

UTE WATER – CITY SEWER EXTENSION REIMBURSEMENT AGREEMENT

This Agreement is made and entered into this 30th day of December 2010, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), and Ute Water Conservancy District, a water conservancy district organized and existing under the laws of the state of Colorado ("Ute Water").

RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility ("regional sewer system") and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Service Area. Ute Water is the developer of the Ute Water Subdivision, the plat for which is recorded in Book 4949 at Page 778 of the records of Mesa County, hereafter referred to as the Property. The Property is identified as "Developer's Property" on Exhibit 1, attached hereto. Ute Water is required to dispose of the sewage waste from the Property through the regional sewer system. Ute Water desires to recoup some of the costs incurred by it to construct a sewer line extension, along with appurtenant facilities such as manholes ("System"), to the Property from the owners of property who connect to and use the System in the future. Such property owners are termed "Future Users" and are those persons who develop within the area shown on the attached Exhibit 1.

The City and Ute Water have entered into a Maintenance Guarantee dated September 17, 2010 (the "Maintenance Guarantee"). Pursuant to the Maintenance Guarantee, Ute Water is obligated to maintain and guarantee the System for a period of one year from August 2, 2010 (the "Maintenance Period"). During the Maintenance Period Ute Water is required to maintain the System according to the standards and specifications required by the City or as otherwise established by the City Engineer.

The City has determined that it is in the best interest of the regional sewer system to accept the System as a component of the regional sewer system so that it will serve the Property and the properties of Future Users who later connect to the System constructed by Ute Water. The City recognizes that Future Users will receive a benefit from Ute Water's construction of the System because Future Users will not have to construct as long a line in order to receive sewer service.

Ute Water desires to have the City collect payments from Future Users when such Future Users connect to the System as provided for herein and the City is willing to do so on the terms set forth herein.

THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals state the intentions of the parties and shall constitute substantive terms of this Agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this Agreement; the parties agree that each is fully capable of engaging its own attorneys and other experts to understand and negotiate the language hereof.

2. Ute Water has constructed the System to serve the Property and has connected the System with the regional sewer system at a location previously approved by the City. The City has inspected, approved and accepted the System, and the City acknowledges and agrees that the System was constructed in accordance with the City's applicable engineering standards. The parties agree that the System was substantially completed on August 2, 2010 ("Substantial Completion Date").
3. Within thirty days after the end of the Maintenance Period, Ute Water shall convey the sewer line and appurtenant facilities that comprise the System to the City by general warranty deed, free and clear of all liens and encumbrances. The conveyance shall not include any portions of the System that are service lines or that are structures or improvements appurtenant to service lines. The easements for the System were acquired in the name of the City or have otherwise previously been conveyed to the City, so the parties acknowledge and agree that no additional conveyance of such easements is required.
4. Ute Water shall be entitled to be reimbursed by Future Users for costs incurred by Ute Water for construction of the System, as follows:
 - (a) The costs for which Ute Water is entitled to reimbursement under this Agreement are **\$125,662.39** (which amount shall be referred to as the "Reimbursable Costs" or "RC").
 - (b) For a period of ten years following the Substantial Completion Date, or until Ute Water is reimbursed for all of the Reimbursable Costs, whichever first occurs (the "Reimbursement Period"), the City agrees that it will not authorize any Future User or other person or entity to connect to or use the System unless and until such Future User, person or entity first pays, in addition to all other applicable charges and fees, a Reimbursement Amount ("Reimbursement Amount" or "RA") for each EQU to be connected to the System, which sum is calculated as follows:

$$RA = \frac{(RC)}{A} + \frac{RC \times i}{A} + B$$

where:

RC = The Reimbursable Costs incurred by Ute Water (**\$125,662.39**).

i = 0.67% per month simple interest (8% annually) times the number of complete months (up to a maximum of 120 months) following the date of this agreement.

B = \$100.00 (this represents the amount to be paid to the City for administration of this agreement and will be paid by each Future User to the City and shall be referred to as the "Administrative Fee").

x = multiply.

A = Number of EQUs that could be served by the System as determined by the City Utility Engineer. The City represents that A= **59.72 EQUs**.

The Reimbursement Amount established by the above formula will be calculated and paid for each EQU connected to the System by each Future User other than those users who have purchased lots in the Ute Water Subdivision or are successors to Ute Water's interest in the Property. Thus, the Property and lots in the Ute Water Subdivision will be allowed to connect to the System without payment of any Reimbursement Amount.

5. The following provisions shall apply with respect to requests to connect to or use the System, payment of the Reimbursement Amount, and challenges to this Agreement by third parties:
 - (a) The City shall collect the appropriate Reimbursement Amount from the Future User prior to allowing connection to the System.
 - (b) When a Future User pays a Reimbursement Amount to the City, the City shall, within thirty days after receipt of such Reimbursement Amount payment, pay the amount of the Reimbursement Amount, less the Administrative Fee paid in connection with the Reimbursement Amount, to Ute Water at Ute Water's address as set forth in this Agreement.
 - (c) In the event that any claim is made or cause of action is filed by any third party alleging that this Agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that any interest or other money payable to Ute Water hereunder from any Future User is excessive, improper or is not enforceable, the City shall promptly give Ute Water notice of any such claim or cause of action. The City and Ute Water each shall be entitled to take such actions as they deem advisable to protect their respective interests under this Agreement. The City is not obligated to defend or resist any such claim or cause of action on behalf of Ute Water.
 - (d) Ute Water hereby waives and releases the officers, agents and employees of the City from any claims or causes of action Ute Water may have due to the failure of those persons to enforce this agreement.
6. Upon request from Ute Water during the term of this Agreement, which request shall not occur more than once every twelve months, the City shall provide an accounting. Said accounting shall consist of a listing of each RA collected during the preceding twelve months, the name and address of the remitter of said RA, the property address for which the RA was paid, a current balance of the RC, and total interest paid to Ute Water.
7. Ute Water shall not accept an RA directly from any Future User. If any such Future User requests to pay an RA directly to Ute Water, Ute Water shall refer such Future User to the City for calculation and payment of the appropriate RA.
8. A party shall be in default under this Agreement if it violates any of the agreements or obligations of that party made or undertaken in accordance with this Agreement. If a

party is in default under this Agreement, the other party shall first give notice of the default to the defaulting party before pursuing any other remedy. The defaulting party shall have thirty (30) days after such notice is given to cure the default. If the default is not timely cured, the non-defaulting attorney shall then be entitled to take whatever actions and pursue whatever remedies are available to it at law or in equity to enforce its rights under this Agreement.

(a) In the event that the City fails to collect an RA from any Future User that connects to or uses the System, Ute Water shall also have the right to sue such Future User in addition to any other rights or remedies that it may have. The City agrees to cooperate, without expense to the City, in any such collection efforts of Ute Water.

(b) In the event that Ute Water is in default with regard to any of its obligations under this Agreement, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default, expense or cost, in addition to any other remedy which the City may have.

9. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be personally delivered with receipt taken therefor, or sent by certified mail, postage prepaid and return receipt requested, directed to the party intended at the address set forth below, or at such other addresses as may be designated by notice given to the other parties in the manner set forth above, and shall be effective upon receipt (if personally delivered) or two days after mailing (if mailed):

TO UTE WATER: Ute Water Conservancy District
Attention: Manager
P.O. Box 460
Grand Junction, CO 81502

TO THE CITY: City of Grand Junction
Attention: City Engineer
250 N. 5th Street
Grand Junction, CO 81501


With a copy to the City Attorney at the same address

- 10 This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
11. Ute Water may assign its rights pursuant to this Agreement; however, any such assignment shall not be effective until notice of such assignment, with the address of the assignee, is given to the City.
12. The successful party in any action arising out of this Agreement or its subject matter shall be entitled to recover all expenses incurred in connection with the enforcement of its rights under this Agreement, including but not limited to court costs and reasonable attorney's fees.

13. Ute Water agrees that the construction of the System and the acceptance by the City of said System does not waive or limit the payment by Ute Water, or any successor of Ute Water, of any costs, fees or charges (e.g., plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges) which the City is now, or may be in the future, entitled to charge or collect from Ute Water or any user or person connected to or benefiting from the System.

CITY OF GRAND JUNCTION

BY:  Date: 1/20/11
City Manager

Attest:  Date: 2/2/11
City Clerk



UTE WATER CONSERVANCY DISTRICT

BY:  Date: 1.24.2011

Address: 2190 H¹/₄ Road

Grand Junction, CO 81505

Attest:  Date: 1-24-11



Exhibit # 1

Project: Ute Water Sewer Reimbursement Agreement
Subject: Benefiting Areas



RECORDER NOTE: POOR QUALITY DOCUMENT
PROVIDED FOR REPRODUCTION

Exhibit # 2

Project: Ute Water Sewer Reimbursement Agreement

Subject: Summary and Allocation of Costs

Item	Ac	Firm	Cost
Engineering		Austin Civil Group	\$ 3,978.04
Easements			\$ 24,119.57
Construction		FCI General Contractor	\$ 97,564.78
Total Cost			\$ 125,662.39
Total Cost to District			\$ 125,662.39
A 2172 H Rd (2697-254-00-061)	25.4		27.85
B 2176 H Rd (2697-254-00-060)	17.4		19.08
C 821 22 Rd (2697-254-00-091)	0.82		0.90
D 819 22 Rd (2697-254-00-092)	3.9		4.28
E 817 22 Rd (2697-254-00-095)	0.84		0.92
F 811 22 H Rd (2697-254-00-096)	6.1		6.69
Total Direct Benefit EQUs			59.72

Cost per EQU	\$ 2,104.36
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Note: Density of the developable area is estimated to be 85% of I-1 allowable density