8 PAGE DOCUMENT

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Janice Rich, Mesa County, CO CLERK AND RECORDER

NIELSEN SEWER EXTENSION
REIMBURSEMENT AGREEMENT

This agreement is made and entered into this 26th day of MAY, 2010, by and between the City of Grand Junction, a Colorado home rule municipality ("City"), John Scott Nielsen, and Jenni Caroline Nielsen, hereinafter referred to as Developer.

RECITALS:

The City is the manager of the Persigo Wastewater Treatment Facility ("regional sewer" or "system") and in such capacity controls the use of and tapping into the sewer facilities located within the 201 Service Area. Developer represents that it is the owner of property as shown on Exhibit 1, attached hereto and with a street address of 2022 Baseline Drive (Mesa County tax assessor number 2947-161-08-003), more particularly described as Lot 2, Block 3, Canyon Creek Subdivision Filing Two, in the County of Mesa, State of Colorado, hereafter referred to as the Property. Developer is required to dispose of its sewage waste through the regional sewer system. Developer desires to recoup some of its costs incurred in construction of a sewer line extension, along with appurtenant facilities such as manholes, ("System") from the owners of property who connect to and receive a benefit from use of the System paid for and installed by the Developer. Such property owners are termed "Future Users" and are those persons who develop within the area shown on the attached Exhibit 1 and who are deemed to benefit from their connection to and use of the System.

The City has determined that it is in the best interest of the regional system to install the System in a manner so that it will serve the Developer's property and Future Users who later tie into the System constructed by Developer. The City recognizes that Future Users will receive some benefit from this Developer's construction because Future Users will not have to construct as long of a line in order to receive sewer service.

The Developer wants the City to collect payments/reimbursement from Future Users when/if such Future Users connect to the System as provided for herein. However, the City is only willing to collect money for reimbursement to the Developer if the City is not at risk, even for its own negligence and if the City is paid as provided herein.

THE PARTIES HAVE AGREED AS FOLLOWS:

1. The above Recitals are intended to state the intent of the parties, and shall constitute substantive terms of this agreement. In addition, the Recitals shall form a basis to construe the several provisions hereof in the event that there is an ambiguity or the intent of the parties is otherwise unclear. Any rule such that any ambiguities shall be construed against the drafter shall not apply to this agreement; the parties agree that each is fully capable of engaging its own attorneys and other experts to understand and negotiate the language hereof.

2. Developer agrees to construct the System to serve its development, and agrees to connect such System with the regional system, at such location as is required by the City. The System shall be constructed in accordance with the engineering standards then applicable, as required by the City Engineer.

3. (a) One year following substantial completion of construction and approval by the City of the as-built drawings and the System, whichever is later, as determined by the City Engineer, and provided that the System is in good working condition and has been built in accordance with City requirements, the Developer may request in writing that the City accept transfer of title of the System.

The City agrees that it will accept a warranty deed for no consideration to all real property interests needed to perpetually own, operate and maintain the System if: (1) the System is then in excellent operating condition; (2) the System has been constructed in accordance with the standards set by the City Engineer; (3) the proposed document(s) warranting title are approved by the City Attorney and are not subject to any liens or encumbrances except as are approved by the City Attorney; (4) the Developer warrants and agrees to hold harmless and indemnify the City that the interests in land, *e.g.* easements and fee title, and facilities are free from any environmental contamination and any hazardous or other regulated or dangerous substances. The City may require proof of such matters in writing, including a report and both field and analytical work from a qualified environmental scientist. Developer shall also supply evidence acceptable to the City that such rights-of-way or other property interests are free from hazardous, toxic and other regulated materials and substances.

(b) If there are any repairs or other construction changes or improvements required, the one-year period referred to shall be extended so it runs from the last repair, construction or other change to the System (this shall be referred to as "Final Acceptance"). Until Final Acceptance, the Developer shall pay all costs associated with the maintenance and operation of the System, as required by the City. Upon Final Acceptance, the City shall thereafter own, operate and maintain the System.

(c) The transfer to, acceptance and Final Acceptance by, the City of the System shall only be for those portions of the System which are not service lines and are not structures/improvements appurtenant to service lines.

(d) City agrees to permit the Developer the nonexclusive use of any easements obtained in the name of the City for the purposes of the construction of the System, but only so long as Developer complies with the requirements and conditions of the City Engineer.

(e) The offer to transfer to, and acceptance by, the City shall constitute Developer's agreement to forever: (1) hold harmless and indemnify the City, its officers, agents and employees from and with respect to any and all claims arising out of this agreement and/or the construction of the System or connection to the regional system, excepting only causes of action or claims resulting from the sole misconduct of the City; (2) hold harmless from and indemnify the City for all reasonable attorneys' fees incurred by the City, or the value thereof, including experts, fees and costs; (3) with respect to the matters provided for in, or reasonably arising out of, this Agreement, indemnify and hold harmless the City, from claims by the Developer, any successor of the Developer, and any third party, whether or not any such claim or cause of action is frivolous.

4. The Developer shall obtain any required prior approvals in the name of the City at no cost

to the City, as deemed necessary by the City Engineer, for the construction, repair and maintenance of the System.

5. Upon Final Acceptance, the Developer shall be entitled to be reimbursed by Future Users, identified on Exhibit #1 and Exhibit #2, for some of the reasonable and necessary costs incurred by the Developer for actual construction costs, as approved by the City Engineer, as follows:

(a) Reimbursable costs are those costs actually paid which may include reasonable engineering fees, but not legal or other consulting fees, paid by the Developer and actually required to design, construct, and inspect the System. In no event shall reimbursable costs exceed **$18,056.85.**

(b) For a period of ten years following the substantial completion of the system, as evidenced by a writing from the City, or until the Developer is reimbursed for those costs set forth in (5a) above, whichever first occurs, the City agrees that it will not authorize any other person to use the system unless each Future User first pays, in addition to all other applicable charges and fees, a Reimbursement Amount ("RA") which sum is calculated as follows:

$$RA = \frac{(RC)}{A} + \frac{RC \times i}{A} + B$$

where:

RC = actual reimbursable costs incurred by Developer and approved by the City Utility Engineer as shown on Exhibit #2. RC= **$18,056.85**

i = 0.67% per month simple interest (8% annually) times the number of complete months (up to a maximum of 120 months) following the date of this agreement.

B = $100.00 (this represents the amount to be paid to the City for administration of this agreement and will be paid by each Future User to the City).

x = multiply.

A = Number of lots/EQUs that could be served by the System as determined by the City Utility Engineer. A= **3 EQUs**

Once the reimbursable costs have been approved by the City Utility Engineer, the reimbursement amount established by the above formula, plus any interest as provided, will be calculated and paid by each Future User (other than those users who have purchased the Developer's lots or are Developer's successors). Thus, the Developer's property and lots/EQUs created from the Developer's property will be allowed to connect to the System without payment of the amounts/charges provided for in this Agreement.

(c) To be entitled to be reimbursed, Developer shall present to the City Utility Engineer adequate documentation so that the City Utility Engineer may determine the actual costs of construction.

6. (a) If the City makes any collections pursuant to this agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee, to the last known address of the Developer or assignee. The City has no duty or obligation to locate a proper payee.

(b) In the event that any claim is made or cause of action is filed by any person alleging that this agreement is unconstitutional, unenforceable, or otherwise contrary to law, or that any interest or other money payable to the Developer hereunder from any Future User or other person is excessive, improper or is not enforceable, the City is not obligated to defend or to resist any such claim or cause of action; rather, the City may settle any such matter regarding any City interest or obligation. Developer agrees that it shall be bound by any settlement of such claim or cause of action, whether or not Developer or his assigns is a party hereto if Developer has reasonable notice thereof. If the City makes any collections pursuant to this agreement, the City shall be obligated only to mail a check to the Developer, or his properly designated assignee, to the last known address of the Developer or assignee. The City has no duty or obligation to locate a proper payee.

(c) Developer agrees to waive and hold the City (including its officers, employees and other agents, hereinafter "City") harmless from, and indemnify the City with respect to any claims the Developer, or Developer's heirs, successors or assigns, may have with regard to the act or failure to act of the City regarding any collection of any such fee, charge or reimbursement amount. Developer hereby waives and releases the City, its officers, agents and employees from any claims or causes of action Developer may have due to the failure of the City to abide by or enforce this agreement.

(d) In the event that the City fails to collect the fee from any Future User, the Developer has the right to sue such Future User. The City agrees to cooperate, without expense to the City, in any such collection efforts of the Developer.

7. Upon request from the Developer during the term of this agreement which request shall not occur more than once every twelve months, the City shall provide an accounting. Said accounting shall consist of a listing of each RA collected during the preceding twelve months, the name and address of the remitter of said RA, the property address for which the RA was paid, a current balance of the RC, and total interest credited to the Developer's account. The City shall pay all fees collected within the preceding twelve months at the time of each accounting, less amounts paid to or retained by the City for costs of administration and less any other amounts which may be retained by the City pursuant to law or this agreement.

8. In the event that the Developer is in default with regard to any other obligation of the Developer as it relates to this agreement and the several rights and duties of the parties reasonably related hereto, the City shall have the right to set off any reimbursements that may be due hereunder to satisfy in whole or in part any such default, expense or cost, in addition to any other remedy which the City may have.

9. In the event that the Developer receives any RA directly from any Future User, owner or developer of any property the Developer shall immediately notify the City Utility Engineer in writing of the amount collected, the name and address of the person from whom collection was made, and the property to which the collection is applicable.

10. This agreement shall bind the signatory parties and their respective heirs, successors and assigns.

11. Upon nonperformance by the City pursuant to this Agreement, the Developer shall give written notice of default specifying the action giving cause to said default to the City Engineer and to the City Attorney. The City shall have thirty (30) days from receipt of the later of the two notices to correct the alleged default. If the City does not correct the default within the prescribed time, Developer may sue to enforce its rights hereunder; in no event shall the Developer have a claim, no matter how it is stated, for damages or the payment of money (except for RA amounts in the possession of the City). Upon the correction of said default as provided, the agreement shall be restored and all terms and conditions will be in full force and effect.

12. In the event the Developer does not substantially complete the construction of the System within one year of the execution of this agreement and obtain acceptance by the City within fifteen (15) months of execution hereof, this agreement shall terminate and shall be of no further force or effect.

13. Developer may assign its rights pursuant to this agreement; however, any such assignment shall not be effective until notice of such assignment, with the address of the assignee, is made by certified mail to the City, in care of the City Utility Engineer.

14. The Developer agrees that the construction of the System, and the possible acceptance in the future by the City of said System, does not waive or limit the payment by the Developer, or any successor of the Developer, of any costs, fees or charges (*e.g.,* plant investment fees, trunk extension fees, inspection fees, monthly sewer service charges)

which the City is now, or may be in the future, entitled to charge or collect from the Developer or any user or person connected to or benefiting from the System.

CITY OF GRAND JUNCTION

BY: _____ Date: 5/26/10
City Manager

Attest: _____ Date: 5/26/10
Deputy City Clerk

DEVELOPER

BY: _____ Date: 5/25/10

BY: _____ Date: 5/25/10

Address: 2022 BASELINE DR.
GRAND JCT., CO 81507

Attest: _____ Date: 5/25/10

Exhibit # 2

Project: Nielsen Sewer Reimbursement Agreement
Subject: Summary and Allocation of Costs

	Item	Firm	Cost
Engineering			$ 3,704.00
Construction			$ 22,091.50
Total Cost			$ 25,795.50
30% SSEP Contribution			$ (7,738.65)
Total Cost to District			$ 18,056.85
A	2022 Baseline Dr (2947-161-08-003)		1.00
B	2024 Baseline Dr (2947-161-08-008)		1.00
C	2025 Baseline Dr (2947-161-06-011)		1.00
Total Direct Benefit EQUs			3.00
Cost per EQU			**$ 6,018.95**

Exhibit # 1

Project: Nielsen Sewer Reimbursement Agreement
Subject: Benefiting Areas