

KMC974TH

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: DEVELOPMENT IMPROVEMENTS AGREEMENT

NAME OF AGENCY OR CONTRACTOR: KOCH MATERIALS

STREET ADDRESS/PARCEL NAME/SUBDIVISION: 202 4TH AVENUE,  
LOT 1 D & RGW RAILROAD SUBDIVISION, FILING ONE

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 1997

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

## **IMPROVEMENTS AGREEMENT**

(Site Plan)

1. **Parties:** The parties to this Improvements Agreement ("the Agreement") are Koch Materials Co., ("the Developer") and **THE CITY OF GRAND JUNCTION**, Colorado ("the City").

THEREFORE, 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 recorded.

### **RECITALS**

The Developer seeks permission to develop property within the City, which property is more particularly described on Exhibit "A" attached and incorporated by this reference ("the Property"). The City seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements and limiting the harmful effects of substandard development. The purpose of this Agreement is to protect the City from the cost of completing improvements itself and is not executed for the benefit to materialmen, laborers, or others providing work, services or materials to the Developer. 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 improvements listed on Exhibit "B" attached and incorporated by this reference. The Developer agrees to pay the City for inspection services performed by the City, in addition to amounts shown on Exhibit B. 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 (except its obligations for warranty under paragraph 6), the Developer will enter into an agreement which complies with either option identified in paragraph 28, or other written agreement between the City and the Developer.

5. **Standards:** The Developer will 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, in writing, the improvements completed by the Developer.

7. **Commencement and Completion Periods:** The improvements, each and every one of them, will be completed within 90 days from the Effective Date of this Agreement (the "Completion Period").

8. **Compliance with Law:** The Developer shall comply with all relevant federal, state and local laws, ordinances and regulations in effect at the time of site plan/development approval when fulfilling its obligations under this Agreement.

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, or is otherwise defective. The Developer will have thirty (30) days from the issuance of such notice to correct the defect.

10. **Acceptance of Improvements:** The City's final acceptance and/or approval of improvements will not be given or obtained until Developer presents a document or documents, for the benefit of the City, showing that the Developer owns the improvements in fee simple and that there are no liens, encumbrances, or other restrictions 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 the approval and/or acceptance.

11. **Use of Proceeds:** The City will use funds deposited with it or drawn under the bank disbursement agreement entered into between the parties, only for the purpose of completing the Improvements or correcting defects in or failure of the Improvements.

12. **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 agreed upon time schedule; the City may not declare a default until a (14) calendar day notice has been given to the Developer;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the

City may not declare a default until a (14) calendar day notice has been given to the Developer;

- 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 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.

13. **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. 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 establish the maximum amount of the Developer's liability.

14. **City's Rights Upon Default:** When any event of default occurs, the City may draw on the letter of credit or cash deposit to the extent of the face amount of the credit or full amount of the deposit, 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 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 disbursement agreement, cash, or other funds or assets to a subsequent developer (or a lender) who has acquired the Development 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 reasonable security for the obligation. In addition, the City may also en-join the sale, transfer, or conveyance of 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.

15. **Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officer, employees 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 of work at the Development or on 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 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.

16. **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 City and 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.

17. **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 its authorized officer. Such amendment or modification shall be properly notarized before it may be deemed effective.

18. **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 the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

19. **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 property in the Development.

20. **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.

21. **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.

22. **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.

23. **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 this liability under this Agreement.

24. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified, and return receipt requested and addressed as follows:

If to Developer:

KOCH  
202 4TH AVE  
GRAND JCT. CO 81501

If to City:

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

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

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

27. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement, whether arising out of or relating to the Agreement, letter of credit, disbursement agreement, cash deposit 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.

28. The **improvements guarantee** required by the City Code to ensure that the improvements described in this Improvements Agreement are constructed to City standards may be in one of the following forms:

\_\_\_(I) disbursement agreement between a bank doing business in Mesa County and the City, or

\_\_\_(II) a good and sufficient letter of credit acceptable to the City, or

(III) depositing with the City cash equivalent to the estimated cost of construction of the improvements.

\_\_\_(IV) other; see attached.

The Finance Department of the City may act as disbursing agent for disbursements to Developer's contractor(s) as required improvements are completed and accepted if agreed to in writing pursuant to a disbursement agreement.

Exhibit C, attached hereto and incorporated herein by this reference as if fully set forth, is the City approved and accepted guarantee for this project.

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

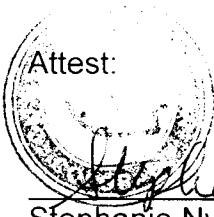
Prior to requesting final acceptance of streets, storm drainage facilities, or other required improvements, the Developer shall furnish to the City Engineer as-built drawings in reproducible form, blue-line stamped and sealed by a professional engineer and copies of results of all construction control tests required by City specifications.

b. 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 prescribed location and shall construct the required width of pavement from the edge of gutter on the side of the street being developed to enable an initial two-way traffic operation without on-street parking.

The Developer is also responsible for end-transitions, intersection paving, drainage facilities, and adjustments to existing utilities and joints necessary to open the street or sidewalk to use.

City of Grand Junction  
250 North 5th Street  
Grand Junction, CO 81501

Kathleen M. Portman 2-28-97  
Director of Community Development Date



Attest:  
Stephanie Nye 2-28-97  
Stephanie Nye, City Clerk Date

Mark Brown 2/18/97  
Developer Date

(If Corporation, to be signed by President and attested to by Secretary together with the Corporate seals)



EXHIBIT "A"

TYPE LEGAL DESCRIPTION BELOW, USING ADDITIONAL SHEETS AS NECESSARY. USE SINGLE SPACING WITH A ONE (1) INCH MARGIN ON EACH SIDE.

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*Lot 1, D & RGW Railroad Subdivision, Filing One*

EXHIBIT "B"

IMPROVEMENTS LIST/DETAIL

DATE: 2-18-97

NAME OF DEVELOPMENT: Koch Materials

LOCATION: 202 4th Ave.

PRINTED NAME OF PERSON PREPARING: Marshall Prothero

|  | UNITS | TOTAL QTY. | UNIT PRICE | TOTAL AMT. |
|--|-------|------------|------------|------------|
| <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 (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   | _____ | _____      | _____      | _____      |
| 2. Earthwork (excavation, embankment const)  | _____ | _____      | _____      | _____      |
| 3. Utility relocations   | _____ | _____      | _____      | _____      |
| 4. Aggregate sub-base course (sq.yd.)  | _____ | _____      | _____      | _____      |
| 5. Aggregate base course (sq.yd.)  | _____ | _____      | _____      | _____      |
| 6. Sub-grade stabilization   | _____ | _____      | _____      | _____      |
| 7. Asphalt or concrete pavement (sq.yd.)   | _____ | _____      | _____      | _____      |
| 8. Curb, gutter & sidewalk (linear feet)   | _____ | _____      | _____      | _____      |
| 9. Driveway sections (sq.yd.)  | _____ | _____      | _____      | _____      |
| 10. Crosspans & fillets  | _____ | _____      | _____      | _____      |
| 11. Retaining walls/structures   | _____ | _____      | _____      | _____      |

- 12. Storm drainage system \_\_\_\_\_
- 13. Signs and other traffic control devices \_\_\_\_\_
- 14. Construction staking \_\_\_\_\_
- 15. Dust control \_\_\_\_\_
- 16. Street lights (each) \_\_\_\_\_

**IV. LANDSCAPING**

- 1. Design/Architecture \_\_\_\_\_
- 2. Earthwork ( top soil, fine grading, berming) \_\_\_\_\_
- 3. Hardscape features (walls, fencing, paving) \_\_\_\_\_
- 4. Plant material and planting 50 50 10 500
- 5. Irrigation system 1 1 1500 1500
- 6. Other features (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 \_\_\_\_\_
- 5. Construction traffic control \_\_\_\_\_
- 6. Rights-of-way/Easements \_\_\_\_\_
- 7. City inspection fees \_\_\_\_\_
- 8. Permit fees \_\_\_\_\_
- 9. Recording costs \_\_\_\_\_
- 10. Bonds \_\_\_\_\_
- 11. Newsletters \_\_\_\_\_
- 12. General Construction Supervision \_\_\_\_\_
- 13. Other \_\_\_\_\_
- 14. Other \_\_\_\_\_

TOTAL ESTIMATED COST OF IMPROVEMENTS: \$ 2000.00

*[Handwritten Signature]*

2/18/97

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 plan layouts submitted to date and the current costs of construction, I take no exception to the above.

*NA*

CITY ENGINEER

DATE

*[Handwritten Signature]*

COMMUNITY DEVELOPMENT

2/18/97

DATE

# Improvements Guarantee

 Deposit

 Request to Release Funds

|                                   |  |                       |
|-----------------------------------|--|-----------------------|
| <b>Date</b>                       | March 3, 1997  |                       |
| <b>File No.</b>                   | CUP-1994-145   |                       |
| <b>Purpose</b>                    | Guarantee for landscaping improvements                               |                       |
| <b>Project Name &amp; Address</b> | Koch Materials Company<br>202 4th Avenue                             |                       |
| <b>Payee Name</b>                 | Koch Materials Company   |                       |
| <b>Payee Mailing Address</b>      | Attn: Marshall Prothero<br>202 4th Avenue<br>Grand Junction CO 81501 |                       |
| <b>ACCOUNTING INFORMATION</b>     |  |                       |
|                                   | <i>Amount</i>  | <i>Receipt/PA No.</i> |
| <b>DEPOSIT</b>                    | \$2,000.00   | TR #                  |
| <b>Refund Amount</b>              | \$2,000.00   | I9710262              |
| <b>Refund Amount</b>              | \$0  |                       |
| <b>Refund Amount</b>              | \$0  |                       |
| <b>BALANCE</b>                    | \$0.00   |                       |
| <b>Fund-Account No.</b>           | 207-21090  |                       |
| <b>Planner's Name</b>             | Kathy Portner  |                       |

KOCH MATERIALS COMPANY  
P O BOX 2338  
WICHITA, KS 67201-2256

NO. 3943521 50-937  
213

3943521

CORPORATE ACCOUNT  
U.S. DOLLARS

PAY TO THE ORDER OF

Two Thousand Dollars 00 Cents

CITY OF GRAND JUNCTION  
CITY HALL  
250 N 5TH  
GRAND JUNCTION CO 81501

| THE CHASE MANHATTAN BANK, N.A.<br>SYRACUSE, NEW YORK |                 |
|--|-----------------|
| DATE   | AMOUNT          |
| 02/24/97   | \$*****2,000.00 |

VOID 120 DAYS AFTER DATE OF CHECK

*Charles Koel*  
*D. L. Markel*

AUTHORIZED OFFICERS

THIS DOCUMENT IS VOID IF THE BACK OF THIS CHECK  
DOES NOT CONTAIN AN ARTIFICIAL WATERMARK

KOCH INDUSTRIES INC

⑈3943521⑈ ⑆021309379⑆ 6010020017334⑈