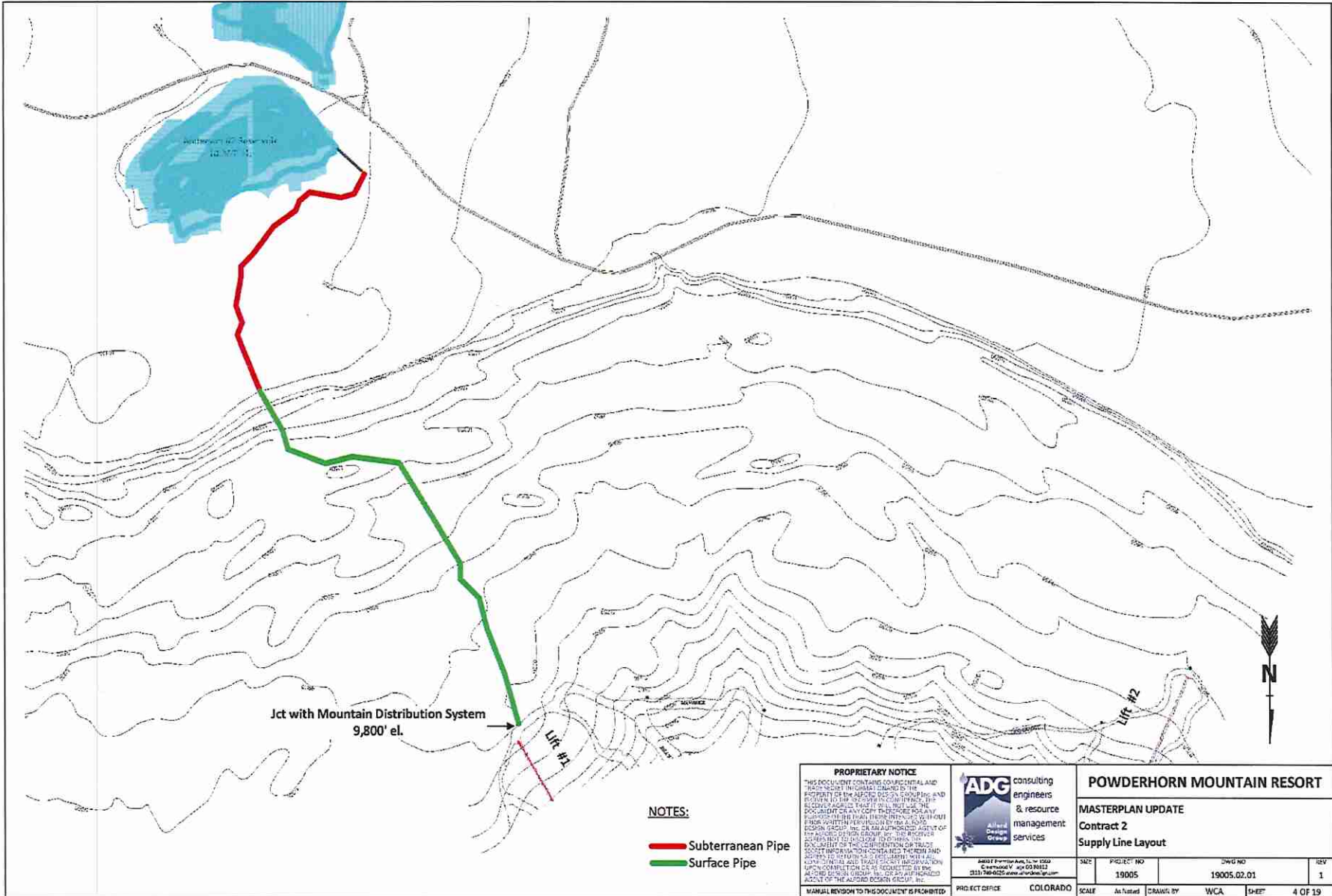
POWDERHORN SKI COMPANY, LLC

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Greg Caton  
City Manager

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Andy Daly  
General Manager



Jct with Mountain Distribution System  
9,800' el.

**NOTES:**

- Subterranean Pipe
- Surface Pipe

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<b>POWDERHORN MOUNTAIN RESORT</b>			
MASTERPLAN UPDATE			
Contract 2			
Supply Line Layout			
SIZE	PROJECT NO	DWG NO	REV
	19005	19005.02.01	1
PROJECT OFFICE	COLORADO	SCALE	As Noted
DRAWN BY	WCA	CHECKED BY	
SHEET		4 OF 19	