

IVC92SEW

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: CONTRACT

NAME OF AGENCY OR CONTRACTOR: INDEPENDENCE VALLEY
CORPORATION BY JAMES E. WEST

STREET ADDRESS/PARCEL NAME/SUBDIVISION/PROJECT: SEWER
REIMBURSEMENT AGREEMENT, 2016 BROADWAY

CITY DEPARTMENT: PUBLIC WORKS

YEAR: 1992

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

SEWER REIMBURSEMENT AGREEMENT

1619068 12:11 PM 10/30/92

MONIKA TODD CLK&REC MESA COUNTY CO

THIS AGREEMENT made and entered into this 23 day of OCT, 1992, by and between Independence Valley Corporation ("Developer"), and the City of Grand Junction, a municipal corporation, State of Colorado, hereinafter referred to as "CITY."

In consideration of the mutual obligations, benefits, duties and promises the parties hereto agree as follows:

1. DEVELOPER represents and promises that it is the owner of the property described in Exhibit "Independence Valley Legal Description," attached hereto (the "Property") and that it has the authority to enter into this agreement on the terms and conditions set forth. If Developer needs to obtain the consent or agreement of another party in order to effectuate this agreement, Developer agrees to do so. If a corporation, Developer shall provide a copy of a corporate resolution establishing that a corporate officer who signs this agreement has the full authority to bind the corporation to this agreement.

2. Developer shall, contemporaneously herewith, execute a power of attorney for the purpose of annexing the Property to the City. A copy of the power of attorney is attached hereto and labelled Exhibit "~~Independence Valley Petition~~" and "Independence Valley Power of Attorney," ~~respectively~~. Developer agrees to support the annexation to the City of all or a portion of the Property, at such times and in the ways determined best by the City.

3. The City intends to construct such sewer and facilities as are generally consistent with the identified Route No. 3 and the other findings and information contained in "Basin Study for Independence Valley Subdivision Sewerline Extension," prepared by Rolland Engineering under date of April 22, 1992 (hereinafter the "sewer project"). When the sewer project is built, the Property will be served by it. When such a sewer line and facilities are constructed, Developer shall make application to connect therewith and shall pay the applicable fees which are of uniform application, in addition to the other sums required pursuant to this agreement.

4. The City requires that Developer, as a condition of City approval of Developer's project, pay to the City a portion of the total costs of the sewer project. The portion of the total costs of the sewer project to be paid by Developer is calculated by multiplying a fraction, the denominator of which is the total acres in the basin to be served by the sewer project (300 acres) and the numerator of which is the number of acres in the Property (33.18 acres), times the total costs of the project. "Total costs of the project" include engineering and legal fees, costs of right-of-way and/or easement acquisition, costs of "as built" plans, costs of any warranty bonds or other security instruments required by the City of any contractors, costs required to design, construct, and inspect the system, and other

expenses and costs deemed necessary by the City and costs deemed necessary to oversize the sewer line(s) and other facilities in order to serve the 300 acre basin.

5. The City intends to pay for the total costs of the project from the Persigo Waste Water Capital Fund and to charge all users in the 300 acre basin a surcharge, based on acreage of a user in proportion to the basin acreage, to reimburse said Fund for the total costs of the project, plus interest, as calculated below, on the total costs of the project.

The surcharge will be calculated as follows:

C= Total cost of the Project to serve the basin;

A=total number of acres in the defined basin. For this agreement A is 300.

D=total gross number of acres in the parcel or property being developed. "Being developed" means the acreage for which subdivision or building permit approval is obtained.

S=Surcharge for the calendar year the sewer project is completed = $D/A \times C$ ("base year"). For each calendar year subsequent to the base year the surcharge (S_n) is = $S + (i \times s \times \text{years, or portion thereof, after the base year})$ plus B.

i = simple interest equal to eight percent adjusted by the annual increase or decrease (measured from the Index base of January 1, 1992) in the Denver/Boulder Consumer Price Index for All Urban Consumers ["CPI"]) following the date of acceptance of the system by the City; the foregoing variation in interest shall be subject to a minimum interest rate of six percent.

B = \$350 each transaction, irrespective of the number of lots or acres involved in the transaction. This represents the amount to be paid to the City for administration of this surcharge arrangement and will be paid by each user or developer to the City. Once the surcharge per acre is established by the above formula, each future user shall pay such fixed amount, in addition to all other fees, charges and impositions which may then be in effect.

The surcharge shall be paid at the following times:

a. for Filing One of Independence Valley Subdivision, consisting of 18 lots, according to the Preliminary Plat on file with Mesa County, at or before the time that the first building permit for any structure within Filing One is applied for. Since the total costs of the project will not be finally ascertained until the project is completed, Developer shall pay the surcharge for filing one based on the estimated total costs of the project which is \$166,873 or such other amount as the parties may agree to in writing, based on revised or updated estimates. Once the final total costs of the project are determined by the City, Developer agrees to pay within 30 days of notice from the City any additional sums owing to the City and the City agrees to reimburse to the Developer that amount of money equal to the difference between the surcharge and the estimated surcharge.

b. with respect to future filings of Independence Valley Subdivision, the surcharge per acre (for all acres being platted) shall be paid on or before the time that a plat is recorded;

c. with respect to other subdivisions within the defined basin, or building permit applications if no plat approvals are required within the defined basin, and with respect to all other users of any portion of the sewer project, at the time the plat is recorded or building permit is issued or when service is provided, whichever occurs first.

6. This agreement shall be recorded with the Clerk and Recorder in Mesa County, Colorado, shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto. Developer shall pay the recording costs. Developer shall forthwith notify City of assignments and the names and addresses of assignees.

7. Nothing contained in this agreement shall constitute or be interpreted as a repeal of existing codes or ordinances or as a waiver or abnegation of City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment or collection by City of any fee which is of uniform or general application.

8. The developer acknowledges and agrees that this agreement does not change or modify the developer's, its successors', or assigns', obligation(s) to pay costs and fees normally charged by the City such as plant investment fees, inspection fees, monthly sewer service charges, or any other charges or fees which the City is now charging, or may be in the future on a uniform system-wide basis entitled to charge the developer or any user or person receiving the benefit of the sewerage system or subject to such fees and charges.

9. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular part, term, or provision held illegal or invalid. Each party represents to the other that it is unaware of any pending actions or existing circumstances which would void this agreement or make the provisions of this agreement impossible to perform.

10. Notice pursuant to this agreement shall be given by certified mail to the address listed below or to such other address as a party may hereafter designate by certified mail.

11. This agreement will terminate at such time as the City has received all monies due to the City pursuant hereto.

Attest:

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

Neva B. Lockhart, CMC
Neva B. Lockhart
City Clerk

By: Mark K. Achen
Mark K. Achen
City Manager

Attest:

Independence Valley Corp.

Esther Chambers
Secretary, Esther Chambers

By: James E. West
President, James E. West
759 Horizon Drive
Grand Junction, CO 81506
Unit E

[j:independ]

POWER OF ATTORNEY

BE IT KNOWN THAT:

BOOK 1934 PAGE 742

I, (WE), Independence Valley Corp. James D. West, President as owner(s) of the real property described herein, all situate in Mesa County Colorado, and more particularly known and described as 2016 Broadway Grand Junction, CO (common address) See Attachment

_____ (legal description) *
do hereby designate and appoint the City Clerk of the City of Grand Junction as my (our) Attorney in Fact, granting to the City Clerk full power and authority for me (us) and in my (our) stead to execute any and all petitions, documents and instruments to effectuate my (our) intention to annex the described property to the City of Grand Junction when eligible. The property described herein may be annexed to the City of Grand Junction in part or parts, at any time and is in consideration for allowing connection to the Persigo Wastewater treatment facility system. The City Clerk is hereby empowered by me (us) to do and perform any and all acts which the City Clerk shall deem necessary, convenient or expedient to accomplish annexation, as fully as I (we) might do if personally present.

This instrument shall be recorded in the land records of Mesa County and the authority granted shall be deemed to be a covenant which runs with the land. This authority and the covenant created thereby shall be binding upon any and all successors in interest to the above described property and shall not cease upon my death (the death of either or both of us) or the dissolution of marriage, partnership, corporation or other form of association which may hold title or claim an interest to the property described herein.

As a further covenant to run with the land, I (we) agree that in the event a counter-petition to a proposed annexation is prepared, any signature on such petition purporting to affect the land herein described may be ignored as of no force and effect by the City.

This power of attorney is not terminable; it shall terminate upon all of the property being finally annexed, to and a part of, the City of Grand Junction.

* (If the legal description is lengthy, attach as Exhibit "POA")

Exhibit "A"

Parcel 1:

The SE1/4 SW1/4 of Section 35, Township 1 North, Range 2 West, EXCEPT Commencing at the Southwest corner of said SE1/4 SW1/4 Section 35 whose West line is recorded as bearing South 00°10'42" West on the official plat of Canyon Creek Subdivision Filing No. Two Mesa County Clerk and Recorder's Office; thence North 00°10'42" East 50.00 feet to the True Point of Beginning, said point being the Southeast corner of Lot 4, Block 3, Canyon Creek Subdivision Filing No. Two; thence continuing North 00°10'42" East 956.67 feet to the approximate center of Canyon Creek; thence leaving said West line and along the approximate center of Canyon Creek, South 83°15'43" East 127.64 feet; thence South 89°36'16" East 103.49 feet; thence leaving said approximate center of Canyon Creek, South 00°10'42" West 941.21 feet; thence North 89°56'38" West 230.29 feet to the True Point of Beginning.

Parcel 2:

Lot 4 of Section 15, Township 11 South, Range 101 West of the 6th P.M.;

Parcel 3:

the SW1/4 NW1/4 and the NW1/4 SW1/4 of Section 15, Township 11 South, Range 101 West of the 6th P.M.
EXCEPT all that portion of said NW1/4 SW1/4 lying South and West of the North right-of-way of State Highway 340 as described in that Warranty Deed dated July 17, 1950, and recorded August 10, 1950, in Book 530 at Page 470

MESA COUNTY, COLORADO

Together with 139 shares of capital stock of Redlands Water and Power Co. (1 A-Lift share; 138 B-Lift shares)

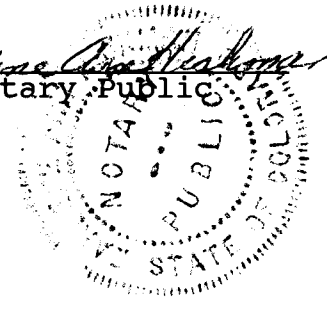
IN WITNESS WHEREOF, I, (WE), have signed, executed and acknowledged this instrument on this 23 day of OCTOBER 1992 .

James D. West

STATE OF COLORADO
COUNTY OF MESA

The foregoing agreement was subscribed and sworn to before me this 23rd day of Oct 1992 .

My commission expires July 19, 1996

Debra A. Walker
Notary Public




GENERAL CONTRACTOR
RESIDENTIAL AND COMMERCIAL

BOOK 1934 PAGE 745

October 23, 1992

Mr. Dan Wilson
City Attorney
City of Grand Junction
250 No. 5th Street
Grand Junction, Colorado 81501

RE: Independence Valley Subdivision

Dear Mr. Wilson:

I hereby give my approval to the contract between Independence Valley Corp. and the City of Grand Junction for the necessary sewer improvements for the property at 2016 Broadway, Grand Junction, Colorado.

Sincerely,

A handwritten signature in cursive script that reads "Reuben Schultz". The signature is written in dark ink and is positioned above the printed name.

Reuben Schultz

cc: Jim West - Builder, Inc.
Independence Valley Corp.
File

RS/ec