

INTERGOVERNMENTAL AGREEMENT
FOR PROVISION OF COLORADO DISCHARGE PERMIT SYSTEM (“CDPS”)
MUNICIPAL SEPARATE STORM SEWER SYSTEM (“MS4”)
STORMWATER PHASE II PERMIT SERVICES

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into effective the _____ day of _____, 2020 by and between the CITY OF FRUITA, COLORADO, a Colorado municipal corporation (“Fruita”), and MESA COUNTY, COLORADO, a political subdivision of the State of Colorado (the “County”), and provides as follows:

RECITALS:

WHEREAS, Colorado law allows the County to accept responsibility for compliance with State Stormwater Phase II permits and procedures; and

WHEREAS, the County desires to provide consolidated CDPS, MS4, and related stormwater permitting services to entities within its jurisdictional boundaries that are necessary for compliance with CDPS MS4 Stormwater Phase II regulations; and

WHEREAS, all of the areas subject to CDPS MS4 Stormwater Phase II discharge permitting are within the jurisdictional boundaries of the County; and

WHEREAS, Fruita has placed a high priority on functional stormwater management and stormwater quality and is desirous of entering into this Agreement with the County to obtain consolidated CDPS MS4 Stormwater Phase II Discharge Permit Services; and

WHEREAS, the County has submitted a Permit Application to CDPHE for a consolidated, MS4 permit to be held by the County and under which the County will obtain and receive future MS4 permit coverage, and the 5-2-1 Drainage Authority will be terminating the responsibility, administration, and management of the existing MS4 permit held by the City of Grand Junction.

NOW, THEREFORE, in consideration of the recitals, terms, conditions, and promises contained in this Agreement, Fruita and the County agree as follows:

1. Duties of the County. The County shall provide CDPS MS4 Stormwater Phase II permit services on behalf of Fruita upon terms and conditions hereinafter set forth. The County will provide for Fruita the Services stated in the scope of work attached hereto as **Exhibit A** and incorporated herein. On the effective date of the CDPS MS4 Permit issued to County by CDPHE, County shall exercise full responsibility for the administration and management of CDPS MS4 Program compliance for Fruita as an entity covered under the MS4 Permit. The County and Fruita agree they have mutual and individual obligations

under the Agreement to initiate and perform enforcement activities in order to maintain compliance with the CDPS MS4 permit provisions.

2. Duties of Fruita

- A. Fruita agrees to reasonably assist the County with the performance of the County's duties as described in Exhibit A of this Agreement and as listed in this subparagraph A:
 - i. Authorizing the County to issue a Notice of Violation ("NOV") to a Stormwater Construction Permit holder and/or property owner for violation of the Mesa County/Grand Junction Stormwater Management Manual, as may be amended from time to time, and/or Colorado Law, concerning CDPS MS4 permit requirements, pursuant to the County's duties under Section A.iii., A.iv., and A.v. of Exhibit A.
- B. Fruita agrees to reasonably provide current and historic documentation such as previous permit program descriptions and annual reports, current resolutions, current construction and post-construction permit files, and other technical data necessary for the County to maintain an MS4 permit.
- C. Fruita shall inform the County, and provide a duplicate copy of, any permit related correspondence with regulatory agencies which may affect the County's performance of its duties under Section 1 of this Agreement.
- D. Fruita agrees to take no intentional actions or perform any activity that can reasonably be foreseen to jeopardize the compliance status of the County's MS4 permit with CDPHE.
 - i. Fruita agrees that if the County is found to be in violation of the County's CDPS MS4 Permit by CDPHE, and the violation can be attributed to an action on the part of Fruita, then Fruita shall be liable for any associated fee, fine, compliance order or penalty incurred by the County and shall assist the County in addressing, mitigating, or responding to the violation.
 - ii. The County and Fruita acknowledge that the City of Grand Junction retains liability for findings by CDPHE of non-compliance against the CDPS MS4 Permit previously held by the City of Grand Junction (COR-090077), and any associated fee, fine, compliance order, or penalty charged thereto.

3. Term. The County and Fruita agree that their respective duties under this Agreement shall commence on the effective date of the transfer of the 5-2-1 Authority's CDPS MS4 Phase II Stormwater Permit to the County, and continue for a period concurrent with the life of the County's CDPS MS4 Phase II Stormwater Permit, subject to the following:

- A. Beginning on the effective date of the County's CDPS MS4 Permit, the County shall administer all remaining permit activities, including inspections and eventual permit inactivation for all remaining active construction sites originally permitted by the City of Grand Junction.

- B. Either party may initiate a review and negotiated modification of this agreement on a yearly basis, beginning no sooner than October 1st of each calendar year, to take effect January 1st of the subsequent year. Amendments or modifications of this Agreement shall require written agreement executed by the parties hereto.
 - C. Notwithstanding any provision herein contained, either party may terminate the Agreement without cause upon written notification of intent to terminate to the remaining party One Hundred Twenty (120) calendar days in advance of such termination date. Upon receipt of a notice of intent to terminate, both parties are individually responsible for informing the State of Colorado of the future change in permit coverage. Upon termination or expiration of this Agreement, The County shall immediately cease service work, and deliver to Fruita all documents, keys, papers, calculations, notes, reports, drawings, or other technical papers prepared by or provided to the County under the terms of this Agreement.
 - D. The expenditure of public funds by either party hereto shall be subject to the requirement of an annual appropriation.
4. Fee for Service. For the services provided by the County pursuant to this Agreement, Fruita shall pay an annual fee of \$39,000. The fee may be adjusted from time to time by written agreement of the parties. The annual rate is contemplated for the agreement being in full effect a full calendar year, payable when the agreement is put into effect, or within 30 days thereafter. If the agreement is not in effect for a full calendar year, the fee will be prorated to reflect the time that the agreement was in effect. If the contracting party decides to not continue with services, they will not be entitled to any return of funds. The IGA is for the operations budget, and any remaining fund balance from Fruita's share of the 5-2-1 Drainage Authority fund balance will be transferred to Mesa County for start up cost.
5. Relationship between Parties. The County is contracted only for the purpose and to the extent set forth in this Agreement, and its relationship to Fruita shall be that of an independent contractor.
6. Assumption of Risk and Governmental Immunity. The parties to this Agreement agree that each party shall bear responsibility for its own negligence and neither shall be responsible for indemnifying the other pertaining to the subject matter of this Agreement. Nothing herein shall be construed or interpreted as a waiver of any provision of the Colorado Governmental Immunity Act ("CGIA") as it now exists, or as it may be hereafter amended, as pertains to limits on liability by governmental entities for claims or injuries to persons or property. Liability for damages for activities conducted by either party via this Agreement shall be controlled and limited in accordance with the CGIA notwithstanding any contrary provision of this Agreement.

7. Assignment. Neither party shall assign such party's rights or interest under this Agreement without the prior written consent of the other.
8. Entire Agreement. This Agreement shall constitute the entire agreement between Fruita and the County. Any prior understanding or representation of any kind preceding the effective date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
9. Amendment. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party.
10. Non-Waiver. The failure of either party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
11. Venue. This Agreement is formed in accordance with laws of the State of Colorado and venue for any action hereunder shall be in the State District Court in Mesa County, Colorado.
12. Standard of Care. The County shall fully and faithfully perform the work required under this Agreement in accordance with the appropriate standards of care, skill, training, diligence, and judgment provided by contractors who perform work of a similar nature to the work described in this Agreement.
13. Dispute Resolution. Disputes arising under, out of, or related to this Agreement or the work which is the subject of this Agreement shall be first addressed by informal means by and among technical staff and management of the parties to the Agreement. If informal means are unsuccessful, disputes shall be mediated using an independent third party. If both informal means and mediation are unsuccessful, the parties expressly reserve the right to arbitrate or file a cause of action pursuant to the Colorado Rules of Civil Procedure under C.R.S. §13-22-201, *et seq.*, or pursue any other remedy available pursuant to Colorado Law. The parties hereto agree that attempts at informal resolution through mediation shall be a precondition to other action being taken.
14. Cooperation with Fruita. In providing services in regards to the subject matter of this agreement, the technical staff of the County shall work cooperatively and in good faith with Fruita.
15. Agreement Provisions Severable. If any of the provisions of this Agreement are deemed to be invalid or unenforceable, such provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the

remainder of this Agreement. If any provisions are deemed invalid because of its scope, this provision shall be deemed valid to the extent of the scope permitted by law.

{SIGNATURES ON FOLLOWING PAGE}

AGREED TO EFFECTIVE THE DATE FIRST WRITTEN ABOVE.

MESA COUNTY

By _____
Scott McInnis, Chair of Board of County Commissioners

ATTEST:

Tina Peters, Clerk and Recorder

CITY OF FRUITA

By _____
Mike Bennett, City Manager

STATE OF COLORADO)
)SS
COUNTY OF MESA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Mike Bennett.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

EXHIBIT A
SCOPE OF WORK

- A. Beginning on the effective date of the transfer of the 5-2-1 Drainage Authority's CDPS MS4 Phase II Stormwater Management Permit, subject to the specific terms of this Agreement, the County shall budget for, administer, coordinate, and perform all the following program elements shown as Minimum Control Measures identified below.
- i. All Public Education and Outreach activities described in the CDPS MS4 Phase II Stormwater Management Permit, as assisted by Fruita.
 - ii. All Public Participation and Involvement activities described in the CDPS MS4 Phase II Stormwater Management Permit as approved by CDPHE.
 - iii. Construction program activities as described in the CDPS MS4 Phase II Stormwater Management Permit, specifically including review and approval of Construction Site Stormwater Management Plans (CSWMPs), issuance of Construction Stormwater Permits, and associated construction related inspection and auditing activities, as assisted by Fruita.
 - iv. Fruita will identify the County as an external review agency for Fruita's project which are subject to the County's Construction Stormwater Management Plan review and Stormwater Construction Permit activities.
 - v. The County will require capital projects disturbing equal to or greater than 1 acre within the County's MS4 Permit jurisdiction to be subject to the County's Construction Stormwater Management Plan review and Stormwater Construction Permit provisions, as assisted by Fruita.
 - vi. Post-Construction program activities as described in the CDPS MS4 Phase II Stormwater Management Permit, including but not limited to: review and approval of Post Construction Stormwater Control Measure Requirements contained within Final Drainage Reports or other applicable documents; associated post-construction inspection and auditing activities, as assisted by Fruita.
 - vii. The County shall work directly to advise developers and/or property owners of sites that require Stormwater Construction Permits and Post-Construction Stormwater Control Measures to maintain sites in compliance with stormwater quality requirements contained within the CDPS MS4 Stormwater Phase II discharge permit, without the involvement of Fruita. If continued non-compliance or blatant disregard of stormwater requirements is documented by the County, or work is being done without appropriate approvals and permits and enforcement actions are necessary, then it shall be the County's responsibility to initiate enforcement actions pursuant to the authority granted to the County's staff as described under Section 2, Paragraph A of the Agreement. Upon initiation of enforcement activities, the County shall provide documentation, field support, testimony, or other support as needed, for legal actions initiated by the County.

- B. To the extent allowed by law, the County shall budget for, administer, coordinate, and perform the following tasks associated with program elements shown as Minimum Control Measures (“MCM”s) within Mesa County’s CDPS MS4 Phase II Stormwater Management Program Description.
- i. Illicit Discharge Detection and Elimination (“IDDE”) activities specifically identified below and described in the County’s Phase II Program Description.
 - a. Operation of a stormwater hotline.
 - b. Coordination and performance of storm drain system mapping efforts. Provide accurate records, files, mapping, mailing list and other documents and information necessary to establish the jurisdictional boundaries, type and ownership of properties within the jurisdictional boundaries and physical facilities of Fruita for which the County will be providing services, and shall reasonably provide any updates or changes to this information as necessary, as assisted by Fruita.
 - c. Continuation of pollution awareness efforts, such as the billboard campaign, and distributing items such as brochures pencils, magnets, and stickers with the Hotline phone number.
 - d. The County will provide Fruita technical staff assistance, for enforcement activities associated with issuing NOV’s for Stormwater Construction violations as outlined in Section 2A.i.
 - e. Coordinate training activities for field staff and audits of Fruita facilities, as assisted by Fruita.
 - f. Maintain an effective IDDE Program for facilities owned and operated by Fruita and compliance with CDPHE regulations and the County’s CDPS MS4 Program Description, as assisted by Fruita.
 - g. Maintaining an effective Pollution Prevention and Good Housekeeping Practices for Municipal Operations Program for facilities owned and operated by Fruita, compliant with CDPHE regulations and the County’s CDPS MS4 Program Description, as assisted by Fruita.
 - ii. The County shall audit Fruita’s IDDE program on an annual basis to ensure Fruita is maintaining an effective program in compliance with the County’s CDPS MS4 Permit Program Description.
 - iii. Pollution Prevention and Good Housekeeping for Municipal Operations activities specifically identified below and described in the County’s Phase II Program Description.
 - a. Coordinate training activities for Fruita’s staff to ensure compliance with the County’s Program Description, as assisted by Fruita.

- b. The County shall audit Fruita's Pollution Prevention and Good Housekeeping for Municipal Operations program on an annual basis to ensure Fruita's is maintaining an effective program in compliance with the County's CDPS Permit and Program Description.
- C. The County shall inform Fruita of any permit related correspondence with regulatory agencies which may affect Fruita's operations or Fruita's performance of its duties pursuant to this Agreement, and provide Fruita a duplicate copy.
- D. The County shall diligently maintain the CDPS MS4 Phase II Stormwater Permit consistent with State of Colorado regulations and approval criteria to ensure continued coverage of Fruita as an entity covered under said Permit. The County shall coordinate with CDPHE on the type and extent of any submittals required, accumulate documents, and/or prepare or coordinate creation of new documents as required for the submittals.
 - i. The County shall administer, maintain, prepare annual reports for, and renew the Phase II permit.
 - ii. The County may pursue CDPHE approval and/or designation as a qualified local program for the construction permitting program for implementation within the Permit Area.
 - iii. Nothing in this section is intended to force the County to continue to hold a CPDS MS4 Stormwater Phase II Permit on behalf of Fruita in violation of CDPHE approval criteria or in violation of applicable law. It is understood that CDPHE retains the right to rescind the County's ability to hold the CPDS MS4 permit on behalf of Fruita if future conditions so warrant.
- E. The County shall maintain a Technical Advisory Committee ("TAC"), chaired by the County's Stormwater Manager, and comprised of a staff representative from each of the parties with which the County has agreed to provide administrative and managerial services related to the CDPS MS4 matters contemplated by this Agreement. Staff representatives to the TAC shall be determined solely by their respective entities and shall be the primary conduit for communicating information to their organization. The general role of the TAC is to provide recommendations and advice to the County's Stormwater Manager on technical, strategic planning, and permit compliance issues, in order to assist the County in performing its duties identified in the respective agreements.
 - i. The County's Stormwater Manager shall hold TAC meetings as necessary as determined by the TAC members.
 - ii. The County's Stormwater Manager is responsible for ensuring the County's Engineering Division Director is kept informed of issues being discussed by the TAC, transmitting recommendations and advice from the

- TAC to the Engineering Division Director, and for transmitting information from the Engineering Division Director to the TAC.
- iii. The County's Stormwater Manager shall consult with TAC members and seek recommendations prior to making decisions or implementing activities directly associated with the CDPS MS4 permit compliance commitments of the contracting parties.

END OF EXHIBIT A