

HYBRID RATE FEE AGREEMENT

[Executed in Duplicate]

THIS AGREEMENT, effective this 3RD day of ~~July~~ ^{AUGUST}, 2022, is made by and between the law firm of **BURG SIMPSON ELDREDGE HERSH & JARDINE, P.C.**, 40 Inverness Drive East, Englewood, Colorado 80112 ("Attorneys"), and Granby Ranch Metropolitan District (referred to as "Client"). At the request of Client, Attorneys have agreed to represent Client in connection with **representing clients in currently active litigation against Headwaters Metropolitan District; Gray Jay Ventures, LLC; Granby Prentice, LLC; GR Terra, LLC** on the following terms and conditions with respect to attorneys' fees and out-of-pocket disbursements to be incurred:

1. Attorneys' fees shall be calculated at the rate of Five Hundred Fifty dollars per hour (\$550.00) for the time of Brian Matise or any other Shareholder-level attorney, at a rate of Four Hundred dollars (\$400.00) per hour for the time of any senior associate in the law firm; at the rate of Three Hundred dollars (\$300.00) per hour for the time of any junior associate in the law firm; and One Hundred Fifty dollars (\$150.00) per hour for the time of any paralegal, for all time expended on Client's behalf on this matter including, but not limited to, all telephone calls (with a minimum charge of one-tenth (.1) of an hour for each telephone call), correspondence, office conferences, legal research, court appearances, and travel time. Client shall not be charged for clerical or stenographic time. The hourly rates provided by this paragraph shall be in effect until January 1 of the next year following execution of the agreement. The rates to be charged under this Fee Agreement will be reviewed at that time and each succeeding January 1, and the rates may be increased at such time. Client shall be notified in writing in advance of any such increase.

2. Client will pay our initial retainer fee in the amount of Ten Thousand Dollars (\$10,000.00), which is due on August 15, 2022. Upon receipt, this amount will be placed in a trust account and will be credited toward your monthly invoices. As the initial retainer balance is depleted, we will ask Client for additional retainer amounts to keep your account current. These monies will be applied toward your legal fees and disbursements as they are incurred each month. If there is a credit balance remaining after our final invoice for the representation, that amount will be promptly refunded to Client. If it appears that your case will involve a contested hearing or trial, we may request an additional retainer prior to that hearing for the estimated fees and costs to be incurred in handling it. Should your case require an additional retainer, Client will be expected to make such payment within 10 days of the written request. Failure to deposit the requested additional retainer will result in our filing a motion to withdraw from your case. **Attorney fees will be billed up to a maximum of Two Hundred Thousand Dollars (\$200,000.00), at which point any further attorney fees will be based on a contingent fee basis as set forth in this Agreement.** Client agrees to pay out-of-pocket disbursements as they come due, notwithstanding this limit. At Client's option, Client may enter into a payment plan to pay attorney fees (but not disbursements) at the rate of not more than \$8,333.33 per month. Attorneys understand that such payment plan is subject to annual appropriations and is not intended to create a multiple-fiscal year obligation, provided that Attorneys may withdraw

from representation or providing future services as may be permitted under the applicable rules of professional conduct if payment is not made in a timely manner.

3. There shall be no minimum attorneys' fee. The total attorneys' fees in the case will depend upon the total time ultimately required to be expended on the matter. Because of the nature of most legal matters, usually it is extremely difficult to estimate at the beginning of the case what the total amount of attorneys' fees in the case will be. Any estimate of attorneys' fees given to Client by Attorneys shall be subject to revision as the case progresses.

4. In addition to attorneys' fees, Client shall be responsible for reimbursing Attorneys on a monthly basis, as incurred, for all out-of-pocket disbursements, including, but not limited to, court costs, service of process fees, long distance telephone calls, photocopying, document scanning, expert witness fees, investigator's fees, hearing transcripts, deposition costs, and mileage and travel expenses, which Attorneys are reasonably required to incur on Client's behalf. At this time, expenses and disbursements are presently estimated to be approximately Twenty-Five Thousand dollars (\$25,000.00). Authority is hereby given to the Attorneys to incur expenses and make disbursements up to a maximum of Twenty-Five Thousand Dollars (\$25,000.00), which limitation will not be exceeded without Client's authority. Disbursements must be paid within ten (10) days of billing

5. Attorneys will send Client an itemized statement monthly, or at other intervals, showing the nature of the work performed on Client's case during the preceding period and the attorneys' fees and costs accrued. In the event any statement shows a balance due in excess of payments already made by Client to Attorneys, the balance is due and payable within ten (10) days. Any balance which remains unpaid for more than thirty (30) days shall accrue a delinquency charge at the rate of one and one-half percent (1-1/2%) per month (18% per annum) until paid, beginning with the date the balance becomes thirty (30) days past due. No interest will apply to any balances that are timely paid pursuant to the terms of any payment plans set forth in paragraphs 2 or 7 of this Agreement.

6. In the event that the Client is successful in the claims stated in paragraph 1 above, the fee agreement will be converted to a contingency fee agreement. Attorneys will be paid as follows: 1) If any recovery is obtained within 6 months of the date of this Agreement, 20 percent of the gross recovery had by said litigation or settlement; 2) If any recovery is obtained more than 6 months after the date of this Agreement but prior to trial, 25 percent of the gross recovery had by said litigation or settlement; 3) If any recovery is obtained after trial commences, 30 percent of the gross recovery had by said litigation or settlement; 4) If any recovery is obtained after a notice of appeal is filed by either side, 40 percent of the gross recovery had by said litigation or settlement. It is understood that the "gross recovery" will be the sum of all damages, interest, costs and expenses awarded, plus awarded attorneys' fees, if any. We reserve the right to co-counsel with other law firms in your case, which will not increase the amount of the contingency fee owed. Co-counsel will be paid pursuant to a separate agreement between Burg Simpson and co-counsel out of Burg Simpson's attorney fees as described in this paragraph. Burg Simpson will inform you of this and will seek your approval.

7. In the event that Attorneys obtain a benefit for the client, where the benefit is other than a payment of monies, Attorneys shall be entitled to recover a reasonable fee for services rendered under theories of unjust enrichment, quantum meruit or equitable recovery. If Client does not pay after the benefit is bestowed, Attorneys may ask a court of competent jurisdiction to declare the value of the services in relation to the outcome obtained by Attorneys. For purposes of this Agreement, "benefit" shall mean any non-monetary value or advantage to the client. **In the event that Client recovers a non-monetary benefit, Client's fees will be capped at not more than \$500,000 which may be payable at the rate of \$100,000 per year over a 5-year period. Attorneys understand that such payment plan is subject to annual appropriations and is not intended to create a multiple-fiscal year obligation, provided that Attorneys may withdraw from representation or providing future services as may be permitted under the applicable rules of professional conduct if payment is not made in a timely manner and to the extent allowed by law, Attorneys may claim a lien on any recovery obtained whether monetary or non-monetary.**

8. In the event that Client discharges Attorneys without cause before the claim, controversy or other matter is resolved or in the event that Attorneys discharge Client with cause before the claim, controversy or other matter is resolved, then Client agrees to pay Attorneys their reasonable fee, calculated by multiplying Attorneys' usual and customary hourly rates by the hours reasonably spent by Attorneys on the Client's claim, controversy or matter. If Client settles the claim, controversy or other matter after discharge, under the circumstances discussed above, then Attorneys' fee presumptively shall be no less than 75% of the contingency fee Attorneys would have received if the discharge had not occurred. This percentage of the contingency fee may be adjusted to reflect the pro rata value of Attorneys' services in obtaining the recovery if Client provides proof that it retained other attorneys or law firms after Attorneys' discharge who contributed more than 25% of the services required to obtain the recovery.

9. If Client's account with Attorneys becomes delinquent and it becomes necessary for Attorneys to refer the account to a collection agency and/or another attorney for collection, or if Attorneys are required to incur additional time of their own to attempt to collect a delinquent account, Client shall also be responsible for all such collection agency's and/or attorneys' fees, plus any additional court costs or other expenses incurred by Attorneys as a result of such collection efforts. Collection agencies and collection attorneys customarily compute their fees based upon a percentage of the amount to be collected; however, in no event shall the collection agency's or attorneys' fees charged to Client regarding such collection efforts exceed a total of fifty percent (50%) of the unpaid balance owing by Client to Attorneys.

10. If Client's account with Attorneys remains unpaid for more than thirty (30) days, Attorneys may also, at their option, cease working on Client's matter until the account is brought current. In such event, Attorneys shall notify Client in writing of their intent to cease working immediately on the matter. If Client's account with Attorneys remains unpaid for more than sixty (60) days, Client authorizes Attorneys to withdraw from any court proceedings then pending on Client's behalf. Client hereby consents to attorneys' withdrawal from representation of them in the event that Client's account with attorney remains unpaid for more than sixty (60) days, and agree to advise the Court that they consent to said withdrawal.

11. Attorneys have advised Client and Client understands that while the court orders and negotiated agreements sometimes provide that one party to the case shall pay all or part of the attorneys' fees and costs of the other party, Attorneys cannot make, nor have they made any representation that any part of Client's fees will, in fact, be paid by some other party. Client understands that he has the primary obligation to pay to Attorneys all of the fees and costs contemplated by this Fee Agreement. Client shall also be obligated to compensate Attorneys in accordance with Paragraph 1 hereof in the event Attorneys are required to incur time in obtaining enforcement of any court order requiring the other party to pay any portion of Client's attorneys' fees.

12. Attorneys' services pursuant to this Fee Agreement may be terminated at any time by either Client or Attorneys upon written notice. Client shall be responsible for all attorneys' fees and costs incurred by Attorneys on behalf of Client until Attorneys receive written notice from Client of termination of Attorneys' services and until the Court grants Attorneys permission to withdraw from representation of Client. In this event, Client agrees to be responsible for the costs of copying the file.

13. This Fee Agreement is made in the State of Colorado. Client agrees to be subject to the personal jurisdiction of the courts of the State of Colorado in the event Attorneys are required to take legal action to enforce this Fee Agreement.

14. Client acknowledges that Attorneys have given Client the opportunity to discuss this Fee Agreement, prior to signing, with another attorney or any other person of Client's choosing.

15. This document may be signed in Counterparts, and facsimile signatures are deemed as valid as originals.

16. Additional provisions: None.

17. Client acknowledges receipt of a signed copy of this Fee Agreement.

**BURG SIMPSON
ELDREDGE HERSH & JARDINE, P.C.**

DATE:

8/3/2022

By:

Brian K. Matise
Brian K. Matise

**GRANBY RANCH METROPOLITAN
DISTRICT**

DATE: AUGUST 3, 2022

By: 
Matthew Girard