

UTE09UWS

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	DEVELOPMENT IMPROVEMENTS AGREEMENT
NAME OF CONTRACTOR:	UTE WATER CONSERVANCY DISTRICT
PROJECT/SUBDIVISION:	UTE WATER SUBDIVISION
ADDRESS:	822 22 ROAD AND 825 22 ROAD
TAX PARCEL NO:	2697-254-00-944
FILE #:	FP-2009-060
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	2009
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE

DEVELOPMENT IMPROVEMENTS AGREEMENT

1. **Parties:** The parties to this Development Improvements Agreement ("Agreement") are Ute Water Conservancy District, ("Developer") and the **City of Grand Junction**, Colorado ("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 shall be the date that it is signed by the Public Works & Planning 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 Ute Water Subdivision has been reviewed and approved under Planning file # FP-2009-060 ("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 \$ 1,018,297.67 (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
Other (see attached Exhibit C)

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 \$ 169,716.28 (Line G2, Exhibit B, City Security). Once the improvements are accepted by the City ("Initial Acceptance") and the Maintenance Guarantee is provided by the Developer, the City will release its right to draw upon the Security/Guarantee addressed in paragraph 4 above.

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: **September 2, 2009**

Completion Date: **September 1, 2010**

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 **\$ 848,581.39** (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: To the fullest extent permitted by law, 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, excluding all acts or omissions of the City, its officers, employees, agents, assigns, or subcontractors.

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: Ute Water Conservancy District Name -Developer/Company
Attn: Mr. Edward Tolen- District Engineer
560 25 Road Address (Street and Mailing)
Grand Junction, Colorado 81505 City, State & Zip Code
(970)242-7491 Telephone Number
(970)242-9189 Fax Number
etolen@utewater.org E-mail

Cc:

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

Cc: Public Works & Planning 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 or the Developer'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;

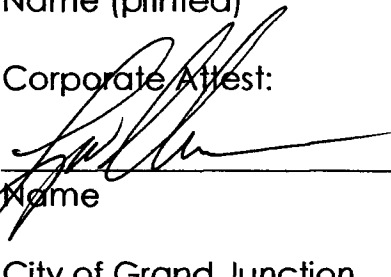
(iii) provides written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney; and

(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.

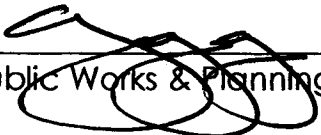
By: Ute Water Conservancy District

 1 Sep 09
Developer Date
Edward Tolen District Engineer
Name (printed)

Corporate Attest:

 9-1-2009
Name Date

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

 9.2.09
Public Works & Planning Dept. Date

5/15/2007

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

EXHIBIT A

**N ½ SE ¼ of Section 25, Township 1 North, Range 2 West of the Ute Meridian,
lying Easterly of the centerline of Copeco Drain, Mesa County, Colorado as
recorded in Book 4425, Page 805 of the County Clerk and Records Office
for Mesa County, Colorado.**

EXHIBIT B**IMPROVEMENTS COST ESTIMATE**

DATE: August 12, 2009
 DEVELOPMENT NAME: Ute Water Subdivision
 LOCATION: 825 22 Road
 PRINTED NAME OF PERSON PREPARING: Jason E. Laible

Item Description	Unit	Quantity	Unit Rate	Cost
DEMOLITIONS / REMOVALS				
Clearing and Grubbing, including Strip Topsoil in Paved Areas	LS	1	\$3,705.00	\$3,705.00
Building, Fences, Trees, Asphalt & Misc. Removals	LS	1	\$18,088.00	\$18,088.00
EARTHWORK				
Earthwork	LS	1	\$37,422.00	\$37,422.00
Subgrade Stabilization	CY	800	\$24.00	\$19,200.00
Watering (Dust Control)	LS	1	\$1,465.00	\$1,465.00
Stormwater Management Site Protection	LS	1	\$7,655.00	\$7,655.00
Gravel Track Pads	LS	1	\$712.00	\$712.00
Dry Utility Trenching (Gas/Phone/Power)	LF	3,210	\$2.70	\$8,667.00
Provide / Install 3" Schedule 40 Electrical Conduit In Dry Utility Trench at Street Crossings	LF	400	\$2.05	\$820.00
Provide / Install 4" Schedule 40 Electrical Conduit In Dry Utility Trench at Street Crossings	LF	600	\$2.55	\$1,530.00
SANITARY SEWER				
8" PVC Sanitary Sewer Main	LF	4,250	\$19.85	\$84,362.50
Approx. 100-FT Steel Encased Bore Under Canal	LS	1	\$41,000.00	\$41,000.00
Sanitary Sewer Manhole	EA	14	\$1,985.00	\$27,790.00
6" PVC Sanitary Sewer	LF	15	\$67.00	\$1,005.00
DOMESTIC WATER				
8" C900 PVC Water Main & Mis. Fittings	LF	2,160	\$15.70	\$33,912.00
8" C900 PVC Water Service Lines	LF	200	\$17.85	\$3,570.00
6" C900 PVC Water Fire Hydrant Lines	LF	90	\$17.00	\$1,530.00
8" Gatevalve	EA	5	\$1,205.00	\$6,025.00
Connect to Existing Water Main	EA	1	\$285.00	\$285.00
Fire Hydrant with Valve, Fittings	EA	4	\$3,250.00	\$13,000.00
Flush / Testing Water Line	LS	1	\$1,765.00	\$1,765.00

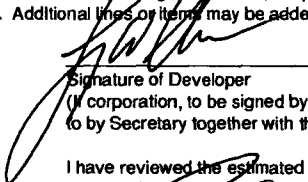
Ute Water Subdivision

Item Description	Unit	Quantity	Unit Rate	Cost
STORM DRAINAGE FACILITIES				
12" RCP Storm Drain Pipe	LF	32	\$42.00	\$1,344.00
18" HDPE Storm Drain Pipe	LF	23	\$36.00	\$828.00
30" RCP Storm Drain Pipe	LF	862	\$62.00	\$53,444.00
36" RCP Storm Drain Pipe	LF	101	\$85.00	\$8,585.00
Gabion Basket Erosion Protection	LS	1	\$1,080.00	\$1,080.00
18" Flared End Section	EA	1	\$235.00	\$235.00
30" Flared End Section	EA	4	\$1,855.00	\$7,420.00
60" Storm Drain Manhole	EA	3	\$3,445.00	\$10,335.00
Small Area Storm Drain Inlet	EA	1	\$2,700.00	\$2,700.00
Area Storm Drain Inlet	EA	1	\$1,795.00	\$1,795.00
Detention Pond Outlet Structure	LS	1	\$19,910.00	\$19,910.00
Culvert Siphon Assembly, Including 2 ea Large Area Inlets, 15" Pipe, Trash Screen and connection tie-ins	LS	1	\$6,240.00	\$6,240.00
STREETS				
Reconditioning Subgrade (Internal Subdivision Roads)	LS	1	\$12,050.00	\$12,050.00
Recondition Subgrade, Place Nine Inches (9") Class VI Aggregate Base Course for COPCO Drain /Sewer Access Road	SY	5,105	\$7.60	\$38,798.00
Class III Aggregate Base Course (if required) Under HBP	SY	5,496	\$8.70	\$47,815.20
Class VI Aggregate Base Course Under HBP	SY	5,496	\$6.55	\$35,998.80
HBP	SY	5,496	\$22.30	\$122,550.89
HBP Patchwork	SY	30	\$79.00	\$2,370.00
Street Signs & Posts	EA	15	\$150.00	\$2,250.00
LANDSCAPING				
8" PVC Irrigation Main Line (160 psi min)	LF	2,325	\$7.40	\$17,205.00
10" - 100 Lb PIP Irrigation Pipe	LF	400	\$9.15	\$3,660.00
Irrigation taps	EA	4	\$280.00	\$1,120.00
Connection to concrete ditch w/ slide gate	EA	1	\$1,234.00	\$1,234.00
Yak Screen Assembly / Box	LS	1	\$8,915.00	\$8,915.00
Drain valve and connection to outlet structure	LS	1	\$995.00	\$995.00
8- Inch Irrigation Isolation valves	EA	2	\$825.00	\$1,650.00
Revegetate detention pond landscape	LS	1	\$20,425.00	\$20,425.00
Irrigation Pump System & Electrical	LS	1	\$20,615.00	\$20,615.00
1 Year Maintenance Agreement	LS	1	\$5,865.00	\$5,865.00
MISCELLANEOUS ITEMS				
Mobilization	LS	1	\$52,910.00	\$52,910.00
Construction Staking/Surveying	LS	1	\$11,405.00	\$11,405.00
Traffic Control	LS	1	\$5,430.00	\$5,430.00
As-Built Drawings / Survey	LS	1	\$1,630.00	\$1,630.00
SWMP Inspections / Maintenance	LS	1		\$0.00
Performance Bond	LS	1	\$6,265.00	\$6,265.00

Item Description	Unit	Quantity	Unit Rate	Cost
TOTAL COST PER UNIT RATE SCHEDULE:				\$848,581.39
F. Miscellaneous Items				
Materials testing / Inspection	%	2.00%	\$848,581.39	\$ 16,971.63
% = Percentage of total site construction costs				
G. COST SUMMARY				
1 Total Improvement Costs				\$848,581.39
2 City Security (20%)				\$ 169,716.28
3 Total Guarantee Amount				\$ 1,018,297.67

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.

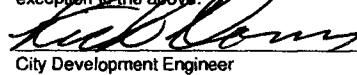


 Signature of Developer
 (If corporation, to be signed by President and attested to by Secretary together with the corporate seals.)

9-4-2009

 Date


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.



 City Development Engineer

9-2-09

 Date



 Community Development

9-2-09

 Date

EXHIBIT C
AGREEMENT TO FUND DEVELOPMENT IMPROVEMENTS

THIS AGREEMENT is made this 27th day of August 2009, between the City of Grand Junction (hereafter "City") and Ute Water Conservancy District (hereafter "The District") and is subject to the following recitals.

RECITALS

The District is engaged in the development of a new office and service yard/facility. As part of said development, The District is required to secure certain on and off site improvements (hereafter "DIA Security") which is established by the City's Zoning and Development Code.

Because the DIA Security is over one million dollars and because The District anticipates completion of its project in 9 or less months, the City and The District have entered into this Agreement to Fund Development Improvements (hereafter "Agreement") guaranteeing payment for the construction of the improvements all as more particularly described herein and in the Development Improvements Agreement (DIA), which is incorporated herein as if fully set forth.

Under this Agreement, in order to guarantee the payment for the construction of the improvements, The District will pledge \$1,018,297.67 to complete the project. There shall be no interest or carrying cost paid by or charged by the City to The District under this Agreement.

The District has agreed to create an investment account(s) with Alpine Bank (hereafter "Bank" or "Banker") to accomplish the purposes of this Agreement. In order to satisfy the requirements of the Agreement, The District desires to transfer, pledge or otherwise encumber certain of its cash and/or certificates of deposit (CD's and/or other investment instruments hereafter "Instruments") from their general accounts into a separate account with the Bank, which will be managed and controlled by the City pursuant to this Agreement, such that the total of the accounts will be equal to the DIA Security. The District shall include this Agreement as part of the deposit agreement with the Bank relating to and concerning the Instruments.

The City has agreed to accept the Instruments as security for the DIA all in accordance with this Agreement and the DIA.

The City and The District stipulate and agree that there is sufficient consideration for the making and enforcement of this Agreement.

NOW THEREFORE, the City and The District agree as follows:

1. Establishment of Accounts. The DIA Security is required by the City as a condition of its approval of The District project. The District has deposited various Instruments with a value of \$1,018,297.67 in an account(s) with the Bank for the use and benefit of the City as provided herein. Said account(s) shall be entitled "Ute Water – Subdivision Project DIA Security" (for purposes of this Agreement "the Ute Project Account") as security for

for income tax purposes until payment(s) to the City, if any, are made in accordance with this Agreement and with the terms of the DIA.

2. Signatories on Accounts. In order to ensure that the City has control over the Ute Project Account pursuant to this Agreement, designated representatives from the City shall be the only signatories on the account. The City shall have the sole authority and power to withdraw, release and convert any and all Instruments in the Ute Project Account to the use and benefit of the City but only in conformance with the terms of this Agreement. The District shall have no ability or power to withdraw, release and/or convert the account(s) without written direction authorization from the City by and through the authorized signers. Two signatures will be required to transact any business on the Ute Project Account(s). The following City representatives shall be authorized signers on the Ute Project Account(s):

Laurie M. Kadrich, Tim Moore and Jodi L. Romero.

Notwithstanding the foregoing, the City acknowledges and agrees that the authority given to the City under this Agreement is solely for purposes of using the Ute Project Account as the financial guaranty for payment in accordance with the DIA and this Agreement. The City agrees that nothing contained herein or contained in any documents establishing the account(s) with the Banker shall constitute evidence of the City's ownership of such accounts until the account(s) is(are) converted to the City as provided by this and the DIA Agreements.

3. Release of Accounts: The Banker shall, in accordance with this Agreement and with the DIA, pay amounts according to written demands made by the City to the Banker from the principal of the Ute Project Account to the City. The City shall submit such documentation to the Banker as is reasonably necessary to release such amount(s) from the Ute Project Account. Other than draws pursuant to the foregoing, any release of the principal shall be conditioned on and subject to The District providing a Maintenance Guarantee in an amount and form acceptable to the City.
4. Failure to Complete. If The District fails to complete the Project for any or no reason, the City may collect or convert the instruments contained in the Ute Project Account in accordance with the DIA. Such right shall be exercised by the City providing written notice to the Banker with a copy to The District that the City is exercising such right and that The District has failed to complete the Project. The Banker shall immediately pay to the City the amount it claims is due. The Bank shall be liable to the City for any direct damages due to any failure on the Bank's part to pay pursuant to this Agreement. To whatever extent reasonably necessary, The District will cooperate in causing or allowing conversion of the instruments or payment of funds to the City to be accomplished in the event of The District's failure to complete the Project.
5. Fees and Charges; Monthly Statements. Any fees or charges relating to the Ute Project Account shall be paid by The District. City agrees to instruct Banker to send monthly

statements for the Ute Project Account to The District, PO Box 460, Grand Junction CO 81502.

6. Interest. The City agrees that all interest income relating to the Instruments in the Ute Project Account shall be paid to The District and shall be for the use and benefit of The District, whether or not such interest is deposited in the Ute Project Account.
7. Control of Account. The parties acknowledge that the Ute Project Account established with the Bank shall be held for the use and benefit of the City. With the written consent of the City, the form of the Instruments may be changed to provide a higher yield. At all times the Ute Project Account is subject to this Agreement and the DIA. In the event of a dispute or request by the City for disbursement of the funds, this Agreement and the DIA shall control the management and use of such account(s).
8. Modification of Agreement. Except as otherwise specifically provided herein, this Agreement may be altered, amended, modified or revoked by writing only, signed by all of the parties hereto.
9. 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 recover from the opposing party any and all costs, including reasonable attorney's fees, which may include but not be limited to the value of in-house counsel, and expert witness fees. If relief is awarded to both parties, the attorney's fees may be equitably divided between the parties by the decision-maker.
10. 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 constructed as if the part, term or provision was never part of the Agreement.
11. Incorporation of Zoning and Development Code. The parties acknowledge that the terms of the City's 2007 Zoning and Development Code establishing the requirements to construct certain improvements and to guarantee those improvements are made a part hereof and incorporated herein.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures to this Agreement.

UTE WATER CONSERVANCY DISTRICT

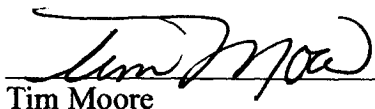
CITY OF GRAND JUNCTION

By:


Larry Clever

By:

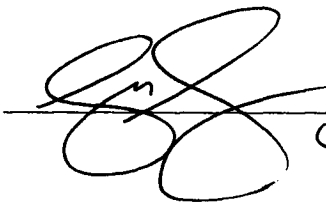

John Shaver

By: 
Tim Moore

By signing below, the Bank acknowledges receipt of the funds described herein and establishment of the account(s) described herein containing said funds as well as its obligations hereunder:

ACKNOWLEDGED BY:

BANK:

By: 
Clay H. TuSly, President

**RECORDING MEMORANDUM
Exhibit D**

City of Grand Junction
Public Works and Planning Department
File: # FP-2009-060

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 Ute Water Conservancy District (Developer) and the City of Grand Junction (City) pertaining to Ute Water Subdivision (Project), located at 825 22 Road /
2190 H/4 Road.


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 # FP-2009-060

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:

By:  8 Sep 09
Date

(Print Name) Edward Tolen District Engineer

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, Public Works & Planning Department, 250 N. 5th Street, Grand Junction Colorado.

 9.8.09
Public Works & Planning Department Date



September 17, 2010

Mr. Larry Clever
Ute Water Conservancy District
PO Box 460
Grand Junction, CO 81502

RE: **Notice of ^{Initial} Acceptance -**
Project Name: Ute Water Subdivision
Project Number: FP-2009-060

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 one year following the initial acceptance date. Improvements under the jurisdiction of other entities, such as water and sewer districts, shall be subject to the warranty requirements of those entities.

The following improvements within the public right-of-way are initially accepted by the City.

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes, and ditches within the public right of way.
- Maintenance of the detention pond and outlet works is the responsibility of the property owners association.

Irrigation system:

- Inverted siphon underneath H ¼ Road at 22 Road including the inlet and outlet structures.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- Public sewer mains and manholes shown on the project plans including the line along the Capeco drain but not including the line from the Capeco Drain running to the east which is private.

The City will conduct a warranty inspection of the project prior to the end of the one-year warranty period. The Developer will be required to correct any deficiencies noted during the warranty period. If a deficient item requires replacement or major repairs the warranty for that item, the Development Improvement Agreement, the Maintenance Agreement, and a financial guarantee shall be extended by one year from the date the item is repaired or replaced.

There are three specific items, shown below, noted on the initial acceptance checklist to be inspected at the end of the warranty period. They were not corrected at this stage to allow time for observation or correction. If the warranty inspection reveals they are problematic, they must be corrected.

1. The siphon pipe under H ¼ Road has a 0.2' reverse slope on the as-built drawings. Because siphons operate under pressure conditions this shouldn't be a problem. It will be examined at the end of the warranty period for operational issues. If there are none, it will be accepted as constructed.
2. Ed Tolen of Ute Water is working on the 22 Road irrigation ditch overflow problem. The concrete irrigation ditch on the west side of 22 Road is overflowing at the siphon and flows to the ditch on the north side of H ¼ Road. This is causing erosion problems in the H ¼ Road ditch. Possible solutions are to lower the outlet pipe on the siphon creating about 4" more freeboard on the upstream side or piping the concrete ditch. This situation will be examined at the end of the warranty period.
3. There is a PVC underdrain installed from sanitary sewer manhole #9 to the Capeco. It is running a small amount of water, presumably coming from the gravel sewer bedding. This will be inspected at the end of the warranty period. If it is still running water it will need to be capped.

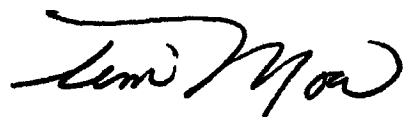
The City hereby authorizes the reduction of the original CD with Alpine Bank to the amount listed below.

Initial acceptance date / begin warranty period: September 13, 2010

Form of financial guarantee: CD at Alpine Bank
Amount of financial guarantee: \$169,716.28

Please direct any questions or concerns to Rick Dorris at 256-4034 who is the Development Engineer for this project.

Sincerely,



Tim Moore
Public Works and Planning Director

Electronic copy:

Brian Rusche, Senior Planner
Peggy Sharpe, Administrative Assistant
Darren Starr, Streets Manager
Chris Spears, Storm Drainage System
Rick Dorris, Development Engineer

Mark Barslund, Development Inspector
Leslie Ankrum, Administrative Assistant
Dan Thorne, Street System
Larry Brown, Sewage Collection System

MAINTENANCE GUARANTEE

1. **Parties:** The parties to this Maintenance Guarantee ("the Guarantee" or "Guarantee") are **Ute Water Conservancy District** ("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") as shown on Exhibit A which were made necessary by virtue of development on property within the City. The Property, known as **Ute Water Subdivision** has been reviewed and approved under Public Works & Planning file #**FP-2009-060** 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 **August 2, 2010** (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 **\$169,716.28** (Line G2, Exhibit B, City

Security). To the extent that it is not used for repairs of the Improvements in accordance with the provisions of this Guarantee, the security shall be released to Developer within thirty (30) days after the end of the guarantee period specified in Paragraph 3, above.

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.

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 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). The City is not obligated to grant an extension of time for correction of defects if it becomes aware of the defect(s) in or during an emergency. However, the City shall notify the Developer of any defects it discovers during an emergency within a reasonable period of time after the emergency situation has been addressed. 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 one year from the date of 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 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.

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 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: To the extent allowed by law, 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:	<u>Ute Water Conservancy District</u>	Name -Developer/Company
	<u>2190 H 1/4 Road</u>	Address (Street and Mailing)
	<u>PO Box 460</u>	
	<u>Grand Junction, CO 81502</u>	City, State & Zip Code
	<u>(970) 242-7491</u>	Telephone and Fax Numbers
	<u>(970) 242-9189</u>	
	<u>etolen@utewater.org</u>	E-mail

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

Cc: Public Works and Planning Department
250 North 5th 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 or the Developer'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: 

Ute Water Conservancy District 09.10.2010
Developer Date

Name (printed): Harley T Jackson 

Title (position): President

Attest:

Sue Mueller 9/17/2010
Secretary Date

City of Grand Junction

Lisa E Cox for Brian Rutsche 9-17-2010
Project Planner Date

Kirk Harris 9-17-2010
Dept. of Public Works and Planning Date

GUARANTEE2007

5/15/2007

EXHIBIT A

Roads- Including asphalt paving, subgrade, roadbase and shoulders at the following locations:

H $\frac{1}{4}$ Road from 21 $\frac{3}{4}$ Road to 22 Road;

21 $\frac{3}{4}$ Road from H $\frac{1}{4}$ Road to Cul-de-sac (just south of H $\frac{1}{2}$ Road).

Sanitary Sewer- Including sanitary sewer mains and manholes at the following locations:

Along Copeco Drain from 21 $\frac{1}{2}$ Road to H $\frac{1}{2}$ Road.

Storm Drain Facilities- Including ditches, drainage pipes and manholes at the following locations:

North side of H $\frac{1}{4}$ Road from 21 $\frac{3}{4}$ Road to 22 Road;

East and West side of 21 $\frac{3}{4}$ Road from H $\frac{1}{4}$ Road to H $\frac{1}{2}$ Road.

Irrigation Improvements- Including inlet/outlet structures and pipe at the following location:

22 Road Lateral crossing of H $\frac{1}{4}$ Road.

August 18, 2011

Mr. Larry Clever
Ute Water Conservancy District
PO Box 460
Grand Junction, CO 81502

RE: Notice of Final Acceptance -
Project Name: Ute Water Subdivision
Project Number: FP-2009-060

The City has conducted a warranty inspection of the project and any needed follow-up inspections. The public infrastructure improvements are in satisfactory condition. All requirements for the final acceptance for the Project have been fulfilled.

The Developer's warranty obligation, for all materials and workmanship, has concluded and all warranty obligations are hereby released.

The following improvements within the public right-of-way are accepted for future maintenance by the City:

Public streets:

- All public streets as shown on the Project plans.

Storm drainage system:

- Storm drain pipes, inlets and manholes within the public right of way.
- Maintenance of the detention pond and outlet works is the responsibility of the property owners association.

Irrigation system:

- Inverted siphon underneath H ¼ Road at 22 Road including the inlet and outlet structures.

Water distribution system:

- N/A – Served by Ute Water

Sanitary sewer:

- Public sewer mains and manholes shown on the project plans including the line along the Capeco drain but not including the line from the Capeco Drain running to the east which is private.

The Planner has been contacted and will release the Development Improvements Agreement, the Maintenance Agreement, and any financial security attached to the Project.

Sincerely,

Rick

Digitally signed by Rick
DN: cn=Rick, o=City of
Grand Junction, CO,
ou=Public Works and
Planning,
email=rckdo@city.org,
c=US
Date: 2011.06.18 13:23:44
+0600

Rick Dorris, PE
Development Engineer

Electronic copy:

Brian Rusche, Senior Planner
Peggy Sharpe, Administrative Assistant
Darren Starr, Streets Manager
Chris Spears, Storm Drainage System

Mark Barslund, Development Inspector
Leslie Ankrum, Administrative Assistant
Dan Thorne, Street System
Larry Brown, Sewage Collection System



PUBLIC WORKS
& PLANNING

August 22, 2011

Alpine Bank
225 North 5th Street
Grand Junction, CO 81502

Re: Release of Guaranty Funds (Certificate of Deposit – Account #41936): Ute Water Conservancy District
Internal File: Ute Water Subdivision/FP-2009-060

To Whom It May Concern:

Enclosed is a copy of the Agreement to Fund Development Improvements entered into between the City of Grand Junction (“City”), **Ute Water Conservancy District** (“Developer”), and **Alpine Bank** for improvements to the development referred to as **Ute Water Subdivision** under the City’s Planning File **FP-2009-060**. As beneficiary of the security for a Development Improvements Agreement (“DIA”), the City informs you that the improvements have been completed by the Developer and accepted by the City. The City hereby releases its interest in the above referenced guaranty funds. This letter is being provided at the direction of the Director of Public Works and Planning.

If you have any questions, please inform me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lisa E. Cox", is written over a horizontal line.

Lisa E. Cox, Planning Manager

pc: **Developer:**
Ute Water Conservancy District
Attn: Mr. Larry Clever
PO Box 460
Grand Junction, CO 81502

ec: Rick Dorris, PE, Development Engineer
Brian Rusche, Senior Planner
Leslie Ankrum, Senior Administrative Assistant
Peggy Sharpe, Administrative Assistant

RELEASE OF RECORDING MEMORANDUM
City of Grand Junction
Public Works & Planning Department
Project: PR-2011-144
Plan: FP-2009-060
DIA-2011-1014

This Release relates to a Recording Memorandum dated September 08, 2009, by and between Ute Water Conservancy District, (Developer) and the City of Grand Junction, pertaining to Ute Water Subdivision (Project), located at 825 22 Road/2190 H ¼ Road, recorded at Book 4914, Page 880, Mesa County Clerk and Recorder's 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 Engineer:

Richard Davis

Date:

8-22-11

City Planner:

[Signature]

Date:

8.22.11

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.

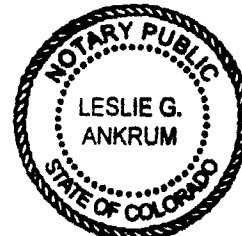
[Signature]
Public Works & Planning Department

8.22.11
Date

The foregoing instrument was executed before me this 22nd day of August, 2011, by Greg Moberg, of the Public Works & Planning Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Leslie G. Ankrum
Leslie G. Ankrum, Notary Public



My commission expires on 8/21/2013

My Commission Expires 08/21/2013