

**INTERGOVERNMENTAL AGREEMENT REGARDING USE OF
SPECIAL IMPROVEMENT DISTRICTS BETWEEN**

**THE TOWN OF JOHNSTOWN, COLORADO
AND
GRANARY METROPOLITAN DISTRICT NOS. 1 AND 3-9**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING USE OF SPECIAL IMPROVEMENT DISTRICTS (“Agreement”) is made and entered into as of this 7th day of October, 2024, by and between the TOWN OF JOHNSTOWN, COLORADO, a home-rule municipal corporation of the State of Colorado (“Town”), and GRANARY METROPOLITAN DISTRICT NOS. 1 and 3-9, quasi-municipal corporations and political subdivisions of the State of Colorado (each a “**District**”, collectively the “**Districts**”). The Town and the Districts are collectively referred to as the “**Parties**.”

RECITALS

WHEREAS, the Districts were organized to provide those services and to exercise those powers as are more specifically set forth in the Districts’ Consolidated Service Plan, as approved by the Town on September 20, 2021, and as may be amended upon approval by the Town in the future (“**Service Plan**”); and

WHEREAS, the Districts were organized pursuant to Orders and Decrees of the District Court for Weld County dated January 6, 2022, and recorded in the Weld County Real Property Records on January 11, 2022; and

WHEREAS, Section 32-1-1101.7, C.R.S. of the Special District Act provides that “A special district may establish a special improvement district within the boundaries of the special district to finance all or part of the costs of any improvements ... that the special district is authorized to finance if the power to levy assessments is authorized in the special district’s service plan or statement of purposes or approved in writing by the county or municipality that approved the special district’s service plan;” and

WHEREAS, Section V.A.27 of the Service Plan provides that Districts “shall not be entitled to create a special improvement district pursuant to Section 32-1-1101.7, C.R.S., unless otherwise provided pursuant to an intergovernmental agreement with the Town” and the Service Plan is silent on levying assessments, other than through Development Fees; and

WHEREAS, the Districts desire authorization to create one or more special improvement districts (SIDs), to issue corresponding special assessment bonds as a bridge financing mechanism, and to levy special assessments in connection therewith that shall be payable by the developer or builder only, and shall not be the responsibility of any future residents or residential or commercial owners after vertical development (defined as an “End Users” under the Service Plan) under *any* circumstances; and

WHEREAS, the Service Plan’s definition of Debt is generally intended to capture obligations that are paid by Development Fees or property taxes generated from owners; and

WHEREAS, the Parties acknowledge that the Service Plan defines “Bond, Bonds or Debt” as “bonds, notes, contracts, reimbursement agreements or other multiple fiscal year financial obligations issued by the Districts or other *obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy and/or impose and collect Development Fees*” (emphasis added), and the Parties agree that such definition does not include special assessment bonds issued by a SID; 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 Intergovernmental Agreement (“Agreement”) to facilitate cost effective bridge financing of Public Improvements by authorizing the creation of one or more special improvement Districts and the corresponding issuance of special assessment bonds by the Districts, but within reasonable limiting guardrails to protect the End Users within the Districts.

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. Authorization of SIDs. Each District may form one SID within the boundaries of that District, but no SID may be formed or utilized in a manner that is inconsistent with this Agreement or applicable Colorado law.
2. Authorization to issue Special Assessments. The Parties agree that each District may assess special assessments, defined as a charge levied by the Districts against eligible real property within a SID specially benefited by Public Improvements for which the Districts has made or will make reimbursement or a direct payment, which charge is proportional to the benefit received from the new Public Improvements, and does not exceed the estimated amount of special benefits received or the full cost of completing the Public Improvements, provided that the requirements contained herein are met, including without limitation Section 4.
3. Limitation on Use of Funding. No costs may be funded by any District through special assessments or SID financing other than those costs that are expressly authorized for funding by the Districts pursuant to the terms of the Service Plan, except that the Districts shall be authorized to finance a swimming pool / recreation center (“Pool”) with the SID financing. Revenue from special assessments or Special Assessment Bonds may only be used to pay for the costs of designing, constructing or acquiring Public Improvements or the Pool or paying for Special Assessment Bonds (defined below), including costs of issuance thereof.
4. Limitation on Sources of Payment. No special assessment levied within a SID may be structured as an obligation of an End User. Additionally, any and all special assessments shall be payable by a developer or homebuilder only, and any such assessments shall be paid prior to the issuance of a Certificate of Occupancy for the subject property within said SID.

5. Special Assessment Obligations of the SID. The Parties agree that prior to sale of any property in a District to an End User, such Districts may issue debt payable from special assessment revenues collected from properties within the boundaries of a SID (“Special Assessment Bonds”), as set forth below. The Parties agree that the Service Plan definition of “Bond, Bonds or Debt” will not include Special Assessment Bonds issued by the Districts that are secured by assessments collected by the Districts within the SIDs because such Special Assessment Bonds would not include, require, or otherwise result in a promise to “impose an ad valorem property tax mill levy and/or impose and collect Development Fees.”

6. Any Special Assessment Bonds shall meet the following requirements:

A. The Special Assessment Bonds shall not be issued to any developer.

B. If a Special Assessment Bond is privately placed, the Districts shall comply with the requirements for Debt set forth in Section V.A.13 of the Service Plan.

C. The Special Assessment Bonds shall not be issued before the effective date of Town Council approval of a final subdivision plat for Phase 1 of the Project, as referenced in the Service Plan.

D. The Special Assessment Bonds shall not be issued in a principal amount exceeding \$30,000,000.

E. The interest rate on any Special Assessment Bonds is expected to be the market rate at the time the Special Assessment Bond is issued. In the event of a default, the proposed maximum interest rate on any Special Assessment Bond shall not exceed twelve percent (12%). The proposed maximum underwriting discount shall be three percent (3%).

F. At least ten (10) business days prior to the issuance of Special Assessment Bonds, the Districts shall provide the Town with any marketing documents that have been or shall be published, along with the District’s Board resolution approving the Special Assessment Bonds.

G. The financing documents associated with any assessment obligations shall be structured to ensure that all liens associated with the special assessment and Special Assessment Bonds are required to be paid off and removed prior to transfer of any property in the Districts to an End User, and, at the time of issuing Special Assessment Bonds, the District shall record a notice stating that the liens must be paid off and released prior to transfer to an End User.

6. No Duplicate Financing. The Districts shall not issue any Debt to finance Public Improvements financed by a Special Assessment Bond unless the Special Assessment Bond has been discharged as to any financing for such improvement. Likewise, no Special Assessment Bonds may be used to finance improvement costs for which a developer has received reimbursement from another developer. Any reimbursement from another developer for improvements financed by a Special Assessment Bond will be paid to the Districts and used toward discharge of such bond. The Districts shall include the amount of outstanding Special Assessment Bonds in its annual reports.

7. Dissolution. The Districts shall promptly take all actions necessary to dissolve the SIDs after full repayment of the Special Assessment Bonds.

8. 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 served by electronic mail, on the condition that the intended recipient, implicitly or explicitly acknowledges receipt thereof, by hand delivery, by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Districts: Granary Metropolitan Districts No. 1-9
Attn: Robert Rogers
Phone: (303) 858-1800
Fax: (303) 858-1801
Email: rrogers@wbapc.com

To the Town: Attn: Town Manager
Town of Johnstown
450 S. Parish Avenue
Johnstown, CO 80534
Phone: (970) 587-4664
Email: notices@johnstownco.gov

With a copy to
Attn: Town Attorney
Town of Johnstown
450 S. Parish Avenue
Johnstown, CO 80534
Phone: (970) 587-4664
Email: avi@rocklinlaw.com

All notices, demands, requests or other communications shall be effective upon acknowledgement of the electronic mail, personal delivery or one (1) business day after being deposited with United Parcel Service 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.

9. 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, provided that the amendment does not constitute a material modification of the Service Plan. Non-substantive administrative amendments may be approved in writing by the Town Manager, with approval of the Town Attorney, on behalf of the Town.

10. 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. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

11. Default/Remedies. Upon the occurrence of any event of breach or default by either Party, the non-defaulting party shall provide written notice to the other Party. The defaulting Party shall immediately proceed to cure or remedy such breach or default, and in any event, such breach or default shall be cured within fifteen (15) days after receipt of the notice. Following the cure period in the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available by 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 by the Town or in a proceeding commenced against the Town with respect to this Agreement, the Town, if the prevailing party in such proceeding, shall be entitled to obtain an award of its reasonable attorneys' fees.

12. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado and venue shall be in the County of Weld.

13. 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.

14. Integration. The Intergovernmental Agreement between the Parties dated January 12, 2022 ("Original IGA"), shall continue in full force and effect, without amendment, except that, in the event of express conflict between two agreements, this Agreement shall control. This Agreement and the Original IGA constitute 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.

15. 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 Districts and the Town 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 Districts and the Town shall be for the sole and exclusive benefit of the Districts and the Town.

16. 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.

17. 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.

18. No Liability of Town. The Town has no obligation whatsoever to construct any improvements that the Districts are required to construct, or pay any debt or liability of the Districts, including any debt issued by the Districts or by a SID.

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

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

[Remainder of Page Intentionally Left Blank. Signature page follows]

**GRANARY METROPOLITAN DISTRICT NO.
1, a quasi-municipal corporation and political
subdivision of the State of Colorado**

By: _____
Officer of the Districts

ATTEST:

By: _____

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

General Counsel to the Districts

**GRANARY METROPOLITAN DISTRICT NO.
3, a quasi-municipal corporation and political
subdivision of the State of Colorado**

By: _____
Officer of the District

ATTEST:

By: _____

**GRANARY METROPOLITAN DISTRICT NO.
4**, a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Officer of the District

ATTEST:

By: _____

**GRANARY METROPOLITAN DISTRICT NO.
5**, a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Officer of the District

ATTEST:

By: _____

**GRANARY METROPOLITAN DISTRICT NO.
6**, a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Officer of the District

ATTEST:

By: _____

**GRANARY METROPOLITAN DISTRICT NO .
7, a quasi-municipal corporation and political
subdivision of the State of Colorado**

By: _____
Officer of the Districts

ATTEST:

By: _____

**GRANARY METROPOLITAN DISTRICT NO.
8, a quasi-municipal corporation and political
subdivision of the State of Colorado**

By: _____
Officer of the District

ATTEST:

By: _____

**GRANARY METROPOLITAN DISTRICT NO.
9, a quasi-municipal corporation and political
subdivision of the State of Colorado**

By: _____
Officer of the District

ATTEST:

By: _____

TOWN OF JOHNSTOWN, COLORADO

By: _____
Michael P. Duncan, Mayor

Attest:

By: Hannah Hill
Its: Town Clerk

APPROVED AS TO FORM: _____
Law Office of Avi S. Rocklin, LLC