

GJP0323R

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **DEVELOPMENT IMPROVEMENTS AGREEMENT**

NAME OF APPLICANT OR DEVELOPER: GRAND JUNCTION PIPE &  
SUPPLY COMPANY

PROJECT/SUBDIVISION: 23 ROAD GRAVEL PIT (HALF STREET  
IMPROVEMENTS

LOCATION: 23 ROAD GRAVEL PIT - ORCHARD GROVE  
SUBDIVISION - LOT 6

PARCEL NO.: 2945-064-00-031

FILE NO.: CUP-2002-113

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2003

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

2097593 01/09/03 0247PM  
JANICE WARD CLK&REC MESA COUNTY CO  
REC FEE \$65.00 SURCHG \$1.00

**DEVELOPMENT IMPROVEMENTS AGREEMENT**

1. **Parties:** The parties to this Development Improvements Agreement ("the Agreement" or "Agreement") are Grand Junction Pipe & Supply Co ("the Developer") and **THE CITY OF GRAND JUNCTION, Colorado** ("the City" or "City").

FOR valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Agreement will be the date that this agreement is signed which shall be no sooner than recordation of the final plat or final plan approval whichever first occurs.

**RECITALS**

The Developer seeks permission to develop property within the City to be known as 23 Road Gravel Pit (Half Street Improvements) which property is more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Property and limiting the harmful effects of substandard developments. The purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants, and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and the City's land development ordinances.

**DEVELOPER'S OBLIGATION**

3. **Improvements:** The Developer will design, construct and install, at its own expense, those on-site and off-site improvements listed on Exhibit B attached and incorporated by this reference ("the Improvements" or "Improvements"). The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The scope of this project is such that the City may have to engage independent consultant(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder. The Developer's obligation to complete the improvements is and will be independent of any obligations of the City contained herein.

4. **Security:** To secure the performance of its obligations under this Agreement the Developer shall supply a guarantee in a form and with terms acceptable to the City. A copy of which or a memorandum thereof is attached as Exhibit C.

5. **Standards:** The Developer shall construct the Improvements according to the standards and specifications required by the City Engineer or as adopted by the City.

6. **Warranty:** The Developer warrants that the Improvements, each and every one of them, will be free from defects for a period of twelve (12) months from the date that the City Engineer accepts or approves the last Improvement completed by the Developer.

7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 7-15-2002 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 24 month from the Effective Date of this Agreement 7-15-2004 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple or as accepted by the City Attorney and that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.

12. **Use of Proceeds:** The City will use funds deposited with it, drawn or guaranteed pursuant to any written agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

13. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities 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 or non-performance of work at the Property or the Property being developed pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

20. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

23. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

24. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Grand Junction Pipe & Supply Co  
P.O. Box 1849  
Grand Junction, CO 81502

If to City: City of Grand Junction  
Community Development Director  
250 N. 5th Street  
Grand Junction, Colorado 81501

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.

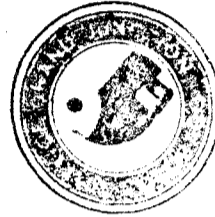
b. **Phased Development:** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

regulated substances or materials: (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

City of Grand Junction  
250 North Fifth Street  
Grand Junction CO 81501

Pat Cain 1/2/03  
Director of Community Development date



Attest:

Stephanie Tun 1/7/03  
City Clerk date

By: Marie Tipping 6.26.2002  
Developer date

Name (printed): President MARIE TIPPING

Its (position): President



Stephanie A. Mude 6/26/2002  
Secretary date



TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.  
 USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

**EXHIBIT A**

Tax Parcel #2945-064-00-031

The following lots located in the Orchard Grove Subdivision, Section 6, Township 1 South, Range 1 West, Ute Meridian, Mesa County, Colorado, more particularly described as follows:

Lot 6 of the Orchard Grove Subdivision, as originally platted in the Mesa County records EXCEPT commencing at the East 1/4 corner of Section 6 and considering the East line of Section 6 to bear South 00°21'41" West to the South 1/16 corner, thence South 89°48'41" West 1296.4 feet, thence South 00°22'01" West 649.64 feet to the Point of Beginning at the Southwest corner of Lot 6, thence South 89°38'17" East 82.17 feet, thence North 28°45'55" West 168.78 feet, thence South 00°22'01" West 147.44 feet to the Point of Beginning at the Southwest corner,

ALSO, Lot 9 of the Orchard Grove Subdivision as originally platted in the Mesa County records EXCEPT commencing at the East 1/4 corner of Section 6 and considering the East line of Section 6 to bear South 00°21'41" West to the South 1/16 corner, thence South 89°48'41" West 1296.4 feet, thence South 00°22'01" West 649.64 feet to the Point of Beginning at the Northwest corner of Lot 9, thence South 00°27'50" West 663.15 feet to the Southeast 1/16 corner of Section 6, thence North 26°18'30" East 482.5 feet, thence North 28°45'55" West 262.48 feet, thence North 89°38'17" West 82.17 feet, more or less, to the Point of Beginning at the Northwest corner of Lot 9,

ALSO, Lot 10 of the Orchard Grove Subdivision, the West part located in the NE¼SW¼SE¼ of Section 6, described as part of an accretion survey made on March 17, 1966, EXCEPT commencing at the Southeast 1/16 corner and considering the North line of Lot 10 to bear South 89°41'03" East to the South 1/16 corner on the East boundary of Section 6, thence South 00°27'50" West 341.4 feet, thence North 32°41'36" West 411.52 feet, thence South 88°44'42" East 225.1 feet to the Point of Beginning at the Southeast 1/16 corner

Tax Parcel #2945-064-00-033

Lot 5, Orchard Grove Subdivision

Tax Parcel #2945-064-00-034

Lot 22, Orchard Grove Subdivision, Section 6, T1S, R1W & That part lying South and West of SD Lot 22 Established by accretion-CV Action No. 15557 B-938 P-786/789 & That part of GLO 9 East of SD Accretion, Orchard Mesa Co Records

Tax Parcel #2945-061-00-038

Lots 3 & 4, Orchard Grove Subdivision

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: 6-26-02  
 NAME OF DEVELOPMENT: 23 Road Gravel Pit - GJ Pipe  
 LOCATION: 23 Road 1/2 Half street improvements  
 PRINTED NAME OF PERSON PREPARING: Edward J. Seftle

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
<b>I. SANITARY SEWER</b>				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)	_____	_____	_____	_____
4. Sewer Services (incl. trenching, bedding, & backfill)	_____	_____	_____	_____
5. Sanitary sewer manhole(s)	_____	_____	_____	_____
6. Connection to existing manhole(s)	_____	_____	_____	_____
7. Aggregate Base Course	_____	_____	_____	_____
8. Pavement replacement	_____	_____	_____	_____
9. Driveway restoration	_____	_____	_____	_____
10. Utility adjustments	_____	_____	_____	_____
<b>II. DOMESTIC WATER</b>				
1. Clearing and grubbing	_____	_____	_____	_____
2. Cut and remove asphalt	_____	_____	_____	_____
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)	_____	_____	_____	_____
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)	_____	_____	_____	_____
5. Connect to existing water line	_____	_____	_____	_____
6. Aggregate Base Course	_____	_____	_____	_____
7. Pavement Replacement	_____	_____	_____	_____
8. Utility adjustments	_____	_____	_____	_____
<b>III. STREETS</b>				
1. Clearing and grubbing	LS	1		500 <sup>00</sup>
2. Earthwork, including excavation and embankment construction	CY	2400	34 <sup>00</sup>	8160 <sup>00</sup>
3. Utility relocations	_____	_____	_____	_____
4. Aggregate sub-base course (square yard)	_____	_____	_____	_____

	TOTAL UNITS	TOTAL UNIT QTY.	UNIT PRICE	TOTAL AMOUNT
5. Aggregate base course (square yard)	Ten	<del>3915</del>	8 <sup>00</sup>	31,320 <sup>00</sup>
6. Sub-grade stabilization				
7. Asphalt or concrete pavement (square yard)	Ten	1285	30 <sup>00</sup>	38,550 <sup>00</sup>
8. Curb, gutter & sidewalk (linear feet)	LF	2920	4 <sup>50</sup>	13,140 <sup>00</sup>
9. Driveway sections (square yard)				
10. Crosspans & fillets				
11. Retaining walls/structures				
12. Storm drainage system	LF	2000	15 <sup>00</sup>	30,000 <sup>00</sup>
13. Signs and other traffic control devices				
14. Construction staking	LS	1		1,200 <sup>00</sup>
15. Dust control				
16. Street lights (each)				
IV. LANDSCAPING				Subtotal 122,870 <sup>00</sup>
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system				
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering	LS	1		10,000 <sup>00</sup>
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing	LS	1		3,000 <sup>00</sup>
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	Hr.	10	45 <sup>00</sup>	450 <sup>00</sup>
8. Permit fees				
9. Recording costs				

05/04/01

Subtotal 136,320<sup>00</sup>

	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other <u>+20%</u>				<u>21,264<sup>00</sup></u>
14. Other				

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 163,584<sup>00</sup>

SCHEDULE OF IMPROVEMENTS:

I. SANITARY SEWER \_\_\_\_\_

II. DOMESTIC WATER \_\_\_\_\_

III. STREETS \_\_\_\_\_

IV. LANDSCAPING \_\_\_\_\_

V. MISCELLANEOUS \_\_\_\_\_

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above:

*Mane Appun* President 6.26.2002  
 SIGNATURE OF DEVELOPER date  
 (If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

*[Signature]* 1/2/03  
 CITY ENGINEER date

*[Signature]* 1/7/03  
 COMMUNITY DEVELOPMENT date



# Alpine Bank

Grand Junction **IRREVOCABLE STANDBY LETTER OF CREDIT**

**Date of Issue:** August 15, 2002  
**Amount:** \$163,584.00  
**Number:** 7150516401  
**Expiration Date:** August 15, 2003

**APPLICANT:** Grand Junction Pipe & Supply Company

**BENEFICIARY:** The City of Grand Junction  
Community Development Director  
250 N. 5<sup>th</sup> Street  
Grand Junction, CO 81501

**PURPOSE:** Secure Performance and Compliance

To Whom It May Concern:

We hereby establish in Beneficiary's favor, at the request and for the benefit of Applicant, our Irrevocable Standby Letter of Credit in an amount not to exceed \$163,584.00 (U.S. One Hundred Sixty Three Thousand Five Hundred Eighty Four Dollars and No/100 Dollars). The purpose of this letter is to secure the performance of and the compliance with, the agreement by and between Applicant and Beneficiary.

Beneficiary shall promptly notify Bank when a default or event of default of said agreement occurs. Your notification shall include any notice or order required to be sent to Applicant pursuant to the agreement. Notice shall be by telephone and in writing to:

Alpine Bank Grand Junction  
Attn: Bucky Moser  
225 North 5<sup>th</sup> Street  
Grand Junction, CO 81501  
970-254-2011

We hereby agree to honor drafts drawn under and in compliance with the terms of this Letter of Credit if duly presented to a loan officer at (physical address), before 5:00pm local time on or before the expiration date, excluding Saturdays and bank holidays. Partial drawings are permitted. This Letter of Credit is not transferable.

The conditions for payment of any draft drawn against this Letter of Credit are as follows:

*Original given to  
Gayleen Per release  
3/25/03  
AK*



1. Receipt by Bank of Beneficiary's manually signed statement by an authorized Signatory certifying that Applicant has failed to perform with, or comply in accordance with, the provisions of said agreement by and between Applicant and Beneficiary, and stating the dollar amount of the default.
2. Presentation of the original Letter of Credit to Bank, endorsed on the reverse side With the words: "Drawn by The City of Grand Junction in the amount of \$163,584.00" then manually signed by an authorized signatory.

This Letter of Credit shall be governed by Article V of the Uniform Commercial Code as in effect in the State of Colorado on the date of issue. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this credit is referred to, or to which this credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement.

ALPINE BANK

By: *Norm Franke*  
 Norm Franke/President

By: *Marie Tipping*  
 Marie Tipping/President  
 Grand Junction Pipe & Supply Company

By: *Ronald Tipping*  
 Ronald Tipping/Vice President  
 Grand Junction Pipe & Supply Company

2097594 01/09/03 0247PM  
 JANICE WARD CLK&REC MESA COUNTY CO  
 REC FEE \$65.00 SURCHG \$1.00

## DEVELOPMENT IMPROVEMENTS AGREEMENT

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7. **Commencement, Completion and Abandonment Periods:** The Developer will commence work on the Improvements within 14 days from the Effective Date of this Agreement 7-15-02 (set date) ("the Commencement Period") and the Improvements, each and every one of them, shall be completed by the end of the 24 month from the Effective Date of this Agreement 7-15-04 (set date) (the "Completion Period"). The Developer shall not cease construction activities for any period of more than 60 consecutive days ("the Abandonment Period").

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this Agreement. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final development approval.

9. **Notice of Defect:** The Developer's Engineer shall provide timely notice to the Developer, contractor, issuer of security and the City Engineer whenever inspection reveals, or the Developer's Engineer otherwise has knowledge, that an improvement does not conform to City standards and any specifications approved in the development application or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect. The City may grant reasonable extensions.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of Improvements will not be given or obtained until the Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the Improvements in fee simple or as accepted by the City Attorney and that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement that is detected or which occurs after approval and/or acceptance.

11. **Reduction of Security:** After the acceptance of any Improvement, the amount which the City is entitled to draw on the guarantee will be reduced by an amount equal to 90 percent of the estimated cost of such Improvement as shown in Exhibit B. At the written request of the Developer, the City will execute a certificate verifying the acceptance of the Improvement and waiving its right to draw on the guarantee to the extent of such amount. A Developer in default under this Agreement will have no right to such certification. Upon the acceptance of all of the Improvements the remaining balance that may be drawn under the guarantee shall be available to the City for 90 days after the expiration of the warranty period.



12. **Use of Proceeds:** The City will use funds deposited with it, drawn or guaranteed pursuant to any written agreement entered into between the parties only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

13. **Events of Default:** The following conditions, occurrences or actions will constitute a default by the Developer during the Completion Period:

- a. Developer's failure to complete each portion of the Improvements in conformance with the time schedule provided in paragraph number seven (7.), above;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvement within the applicable correction period;
- c. Developer's insolvency, the appointment of a receiver for the Developer or the filing of a voluntary or involuntary petition in bankruptcy respecting the Developer; in such event the City may immediately declare a default without prior notification to the Developer;
- d. Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;
- e. Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer.

Unless specifically provided herein the City may not declare a default until written notice has been sent to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

14. **Measure of Damages:** The measure of damages for breach of this Agreement by the Developer will be the reasonable cost of satisfactorily completing the Improvements plus reasonable City administrative expenses. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to the collection/completion of the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Exhibit B will be *prima facie* evidence of the minimum cost of completion, however, neither that amount or the amount of a letter of credit, the subdivision improvements disbursement agreement or cash escrow or other guarantee establish the maximum amount of the Developer's liability.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security less ninety percent (90%) of the estimated cost (as shown on Exhibit B) of all Improvements previously accepted by the City or may exercise its rights to disbursement of loan proceeds or other funds under the improvements disbursement agreement. The City will have the right to complete Improvements itself or it may contract with a third party for completion, and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. Alternatively, the City may assign the proceeds of the letter of credit, the improvements disbursement agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

16. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities 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 or non-performance of work at the Property or the Property being developed pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this Agreement except where such suit is brought by the Developer against the City. The Developer is not an agent or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify the Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

19. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this Agreement, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

20. **Vested Rights:** The City does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the City, if any, before the Developer is entitled to commence development or to transfer ownership of the Property being developed.

21. **Integration:** This Agreement, together with the exhibits and attachments thereto constitutes the entire agreement between the parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this Agreement will be binding on the parties.

22. **Third Party Rights:** No person or entity who or which is not a party to this Agreement will have any right of action under this Agreement.

23. **Time:** For the purpose of computing the Abandonment and Completion Periods, and time periods for City action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or City from performing its obligations under the Agreement.

24. **Severability:** If any part, term, or provision of this Agreement is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the rights of the parties will be construed as if the part, term, or provision was never part of the Agreement.

25. **Benefits:** The benefits of this Agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property. There is no prohibition on the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all warranty periods, as extended by litigation, repair or alteration work, have expired.

26. **Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: *Grand Junction Pipe & Supply Co  
P.O. Box 1849  
Grand Junction, CO 81502*

If to City: City of Grand Junction  
Community Development Director  
250 N. 5th Street  
Grand Junction, Colorado 81501

27. **Recordation:** Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

28. **Immunity:** Nothing contained in this Agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

29. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this Agreement whether arising out of or relating to the Agreement, letter of credit, improvements disbursements agreement, or cash escrow agreement or any action to collect security will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

30. a. **Conditions of Acceptance:** The City shall have no responsibility or liability with respect to any street, or other improvement(s), notwithstanding the use of the same by the public, unless the street or other improvements shall have been finally accepted by the City.

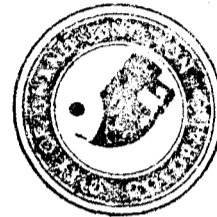
b. **Phased Development:** If the City allows a street to be constructed in stages, the Developer of the first one-half street opened for traffic shall construct the adjacent curb, gutter and sidewalk in the standard location and shall construct the required width of pavement from the edge of gutter on his side of the street to enable an initial two-way traffic operation without on-street parking. That Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities necessary to open the street to traffic.

c. Prior to requesting final acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall: (i) furnish to the City engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and in computer disk form and copies of results of all construction control tests required by City specification; (ii) provide written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the improvements have been constructed, or which are necessary for the improvements, are free from toxic, hazardous or other

regulated substances or materials; (iii) provide written evidence to the City Attorney that the title to lands underlying the improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

City of Grand Junction  
250 North Fifth Street  
Grand Junction CO 81501

Pat Carl 1/2/03  
~~Director~~ of Community Development date



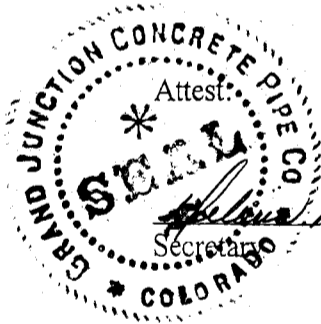
Attest:

Stephanie Lunn 1/7/03  
City Clerk date

By: Marie Tipping 6-26-2002  
Developer date

Name (printed): MARIE TIPPING

Its (position): PRESIDENT



Attest:  
Shelene A. Mader 6/26/2002  
Secretary date

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY.  
USE SINGLE SPACING WITH A ONE INCH MARGIN ON EACH SIDE.

**EXHIBIT A**

*Lots 3 & 4, Orchard Grove Sub., Section 6, T.1S., R.1W., W.M.,  
Mesa County, Colorado.*

EXHIBIT B

IMPROVEMENTS LIST/DETAIL

(Page 1 of 3)

DATE: May 26, 2002  
 NAME OF DEVELOPMENT: 23 Road Gravel Pit  
 LOCATION: River Road Improvements  
 PRINTED NAME OF PERSON PREPARING: Edward J. Settle

	UNITS	TOTAL QTY.	UNIT PRICE	TOTAL AMOUNT
<b>I. SANITARY SEWER</b>				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. PVC sanitary sewer main (incl. trenching, bedding & backfill)				
4. Sewer Services (incl. trenching, bedding, & backfill)				
5. Sanitary sewer manhole(s)				
6. Connection to existing manhole(s)				
7. Aggregate Base Course				
8. Pavement replacement				
9. Driveway restoration				
10. Utility adjustments				
<b>II. DOMESTIC WATER</b>				
1. Clearing and grubbing				
2. Cut and remove asphalt				
3. Water Main (incl. excavation, bedding, backfill, valves and appurtenances)				
4. Water services (incl. excavation, bedding, backfill, valves, and appurtenances)				
5. Connect to existing water line				
6. Aggregate Base Course				
7. Pavement Replacement				
8. Utility adjustments				
<b>III. STREETS</b>				
1. Clearing and grubbing	LS	1		535.00
2. Earthwork, including excavation and embankment construction	CY	1765	475	8383.50
3. Utility relocations - Irrigation Structure	LS	1		500.00
4. Aggregate sub-base course (square yard)				

	TOTAL UNITS	TOTAL UNIT QTY.	UNIT PRICE	TOTAL AMOUNT
5. Aggregate base course <del>(square yard)</del>	Ton	1250	8 <sup>50</sup>	10,625 <sup>00</sup>
6. Sub-grade stabilization				
7. Asphalt or concrete pavement <del>(square yard)</del>	Ton	457	37 <sup>00</sup>	16,909 <sup>00</sup>
8. Curb, gutter & sidewalk (linear feet)	LF	750	13 <sup>50</sup>	10,125 <sup>00</sup>
9. Driveway sections (square yard)				
10. Crosspans & fillets				
11. Retaining walls/structures				
12. <del>Storm drainage system</del> Sidewalk drain	EA	2	450 <sup>00</sup>	900 <sup>00</sup>
13. Signs and other traffic control devices	LS	1		700 <sup>00</sup>
14. Construction staking	LS	1		900 <sup>00</sup>
15. Dust control				
16. <del>Street lights (each)</del> Striping	LS	1		350 <sup>00</sup>
IV. LANDSCAPING				
1. Design/Architecture				
2. Earthwork (includes top soil, fine grading, & berming)				
3. Hardscape features (includes walls, fencing, and paving)				
4. Plant material and planting				
5. Irrigation system				
6. Other features (incl. statues, water displays, park equipment, and outdoor furniture)				
7. Curbing				
8. Retaining walls and structures				
9. One year maintenance agreement				
V. MISCELLANEOUS				
1. Design/Engineering				
2. Surveying				
3. Developer's inspection costs				
4. Quality control testing	LS	1		700 <sup>00</sup>
5. Construction traffic control				
6. Rights-of-way/Easements				
7. City inspection fees @\$45./hr	Hr	12	45 <sup>00</sup>	540 <sup>00</sup>
8. Permit fees				
9. Recording costs				

Subtotal 51,981<sup>50</sup>



	TOTAL UNITS	UNIT QTY.	TOTAL PRICE	TOTAL AMOUNT
10. Bonds				
11. Newsletters				
12. General Construction Supervision				
13. Other <u>+20%</u>				<u>10,396<sup>30</sup></u>
14. Other				

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 62,377<sup>80</sup>

SCHEDULE OF IMPROVEMENTS:

- I. SANITARY SEWER \_\_\_\_\_
- II. DOMESTIC WATER \_\_\_\_\_
- III. STREETS \_\_\_\_\_ 62,377<sup>80</sup>
- IV. LANDSCAPING \_\_\_\_\_
- V. MISCELLANEOUS \_\_\_\_\_

I have reviewed the estimated costs and time schedule shown above and based on the plans and the current costs of construction agree to construct and install the Improvements as required above.

*Mark Spang* President 6-26-2002  
 SIGNATURE OF DEVELOPER date  
 (If corporation, to be signed by president and attested to by secretary together with the corporate seals.)

Reviewed and approved.

*[Signature]* 1/2/03  
 CITY ENGINEER date

*[Signature]* 1/4/03  
 COMMUNITY DEVELOPMENT date



# Alpine Bank

Grand Junction

## IRREVOCABLE STANDBY LETTER OF CREDIT

**Date of Issue:** August 15, 2002  
**Amount:** \$62,377.80  
**Number:** 7150515601  
**Expiration Date:** August 15, 2003

**APPLICANT:** Grand Junction Pipe & Supply Company

**BENEFICIARY:** The City of Grand Junction  
 Community Development Director  
 250 N. 5<sup>th</sup> Street  
 Grand Junction, CO 81501

**PURPOSE:** Secure Performance and Compliance

To Whom It May Concern:

We hereby establish in Beneficiary's favor, at the request and for the benefit of Applicant, our Irrevocable Standby Letter of Credit in an amount not to exceed \$62,377.80 (U.S. Sixty Two Thousand Three Hundred Seventy Seven and 80/100 Dollars). The purpose of this letter is to secure the performance of and the compliance with, the agreement by and between Applicant and Beneficiary.

Beneficiary shall promptly notify Bank when a default or event of default of said agreement occurs. Your notification shall include any notice or order required to be sent to Applicant pursuant to the agreement. Notice shall be by telephone and in writing to:

Alpine Bank Grand Junction  
 Attn: Bucky Moser  
 225 North 5<sup>th</sup> Street  
 Grand Junction, CO 81501  
 970-254-2011

We hereby agree to honor drafts drawn under and in compliance with the terms of this Letter of Credit if duly presented to a loan officer at (physical address), before 5:00pm local time on or before the expiration date, excluding Saturdays and bank holidays. Partial drawings are permitted. This Letter of Credit is not transferable.

The conditions for payment of any draft drawn against this Letter of Credit are as follows:





1. Receipt by Bank of Beneficiary's manually signed statement by an authorized Signatory certifying that Applicant has failed to perform with, or comply in accordance with, the provisions of said agreement by and between Applicant and Beneficiary, and stating the dollar amount of the default.
2. Presentation of the original Letter of Credit to Bank, endorsed on the reverse side With the words: "Drawn by The City of Grand Junction in the amount of \$62,377.80" then manually signed by an authorized signatory.

This Letter of Credit shall be governed by Article V of the Uniform Commercial Code as in effect in the State of Colorado on the date of issue. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this credit is referred to, or to which this credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement.

ALPINE BANK

By: Norm Franke  
Norm Franke/President

By: Marie Tipping  
Marie Tipping/President  
Grand Junction Pipe & Supply Company

By: Ronald Tipping  
Ronald Tipping/Vice President  
Grand Junction Pipe & Supply Company

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
FILE # CUP-2002-113

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated January 2, 2002 (year) and recorded at Book 3248, Page 669 - 681 of the land records of Mesa County, Colorado, by and between Grand Junction Pipe & Supply Co. (Developer) and the City of Grand Junction (City) pertaining to 23 Rd Gravel Pit - 23 Road Improvements (Project).

Legal Description:

Tax parcel #2945-064-00-031: The following lots located in the Orchard Grove Sub SEC 6 T1S, R1W, UM Mesa Co., CO desc as: Lot 6 of Orchard Grove Sub, as originally platted in the Mesa Co, recds EXC commencing at the E1/4 corner of SEC 6 and considering the E line of SEC 6 S00°21'41"W to the S1/16 corner, S89°48'41"W 1296.4' S00°22'01"W 649.64' POB at the SW corner of Lot 6, S89°38'17"E 82.17' N28°45'55"W 168.78', S00°22'01"W 147.44' POB at the SW corner, ALSO Lot 9 Orchard Grove Sub platted in Mesa Co, recds EXC commencing at E1/4 corner of SEC 6 and considering the E line SEC 6, S00°21'41"W S1/16 corner, S89°48'41"W 1296.4' S00°22'01"W 649.64' POB NW corner of Lot 9, S00°27'50"W 663.15' SE1/16 corner of SEC 6, N26°18'30"E 482.5' N28°45'55"W 262.48' N89°38'17"W 82.17' more or less POB at the NW corner of Lot 9. ALSO Lot 10 Orchard Grove Sub the W part located in the NE1/4SW1/4SE1/4 SEC 6, desc as part of an accretion survey made on March 17, 1966, EXC commencing at the SE1/16 corner and considering the N line of Lot 10 S89°41'03"E S1/16 corner on the E bndry SEC 6, S00°27'50"W 341.4. N32°41'36"W 411.52' S88°44'42"E 225.1' POB SE1/16; Tax Parcel#2945-064-00-033: Lot 5 Orchard Grove Sub; Tax Parcel #2945-064-00-034: Lot 22 Orchard Grove Sub SEC 6, T1S, R1W & that part lying S and W of SD Lot 22 Established by accretion-CV Action No. 15557 B-938 P-786/789 & that part of GLO 9 E of SD Accretion, Orchard Mesa Co, Recds; Tax Parcel #2945-061-00-038: Lots 3 & 4 Orchard Grove Sub

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the improvements and have accepted the same,

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:

By: City Engineer [Signature] Date 3/18/03

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 3248, Page 669 - 681 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

~~Director of Community Development~~ Lisa E. Cox AICP Date 3/18/03  
Acting Development Services Supervisor

The foregoing instrument was executed before me this 18<sup>th</sup> day of March, 2003 (year) by LISA E. Cox Acting Development Svcs. Supervisor Director of ~~Community Development~~ for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Gayleen Henderson

My commission expires 10/29/2005





# Alpine Bank

## Grand Junction

225 N. 5th Street  
Grand Junction, Colorado 81501  
970-243-5600  
Fax 970-243-5778

City of Grand Junction  
250 North Fifth Street  
Grand Junction, CO 81501

RE: Letter of Credit  
23 Road Gravel Pit (CUP-2002-113)

Attn: Eric Hahn

Please forward the original Letter of Credit to my attention at 225 N. 5<sup>th</sup> Street, Grand Junction, CO 81501 as it has been completed and released. The Maintenance Agreement in the amount of \$10,396.00 was paid to your office by Grand Junction Pipe to hold for the remaining time.

If you should have any questions, please feel free to contact me at 254-2002.

Sincerely,

Stacy Smallwood  
Sr. Loan Administrator

Ss

enc

*Please release original LOC.*

*Thank you.*

*Santa Costello  
3/12/04*

*Released to Santa Costello 3/12/04 W. Kemp*



**City of Grand Junction**  
Department of Public Works and Utilities  
Engineering Division  
250 North Fifth Street  
Grand Junction, CO 81501-2668  
FAX: (970) 256-4031

November 4, 2003

Ed Settle  
Grand Junction Pipe & Supply  
P.O. Box 1849  
Grand Junction, CO 81502

Reference: Initial Acceptance - 23 Road Gravel Pit (CUP-2002-113)

Dear Mr. Settle,

A final inspection of the streets and drainage facilities for the referenced project was conducted. A list of items to be corrected and/or furnished was given to the project representative. Subsequent inspections have revealed that these items have been satisfactorily completed.

"As Built" record drawings and required test results for the subdivision were received and reviewed, corrected as necessary, and are now acceptable.

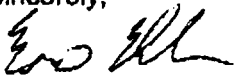
The streets and drainage facilities within the public right-of-way are eligible to be accepted for future maintenance by the City of Grand Junction one year after the date of initial acceptance. The date of initial acceptance is October 31, 2003.

Your warranty obligation, for all materials and workmanship, is for a period of one-year beginning with the date of initial acceptance. The City will re-inspect the project prior to the end of the warranty period. Any defects discovered during this re-inspection must be corrected. The City will then establish a new acceptance date and an extended warranty period. The warranty period will expire upon final acceptance by the City.

A Maintenance Agreement and associated financial security in the amount of \$10,396 must be received and executed before the City will release the \$62,377 DIA currently being held to guarantee half-street improvements along River Road.

Thank you for your cooperation in the completion of the work on this project.

Sincerely,

  
Eric Hahn, PE  
City Development Engineer

cc:	Tim Moore	Mike McDill	Doug Cline
	Mark Barslund	Walt Hoyt	Jody Kliska
	Senta Costello	✓Bucky Moser, Alpine Bank	

RELEASE OF IMPROVEMENTS AGREEMENT & GUARANTEE  
Grand Junction Community Development Department  
FILE # CUP - 2002-113

This memorandum relates to a certain recorded Improvements Agreement and Guarantee dated January 2, 2003 (year) and recorded at Book 3248, Page 682 - 694 of the land records of Mesa County, Colorado, by and between Grand Junction Pipe and Supply (Developer) and the City of Grand Junction (City) pertaining to 23 Road Gravel Pit (River Road Improvements) (Project).

Legal Description:

Lots 3 & 4, Orchard Grove Subdivision, Section 6 T1S, R1W, U.M., Mesa County, Colorado

Whereas, Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of an Improvements Agreement and Guarantee, and

Whereas, the City of Grand Junction and all other agencies possessing regulatory authority over the Project and/or the improvements have inspected the improvements and have accepted the same,

NOW THEREFORE, officials of the City of Grand Junction and other officials duly representing their agencies, possessing and representing by their signatures, affixed thereto, that they possess sufficient authority to accept improvements and release the portion of the guarantee pertaining to the improvements under their jurisdiction, do accept, sign and release said improvements agreement and guarantee.

CITY OF GRAND JUNCTION:

By: City Engineer Eric Hahn - [Signature] Date 11/19/03  
City Utilities Manager N/A Date \_\_\_\_\_  
Fire Marshall N/A Date \_\_\_\_\_

UTE WATER:

By: N/A Date \_\_\_\_\_

GRAND JUNCTION DRAINAGE:

By: N/A Date \_\_\_\_\_

In accordance with the above signatures, I hereby certify that the Improvements Agreement & Guarantee and the recording evidencing the agreement and guarantee, at Book 3248, Page 682 - 694 of the Mesa County land records, have been completed and accepted and in accordance with the provisions of the Grand Junction Zoning and Development Code are hereby released, subject to the required warranty period.

~~Director~~ of Community Development [Signature: Pat Cecil] Date 1/26/03

The foregoing instrument was executed before me this 26<sup>th</sup> day of January, 2004 (year) by Pat Cecil, ~~Director~~ of Community Development for the City of Grand Junction, Colorado.

Witness my hand & official seal.

Notary Public Gayleen Henderson

My commission expires 10/29/2005.



My Commission Expires 10/29/2005

## MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are Grand Junction Pipe ("the Developer") and the City of Grand Junction, Colorado ("the City" or "City"). Collectively the Developer and the City may be referred to as the Parties.

FOR valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

2. **Effective Date:** The Effective Date of the Guarantee will be the date that it is signed and accepted by the City.

## RECITALS

The Developer has constructed, installed and is required to warrant and maintain certain improvements ("Improvements" or "the Improvements") which were made necessary by virtue of development on property within the City. The Property, known as 23 Road Pit has been reviewed and approved under Community Development file # 2002-113 and as necessary or required to construe this guarantee, that file(s) is incorporated by this reference.

The City seeks to protect the health, safety and general welfare of the community by requiring that the Improvements, once constructed, be maintained. The purpose of this guarantee is to protect the City from having to repair the Improvements at its cost. The Agreement is not executed for the benefit of materialmen, laborers or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this guarantee are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

## DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer or its successor(s) or assign(s) shall maintain and guarantee the Improvements, at his/her/its own expense, against defects in workmanship and materials for a period of one year from the date of City acceptance of the Improvements. The Developer's obligation is and will be independent of any obligations of the City.

4. **Security:** To secure the performance of its obligations the Developer is required to post security in an amount of \$ 10,396 (20% of the DIA amount for the Improvements that the Developer has completed and for which the City has given its Final Acceptance.)



4a. The Developer has posted security to guarantee the Improvements in an amount, form and with terms acceptable to the City.

4b. In addition to that security all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) are hereby assigned to the City.

4c. The Developer shall to the extent necessary or required by the City take whatever action is necessary or required to assign all warranties and/or guarantees (those incident to construction or as provided by the contractor and/or manufacturer of installed equipment) to the City. A copy of those warranties or a memorandum of the same is attached as Exhibit A.

4d. The Developer for itself, its successors and assigns agrees that if the Improvements are not maintained to City standards that the City shall notify the Developer in writing of the defect(s) in accordance with paragraph 8 hereof.

5. **Standards:** The Developer shall maintain the Improvements according to the standards and specifications required by the City or as otherwise established by the City Engineer.

6. **Warranty:** The Developer hereby warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for the period of this guarantee.

7. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations in effect at the time of final approval when fulfilling its obligations under this guarantee. When necessary to protect the public health, safety or welfare, the Developer shall be subject to laws, ordinances and regulations that become effective after final acceptance of the Improvements.

8. **Notice of Defect/Default:** The City shall provide timely notice to the Developer whenever routine inspection reveals that an Improvement and/or maintenance of the same does not conform to City standards and any specifications approved or required in or by the development or that an Improvement(s) is otherwise defective.

8a. As provided herein the City shall provide written notice to the Developer at the address stated in paragraph 22. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

8b. The Developer will have twelve (12) calendar days from the date of the notice to correct the defect.

8c. The City may grant reasonable extensions in writing to the time for correction of defect(s), however, it is not obligated to do so nor is it obligated to provide any notice of a defect(s) if it becomes aware of the defect(s) in or during an emergency. Furthermore, the City is not obligated to inspect the Improvements but may do so as it would any other improvement.

**9. Acceptance:** Prior to acceptance of any Improvement(s), the Developer shall demonstrate in writing to the satisfaction of the City Attorney that it owns the Improvements in fee simple or that there are no liens, encumbrances or other restrictions other than those that have been accepted by the City Attorney on the Improvements. Approval and/or acceptance of any Improvements does not constitute a waiver by the City of any rights it may have on account of any defect in or failure of the Improvement or maintenance of the same that is detected or which occurs after approval and/or acceptance. All warranties and/or guarantees shall be for a period of no less than 12 months from the date of final acceptance of the Improvements.

**10. Funds:** Funds drawn, guaranteed or collected by the City under this agreement shall be used for the purpose of correcting defects in and/or repairing or replacing failure(s) of the Improvement(s).

**11. Defect/Default Events:** The following conditions, occurrences or actions will constitute a defect and/or default:

11a. Developer's failure to maintain each and every one of the Improvements in conformance with this guarantee and/or as required by code, law, rule, ordinance or regulation;

11b. Developer's failure to correct defective construction of any Improvement within the applicable guarantee period;

11c. Developer's failure to maintain security in a form and amount required/provided by this guarantee.

11d. As provided herein the City shall provide written notice to the Developer at the address on file with the development application. Notice is and shall be deemed effective two calendar days after mailing thereof by first class United States mail, postage prepaid.

**12. Measure of Cost/Expenses:** The measure of costs and or expenses chargeable by the City under this guarantee will be the reasonable cost of satisfactorily repairing and/or replacing the Improvements plus reasonable City administrative expenses (in the amount of 20% of the repair, replacement and/or warranty work) all of which may exceed the amount of the security provided for in paragraph 4. The amount of the security provided for in paragraph 4 does not set, limit, establish or provide the Developer's maximum financial obligation.

12a. City administrative expenses for which the Developer is obligated to pay include but are not limited to personnel costs, including benefits, overtime, callback, standby and other extraordinary compensation, materials, equipment, third-party contracting costs, collection costs and the value of engineering, legal and administrative staff time devoted to the repair and/or replacement of the Improvements and/or enforcement of this guarantee and all initial warranty(ies) or guarantee(s) assigned to the City by the Developer.

**13. City's Rights:** When any defect or default occurs, the City may after notice and the Developer's failure and/or refusal to repair or replace the Improvements, proceed to collect the amount of the cost or expense incidental or necessary to affect the repair or replacement of the Improvements. The City will have the right to reconstruct, rebuild or otherwise maintain Improvements itself or it may contract with a third party for completion and the Developer grants to the City, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, reconstructing, maintaining and repairing such Improvements. This remedy is cumulative in nature and is in addition to any other remedy the City has at law or in equity.

**14. Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities 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 or non-performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this guarantee. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance of work pursuant to this guarantee except where such suit is brought by the Developer against the City. The Developer is, however, not an agent or employee of the City.

15. **No Waiver:** No waiver of any provision of this Agreement by the City will be deemed to or constitute a waiver of any other provision, nor will it be deemed to or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the City and the Developer; nor will the waiver of any defect or default under this guarantee be deemed a waiver of any subsequent defect(s) or default(s) of the same type. The City's failure to exercise any right under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any defect(s), defaults(s) or Improvement(s).

16. **Amendment or Modification:** The Parties may amend or modify the Agreement only by written instrument executed on behalf of the City by the Public Works and Utilities Director or his designee and by the Developer or his authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

17. **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of this guarantee, the prevailing party, plaintiff or defendant, will be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker. The value of the City's in-house legal counsel is agreed to be \$125.00 per hour.

18. **Integration:** This guarantee, together with the exhibits and attachments thereto constitutes the entire agreement between the Parties and no statement(s), promise(s) or inducement(s) that is/are not contained in this agreement will be binding on the parties.

19. **Third Party Rights:** No person or entity who or which is not a party to this agreement will have any right of action under this agreement.

20. **Severability:** If any part, term or provision of this guarantee is held by a court or courts of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or unenforceability will not affect the validity of any other part, term, or provision and the right of the parties will be construed as if the part, term or provision was never part of the agreement.

21. **Benefits:** The benefits of this agreement to the Developer are personal and may not be assigned without the express written approval of the City. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this agreement are personal obligations of the Developer and also will be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with

the Property. There is no prohibition on the City to assign its rights under this agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property; however, no other act of the City will constitute a release of the original Developer from his liability under this agreement.

**22. Notice:** Any notice required or permitted by this Agreement will be deemed effective two calendar days after deposit with the United States Postal Service, first class, postage prepaid and addressed as follows:

If to Developer: Grand Junction Name -Developer/Company  
Pipe & Supply Co.  
P.O. Box 1849 Address - Street and Mailing if different  
Grand Junction,  
CO 81502 City, State & Zip Code  
243-4604 Telephone and Fax Numbers  
241-6622  
\_\_\_\_\_ E-mail

If to City: Office of the City Attorney  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

Cc: Public Works and Utilities Department  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

**23. Recordation:** Developer will pay for all costs to record a memorandum of this guarantee in the Clerk and Recorder's Office of Mesa County, Colorado.

**24. Immunity:** Nothing contained in this agreement constitutes a waiver of the City's sovereign or other immunity under any applicable law.

**25. Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any action commenced by either party to this agreement whether arising out of or relating to the agreement, will be deemed to be proper only if such action is commenced in Mesa County, Colorado. The Developer expressly waives his right to bring such action in or to remove such action to any other court whether state or federal.

By: Mario Lopez \_\_\_\_\_ Date 11. 5. 03  
Developer

Name (printed): MAKIE TIPPING

Its (position): PRESIDENT

Attest:

*Richard L. Duke*  
Secretary

November 5, 2003  
Date

City of Grand Junction

*E. Smith* FOR THE  
Director of Public Works and Utilities

2/25/04  
Date

CHECK NO. 0046389      DATE 11/06/03  
 VENDOR CITY OF GRAND JUNCTION

INVOICE NUMBER	INVOICE DATE	INVOICE DESCRIPTION	GROSS AMOUNT	DISCOUNTS RETENTIONS PAYMENTS TO DATE	NET AMOUNT THIS CHECK
23 RD PIT	11/04/03	PO 86602	10,396.00	.00	10,396.00

TO REORDER BLANK CHECK STOCK CALL 800-347-3638

TOTALS >

GROSS AMOUNT      TOTAL DISCOUNT      NET AMOUNT  
 10,396.00                      .00                      10,396.00

THIS CHECK IS VOID WITHOUT A BLUE & GREEN BACKGROUND AND AN ARTIFICIAL WATERMARK ON THE BACK - HOLD AT AN ANGLE TO VIEW



**Grand Junction  
 Pipe & Supply Co.**

P.O. Box 1849 - I 70 Business Loop - Grand Junction, Colorado 81502 - 970 / 243-4604  
 740 Hwy. 133 - Carbondale, Colorado 81623 - 970 / 927-4601  
 240 Airpark Dr. - Gypsum, Colorado 81637 - 970 / 524-4440  
 133 KayCee Lane - Durango, Colorado 81302 - 970 / 385-6733

56-382/412

7554440

CHECK DATE

CHECK NUMBER

11/06/03

0046389

Wells Fargo Bank  
 115 Hospital Dr.  
 Van Wert, OH 45891

Ten Thousand Three Hundred Ninety Six and 00/100

TO  
 THE  
 ORDER  
 OF

CITY OF GRAND JUNCTION  
 P.O. BOX 1809

GRAND JUNCTION

CO 81502-1809

PAY THIS AMOUNT

\$ 10,396.00

*Manu...*  
 AUTHORIZED SIGNATURE

BORDER CONTAINS MICROPRINTING

⑈46389⑈ ⑈041203824⑈ 9600033543⑈

**RECORDING MEMORANDUM**  
**Exhibit D**

City of Grand Junction  
Community Development Department Community Development  
File: # CUP-2002-113

This memorandum relates to and confirms that certain Development Improvements Agreement and/or Maintenance Guarantee concerning land in Mesa County, Colorado. The Agreement is by and between GRAND JUNCTION PIPE & SUPPLY CO (Developer) and the City of Grand Junction (City) pertaining to \_\_\_\_\_ (Project), located at 23 ROAD GRAVEL PIR. LANDSCAPING.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book N/A, Pages N/A.)

The Developer of the Project was required by law to install and construct certain public and private improvements, the completion of which was guaranteed by a Development Improvements Agreement and/or Maintenance Guarantee. The Project is required to be constructed in accordance with the approval by the City pursuant to and in accordance with the Zoning and Development Code all as more fully detailed and described in City of Grand Junction development file # CUP-2002-113.

The Developer and the City of Grand Junction by and through the signatures of the undersigned have determined and agreed to the type, quality and amount of improvements required and/or necessitated by the approval of the Project and that the improvements are guaranteed by and through the Development Improvements Agreement and /or Maintenance Guarantee. Furthermore, the Developer and the City agree that the Development Improvements Agreement and/or Maintenance Guarantee are contractual in nature and that the obligations under the Development Improvements Agreement and/or Maintenance Guarantee shall not be assigned except as provided in the agreement(s).

**By virtue of this notice being recorded in the land records of the Mesa County Clerk and Recorder, subsequent owners and/or those that claim by, through or under the Developer are on notice of the Developer's obligations under the agreement(s).**

NOW THEREFORE, the Developer and an official of the City of Grand Junction, both possessing and representing by their signatures that they possess sufficient authority, do hereby memorialize the relative, rights and obligations contained in the Development Improvement Agreement and/or Maintenance Guarantee herein characterized.

**DEVELOPER:** GRAND JUNCTION PIPE & SUPPLY CO

By: C. Royce Clement 2/15/2004  
Date

(Print Name) C. ROYCE CLEMENT

**CITY OF GRAND JUNCTION:**

In accordance with the above, I hereby certify that the Development Improvement Agreement and/or Maintenance Guarantee are made of record by this memorandum and that the same may be inspected and/or copied at the City of Grand Junction, Community Development Department, 250 N. 5<sup>th</sup> Street, Grand Junction Colorado.

Pat Carl 2/25/04  
Community Development Department Date



**RELEASE MEMORANDUM**  
**City of Grand Junction**  
**Community Development Department**  
**FILE # CUP-2002-113**

This Release relates to a Maintenance Guarantee dated February 25, 2004, by and between Grand Junction Pipe (Developer) and the City of Grand Junction, pertaining to 23 Road Gravel Pit (Project), located at 2301 River Road / 641 23 Road.

**WHEREAS**, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

**WHEREAS**, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

**NOW THEREFORE**, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Eric H* Date: 3/10/05

Planner: *Santa J Costello* Date: 3/11/05

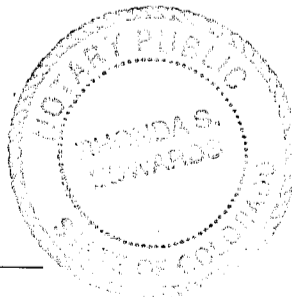
In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

*Pat Cecil* Date 3/11/05  
Community Development Department

The foregoing instrument was executed before me this 11<sup>th</sup> day of March, 2004, by *Pat Cecil*, of the Community Development Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

*Rhonda S Edwards*  
Notary Public



My commission expires on November 28, 2005

**RELEASE OF RECORDING MEMORANDUM**  
**City of Grand Junction**  
**Community Development Department**  
**FILE # CUP-2002-113**

This Release relates to a Recording Memorandum dated February 25, 2004, by and between Grand Junction Pipe & Supply Co. (Developer) and the City of Grand Junction, pertaining to 23 Road Gravel Pit – Landscaping (Project), located at 2301 River Rd / 641 23 Road, recorded at Book 3594, Page 393, Mesa County Clerk and Recorders Office.

**WHEREAS**, the Developer has installed and constructed certain public and private improvements at and for the Project, which completion was guaranteed by the execution of a Development Improvements Agreement and/or Maintenance Guarantee and provision of a Guarantee, and;

**WHEREAS**, the City of Grand Junction and other agencies possessing authority over the Project, and/or the improvements, have inspected the improvements and have accepted the same.

**NOW THEREFORE**, officials of the City of Grand Junction, duly representing their agencies, possessing and representing by their signatures affixed hereto, that they possess sufficient authority to accept improvements and may release the Development Improvements Agreement and/or Maintenance Guarantee, pertaining to the improvements under their jurisdiction, do accept, sign and release said Development Improvements Agreement and/or Maintenance Guarantee.

CITY OF GRAND JUNCTION:

City Engineer: *Eric H.* Date: 3/14/05  
Planner: *Santa Costello* Date: 3/11/05

In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby released, subject to the required warranty period.

*Pat Cecil* Date: 3/11/05  
Community Development Department

The foregoing instrument was executed before me this 11<sup>th</sup> day of March, 2004, by Pat Cecil, of the Community Development Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

*Rhonda S. Edwards*  
Notary Public



My commission expires on November 28, 2005