GOVERNING DOCUMENT
FOR

BLACK DESERT PUBLIC INFRASTRUCTURE DISTRICT

IN IVINS CITY, WASHINGTON COUNTY, UTAH

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I. INTRODUCTION

A. Purpose and Intent.

The Black Desert Public Infrastructure District (the "District") is an independent unit of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Governing Document, its activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Governing Document. It is intended that the District will finance a part or all of the Public Improvements permitted under the PID Act and the Local District Act for the use and benefit of all anticipated inhabitants and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District will support the construction of infrastructure for the Black Desert Resort that is being developed in the City (the "Project").

The plan for the Project includes the development of approximately 1,000–1,200 resort residences, 150 hotel rooms, significant resort retail and restaurant space, a first-class spa, golf course, 7 miles of hiking trails, and the preservation of a majority of the property in a natural state. The Project will be managed in a cohesive manner as a first-class resort destination, and the District will provide a funding vehicle that will allow the Project to pay for the significant infrastructure that will be required for an undertaking of this magnitude.

B. Need for the District; Public Benefit.

There are currently no other governmental entities, including the City, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.

The Project plan envisions a network of approximately 7 miles of publicly accessible hiking trails through approximately 175 acres of Developer's property. The Project will enhance recreation opportunities for local residents, as well as guests, and will also provide educational opportunities for the study of the lava rock desert environment. In addition, the Project envisions the creation of a desert boardwalk area, which is a pedestrian only walk that will provide a critical sense of place offering food, live entertainment, and shopping opportunities for guests of the resort and citizens of Ivins alike. The Project is anticipated to be a significant driver of the local economy and a substantial contributor of net financial benefits to Ivins City, including through property, sales, transient room, and franchise taxes.

C. Objective of the City Regarding District's Governing Document.

The City's objective in approving the Governing Document for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, relocation and redevelopment of the Public Improvements from the proceeds of Debt to be issued by the District. All Debt is expected to be repaid by taxes imposed and collected for no longer than

the Maximum Property Tax Levy Imposition Term for commercial and residential properties and at a tax mill levy no higher than the Maximum Property Tax Levy for commercial and residential properties, and/or repaid by Assessments. Debt which is issued within these parameters and, as further described in the Financial Plan, will insulate property owners from excessive tax burdens to support the servicing of the Debt and will result in a timely and reasonable discharge of the Debt.

This Governing Document is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with the Project and regional needs. The District is authorized to operate any improvements funded by the District including both the Required Improvements and Additional Improvements set forth in Section V below. All operation and maintenance costs are to be paid through fee based arrangements with the Developer and communities within the Project.

It is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, and if the District has authorized operating functions, to retain only the power necessary to impose and collect Fees to pay for these costs.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from Assessments or from tax revenues collected from a mill levy which shall not exceed the Maximum Property Tax Levy on taxable properties and which shall not exceed the Maximum Property Tax Levy Imposition Term on taxable properties. It is the intent of this Governing Document to assure to the extent possible that no taxable property bear an economic burden that is greater than that associated with the Maximum Property Tax Levy in amount and that no taxable property bear an economic burden that is greater than that associated with the Maximum Property Tax Levy Imposition Term in duration even under bankruptcy or other unusual situations. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

II. DEFINITIONS

In this Governing Document, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Approved Development Plan: means the Ivins Area Concept Plan dated April 24, 2020 that was submitted to the City in connection with the developer's application for a conditional use permit for the Project.

Assessment: means assessments levied in an assessment area created within the District.

Board: means the board of trustees of the District.

Bond, Bonds or Debt: means bonds or other obligations, including loans of any property owner, for the payment of which the District has promised to impose an *ad valorem* property tax rate levy, and/or collect Assessments.

City: means Ivins City, Washington County, Utah.

City Code: means the City Code of Ivins, Washington County, Utah.

City Council: means the City Council of Ivins, Washington County, Utah.

District: means the Black Desert Public Infrastructure District.

District Area: means the property within the Initial District Boundary Map.

End User: means any owner, or tenant of any owner, of any taxable improvement within the District, who is intended to become burdened by the imposition of ad valorem property taxes subject to the Maximum Property Tax Levy. By way of illustration, a resident homeowner, renter, commercial property owner, or commercial tenant is an End User. The business entity that constructs homes or commercial structures is not an End User.

Fees: means any fee imposed by the District for administrative services provided by the District.

Financial Plan: means the Financial Plan described in Section VIII which describes (i) the potential means whereby the Public Improvements may be financed; (ii) how the Debt is expected to be incurred; and (iii) the estimated operating revenue derived from property taxes for the first budget year.

General Obligation Debt: means a Debt that is directly payable from and secured by ad valorem property taxes that are levied by the District and does not include Limited Tax Debt.

Governing Document: means this Governing Document for the District approved by the City Council.

Governing Document Amendment: means an amendment to the Governing Document approved by the City Council in accordance with the City's ordinance and the applicable state law and approved by the Board in accordance with applicable state law.

Infrastructure Plan: means a preliminary plan identifying infrastructure anticipated to be financed and a plan of finance of the anticipated Debt approved by the City set forth in Section V.A.1 below.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit B**, describing the District's initial boundaries.

Limited Tax Debt: means a debt that is directly payable from and secured by ad valorem property taxes that are levied by the District which may not exceed the Maximum Property Tax Levy.

Local District Act: means Title 17B of the Utah Code, as amended from time to time.

Maximum Property Tax Levy: means the maximum tax levy the District is permitted to impose for payment of Debt as set forth in Section VIII.C below. Such levy may only be imposed on the property within the District and may in no way be imposed by the District outside of its boundaries.

Maximum Property Tax Levy Imposition Term: means the maximum term for imposition of a property tax levy for any given series of bonds as set forth in Section VIII.D below.

Municipal Advisor: means a consultant that: (i) advises Utah governmental entities on matters relating to the issuance of securities by Utah governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District.

Project: means the development or property commonly referred to as Black Desert Resort.

PID Act: means Title 17B, Chapter 2a, Part 12 of the Utah Code, as amended from time to time.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped and financed as generally described in the Local District Act, except as specifically limited in Section V below, to serve the future taxpayers and inhabitants of the District Area as determined by the Board.

Regional Improvements: means Public Improvements and facilities that benefit the District Area and which are to be financed pursuant to Section VII below.

State: means the State of Utah.

Taxable Property: means real or personal property within the District Area subject to ad valorem taxes imposed by the District.

Trustee: means a member of the Board.

Utah Code: means the Utah Code Annotated 1953, as amended.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately 278.46 acres of undeveloped land. A legal description of the Initial District Boundaries is attached hereto as **Exhibit A**. A map of the Initial District Boundaries is attached hereto as **Exhibit B**. It is anticipated that the District's boundaries may change from time to time as it undergoes annexations and withdrawals pursuant to Section 17D-4-201, Utah Code, subject to Article V below.

The District is located on the southeast side of the City. The Snow Canyon State Park entrance is a mile north of the District. The District Boundaries include a substantial portion of a lava flow that originated from two cinder cones in Snow Canyon State Park. The Tuacahn Center for the Arts is two miles north of the District. The Entrada development is to the east of the District Boundaries.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The District Area consists of approximately 278.46 acres of undeveloped land. The current assessed valuation of the District Area is $83,362 for purposes of this Governing Document and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. Upon completion the District and Project are expected to attract approximately 800,000 annual patrons.

The Project developer anticipates constructing the Project over a series of eight phases. The first phase of construction is planned to include a 19-hole golf course and a resort center that includes 150 hotel rooms, 302 condominium units, three restaurants, a spa, three pools, a fitness center, and a conference center. Future phases are planned to include approximately 755 additional residential units that are spread out in several villages, including the Corporate Retreat, 48 Units; Culinary Village, 200 Units (the Corporate Village and Culinary Village are expected to be completed at near to the same time as the Resort Center); Family Village, 207 Units; Stay & Play Village, 100 Units, Hideaway Village, 140 Units; and the Active Lifestyle Village, 60 Units. These future phases are anticipated to include 174,000 square feet of retail space. The Project plan includes 175 acres of proposed open space and a 7-mile trail network through lava rock that is publicly accessible.

Approval of this Governing Document by the City does not imply approval of the development of a specific area within the District, nor does it imply approval of the number of residential units or the total site/floor area of commercial or industrial buildings identified in this Governing Document or any of the exhibits attached thereto, unless the same is contained within an Approved Development Plan.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Governing Document Amendment.

The District shall have the power and authority to provide the Public Improvements within and without the boundaries of the District as such power and authority is described in the Local District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Improvements.

(a) **Pre-Requisite Improvements**. The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and

without the boundaries of the District. Notwithstanding the foregoing, prior to or contemporaneous with providing for the planning, design, acquisition, construction, installation, relocation, maintenance, and financing of any other Public Improvements the District must have arranged for the financing of the following improvements ("Pre-Requisite Improvements"), depicted in the Desert Boardwalk/Culinary Village portion of the concept plan attached hereto as Exhibit "A":

(i) Resort Center Parking
(ii) Desert Boardwalk/ Culinary Village Pedestrian Bridge
(iii) Desert Boardwalk/Culinary Village North Parking Structure
(iv) Desert Boardwalk/Culinary Village South Parking Structure

Projected cost of Pre-Requisite Improvements.

Road 'A' Pedestrian Bridge	$1,810,000
Desert Boardwalk/Culinary Village South Parking Structure	$18,630,000
Resort Center Parking Structure	$6,760,000
Desert Boardwalk North Parking Structure	$15,170,000
Total Estimated Cost of Pre-Requisite Public Improvements	$42,350,000
Cost Escalation Contingency (20%)	$8,474,000
Total Estimated Cost of Pre-Requisite Public Improvements with Contingency	**$50,844,000**

These estimated costs for the Pre-Requisite Improvements do not include any costs associated with raising the debt and/or equity required to fund such expenses and are estimates only. These estimates are subject to change based on the final construction plans approved by the City and so long as financing sufficient to build such improvements as set forth the plans approved by the City has been arranged, then the District's obligation with respect to the Pre-Requisite Improvements shall be considered satisfied.

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(b) Additional Improvements

The District is also authorized to fund the planning and design of the following additional Public Improvements ("Additional Improvements") contemporaneously with arranging for the financing of the Pre-Requisite Improvements, provided that the District may not fund the construction of such Additional Improvements until funding for the construction of Pre-Requisite Improvements has been secured or will be secured at the same time as the funding for the Additional Improvements, and the District shall use reasonable efforts to fund such improvements in the order they are listed belwo:

(i) Roads including curb, gutter, and sidewalk

(ii) Trails/Trail Heads including parking and bathroom facilities
(iii) Convention Center
(iv) Additional Underground Parking
(v) Nature Center
(vi) Irrigation related improvements
~~(i)~~(vii) Improvements related to utilities

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Projected cost of Additional Improvements.

~~**Resort Center**~~	
Road 'C' & 'E'	$2,260~~030~~,000
Trails/Trail Heads ~~Hiking Trails~~	$1,400~~290~~,000
Convention Center	$10,580,000
Additional Underground Parking (500 stalls)	$17,500,000
Nature Center	$3,500,000
~~**Hideaway Village**~~	
~~Road 'E'~~	~~$230,000~~
~~**Parkway Village**~~	
~~Trail System~~	~~$670,000~~
~~Trail Heads~~	~~$440,000~~
Total Projected Additional Improvement Costs	$35,240,000
Cost Escalation Contingency (20%)	$7,048,000
Total Estimated Cost of Additional Public Improvements with Contingency	$42,288,000
Total Estimated Coste of Pre-Requisite And Additional Improvements	$93,132,000

The District shall be permitted to pay for Public Improvements specifically identified herein irrespective of any increase or decrease in the actual cost, provided that the District complies with the and other requirements of this Governing Document, including but not limited to the debt limit provided in Section V.A(8) and the maximum property tax mill levy provided in Section VIII.C. If the District desires to pay for the costs associated with improvements not specifically identified herein, then it must first obtain approval from the City to amend this Governing Document to add such to the list of Additional Improvements set forth herein.

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other

applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

(c) Commencement of Construction of Pre-Requisite Improvements

Construction of the fully funded Pre-Requisite Improvements must commence prior to or simultaneously with the construction of the any Additional Improvements that may be funded through the District.

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2. Operations and Maintenance Limitation. The primary purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop and finance the Public Improvements. The District may dedicate the Public Improvements to the City or other appropriate public entity or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The District shall be authorized, but not obligated, to own, operate and maintain Public Improvements not otherwise required to be dedicated to the City or other public entity, including, but not limited to street improvements (including roads, curbs, gutters, culverts, sidewalks, bridges, parking facilities, paving, lighting, grading, landscaping, and other street improvements), traffic and safety controls, retaining walls, park and recreation improvements and facilities, trails, open space, landscaping, drainage improvements (including detention and retention ponds, trickle channels, and other drainage facilities), irrigation system improvements (including wells, pumps, storage facilities, and distribution facilities), and all necessary equipment and appurtenances incident thereto. All parks and trails owned by the District shall be open to the general public and Non-District City residents, subject to the rules and regulations of the District as adopted from time to time. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

3. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

4. Procurement.

(a) A third-party engineer shall review any bids for a construction project that will paid for or reimbursed by the District. This review shall take place at the time of pricing to advise regarding the reasonableness of the specifications and price.

(b) The District shall be subject to the Utah Procurement Code, Title 63G, Chapter 6a. Notwithstanding this requirement, the District may acquire completed or partially completed improvements for fair market value as reasonably determined by a surveyor

or engineer employed or selected by the District, with the approval of the City, which approval shall not be unreasonably withheld.

(c) For any request to reimburse the Project developer, the District will first seek the approval of a surveyor or engineer employed or selected by the District, with the approval of the City, which approval shall not be unreasonably withheld, to ensure the request is within the scope of the District's bond(s), complies with the Governing Document, and that the expense was incurred according to the State of Utah's competitive procurement rules or in accordance with Section 17B-4-203(3), as may be amended from time to time. If an audit performed under Section IX.B(12) concludes that there are material violations of this subsection (c), the District shall not release additional bond funds until the violations are cured.

5. Privately Placed Debt Limitation. Prior to the issuance of any Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

> We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.
>
> We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.]

6. Annexation and Withdrawal. The District shall not include within any of its boundaries any property outside the District Area without the prior written consent of the City.

(b) The City, by resolution, has consented to the withdrawal of any area within the District Boundaries from the District without additional action of the City. Such area may only be withdrawn upon the District obtaining consent of all property owners and registered voters, if any, within the area proposed to be withdrawn and the passage of a resolution of the Board approving such withdrawal.

(c) Any annexation or withdrawal shall be in accordance with the requirements of the PID Act.

(d) Upon any annexation or withdrawal, the District shall provide the City a description of the revised District Boundaries.

(e) Annexation or withdrawal of any area in accordance with V.A.6(a) and (b) shall not constitute an amendment of this Governing Document.

7. Overlap Limitation. The District shall not consent to the organization of any other district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate property tax levy for payment of Debt of such

proposed districts will not at any time exceed the Maximum Property Tax Levy of the District. The District may annex an area that is a part of another public infrastructure district only if the aggregate mill levy for payment of Debt of the overlapping area would not exceed the Maximum Property Tax Levy of the District

8. Initial and Subsequent Debt Limitation. On or before the recording of the notice required under Article XI, the District shall not: (a) issue any Debt; nor (b) impose a property tax levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any Assessments used for the purpose of repayment of Debt as set forth in the bond documents related thereto. No Debt may be issued until the District has obtained consent to such Debt from the property owners and/or registered voters, as applicable, in accordance with the PID Act.

9. . Total Debt Issuance Limitation. The District shall not issue Debt in excess of One Hundred Six Million Dollars ($106,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by the District.

10. Bankruptcy Limitation. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Property Tax Levy, Maximum Property Tax Levy Imposition Term and the Fees have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(5), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Property Tax Levy and the Maximum Property Tax Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

11. Governing Document Amendment Requirement.

(a) This Governing Document has been designed with sufficient flexibility to enable the District to provide required improvements and facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in V.A.1-9 above or in VIII.B-G. shall be deemed to be material modifications to this Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

(b) Subject to the limitations and exceptions contained herein, this Governing Document may be amended by passage of a resolutions of the City and the District approving such amendment.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District. It is estimated by the Developer that the costs of the Public Improvements that may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained, or financed will be as follows:

The estimated cost for total project enhancements does not include any costs associated with raising the debt and/or equity required to fund such expenses. These are estimates only. The District may finance all or a part of these improvements irrespective of any increase or decrease in the actual cost, provided that the District complies with requirements of this Governing Document, including but not limited to the debt limit provided in Section V.A(8) and the maximum property tax mill levy provided in Section VIII.C.

All of the Public Improvements will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the City and/or any other applicable public entity and shall be in accordance with the requirements of the Approved Development Plan. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

VI. THE BOARD OF TRUSTEES

A. Board Composition.

1. The Board shall initially be composed of 3 Trustees who shall be appointed by the City Council pursuant to the PID Act. Trustees 1, 2, and 3 shall represent the District, which seats shall be at large. Trustee terms shall be staggered with initial terms as follows: Trustee 1 shall serve an initial term of 4 years; Trustees 2 and 3 shall serve an initial term of 6 years.

2. Upon the earlier to occur of 8 years from the date of this Governing Document or the date on which there are 300 registered voters whose "principal place of residence," as that term is defined under Utah Code Section 20A-2-105(1)(a), as may be amended, is in the District (the "Board Transition"), the Board shall be composed of 2 additional Trustees who shall be elected at the next election following the Board Transition. The initial terms of such additional Trustees shall ensure that the terms of 3 Trustees are staggered from the terms of 2 Trustees.

3. In accordance with the PID Act, appointed Trustees shall not be required to be residents of the District provided that they meet the requirements of Section 1205(c), Chapter 2a, Title 17B, Utah Code.

B. Transition to Elected Board Seat.

1. Trustees 1, 2, and 3 shall continue to be appointed from commercial and non-residential (whether primary or non-primary residents) property owners (the "Commercial Owners" and such property, the "Commercial Property"). Any Commercial Owner owning at least [33.3%] of the value of the Commercial shall be entitled to appoint 1 Trustee for each 33.3% value. Any Commercial Owners not owning at least 33.3% of the value of the Commercial Property shall vote to appoint any remaining seats, with such vote weighted based on their respective Commercial Property value, provided that such vote need not be conducted at a regularly scheduled election and may instead be made by consents signed by such Commercial Owners; and provided that such appointees must be acceptable to the City Council.

By way of example, in the event Company A, Company B, and Company C owned 70%, 20%, and 10% of the taxable value of the Commercial Property, respectively, Company A would appoint 2 Trustees while Company B and Company C would vote for 1 Trustee, with Company B's vote having twice the weight of the vote of Company C.

2. After the Board Transition, such 2 Trustees shall continue to be elected from the registered voters within the District and Trustees 1, 2, and 3 shall continue to be appointed pursuant to B(1) above.

C. Reelection and Reappointment. Upon the expiration of a Trustee's respective term, any seat which has not transitioned to an elected seat shall be appointed by the City Council pursuant to the PID Act and this Governing Document, and any seat which has transitioned to an elected seat shall be elected pursuant to an election held for such purpose. In the event that no qualified candidate files to be considered for appointment or files a declaration of candidacy for a seat, such seat may be filled in accordance with the Local District Act, the PID Act, and this Governing Document. If a seat has not yet transitioned to an elected seat when a Trustee's term expires, the City Council will appoint a Trustee who is an agent for the same property owner (or successor) for which the outgoing trustee was agent at the time the term expired. If no such person is available, the City shall appoint a new trustee who is an agent for the property owner that owns the most surface property within the District boundaries at the time the term expires.

D. Vacancy. Any vacancy on the Board shall be filled pursuant to the Local District Act and this Governing Document. In the event of a vacancy in an appointed board seat, the City shall appoint a new trustee who is an agent for the same property owner (or successor) for which the outgoing trustee was agent at the time the vacancy occurred. If no such person is available, the City shall appoint a new trustee who is an agent for the property owner that owns the most surface property within the District boundaries at the time of the appointment.

E. Compensation. Only Trustees who are residents of the District may be compensated for services as Trustee. Such compensation shall be in accordance with State Law.

F. Conflicts of Interest. Trustees shall disclose all conflicts of interest. Any Trustee who discloses such conflicts in accordance with 17D-4-202 and 67-16-9, Utah Code, shall be entitled to vote on such matters.

VII. REGIONAL IMPROVEMENTS

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

VIII. FINANCIAL PLAN

A. General.[1]

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Property Tax Levy Imposition Term from revenues derived from the Maximum Property Tax Levy, Assessments, and other legally available revenues. The total Debt that the District shall be permitted to issue shall not exceed One Hundred Six Million Dollars ($106,000,000) and shall be permitted to be issued on a schedule and in such year or years as the District determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. Any portion of bonds issued to refund a prior issuance of debt by the District shall not count against the permitted total Debt. All bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all Taxable Property within the District and Assessments. The District may also rely upon various other revenue sources authorized by law. These will include the power to assess Fees, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time.

B. Maximum Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed eighteen percent (18%). The proposed maximum underwriting discount will be five percent (5%). All Debt issued will comply with all relevant requirements of this Governing Document, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Property Tax Levy.

(c) The maximum property tax levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.01 per dollar of taxable value of taxable property in the District (the "Maximum Property Tax Levy"); provided that such property tax levy shall be subject to adjustment as provided in Section 17D-4-301 (8), Utah Code.

(d) The Maximum Property Tax Levy may be amended only pursuant to a Governing Document Amendment and as provided in Section 17D-4-202, Utah Code.

D. Maximum Property Tax Levy Imposition Term.

Each bond issued by the District shall mature within thirty-one (31) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the first date of imposition of such mill levy with respect to such series of bonds (the "Maximum Property Tax Levy Imposition Term"). Notwithstanding the foregoing, the bonds issued by the PID shall have a term that is the same or shorter than the weighted average expected useful life of the improvements to be constructed from the bond proceeds. Debt Repayment Sources.

The District may impose a property tax levy on taxable property within its boundaries as a primary source of revenue for repayment of debt service. The District may also rely upon Community Reinvestment Area revenue and various other revenue sources authorized by law. At the District's discretion, other revenue sources may include the power to assess Assessments, penalties, or charges, including as provided in Section 17D-4-304, Utah Code, as amended from time to time. Except as described in Section VIII.C(a), the debt service property tax levy in the District shall not exceed the Maximum Property Tax Levy or, the Maximum Property Tax Levy Imposition Term, except for repayment of General Obligation Debt.

The District shall not be permitted to charge an End User the costs of any portion of a Public Improvement for which such End User has already paid or is presently obligated to pay through any combination of property tax levy, Assessment, or impact fee. This provision shall not prohibit the division of costs between property tax levies, Assessments, or impact fees, but is intended to prevent double taxation of End Users for the costs of Public Improvements.

E. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the District shall set forth a statement in substantially the following form:

> By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the resolution of the District authorizing the issuance of this Bond and in the Governing Document for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Governing Document shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, a developer of property within the boundaries of the District.

F. Security for Debt.

The District shall not pledge any revenue or property of the City as security for the indebtedness set forth in this Governing Document. Approval of this Governing Document shall not be construed as a guarantee by the City of payment of any of the District's obligations; nor shall anything in the Governing Document be construed so as to create any responsibility or liability on the part of the City in the event of default by the District in the payment of any such obligation.

G. District's Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations, are anticipated to be One Hundred Thousand Dollars ($100,000), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed. The annual operating budget for each of the first three years after the District creation is estimated to be approximately Fifty Thousand Dollars ($50,000) which is anticipated to be derived from property taxes and other revenues.

H. Bond and Disclosure Counsel; Municipal Advisor.

It is the intent of the City that the District shall use competent and nationally recognized bond and disclosure counsel and Municipal Advisor with respect to District Bonds to ensure proper issuance and compliance with this Governing Document. The District has agreed to utilize the City's counsel, Gilmore & Bell, P.C., as bond and disclosure counsel and Zions Public Finance as Municipal Advisor with respect to District Bonds as permitted by law. The forgoing requirement may be waived by written agreement by the City.

I. Bond Purchasers.

District bonds may not be purchased by parties who have a material conflict of interest related to the ownership of the property within the District.

IX. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the City Manager's Office no later than July 1st of each year, beginning July 1, 2022.

B. Reporting of Significant Events.

The annual report shall include information as to any of the following:

1. Boundary changes made or proposed to the District's boundary as of December 31 of the prior year.

2. List of current interlocal agreements, if changed (to be delivered to the Creating Entity upon request);

3. Names and terms of Board members and officers and progress towards milestones required for transition to elected Board;

4. District office contact information;

5. Rules and regulations of the District regarding bidding, conflict of interest, contracting, and other governance matters, if changed;

6. A summary of any litigation which involves the District Public Improvements as of December 31 of the prior year;

7. Status of the District's construction of the Public Improvements as of December 31 of the prior year and listing all facilities and improvements constructed by the District that have been dedicated to and accepted by the City as of December 31 of the prior year;

8. A table summarizing total debt authorized and total debt issued by the District as well as any presently planned debt issuances;

9. Official statements or similar limited offering documents used in the marketing and sale of current outstanding bonded indebtedness, if not previously provided to the Creating Entity;

10. The assessed valuation of the District for the current year;

11. Current year budget including a description of the Public Improvements to be constructed in such year;

12. Audit of the District's financial statements, for the previous fiscal year, such statements shall be audited if required by statute or Bond documents;

13. Notice of any uncured events of default by the District, which continue beyond a ninety (90) day period, under any Debt instrument; and

14. Any inability of the District to pay its obligations as they come due, in accordance with the terms of such obligations, which continue beyond a ninety (90) day period.

X. DISSOLUTION

Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District shall initiate and complete the dissolution process as provided under Title 17B, Chapter 1, Part 13, Utah Code, as may be amended from time to time. In no event shall a dissolution occur until the District has provided for

the payment or discharge of all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes. Further, in no event shall a dissolution occur until the District has satisfied all contractual obligations.

XI. DISCLOSURE TO PURCHASERS

Within thirty (30) days of the Lieutenant Governor's issuance of a certificate of incorporation for the District, the Board shall record a notice with the recorder of Washington County, Utah.

This notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Property Tax Levy of the District; (e) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion; and (f) a disclosure outlining the impact of any applicable property tax, in substantially the following form:

> Under the maximum property tax rate of the District, a primary residence valued at $500,000 would have an additional annual property tax of $2,750 for the duration of the District's Bonds. A business property valued at $500,000 would have an additional annual property tax of $5,000 for the duration of the District's Bonds

This notice shall be filed with the City.

In addition, the Board shall ensure that the Project developer, homebuilders, commercial lessors, and commercial lessors, as applicable, disclose the foregoing information to initial resident homeowners, renters, commercial property owners, and/or commercial tenants. Such disclosures shall be included on a separate colored page with the closing documents on any sale of real property within the District and in any lease (if the tenant will be paying for property taxes), and shall require a signature from the end user acknowledging the foregoing.

At least annually following the formation of the District, the District shall notify (by mail to the property owner's address that is on file with the Washington County Recorder's Office, email, or posting to the District's website) property owners in the District of the existence of the District and of the next scheduled meeting of the Board of the District. Such meeting shall occur at least 30 days and not more than 60 days following the date of the notice. Such notification shall include names and contact information of the Board of Directors and officers, the address, telephone numbers, and fax numbers (if any), and e-mail address of the District, and shall include reference to the existence of a District file maintained by the City that includes the information provided in accord with Section IX above.

XII. INTERLOCAL AGREEMENT

The form of the Interlocal Agreement, relating to the limitations imposed on the District's activities, is attached hereto as **Exhibit C**. The District shall approve the Interlocal Agreement in the form attached as **Exhibit C** at its first Board meeting after its organization. Failure of the District to execute the Interlocal Agreement as required herein shall constitute a material modification and shall require a Governing Document Amendment. The City Council shall

approve the Interlocal Agreement in the form attached as **Exhibit C** at the public hearing approving the Governing Document.

XIII. CONCLUSION

It is submitted that this Governing Document for the District, establishes that:

1. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

2. The proposal is in substantial compliance with a comprehensive plan adopted pursuant to the City Code.

3. The proposal is in compliance with any duly adopted City, regional or state long-range water quality management plan for the area.

4. The creation of the District is in the best interests of the area proposed to be served.

EXHIBIT A

Legal Descriptions

EXHIBIT B

Initial District Boundary Map

EXHIBIT C

Interlocal Agreement between the District and Ivins, Utah

INTERLOCAL AGREEMENT BETWEEN

Commented [WA(4]: To be updated to match Governing Document once finalized

IVINS CITY, UTAH
AND
BLACK DESERT PUBLIC INFRASTRUCTURE DISTRICT

THIS AGREEMENT is made and entered into as of this ___ day of _____, _____, by and between Ivins City, a Utah municipal corporation ("City"), and BLACK DESERT PUBLIC INFRASTRUCTURE DISTRICT, a political subdivision of the State of Utah (the "District"). The City and the District are collectively referred to as the Parties.

RECITALS

WHEREAS, the District was organized to provide to exercise powers as are more specifically set forth in the District's Governing Document approved by the City on _____ ("Governing Document"); and

WHEREAS, the Governing Document makes reference to the execution of an Interlocal Agreement between the City and the District; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Interlocal Agreement ("Agreement").

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. Operations and Maintenance. The District may dedicate the Public Improvements (as defined in the Governing Document) to the City or other appropriate jurisdiction in a manner consistent with the applicable provisions of the City Code. The District shall be authorized, but not obligated, to own Public Improvements not otherwise required to be dedicated to the City or other public entity, and all necessary equipment and appurtenances incident thereto.

All parks and trails owned by the District shall be open to the general public and Non-District City residents, subject to the rules and regulations of the District as adopted from time to time. Trails which are interconnected with a city or regional trail system shall be open to the public free of charge and on the same basis as residents and owners of taxable property within the District.

2. Construction Standards. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the City and of other governmental entities having proper jurisdiction, as applicable. The District will obtain the City's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

3. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of a Municipal Advisor substantially as follows:

> We are [I am] a Municipal Advisor within the meaning of the District's Governing Document.
>
> We [I] certify that (1) the net effective interest rate to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

4. Inclusion Limitation. The District shall not include within any of their boundaries any property outside the District Area without the prior written consent of the City. The District shall not include within any of its boundaries any property inside the inclusion area boundaries without the prior written consent of the City except upon petition of the surface property owners of 100 percent of such property and/or 100 percent of registered voters within the area to be included, as applicable, as provided in Section 17D-4-201(3), Utah Code.

5. Overlap Limitation. The District shall not consent to the organization of any other public infrastructure district organized under the PID Act within the District Area which will overlap the boundaries of the District unless the aggregate mill levy for payment of Debt of such proposed districts will not at any time exceed the Maximum Property Tax Levy of the District.

6. Initial Debt. On or before the effective date of approval by the City of an Approved Development Plan (as defined in the Governing Document), the District shall not: (a) issue any Debt; nor (b) impose a property tax levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; nor (c) impose and collect any fees used for the purpose of repayment of Debt.

7. Total Debt Issuance. The District shall not issue Debt in excess of Ninety Million Dollars ($90,000,000). This amount excludes any portion of bonds issued to refund a prior issuance of debt by the District.

8. Bankruptcy. All of the limitations contained in this Governing Document, including, but not limited to, those pertaining to the Maximum Property Tax Levy and the Maximum Property Tax Levy Imposition Term have been established under the authority of the City to approve a Governing Document with conditions pursuant to Section 17D-4-201(4), Utah Code. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Governing Document Amendment; and

(b) Are, together with all other requirements of Utah law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11

U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Property Tax Levy and the Maximum Property Tax Levy Imposition Term, shall be deemed a material modification of this Governing Document and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the City as part of a Governing Document Amendment.

9. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file petitions in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

10. Disclosure to Purchasers. Within thirty (30) days of the Lieutenant Governor's issuance of a certificate of incorporation of the District, the Board shall record a notice with the recorder of Washington County, Utah. Such notice shall (a) contain a description of the boundaries of the District, (b) state that a copy of this Governing Document is on file at the office of the City, (c) state that the District may finance and repay infrastructure and other improvements through the levy of a property tax; (d) state the Maximum Property Tax Levy of the District; and (d) if applicable, stating that the debt may convert to general obligation debt and outlining the provisions relating to conversion. Such notice shall further be filed with the City.

11. Governing Document Amendment Requirement. Actions of the District which violate the limitations set forth in V.A.1-9 or VIII.B-G of the Governing Document shall be deemed to be material modifications to the Governing Document and the City shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Annual Report. The District shall be responsible for submitting an annual report to the City Manager's Office no later than July 1st of each year following the year in which the District was created, containing the information set forth in Section VIII of the Governing Document.

13. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provisions of the Regional Improvements.

14. Maximum Property Tax Levy.

(a) The "Maximum Property Tax Levy" shall be the maximum property tax levy the District is permitted to impose upon the taxable property within the District for payment of Limited Tax Debt shall be 0.01 per dollar of taxable value of taxable property in the District; provided that such levy shall be subject to adjustment as provided in Section 17D-4-301(8).

(b) Such Maximum Property Tax Levy may only be amended pursuant to a Governing Document Amendment and as provided in Section 17D-4-202.

15. Maximum Property Tax Levy Imposition Term. Each bond issued by the District shall mature within forty (40) years from the date of issuance of such bond. In addition, no mill levy may be imposed for the repayment of a series of bonds after a period exceeding forty (40) years from the date of issuance of such bond (the "Maximum Property Tax Levy Imposition Term").

16. 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 deemed to have been validly given or served by delivery of same in person to the address or 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 District:	Black Desert Public Infrastructure District Attn: Damon Georgelas, Esq. 160 W. Canyon Crest Rd. Alpine, UT 84004 Phone: (435) 513-0531
To the City:	Ivins City Attn: Mayor 55 N. Main Ivins City, Utah 84738 Phone: (435) 628-0606

All notices, demands, requests or other communications shall be effective upon such 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.

17. 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 Governing Document.

18. 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, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

19. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at 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, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

20. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Utah.

21. 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.

22. Integration. This Agreement constitutes 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.

23. 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 District and the City 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 District and the City shall be for the sole and exclusive benefit of the District and the City.

24. 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.

25. 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.

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

27. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Governing Document.

[SIGNATURE PAGE TO INTERLOCAL AGREEMENT]

BLACK DESERT PUBLIC
INFRASTRUCTURE DISTRICT

By: _____
Chair

Attest:

_____
Clerk

IVINS CITY, UTAH

By: _____
Chris Hart, Mayor

Attest:

By: _____
Its: _____