

PTE03DRD

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **MAINTENANCE AND GUARANTEE AGREEMENT**

NAME OF CONTRACTOR: PIPE TRADES EDUCATIONAL CENTER, INC.

SUBJECT/PROJECT: PIPE TRADES COMMERCIAL PARK

LOCATION: 3165 D ROAD

PARCEL: 2943-221-00-092

FILE NO: FP-2001-169

CITY DEPARTMENT: COMMUNITY DEVELOPMENT

YEAR: 2003

EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

RECEIVED

MAY 06 2003

COMMUNITY DEVELOPMENT  
DEPT.

## MAINTENANCE AND GUARANTEE AGREEMENT

Parties: The parties to this Maintenance Agreement ("the Agreement" or "Agreement") are PIPE TRADES EDUCATIONAL CENTER, INC. ("the Developer") and THE CITY OF GRAND JUNCTION, Colorado ("the City" or "City").

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

Effective Date: The Effective Date of the Agreement will be the date that this Agreement is signed.

## RECITALS

The Developer shall maintain Right of Way Improvements made or constructed on Property within the City to be known as PIPE TRADES COMMERCIAL PARK, which Property Improvement(s) is/are more particularly described on Exhibit A attached and incorporated by this reference ("the Property" or "Property"). The City seeks to protect the health, safety and general welfare of the community by requiring that Improvements once constructed be maintained. The purpose of this Agreement is to protect the City from the cost of repairing necessary Improvements itself and is not executed for the benefit of materialmen, laborers, or others providing work, services or material to the Developer and/or the Property or for the benefit of the owners, purchasers or users of the Property. The mutual promises, covenants and obligations contained in this Agreement are authorized by law, the Colorado Constitution, the Charter and the City's ordinances.

## DEVELOPER'S OBLIGATION

Improvements: The Developer will maintain, at its own expense, those on-site and off-site Improvements listed on Exhibit B attached to this Agreement and incorporated by this reference ("the Improvements" or "Improvements") as if fully set forth. The Developer agrees to pay the City for construction, engineering, and inspection services performed by the City, the amounts shown on Exhibit B. The hourly rate of "in-house" City inspection services is \$45.00 per hour. The Developer's obligation to the Improvements is and will be independent of any obligations of the City contained herein or elsewhere.

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

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

Warranty: The Developer warrants that the Improvements, each and every one of them, will be maintained in accordance with the Standards in paragraph 5 for a period of time determined by the City. The Developer shall maintain the same until final acceptance.

Period: The Developer will maintain the Improvements through the completion of the Warranty Period ("Final Acceptance") and the Improvements, each and every one of them, shall be maintained in the condition they were in at the time of Initial Acceptance, for TWELVE (12) consecutive months from the start of the Warranty Period specified in the Warranty Letter. Failure of any Improvement(s) to the point that the failure requires the repair/reconstruction of the Improvement(s) as determined in the sole discretion of the City will restart a 12-month Warranty Period, during which time the Improvements must remain defect free.

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

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

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

**Warranty Guarantee:** After the initial acceptance of any Improvement(s), the amount which the City is entitled to draw on under the guarantee will be an amount equal to 20 percent of the original estimated cost of such Improvement as shown in Exhibit B plus allowed administrative costs/expenses. The City may draw on the guarantee for up to 90 days after the expiration of the Warranty Period.

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

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

Developer's failure to maintain each portion of the Improvements in conformance with this Agreement an/or as required by code, law, rule, ordinance or regulation;

Developer's failure to correct defective construction of any Improvement within the applicable Warranty Period;

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;

Notification to the City, by any lender with a lien on the property, of a default on an obligation; the City may immediately declare a default without prior notification to the Developer;

Initiation of any foreclosure action of any lien or initiation of mechanics lien(s) procedure(s) against the Property or a portion of the Property or assignment or conveyance of the Property in lieu of foreclosure; the City may immediately declare a default without prior notification to the Developer

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

**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 not to exceed the amount provided for in paragraph 11. Administrative expenses may include but are not limited to contracting costs, collection costs and the value of planning, engineering, legal and administrative staff time devoted to repair of the Improvements an/or collection of the Warranty Guarantee.

**City's Rights upon Default:** When any event of default occurs, the City may draw on the letter of credit, escrowed collateral, or proceed to collect any other security to the extent of the face amount of the credit or full amount of escrowed collateral, cash, or security or may exercise its right to disbursement of loan proceeds or other funds under the Improvements Disbursement Agreement. 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. Alternatively, the City may assign the proceeds of the letter of credit, the Improvements Disbursement Agreement, the escrowed collateral, cash, or other funds or assets to a subsequent developer (or lender) who has acquired the Property by purchase, foreclosure or otherwise who will then have the same rights of completion as the City if and only if the subsequent developer (or lender) agrees in writing to complete the unfinished Improvements and provides to the City reasonable security for the obligation. In addition, the City may also enjoin the sale, transfer, or conveyance of lots within the development, until the Improvements are completed or accepted. These remedies are cumulative in nature and are in addition to any other remedies the City has at law or in equity.

**Indemnification:** The Developer expressly agrees to indemnify and hold the City, its officers, employees, agents and assigns harmless from and against all claims, costs and liabilities of every kind and nature, for injury or damage received or sustained by any person or entity in connection with, or on account of the performance or non-performance of work at the Property pursuant to this Agreement. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the performance or non-performance of work pursuant to this 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.

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

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

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

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

**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.

**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 right of the parties will be construed as if the part, term, or provision was never part of the Agreement.

**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 the right of the City to assign its rights under this Agreement. The City will expressly release the original Developer's guarantee or obligations if it accepts new security from any Developer or lender who obtains the Property;

however, no other act of the City will constitute a release of the original Developer from his liability under this Agreement. When the Improvements are completed and approved by the City, the City agrees to state same in writing, with appropriate acknowledgments. The City will sign a release only after all Warranty Periods, as extended by litigation, repair or alteration work, have expired.

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:

If to City: City of Grand Junction  
Community Development Director  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

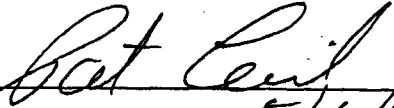
Recordation: Developer will pay for all costs to record this Agreement or a Memorandum thereof in the Clerk and Recorder's Office of Mesa County, Colorado.

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

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

Acceptance: Prior to Final Acceptance of any street, storm drainage facility, or other required improvement(s), the Developer shall have: (a) furnished 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 quality assurance tests required by City specification; (b) provided written evidence to the City Engineer under signature of a qualified expert that the earth, soils, lands and surfaces upon, in and under which the Improvements have been constructed, or which are necessary for the Improvements, are free from toxic, hazardous or other regulated substances or materials; (c) provided written evidence to the City Attorney that the title to lands underlying the Improvements are free and clear from all liens and encumbrances, except those items and encumbrances which may be approved in writing by the City Attorney.

City of Grand Junction  
250 North 5<sup>th</sup> Street  
Grand Junction, CO 81501

  
\_\_\_\_\_  
5/6/03  
Director of Community Development Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

By: PIPE TRADES EDUCATIONAL CENTER, INC.

03-19-03

Developer

Date

**Name (printed): Mathew D. Burtis**

**Its (position): Business Manager**

Attest:

*Mathew D. Burtis*

Secretary

Date

3-19-03

**EXHIBIT B**

DATE: 03-19-03  
NAME OF DEVELOPMENT: PIPE TRADES COMMERCIAL PARK  
LOCATION: 3165 D ROAD, GRAND JUNCTION, CO 81504  
PRINTED NAME OF PERSON PREPARING: Mathew D. Burtis

SCHEDULE OF IMPROVEMENTS (from original project DIA):

- I. SANITARY SEWER \$33976.00
- II. DOMESTIC WATER \$63328.60
- III. STREETS \$279,279.25
- IV. LANDSCAPING \$8992.00
- V. MISCELLANEOUS \$31,500.00

ORIGINAL TOTAL ESTIMATED COST OF IMPROVEMENTS: \$417,075.85

MAINTENANCE PERIOD FINANCIAL GUARANTEE (20% of original Total Estimated Cost):  
\$83,415.17

I have reviewed the original costs shown above and based on the plans and the current costs of construction agree to guarantee and maintain the Improvements as required above.

Mathew D. Burtis 4-8-03  
SIGNATURE OF DEVELOPER date

(If corporation, to be signed by president and attested  
to by secretary together with the corporate seals.)

Reviewed and approved.

Daniel R. Donohue 4/9/03  
CITY ENGINEER date

Pat Carl 5/6/03  
COMMUNITY DEVELOPMENT date

**EXHIBIT C**

**ALPINE BANK (Bank Name)**

**225 N 5TH STREET**

**Grand Junction, Colorado 81501**

Date: 03-19-03

**IRREVOCABLE LETTER OF CREDIT**

Dear Sirs:

We hereby open our irrevocable credit in your favor available by your draft(s) at sight on us for a sum not exceeding \$83,415.17 for the account of PIPE TRADES EDUCATIONAL CENTER, INC. ("Developer"), to be accepted by your signed statement that drawing is due to default or failure to perform by Developer with respect to Improvements required on or before JANUARY 15, 2004 ) a development occurring within the City of Grand Junction, Colorado. Acting through the City Attorney you will notify us when either:

1. The Improvements have been timely completed and the warranty period has terminated and the credit may be released; or
2. The Developer has failed to perform or is in default. Notice shall be signed by the City Attorney or the Attorney's designee. Proof of default or a statement from any other party shall not be required.

All drafts drawn hereunder must be by sight draft marked:

"Drawn under ALPINE BANK (bank name), Credit No. \_\_\_\_\_,  
\_\_\_\_\_ dated ."

The original of the credit must be presented along with any such draft.

The amount of any draft drawn under this credit must, concurrently with negotiation, be endorsed on the reverse side hereof and the presentment of any such draft will be a warranty by the negotiating bank that such endorsement has been made and that document(s) have been forwarded as herein required.



RECORDING MEMORANDUM

City of Grand Junction Community Development Department Community Development File: # FP-2001-169

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 United Assoc. of Plumbers and Pipefitters Local Union #45 (Developer) and the City of Grand Junction (City) pertaining to Pipe Trades Comm. Park (Project), located at 3165 D 1/2 Rd.

(Subject subdivision is more particularly depicted and described in the recording found at Plat Book 18, Pages 292.)

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-2001-169.

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: Matthew D. Burtis 6-13-03  
Date

(Print Name) Matthew D. Burtis

CITY OF GRAND JUNCTION:

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

Pat Cerril 6/13/03  
Community Development Department Date

RELEASE OF RECORDING MEMORANDUM  
City of Grand Junction  
Community Development Department  
FILE # FP-2001-169

This Release relates to a Recording Memorandum dated June 13, 2003, by and between Mathew D. Burtis\* (Developer) and the City of Grand Junction, pertaining to Pipe Trades Comm. Park (FP-2001-169) (Project), located at 3165 D. Rd., recorded at Book 3386, Page 908, Mesa County Clerk and Records 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.

2181060 BK 3604 PG 465  
03/10/2004 03:19 PM  
Janice Ward CLK&REC Mesa County, CO  
RecFee \$5.00 SurChg \$1.00

CITY OF GRAND JUNCTION:

City Engineer: David R. Donohue Date: 1/15/04  
Planner: Pat Cecil Date: 3/9/04

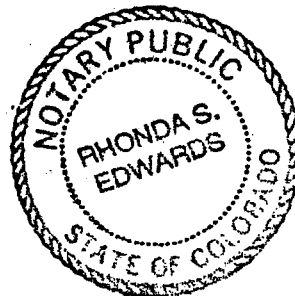
In acknowledgement with the above signatures, I hereby certify that the improvements as specified in the Development Improvements Agreement and/or Maintenance Guarantee have been completed and accepted in accordance with the provisions of the Grand Junction Zoning and Development Code, and are hereby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

Pat Cecil Date 3/9/04  
Community Development Department

The foregoing instrument was executed before me this 9<sup>th</sup> day of March, 2003, by Pat Cecil, of the Community Development Department for the City of Grand Junction, Colorado.

Witness my hand and official seal:

Rhonda S. Edwards  
Notary Public



My commission expires on November 28, 2005

\* United Assoc. of Plumbers and Pipefitters Local Union #145

6/10/2003