

_____ Filing No. ____ Fountain, Colorado
SUBDIVISION PUBLIC IMPROVEMENTS AGREEMENT
(Letter of Credit)

THIS AGREEMENT is made and entered into this _____ day of _____, 2005, by and between _____ (hereinafter called "Owner") and the Fountain Sanitation District, a special district founded pursuant to the laws of the State of Colorado (hereinafter called "District").

WITNESSETH:

WHEREAS, the Owner is the titleholder of certain real property located within the District known as _____, Filing No. _____; and

WHEREAS, as a condition of approval of the final plats of said subdivisions and of receiving sanitary sewer service, certain public improvements must be completed, as more fully set forth in the documents attached hereto and incorporated by reference herein; and

WHEREAS, the Owner is willing to provide security or collateral sufficient in the judgment of the District to make reasonable provision for the completion of certain public improvements and warranties on them; and

WHEREAS, the Owner wishes to provide collateral to guarantee performance of this Agreement, including construction and warranty of the above-referenced public improvements, by means of an irrevocable letter of credit.

NOW, THEREFORE, in consideration of the following mutual covenants and conditions, the Owner and District agree as follows:

Section 1 - Public Improvements. As Owner elects to proceed with this Filing No. _____, Owner agrees to construct and install, at his sole expense, all of those public improvements as set forth in the exhibits attached hereto and incorporated by reference herein associated with said Filing No. _____. Owner's obligation to construct improvements arises only when it elects to proceed with each phase by filing with the District the appropriate letter of credit and obtaining the necessary permits. It is understood by the parties that the description of public improvements contained herein are general in nature and that reasonable modifications of the scope, nature, cost and similar aspects of such improvements may be necessary to secure approval of the final design of such improvements.

Before beginning any construction of the public improvements in or along the public right-of-way, the Owner shall submit to the District an application to do such work, together with final engineering construction plans for all such improvements and proof of a satisfactory letter of credit. A permit shall be issued upon approval by the District Engineer of final construction plans, and the Owner shall construct said improvements in conformity with the requirements of the permit.

Section 2 - Additional Requirements. The Owner agrees that all of those certain public improvements to be completed as identified in the exhibits attached hereto shall be constructed in a good and workmanlike manner and in compliance with the following:

- A. All laws and regulations of the United States, State of Colorado, City of Fountain, Fountain Sanitation District, other affected special districts and/or servicing authorities.
- B. Such other designs, drawings, maps, specifications, sketches and other matters submitted to and approved by any of the above-stated governmental entities.

Section 3 - Sewer Improvements. The Owner, its successors, and assigns, shall install and pay for all sewer improvements described in wastewater collection system plans submitted by the Owner and approved by the District. The Owner shall submit construction plans and profiles for the wastewater collection system to the District for approval. It is understood that no application to do work in any public right-of-way or public easement shall be submitted or approved until the wastewater collection system construction plans and profiles have been approved by the District Engineer.

Section 4 - Compliance with Regulations. All work to be performed by the Owner shall be performed in accordance with the exhibits attached hereto and incorporated by reference herein and with the District's rules, regulations, specifications, standards and conditions.

Section 5 - Collateral. To secure and guarantee performance of its obligations as set forth herein, the Owner agrees to provide, prior to beginning construction of any public improvements, security and collateral in the form of an irrevocable letter of credit in the amount of one hundred ten percent (110%) of the cost of all public improvements as set forth in Exhibit A, attached hereto and incorporated by reference herein. Said collateral may be extended for additional periods of time as determined by the District.

The Owner hereby warrants and guarantees that all public improvements hereunder shall be constructed in a workmanlike manner, of materials as specified by the District's engineering requirements, construction specifications and design standards for a period of two (2) years on workmanship and materials from the date of issuance of a Certificate of Acceptance thereof. The Owner shall ensure that the contractor or subcontractor who works on the improvements will also warrant their work to the same extent as Owner. The Owner shall convey title to the improvements and any necessary easements via bill of sale and warranty deed, as appropriate, free and clear of any lien, encumbrance or cloud upon such title, to the District at the time of, and as a condition of, issuance of a Certificate of Acceptance by the District. The District may require that the Owner procure title insurance for such improvements and interests naming the District as a named insured in such amount as the District shall reasonably require.

The District Board may reduce or increase the required amount of the letter of credit whenever, in their reasonable opinion, changed circumstances, with respect to the factors listed herein justify the reduction or increase. If greater amount is reasonably required, the District shall so inform the Owner and shall set a date by which such letter of credit must be provided. If

the additional amount in the form of another letter of credit has not been provided by said date, a cease and desist order may be issued by the District.

Upon issuance of the Certificate of Acceptance, the required letter of credit for the accepted improvements shall be reduced to fifteen percent (15%) of the total cost of the accepted improvements, and after one (1) year, the letter of credit may be reduced to five percent (5%) of the total cost of the accepted improvements upon recommendation from the District Engineer and approval by the District Board. Said remaining letter of credit shall be applied to correct any defects in the workmanship of the improvements constructed and installed of which reasonable notice and opportunity for correction has been given to the Owner. If no defect is discovered and notice thereof given to the Owner within two (2) years, all of said letter of credit shall be released.

If, at the expiration of two (2) years from the date of issuance of the Certificate of Acceptance, the Owner has failed to correct any defect of which notice has been mailed, the District shall retain the collateral for forty-five (45) additional days to allow time for correction of each such defect and for a claim to be made against such collateral in the event that such defect has not been corrected within a reasonable time as determined by the District. At the end of such forty-five (45) day period, the District shall release any letter of credit against which no written claim has been made.

The Owner shall be responsible for renewing or extending any letter of credit that may expire prior to the completion and the acceptance of public improvements or the completion of the applicable warranty periods for said public improvements. In the event the Owner's letter of credit must be extended or renewed under the terms of this Agreement, the Owner shall renew or extend said letter of credit by no later than ten (10) days prior to the date of expiration. If the Owner fails to do so, then the District may draw upon the letter of credit within the ten (10) day period prior to expiration.

Section 6 - Inspection. The District shall provide the necessary inspectors at the Owner's expense to monitor the construction and installation of public improvements under this Agreement. The number of inspections and hours involved shall be reasonable and agreed upon by both parties prior to construction.

Section 7 - Certificate of Acceptance. Upon completion of the requisite public improvements, the Owner shall request, in writing, that the District Engineer perform an inspection of the improvements and issue a Certificate of Acceptance of such improvements. The written request from the Owner shall be accompanied by a letter from a registered professional engineer stating that said improvements are fully completed and installed in accordance with this Agreement, District rules and regulations, current ordinances and exhibits attached hereto.

The District Board and District Engineer shall, within ten (10) days after receipt of the written request, cause the improvements to be inspected. If the District Engineer determines, in his sole discretion, that all improvements are completed without defects and that they comply

with the provisions of any applicable standards, the District Engineer shall issue a Certificate of Acceptance.

If the District Engineer determines that all improvements are not complete, or if they are complete, that they contain defects, the District Engineer shall inform the Owner of the improvements requiring completion or repair, and shall not issue a Certificate of Acceptance until the specified improvements are completed or repaired by Owner at Owner's expense. Failure to issue said Certificate or to notify Owner of the deficiencies within thirty (30) days of inspection shall constitute acceptance of all said improvements by the District.

The Owner shall repair any defect in any improvements which is covered by the warranty; provided, however, that written notice of obvious or reasonably discoverable defects, shall be provided to the Owner by the District Engineer prior to the expiration date of said warranties. If Owner has commenced repairs and is proceeding diligently, Owner shall be provided sufficient time to complete repairs. If Owner has not commenced repairs within thirty (30) days of notice thereof, the District may correct said defect and may draw upon the letter of credit to pay the cost of such repairs, or may employ any other lawful remedy to secure correction and repair of such defect.

All public improvements for the project shall be completed within _____ months from Owner's election to proceed, but in no event later than _____. If no Certificate of Acceptance has been requested prior to such date or said public improvements have not been completed in accordance with the specifications of this Agreement prior to such date, the District may indefinitely suspend the issuance of taps, or may construct, complete or repair any public improvements required under this Agreement and may apply the letter of credit to pay the cost of completion, correction, or repair of such improvements. Any costs incurred by District in completing the improvements which exceed the amount provided in the letter of credit shall be borne by Owner. Upon completion, correction, or repair of such improvements, the District Engineer shall issue a Certificate of Acceptance thereof.

Section 8 - Non-Discrimination. The Owner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, or disability(ies) as defined by the Americans with Disabilities Act (ADA) of 1990. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Owner shall make every subcontract utilized by the Owner in conjunction with this Agreement subject to the foregoing non-discrimination provisions.

Section 9 - Indemnification. The Owner hereby expressly agrees to indemnify and hold the District harmless for and against all claims of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of, the performance of work at the development site pursuant to this Agreement, and which is not caused in whole or in part through the fault or negligence of the District, its agents, employees or representatives.

Section 10 - No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any subsequent default hereunder.

Section 11 - Amendments or Modifications. This Agreement may be amended from time to time provided that such amendment be mutually agreed upon in writing and signed by all parties hereto.

Section 12 - Effect of Agreement. This Agreement may be recorded with the Clerk and Recorder of El Paso County and shall constitute a covenant running with the land and shall be binding upon the heirs, successors, and assigns of the parties.

Section 13 - Designation. The Owner is an independent contractor, and nothing contained herein shall constitute designation of the Owner or any of its employees or agents as an agent or employee of the District.

Section 14 – Choice of Law/Enforcement. This Agreement shall be construed in accordance with and governed in all respects by the internal laws of the State of Colorado. Owner agrees that the exclusive venue and forum shall be to submit to in the District Court for El Paso County, Colorado for any dispute arising out of or relating to this Agreement including its negotiation, execution or performance. Owner shall pay to the District any costs or fees (including legal and engineering fees) incurred by the District as a result of the failure of the Owner to perform any of the obligations set forth herein.

Section 15 - Insurance. Owner or Owner's sub-contractors shall maintain at their sole cost and expense the following insurance coverage (with deductibles, if applicable, in amounts reasonably acceptable to District) at all times during the Agreement.

- (A) Commercial general liability insurance;
- (B) Owner's sub-contractors shall carry worker's compensation insurance at no less than statutory requirements, and employer's liability insurance with a limit of not less than One Million Dollars; and
- (C) Owner's sub-contractors shall carry non-occupational disability insurance when required by law.

Section 16 - Exhibits. The following listed exhibits are incorporated herein and made a part of this Agreement:

- (A) Exhibit A - cost of sewer public improvements as filed in the office of the District Engineer.

