

IRI05IRS

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	INDIAN ROAD INDUSTRIAL PARK, LLC.
PROJECT/SUBDIVISION:	INDIAN ROAD SUBDIVISION
ADDRESS:	INDIAN ROAD
TAX PARCEL NO:	2945-241-()
FILE #:	MSC-2005-104
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2005
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Indian Road, ("Developer") and the **City of Grand Junction**, Colorado ("City"). Industrial Park LLC

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 shall be the date that it is signed by the Community Development Director, 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, described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The Property, known as Indian Road Subdivision, has been reviewed and approved under Community Development file # N/A ("Development" or "the Development").

The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements to the Property and limiting the harmful effects of substandard development.

A further purpose of this Agreement is to protect the City from the cost of completing necessary improvements itself; this 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 owner(s), purchaser(s) or user(s) of the Property.

The mutual promises, covenants and obligations contained in this Agreement are authorized by state law, the Colorado Constitution and City's land development ordinances and regulations.

DEVELOPER'S OBLIGATION

3. **Improvements:** The Developer shall 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 ("Improvements" or "the Improvements").

3a. On and after the Effective Date of this Agreement the Developer agrees to pay the City for its Administration and Inspection of the Development. The hourly rate for those services is \$45.00/hour. Administration and Inspection includes but is not limited to the time expended by the City's planner, engineer, construction inspector and attorney in directing, advising, correcting and enforcing by means other than

litigation, this agreement and/or the approved development plan. Making disbursements and calling/collecting Guarantees are Administration and Inspection services and shall be charged at \$45.00/hour. See, paragraph 19 concerning attorneys'/ litigation fees.

3b. The scope of this project is such that the City may have to engage independent consultants(s) to adequately provide inspection services; Developer agrees to pay such costs, in addition to all others for which Developer is responsible hereunder.

3c. The Developer's obligation to complete the Improvements is and shall 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. The Developer is required to post security in an amount of \$ 1166,758.79 (120% of the amount for the Improvements) in a form and with terms acceptable to the City ("Guarantee"). The Guarantee shall be in the form of a cash deposit made to the City, a letter of credit or a disbursement agreement in a form and with content approved by the City Attorney. The Guarantee specific to this Agreement is attached as Exhibit C and is incorporated by this reference as if fully set forth.

Select one: Cash Letter of Credit (LOC) Disbursement Agreement

5. **Standards:** The Developer shall construct the Improvements according to the City's standards and specifications.

6. **Warranty:** The Developer shall warrant the Improvements for one year following Acceptance by the City. "Warrant" or "Warranty" as used herein means the Developer shall take such steps and incur such costs as may be needed so that the Improvements or any portion or phase thereof as repaired and/or replaced, shall comply with the Development's construction plans and/or site plan, City standards and specifications at the end of the warranty period. The Developer shall warrant each repaired and/or replaced Improvement or any portion or phase thereof for one year following Acceptance of such repair and/or replacement.

6a. Upon Acceptance the Developer shall provide a Maintenance Guarantee in an amount of \$ 27,793.13 (Line G2, Exhibit B, City Security).

6b. The Maintenance Guarantee shall be secured by a letter of credit, cash escrow or other form acceptable to the City.

7. **Commencement, Completion and Abandonment Periods:** The Developer shall commence work on the Improvements within 30 days from the Effective Date of this Agreement; that date is known as the "Commencement Date."

7a. The Developer shall complete the Improvements by the end of the twelfth month from the Effective Date of this Agreement; that date is known as the "Completion Date."

7b. The Developer shall not cease construction for any period of more than 60 consecutive days. If construction is ceased for 60 or more consecutive days the Director may deem the Development abandoned ("the Abandonment Period").

7c. The Commencement date and the Completion Date are as follows:

Commencement Date: Apr 15, 05.
Completion Date: Apr 15, 06

8. **Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws, ordinances and regulations when fulfilling its obligations under their 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 the Effective Date.

9. **Notice of Defect:** The Developer by and through his/her/its engineer shall provide timely written notice to the issuer of the Guarantee and the Director when the Developer and/or his/her/its engineer has knowledge, that an Improvement or any part or portion of any Improvement either does not conform to City standards or is otherwise defective.

9a. The Developer shall correct all non-conforming construction and/or defects within thirty (30) days from the issuance of the notice by his/her/its engineer of a/the defect.

10. **Acceptance of Improvements:** The City shall not accept and/or approve any or all of the Improvements 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 on the Improvements other than those that have been accepted by the City Attorney.

10a. Approval and/or acceptance of any Improvement(s) does not constitute a waiver by the City of any right(s) that 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.

10b. Acceptance by the City shall only occur when the City Engineer, sends a writing to such effect ("Acceptance").

11. **Reduction of Security:** Upon Acceptance of any Improvement(s) the amount which the City is entitled to draw on the Guarantee shall be reduced by an amount of ~~\$138,965~~⁵¹⁶ (Line G1, Exhibit B, Total Improvement Costs).

11a. At the written request of the Developer, the City shall execute a certificate verifying Acceptance of the Improvement and thereafter waiving its right to draw on the Guarantee to the extent of such amount. A Developer in default under this Agreement has no right to such certification.

12. **Use of Proceeds:** The City shall use funds deposited with it, drawn or guaranteed pursuant to this Agreement only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements or paying Administration and Inspection fees.

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

13a. Developer's failure to complete each portion of the Improvements on or before the Completion Date;

13b. Developer's failure to demonstrate reasonable intent to correct defective construction of any Improvements within the applicable warranty period;

13c. 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;

13d. Notification to the City, by any lender with a lien on the Property, of a default by Developer on any obligation to such lender. In such event, the City may immediately declare a default without prior notification to the Developer.

13e. With regard to the Property or any portion thereof: initiation of any foreclosure action regarding any lien or encumbrance; or initiation of mechanics lien(s) procedure(s); or assignment or conveyance of the Property in lieu of foreclosure. In such event the City may immediately declare a default without prior notification to the Developer.

13f. Notification to the City from the bank issuing the Guarantee that it will not renew the Guarantee at a time when security is still required hereunder and no substitute collateral acceptable to the City has been provided by the Developer.

13g. Except as provided, the City may not declare a default until written notice has been sent to the Developer at the address shown in the development file. 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 shall be the reasonable cost of satisfactorily completing the Improvements, plus reasonable expenses. 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 shall be *prima facie* evidence of the minimum cost of completion; however, the maximum amount of the Developer's liability shall not be established by that amount or the amount of the Guarantee.

15. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the Guarantee or proceed to collect any other security to the extent of the face amount of the Guarantee less eighty percent (80%) of the estimated cost (as shown on Exhibit B) of all Improvements for which the City has given its Acceptance and no warranty work is reasonably required. The City may also exercise its rights to disbursement of loan proceeds or other funds under the City improvements disbursement agreement.

15a. The City shall have the right to complete Improvements itself or it may contract with a third party for completion.

15b. 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, inspecting and repairing the Improvements.

15c. The City may assign the proceeds of the Guarantee or other funds or assets that it may receive in accordance with this Agreement to a subsequent developer or lender that has acquired the Property by purchase, foreclosure or otherwise.

15d. That developer or lender shall then have the same rights of completion as the City if and only if the subsequent developer or lender agrees in writing to complete or correct the Improvements and provides to the City reasonable security for that obligation.

15e. 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 ("City") 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 and/or the Improvements and/or the Development that is being done pursuant to this Agreement.

16a. The Developer further agrees to aid and defend the City in the event that the City and/or the Improvements is named as a defendant in an action concerning the performance of work pursuant to this Agreement except for a suit wherein the Developer states claim(s) against the City.

16b The Developer is not an agent, partner, joint venturer or employee of the City.

17. **No Waiver:** No waiver of any provision of this Agreement by the City shall be deemed or constitute a waiver of any other provision nor shall 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 shall 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 shall not constitute the approval of any wrongful or other act by the Developer or the acceptance of any Improvement.

18. **Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the City by the City Manager or his designee and by the Developer or his/her/its 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, shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the opposing party. The City shall be entitled to claim the value of its in-house attorneys at the rate of \$125.00 per hour. 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:** This Agreement does not guarantee, represent or certify that the Developer is entitled to any other approval(s) required by the City, before the Developer is entitled to commence development beyond the scope of this Agreement 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. No statement(s), promise(s) or inducements(s) that is/are not contained in this Agreement shall be binding on the parties.

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

23. **Time:** For the purpose of computing the Abandonment Period and Commencement and Dates, such times in which war, civil disasters or acts of God occurs or exist shall not be included if such prevents the Developer or City from performing its obligations under the Agreement. The Developer must notify the City in writing if/when it asserts impossibility of performance under this paragraph. The City may reject the Developer's assertion, if it finds, in writing that the condition(s) that the Developer asserts do not exist.

24. **Severability:** If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or otherwise unenforceable, such illegality or

unenforceability shall not affect the validity of any other part, term or provision. The rights of the parties shall 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.

25a. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer and shall be a covenant(s) running with the Property.

25b. There is no prohibition on the right of the City to assign its rights under this Agreement.

25c. Upon written request from the Developer the City shall expressly release the original Developer's Guarantee and/or contract obligations if it accepts new security from any developer or lender who obtains the Property, however, no other act of the City shall constitute a release of the original Developer from his liability under this Agreement.

25d. When the City has issued its Acceptance regarding the Improvements, the City agrees to state the same in writing, with appropriate acknowledgments.

25e. The City shall 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 shall 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 Industrial Park LLC~~ ^{Grand Junction Industrial Park LLC} Name -Developer/Company
2785 D rd. Address (Street and Mailing)
Grand Junction Co
81501 City, State & Zip Code
(970) 243-3355 Telephone and Fax Numbers
(970) 243-4164
E-mail

Cc:

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

Cc: Community Development Department
250 North 5th Street
Grand Junction, CO 81501

27. **Recordation:** Developer shall pay the costs to record a memorandum of this Agreement (Exhibit D) in the records of the Mesa County Clerk and Recorder's Office. The Developer may, at his/her/its option record the entire agreement.

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, the Guarantee, the Maintenance Guarantee or any action based arising out of or under this Agreement shall be deemed to be proper only if such action is commenced in Mesa County, Colorado.

29a. The Developer expressly waives his/her/its right to bring such action in or to remove such action to any other court whether state or federal.

30. **Liability before 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 Improvement shall have received Acceptance by the City.

30a. 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 the side of the street nearest the property to enable an initial two-way traffic operation without on-street parking.

30b. Developer shall also construct and pay for end-transitions, intersection paving, drainage facilities and adjustments to existing utilities necessary to open the street to traffic.

30c. The City shall not issue its written Acceptance with regard to any Improvement(s) including any street, storm drainage facility, sewer, water facility or other required Improvement(s), until the Developer:

(i) furnishes 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) provides 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 Improvement(s) have been constructed or which are necessary for the Improvements are free from toxic, hazardous and other regulated substances or materials;

(iii) provides 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; and
(iv) provides written evidence, certified by the Developer's engineer, that the work was systematically inspected and tested and that the materials and the compaction of the materials that are required to be compacted, were in conformance with City-approved plans and specifications.

By:

Darin Dahn 4/18/05
Developer Date
Darren Davidson
Name (printed)

Corporate Attest:

Name Date

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

Pat Cend 4/18/05
Community Development Dept. Date

6/13/2003

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

EXHIBIT A

Indian Road Industrial Subdivision
Mesa County, Colorado
As recorded in Plat Book No. 12
Page 43 at Mesa County Clerk
Recorders Office

EXHIBIT B

IMPROVEMENTS COST ESTIMATE

DATE: 3/21/2005
 DEVELOPMENT NAME: Indian Road Subdivision
 LOCATION: D road to C 1/2 Road east of 27 1/2
 PRINTED NAME OF PERSON PREPARING: Darren Davidson

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
A. SANITARY SEWER					
1	___ " PVC Sanitary Sewer Main	LF			\$ -
2	___ " PVC Sanitary Sewer Main	LF			\$ -
3	___ " PVC Sanitary Sewer Main	LF			\$ -
4	Sewer services	EA or LF			\$ -
5	Sanitary Sewer Manhole	EA			\$ -
6	Sanitary Sewer Drop Manhole	EA			\$ -
7	Connection to Existing Manhole	EA			\$ -
8	Concrete Encasement	LF			\$ -
Subtotal Part A Sanitary Sewer					\$ -
B. DOMESTIC WATER					
1	___ " PVC Water Main	LF			\$ -
2	___ " PVC Water Main	LF			\$ -
3	___ " PVC Water Main	LF			\$ -
4	___ " Gatevalve	EA			\$ -
5	___ " Gatevalve	EA			\$ -
6	___ " Gatevalve	EA			\$ -
7	Water Services	EA or LF			\$ -
8	Connect to Existing Water Line	EA			\$ -
9	Fire Hydrant with Valve	EA			\$ -
10	Utility Adjustments	EA			\$ -
11	Blowoff	EA			\$ -
Subtotal Part B - Domestic Water					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C1	STREETS				
1	___" PVC Utility/Irrigation sleeves	LF			\$ -
2	___" PVC Utility/Irrigation sleeves	LF			\$ -
3	Reconditioning	SY			\$ -
4	Aggregate Base Course (Class 3)	TN			\$ -
5	Aggregate Base Course (Class 6) (___" Compacted Thickness)	SY			\$ -
6	Aggregate Base Course (Class 6) (___" Compacted Thickness)	SY			\$ -
7	Hot Bituminous Paving, Grading___ (3" thick)	SY	16000	\$ 5.70	\$ 91,200.00
8	Hot Bituminous Paving, Grading___ (___" thick)	SY			\$ -
9	Hot Bituminous Paving, Patching (___" Thick)	SY			\$ -
10	Geotextile	SY			\$ -
11	Concrete Curb (___" Wide by ___" High)	LF			\$ -
12	Concrete Curb and Gutter (2' wide)	LF			\$ -
13	Concrete Curb and Gutter (1.5' wide)	LF			\$ -
14	Monolithic, Vertical Curb, Gutter and Sidewalk (___' Wide)	LF			\$ -
15	Drive Over Curb, Gutter, and Sidewalk (___' Wide)				\$ -
16	Concrete Sidewalk (___' Wide)	LF			\$ -
17	Concrete Gutter and Driveway Section (___" Thick)	SY			\$ -
18	18" Concrete Drain Trough with Plate	LF	36	\$ 30.00	\$ 1,080.00
19	Concrete Corner Fillet	SY			\$ -
20	Concrete Curb Ramp	SY			\$ -
21	Complete Concrete Corner	SY			\$ -
22	Concrete Driveway (___" Thick)	SY			\$ -
23	Driveway/Concrete Repair	SY			\$ -
24	Retaining Walls	LF			\$ -
25	Street Signs	EA			\$ -
26	Striping (New, Remove/Replace)	LF			\$ -
27	Street Lights	EA			\$ -
28	Signal Construction or Reconstruction	LS			\$ -
29	Flowable Fill	CY			\$ -
30	Sleeves, _____, _____ PVC	LF			\$ -
					\$ -
					\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
C2	BRIDGES				
					\$ -
1	Box Culvert Pre-Cast	LS			\$ -
2	Box Culvert Cast-in-Place	LS			\$ -
3	Wingwalls	LS			\$ -
4	Parapet Wall	LS			\$ -
5	Railing (handrail, guardrail)	LS			\$ -
					\$ -
					\$ -
Subtotal Part C - Streets and Bridges					\$ 92,280.00
D1	EARTHWORK				
1	Mobilization	LS			\$ -
2	Clearing and Grubbing	AC or LS			\$ -
3	Unclassified Excavation	CY			\$ -
4	Unclassified Embankment	CY			\$ -
5	Silt Fence	LF			\$ -
6	Watering (Dust Control)	AC or LS			\$ -
D2	REMOVALS AND RESETTING				
1	Removal of Asphalt	SY			\$ -
2	Removal of Miscellaneous Concrete	SY			\$ -
3	Remove Curb and Gutter	LF			\$ -
4	Removal of Culverts	LF			\$ -
5	Remove Structures	EA			\$ -
6	Remove Signs	EA			\$ -
7	Remove Fence	LF			\$ -
8	Adjust Manhole	EA			\$ -
9	Adjust Valvebox	EA			\$ -
10	Relocate or Adjust Utilities	LS			\$ -
D3	SEEDING AND SOIL RETENTION				
1	Sod	SY			\$ -
2	Seeding (Native)	SY or AC			\$ -
3	Seeding (Bluegrass/Lawn)	SY or AC			\$ -
4	Hydraulic Seed and Mulching	SY or AC			\$ -
5	Soil Retention Blanket	SY			\$ -


Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
D4	STORM DRAINAGE FACILITIES				
1	V-Ditches	LF	4711	\$ 1.00	\$ 4,711.00
2	24" RCP Storm Drain Pipe	LF	1080	\$ 17.00	\$ 18,360.00
3	12" RCP Storm Drain Pipe	LF	60	\$ 12.00	\$ 720.00
4	" Storm Drain Pipe	LF			\$ -
5	" Storm Drain Pipe	LF			\$ -
6	" Storm Drain Pipe	LF			\$ -
7	12" Flared End Section	EA	4	\$ 200.00	\$ 800.00
8	24" Flared End Section	EA	2	\$ 300.00	\$ 600.00
9	48" Storm Drain Manhole	EA			\$ -
10	60" Storm Drain Manhole	EA			\$ -
11	72" Storm Drain Manhole	EA			\$ -
12	Manhole with Box Base	EA	3	\$ 3,000.00	\$ 9,000.00
13	Connection to Existing MH	EA			\$ -
14	Single Curb Opening Storm Drain Inlet	EA	1	\$ 1,000.00	\$ 1,000.00
15	Double Curb Opening Storm Drain Inlet	EA	2	\$ 1,500.00	\$ 3,000.00
16	Area Storm Drain Inlet	EA			\$ -
17	Detention Area Outlet structure	EA	1		\$ -
18	Rip-Rap D ₅₀ = 6"	CY	25	\$ 50.00	\$ 1,250.00
19	Sidewalk Trough Drain	EA			\$ -
20	Pump Systems including Electrical	LS			\$ -
	Subtotal Part D - Grading and Drainage				\$ 39,441.00

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
E1	IRRIGATION				
1	Connect to Existing Pipe	LS			\$ -
2	____" ____ Irrigation Pipe	LF			\$ -
3	____" ____ Irrigation Pipe	LF			\$ -
4	Fittings and Valves	LS			\$ -
5	Services	EA			\$ -
6	Pump System and Concrete Vault	LS			\$ -
7	Irrigation Structure	EA			\$ -
8	Vacuum Relief and/or Air Release Valve	EA			\$ -
E2	LANDSCAPING				
1	Design/Architecture	LS			\$ -
2	Earthwork	CY			\$ -
3	Hardscape Features	LS			\$ -
4	Plant Material & Planting	LS			incl
5	Irrigation System	LS			incl
6	Curbing	LF			\$ -
7	Retaining Walls & Structures	LS			\$ -
8	1 Year Maintenance Agrmnt.	LS			\$ -
9	Topsoil				\$ -
					\$ -
					\$ -
E	Subtotal Part E - Landscaping and Irrigation				\$ -

Item #	Item Description	Unit	Quantity	Unit Price	Extended Price
F. Miscellaneous Items					
1	Construction staking/surveying	%	1.00%	\$ 131,721.00	\$ 1,317.21
2	Developer's inspection cost	%		\$ 131,721.00	
3	General construction supervsn	%		\$ 131,721.00	
4	Quality control testing	%	2.00%	\$ 131,721.00	\$ 2,634.42
5	Construction traffic control	%		\$ 131,721.00	\$ -
6	City inspection fees	%	0.50%	\$ 131,721.00	\$ 658.61
7	As-builts	%	2.00%	\$ 131,721.00	\$ 2,634.42
E	Subtotal Part F - Miscellaneous Items				\$ 7,244.66
% = Percentage of total site construction costs					
G. COST SUMMARY					
1 Total Improvement Costs					\$ 138,965.66
2 City Security (20%)					\$ 27,793.13
3 Total Guarantee Amount					\$ 166,758.79

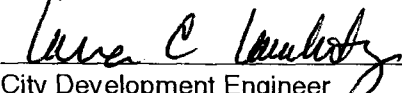
NOTES

1. All prices shall be for items complete in place and accepted.
2. All pipe prices shall include excavation, pipe, bedding, backfill, and compaction.
3. Water main shall include pipe, excavation, bedding, backfill, bends, and appurtenances not itemized elsewhere.
4. All concrete items shall include Aggregate Base Course where required by the drawings.
5. Fill in the pipe type for irrigation pipe and sleeves.
6. Reconditioning shall be calculated to at least 6" outside of back of walk on both sides.
7. Units can be changed if desired, simply annotate what is used.
8. Additional lines or items may be added as needed.

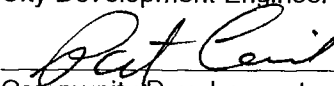

4/18/05

 Signature of Developer Date
 (If corporation, to be signed by President and attested
 to by Secretary together with the corporate seals.)

I have reviewed the estimated costs and time schedule shown above and, based on the construction drawings submitted to date and the current cost of construction, I take no exception to the above.


4/18/05

 City Development Engineer Date


4/18/05

 Community Development Date



Alpine Bank

Grand Junction

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

April 15, 2005

City of Grand Junction
C/O Director of Community Development
250 N. 5th Street
Grand Junction, CO 81501

Irrevocable Letter of Credit No. 7150966333 ABA #102103407
Dated: April 15, 2005
Expiration: April 15, 2006 subject to the automatic extensions stated below.

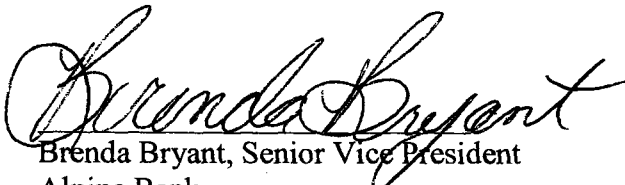
Dear Sirs:

We hereby establish our Irrevocable Self Liquidating Letter of Credit No. 7150966333 in favor of the City of Grand Junction at the request of and for the account of Indian Road Industrial Park, LLC (Developer) in the amount of One Hundred Sixty Six Thousand, Seven Hundred Fifty Nine and No/100 (\$166,759.00) U.S. Dollars.

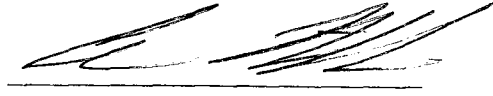
This Letter of Credit is subject to the following terms and conditions:

- 1) it is effective upon signature;
- 2) it expires on April 15, 2006 subject to the automatic extensions discussed below;
- 3) this Letter of Credit is available by sight draft (s) drawn and marked "Drawn under Alpine Bank, Letter of Credit No. 7150966333 dated 04/15/05";
- 4) this Letter of Credit is established for the use and benefit of the city of Grand Junction by reason of the Indian Road Industrial Park, LLC (Developer) being obligated to pay or perform in accordance with the provisions of the Grand Junction Zoning and Development Code;
- 5) the following statement signed by an authorized designee of the City of Grand Junction must accompany the sight draft;
- 6) _____ (Developer) has failed to comply with the terms, conditions, provisions and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$ _____.

- 7.) It is a condition of this Letter of Credit that it will be automatically extended for a period of six (6) months from the present or any future expiration date unless: (a) the underlying obligation has been performed, released or satisfied, (b) this Letter of Credit has been called in full or (c) the Bank notifies the City of Grand Junction at 250 N. 5th Street, Grand Junction CO 81501, by certified mail return receipt requested, at least ninety (90) days prior to such expiration date that we elect not to further extend this Letter of Credit.
- 8.) Except as stated above no modifications or revocations may be made by the undersigned to this Letter of Credit without the express written approval of the City's Director of Community Development or his designee;
- 9.) This Letter of Credit is neither negotiable nor assignable;
- 10.) partial drawing are permitted
- 11.) we hereby agree that drafts drawn under and in compliance with the terms of this Letter of credit will be duly honored on due presentation and delivery of documents, which may be done by first class mail, facsimile, in person or by any other reasonable business practice on or prior to the expiration or any extension thereof on this Letter of Credit;
- 12.) except as otherwise stated herein, this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) and to the extent that it does not conflict with Article 5 of the Uniform Commercial Code of the State of Colorado.


Brenda Bryant, Senior Vice President
Alpine Bank

The originals of the attached documents, including the letter of demand from Sheryl Trent, the sight draft signed by Sheryl Trent, and the original letter of credit #7150966333 were delivered to me on this the 10th day of July 2006.



Alpine Bank

AARON MILLER
Senior Vice President

225 N. 5th Street • Grand Junction, CO 81501
(970) 254-2011 • Cell (970) 216-0625 • Fax (970) 243-5778
email: aaronmiller@alpinebank.com

www.alpinebank.com

NOTICE OF DEFAULT OF DEVELOPMENT IMPROVEMENTS AGREEMENT

June 27, 2006

VIA FIRST CLASS U.S. MAIL, POSTAGE PREPAID

Indian Road Industrial, LLC
Attn: Darren Davidson
2785 D Road
Grand Junction, CO 81501

Re: Indian Road Subdivision - Development Improvements Agreement

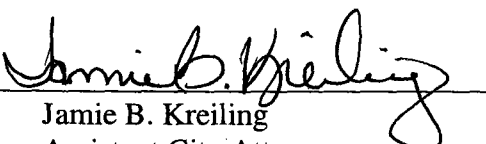
Dear Mr. Davidson:

Indian Road Industrial, LLC is hereby declared to be in default of the terms of the Development Improvements Agreements executed by you on April 18, 2005, ("DIA") concerning the above referenced development. You are in default for failing to complete one (1) or more portions of the Improvements on or before the Completion Date.

If you have questions, you may contact the Development Engineer, Laura Lamberty, at (970) 244-1430.

Sincerely,

OFFICE OF THE CITY ATTORNEY

By: 
Jamie B. Kreiling
Assistant City Attorney

cc: John Shaver, City Attorney
Tim Moore, Public Works Manager
Sheryl Trent, Interim Community Development Director
Senta Costello, Associate Planner
Laura Lamberty, Development Engineer

Fax

To: Brenda Bryant
Senior Vice President

From: Jamie B. Kreiling
Assistant City Attorney

Fax: (970) 242-0001

Date: July 6, 2006

Phone: (970) 243-5600

Pages: 3 including cover page

Re:

CC:

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Dear Brenda:

Following is a copy of the Letter of Credit. We will be submitting the original and the other required documents to the Alpine Bank at 225 N. 5th Street, Grand Junction, CO 81501, this afternoon. Please inform me, if there is someone at the bank that we should speak with regarding this matter when we make the demand.

If you have questions, please let me know.

Thank you,

Jamie B. Kreiling, Assistant City Attorney



CITY ATTORNEY'S OFFICE

Fax

To: Alpine Bank **From:** Jamie B. Kreiling
 Attn: Clay Tufly, President Assistant City Attorney

Fax: (970) 243-5778 **Date:** July 6, 2006

Phone: (970) 243-5600 **Pages:** 5 including cover page

Re: Letter of Credit #7150966333 **CC:**

Urgent For Review Please Comment Please Reply Please Recycle

Comments:

Dear Mr. Tufly:

Following is a letter of demand, a sight drawn draft, and Letter of Credit No. 7150966333. We intended to present the originals in person this afternoon, but I had not heard back from you after returning your call. I am faxing these as allowed under the terms of the letter of credit. We would be happy to deliver the originals tomorrow. Please inform, if you have any questions, or need more information from us.

Thank you,

Jamie B. Kreiling, Assistant City Attorney

July 6, 2006

To Drawee: ALPINE BANK, 225 N. 5th Street, Grand Junction, Colorado

Pay to the order of the **City of Grand Junction** U.S.\$ 166,759.00

The sum of One Hundred Sixty-six Thousand, Seven Hundred Fifty-nine Dollars

Drawn under Alpine Bank, Letter of Credit No. 7150966333, dated 04/15/05.

Beneficiary: City of Grand Junction, Colorado

By: 

Sheryl Trent

Interim Community Development Director

July 6, 2007

Alpine Bank
225 N. 5th Street
Grand Junction, CO 81501

Re: Letter of Credit No. 7150966333 for Indian Road Industrial Park, LLC

Dear Sir or Madam:

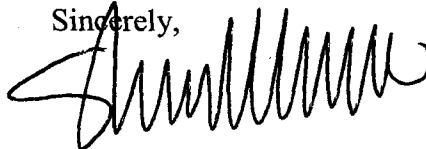
Pursuant to the terms of Letter of Credit No. 7150966333, the City of Grand Junction ("City") provides the following statement:

Indian Road Industrial Park, LLC has failed to comply with the terms, conditions, provisions, and requirements of the Grand Junction Zoning and Development Code and/or plans, specifications or agreements relating to the construction of improvements required by the City of Grand Junction. The monies received from this drawing are required to construct those improvements. The City of Grand Junction therefore requests the payment of \$166,759.00.

As the Interim Community Development Director for the City I am an authorized designee.

Included is a sight draft drawn and marked as required by the terms of the Letter of Credit. Please provide the payment to the person submitting this letter.

Sincerely,



Sheryl Trent
Interim Community Development Director

cc: David Varley, Interim City Manager
John Shaver, City Attorney
Senta Costello, Associate Planner
Laura Lamberty, Development Engineer
File



PUBLIC WORKS
& UTILITIES

August 1, 2006

Darren Davidson
Indian Road Industrial Park LLC
2785 D Road
Grand Junction, CO 81501

Regarding: Indian Road Subdivision Drainage Improvements

Dear Darren:

We have completed a review of the "raw data" and the "certified" as-builts from Rhino Engineering and have come away with more questions than answers.

Some examples are:

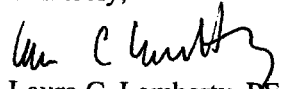
- No as-built data on the outlet structure (As-builts are incomplete)
- Different elevations from the raw data to the "certified data" (Where did the different numbers come from and why were the other numbers dismissed?)
- Significant variance from the as-built condition from the design condition (Are the differences acceptable or not?)
- Changes in as-built conditions that were certified by Rhino Engineering from submittal to submittal which are not substantiated by the raw data. (Why was some data manipulated or selected?)

This further leads us to question whether the as-constructed improvements are sufficient to handle the required design condition.

For this reason, the City is pursuing the confirmation of the true as-built condition in order to formulate a plan for corrections. The City will not release any funds collected against the DIA agreement until scope and costs of corrections are fully known.

At this time, we can proceed with review of the re-plat, but further development of the site cannot occur until the storm drain system is fully functional.

Sincerely,



Laura C. Lamberty, PE
Development Engineer

C: Tim Moore, Assistant Public Works and Utilities Director
Jamie Kreiling, Assistant City Attorney
Senta Costello, Associate Planner



PUBLIC WORKS
& PLANNING

November 4, 2008

Mr. Darren Davidson
Indian Road Industrial Park
P. O. Box 9233.
Grand Junction, CO 81501

Void

RE: **Notice of ~~initial~~ FINAL Acceptance** – (FINAL per Darren's conversation with Dan Wilson)
Project Name: Indian Road Industrial Park
Project Number: SPR-2004-188

The Developer is hereby notified that all requirements for the initial acceptance for the Project have been fulfilled. The Developer is responsible for all materials and workmanship for all of the public infrastructure improvements constructed or installed as part of the Project for six months following the initial acceptance date. Except that improvements under the jurisdiction of other entities, such as water districts and sewer districts shall be subject to the warranty requirements of those entities.

The City will conduct a warranty inspection during the first week of April 2009 prior at the end of the shorted warranty period. The Developer will be required correct any deficiencies noted during the warranty period of items described in the attached DIA Exhibit B.

The City will require that the developer provide a Maintenance Guarantee for the warranty period in the amount of \$1,097.00. The City will release the held funds of \$166,759.00 in the form of a check to the developer. This check will be paid on or before November 14, 2008.

Initial acceptance date / begin warranty period: November 4, 2008
Final acceptance will be granted on April 15, 2009 if all items are still in good condition.

Form of financial guarantee: ~~LOG~~ check
Amount of financial guarantee: \$1,097.00

Sincerely,

Mike Best
Project Manager

Electronic copy:
Scott Peterson, Senior Planner
Eric Hahn, Development Engineer
Mark Barslund, Development Inspector
Darren Starr, Streets Manager
David Van Wagoner – Street System
Ed Tolen – Ute Water Conservancy District
Larry Brown – Sewage Collection System



PUBLIC WORKS
& PLANNING

November 4, 2008

Mr. Darren Davidson
Indian Road Industrial Park
P. O. Box 9233.
Grand Junction, CO 81501

RE: Notice of Final Acceptance -

Project Name: Indian Road Industrial Park
Project Number: SPR-2004-188

MSC-2005-104
The Developer is hereby notified that all requirements for the initial acceptance for the Project have been fulfilled. The Developer is responsible for all materials and workmanship for all of the public infrastructure improvements constructed or installed as part of the Project for six months following the initial acceptance date. Except that improvements under the jurisdiction of other entities, such as water districts and sewer districts shall be subject to the warranty requirements of those entities.

The City will conduct a warranty inspection during the first week of April 2009 prior at the end of the shorted warranty period. The Developer will be required correct any deficiencies noted during the warranty period of items described in the attached DIA Exhibit B.

The City will require that the developer provide a Maintenance Guarantee for the warranty period in the amount of \$1,097.00. The City will release the held funds of \$166,759.00 in the form of a check to the developer. This check will be paid on or before November 14, 2008.

Initial acceptance date / begin warranty period: November 4, 2008

Final acceptance will be granted on April 15, 2009, if all items are still in good condition.

Form of financial guarantee: Check
Amount of financial guarantee: \$1,097.00

Sincerely,

Mike Best
Project Manager

Electronic copy:

- Greg Mobert, Planning Services Supervisor
- Eric Hahn, Development Engineer
- Mark Barslund, Development Inspector
- Darren Starr, Streets Manager
- David Van Wagoner – Street System
- Ed Tolen – Ute Water Conservancy District
- Larry Brown – Sewage Collection System



Alpine Bank

Grand Junction

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

Advice of Amendment #1

BENEFICIARY

City of Grand Junction
C/O Director of Community Development
250 N 5th Street
Grand Junction, CO 81501

RE: Our Letter of Credit #71509663-33 dated April 15, 2005 for the benefit of:

Indian Road Industrial Park, LLC

The above Letter of Credit opened in your favor is amended as follows:

***The Expiration date of said Letter of Credit is extended for 1 year to
April 15, 2007***

All other terms and conditions to remain unchanged. This Advice of Amendment is to be considered as part of Letter of Credit #71509663-33 and must be attached thereto.

This Letter of Credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1983 Revision, ICC Publication #400.

Sincerely,

Aaron Miller
Vice President
Alpine Banks of Colorado.