

**INTERGOVERNMENTAL AGREEMENT
AMONG TOWN OF FRASER,
WEST MOUNTAIN METROPOLITAN DISTRICT AND
WEST MOUNTAIN METROPOLITAN DISTRICT NOS. 2-5**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2023, by and among the Town of Fraser, a municipal corporation of the State of Colorado (“Town”); and West Mountain Metropolitan District and West Mountain Metropolitan District Nos. 2-5, each a quasi-municipal corporation and political subdivision of the State of Colorado (individually, the “District” and collectively, the “Districts”) (all parties individually, the “Party” and collectively, the “Parties”).

RECITALS

WHEREAS, the Districts were organized for the purpose of, *inter alia*, providing water improvements, sanitation improvements, street improvements, traffic and safety control improvements, street improvements, and park and recreation improvements for the benefit of their residents and taxpayers; and

WHEREAS, the purpose and powers of the Districts are more specifically set forth in the Districts’ Consolidated Service Plan, approved by the Town on April 26, 2023 (the “Service Plan”); and

WHEREAS, the Service Plan contemplates entry into an intergovernmental agreement among the Town and the Districts; and

WHEREAS, the Town and the Districts have determined it to be in the best interests of their respective taxpayers, residents, and property owners to enter into this Agreement.

COVENANTS AND AGREEMENTS

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:

1. Application of Local Laws. The Districts hereby acknowledge that the property within their respective boundaries shall be subject to the generally applicable ordinances, rules and regulations of the Town relating to zoning, subdividing, building, dedication and acceptance of public improvements, and land use.

2. Application of Certain Agreements. The Districts will comply with the approved Planned Development District Plan (including without limitation the June 4, 2003 Annexation Agreement applicable to any service area of the Districts) for the Districts as amended and supplemented from time to time.

3. Issuance of Bonds.

a. The Districts agree that they will provide the Town with a minimum of thirty (30) days advance notice of any issuance of new money bonds or refunding bonds.

b. The Districts shall prepare a Service Plan amendment and financing plan for the Town's prior approval before the issuance of any debt outside the parameters established pursuant to the Service Plan.

c. The maximum mill levies identified in the Service Plan shall not be exceeded without the approval of the Board of Trustees of the Town ("Town Board") and shall be viewed as a material modification of the Districts' Service Plan.

d. The total combined Service Plan debt limit in the Service Plan shall not exceed \$200,000,000 without approval of the Boards of Directors of the Districts and the Town Board's approval of a material modification of the Service Plan.

e. All limitations relating to the Districts' Financing Plan and issuance of debt, contained in the Districts' Service Plan, are incorporated herein by this reference.

4. Certain Items Requiring Town Board Approval. The Districts agree that other than as allowed by the Service Plan, the following actions that may be undertaken by the Districts shall be subject to the prior approval of the Town Board as evidenced by a resolution adopted by the Town Board; provided, however, that the following actions shall not constitute a material modification of the Service Plan.

a. Inclusions. Other than certain property as described in the Service Plan, the inclusion of property within the boundaries of the Districts;

b. Exclusions. Other than certain property as described in the Service Plan, any exclusion of property from the boundaries of the Districts;

c. Extraterritorial Service. The provision of service to a customer located outside of the boundaries of the Districts;

d. Initiation of or Consent to Consolidation. The filing by any of the Districts of a request or resolution with the District Court to consolidate with another district;

e. Consent for an Overlapping District. The provision by any of the Districts of its consent, if required pursuant to Section 32-1-107(3)(b)(IV), C.R.S., for the overlapping of any other special district or metropolitan district.

5. Certain Items Requiring Notice to Town, Departures. As soon as practicable, the Districts shall provide written notice to the Town in the event any of the following occurs:

a. Failure by the Districts to make a scheduled debt service payment when due.

b. Failure for an unreasonable time to commence or diligently pursue completion of a capital facility to be constructed with bond proceeds after the scheduled start date for construction. The Town acknowledges that certain federal regulations allow at least three years for the construction of facilities following the issuance of certain bonds.

c. Failure to perform this Agreement.

d. Failure to conform to the Special District Act as it applies to the Districts.

The occurrence of any of the foregoing actions or events shall constitute a material departure from the Service Plan; provided, however, that the foregoing are only examples and are not an exclusive list of all matters that may constitute material departures from the Service Plan. In the event of any such material departure from the Service Plan, the Town may pursue the remedies provided by law for any such departure, and/or it may require the Districts to submit a proposal for a material modification of the Service Plan to resolve such departure in accordance with the provisions of Section 7 hereof.

6. Annual Report. The Districts shall submit an annual report to the Town within 90 days following the conclusion of the Districts' fiscal year. Such report shall include information as to the following matters that occurred during the year:

a. Narrative summarizing the Districts' efforts toward meeting their goals, objectives, and schedules.

b. Boundary changes made or proposed.

c. Intergovernmental agreements made or proposed.

d. Material changes or proposed changes in the Districts' operations.

e. Any material changes in the financial status of the Districts including revenue projections or operating costs.

f. A summary of any litigation which involves the Districts.

g. A summary of the capital facilities constructed by the Districts during the past year.

h. A summary of residential and commercial development within the Districts during the past year.

i. The Districts' schedule of rates, fees, tolls, charges, and penalties.

j. Certification by each Board of Directors that there have been no actions taken by the respective District that would constitute a material modification of the Service Plan during the past year.

k. Proposed capital facility plans for the year immediately following the year summarized in the annual report.

l. Certified assessed valuation in each District.

m. Annual budget for each District.

n. Annual audited financial statements or audit exemption application of each District.

o. A summary of financial obligations, including total debt authorized and total debt issued.

p. Names, telephone numbers, and terms of members of the Boards of Directors and officers.

q. A listing of any developer repayments.

r. An explanation of any increase or decrease in the debt service mill levy reflective of a change in the method of calculating assessed valuation, as provided in the Service Plan.

7. Dissolution. Upon the determination by resolution of the Town Board that the Districts have accomplished their objectives, in good faith and at the Districts' expense, the Districts shall file petitions in the District Court for dissolution of their respective District at the request of the Town if provision for payment of the financial obligations of the District has been made, with dissolution subject to completion of all required statutory and election procedures. The Town agrees that, in the event that the eligible electors voting at a dissolution election do not approve the dissolution, the Town will not request dissolution for a period of at least two years thereafter. Nothing herein shall preclude the Town from pursuing exclusion or dissolution of one or more of the Districts pursuant to other provisions of Colorado law or of this Agreement.

8. Procedure for Modification of Service Plan. The Districts shall obtain the prior written approval of the Town before making any material modifications to the Service Plan.

a. Material modifications shall include modifications of a basic or essential nature including:

- i. any additions to the types of services initially provided by the Districts;
- ii. a decrease in the level of services;
- iii. a decrease in the financial ability of the Districts to discharge the existing or proposed indebtedness;
- iv. change in the total Service Plan debt limit;
- v. change in maximum mill levy;
- vi. decrease in the existing or projected need for organized service in the area.

The examples above are only examples and are not an exclusive list of all actions which may be identified as a material modification.

b. The Town's approval for modification shall not be required for changes necessary only for the execution of the Service Plan if they contain modifications that have been approved by the Town in the future.

c. Material modifications of the Service Plan of the Districts shall be considered by the Town Board pursuant to Section 32-1-204.5 and 32-1-207, C.R.S. as follows:

- i. Prior to submission of a written proposal to modify the Service Plan, the Districts shall discuss the proposal informally with the Town Manager and Town Attorney.
- ii. The Districts shall set forth, in writing, the proposed modification to the Service Plan (including its purpose and estimated financial impact, if any) in such detail as may be reasonably required by the Town ("Proposed Amendment").
- iii. The Districts shall submit one copy of the Proposed Amendment to the Town Manager, and one copy to the Town Attorney, at least 10 days before a meeting of the Town Board.
- iv. At its next meeting after the filing, the Town Board shall set the date, time, and place for a public hearing on the Proposed Amendment, such public hearing shall occur no later than 30 days after the filing and may be continued by the Town for an additional 30 days.
- v. Unless waived by the Town, the Districts shall provide notice by publication as defined in Section 32-1-103(15), C.R.S. of the date, time, place and purpose of the hearing on the Proposed Amendment.
- vi. The Town Board shall hold a public hearing on the Proposed Amendment in accordance with its regular procedures for public hearings.
- vii. The Town Board shall provide a written decision on the Proposed Amendment within 10 days of the conclusion of the hearing which shall be in the form of an adopted resolution approving,

conditionally approving, or disapproving the Proposed Amendment as needed.

9. Limitation on Requests to Add Additional Powers. The Districts shall not request Town approval of modification of the Service Plan to add a power that is included in the service plan of an overlapping district (such as park and recreation powers) without first obtaining the consent of such overlapping district as required by Section 32-1-107(3)(b)(1V), C.R.S.

10. Collection and Allocation of Fees. Prior to the collection of development fees, the Town and the District or Districts shall enter into intergovernmental agreements concerning the method of collection and allocation of their respective rates, fees, tolls, penalties, and charges, which shall not affect the amount of the fees. Such agreements may include provisions wherein the Town collects such fees prior to the issuance of a permit and collects and retains a reasonable administrative fee to provide such service.

11. Procedure for Dedication of Improvements to the Town. The Districts intend to dedicate all of the improvements that they construct to the Town or such other entity as the Town may direct. It is the intent of the Districts to operate improvements only during the limited period prior to the acceptance of such dedications or in unusual circumstances, such as when the Town or other recipient does not want to accept the improvements. The dedication of improvements by the Districts and acceptance of improvements by the Town shall be completed in accordance with the generally applicable regulations of the Town governing the dedication and acceptance of public improvements as the same may be amended from time to time. The offering of improvements for dedication by the Districts and the acceptance of improvements offered for dedication by the Town shall not be unreasonably withheld or delayed. All conveyance documents shall be in such form as is reasonably acceptable to the Town.

12. Entire Agreement of the Parties. This Agreement constitutes the entire agreement among the Parties and supersedes all prior written or oral agreements, negotiations, or representations and understanding of the Parties with respect to the subject matter contained herein.

13. 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.

14. Enforcement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the laws and statutes of the State of Colorado. It is specifically understood that by executing this Agreement each Party commits itself to perform pursuant to the terms contained herein, and that any breach hereof which results in any recoverable damages shall not cause the termination of any obligations created by this Agreement.

15. Venue. Venue for any action arising out of any dispute hereunder shall be in the Grand County District Court of the State of Colorado.

16. Third Party Beneficiaries. Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and among the named Parties and is not intended to, and shall not be deemed to, confer any rights upon any persons or entities not named as parties.

17. Retained Powers. This Agreement shall not limit in any way the police powers and responsibilities of the Town.

18. Effect of Invalidity. If any portion hereof is held invalid or unenforceable by a court of competent jurisdiction as to any Party or as to all Parties, such portion shall be deemed severable and its invalidity or its unenforceability shall not cause the entire Agreement to be terminated.

19. Assignability. Neither the Town nor the Districts shall assign their rights or delegate their duties hereunder without the prior written consent of the other Parties. Notwithstanding the foregoing, one District may assign or delegate any or all of its duties hereunder to another District without the Town's consent.

20. Successors and Assigns. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

[Signature pages to follow]

WEST MOUNTAIN METROPOLITAN DISTRICT

President

ATTEST:

Secretary

WEST MOUNTAIN METROPOLITAN DISTRICT NO. 2

President

ATTEST:

Secretary

WEST MOUNTAIN METROPOLITAN DISTRICT NO. 3

President

ATTEST:

Secretary

WEST MOUNTAIN METROPOLITAN DISTRICT NO. 4

President

ATTEST:

Secretary

WEST MOUNTAIN METROPOLITAN DISTRICT NO. 5

President

ATTEST:

Secretary

TOWN OF FRASER

Mayor

ATTEST:

Town Clerk