

TRANSPORTATION CAPACITY PAYMENT FEE AGREEMENT

THIS AGREEMENT is made this 1st day of September 2014, between the City of Grand Junction (hereafter "City") and Paradise Hills Partnership (hereafter "Developer") and is subject to the following recitals.

RECITALS

The Developer is engaged in the development of Summer Hill, a 201 lot maximum, 8 filing residential development ("Development" or "the Development") located generally east of 26 1/2 Road and to the North and East of Amber Way in Grand Junction, Colorado. As part of the Development, the Developer is required to pay a Transportation Capacity Payment (hereafter "TCP Fee") which is established by the City's Zoning and Development Code.

Because the TCP Fee 1) has been in effect for a number of years and 2) was set for the Development by an agreement (a copy of which is attached and incorporated by this reference as if fully set forth) between the Parties and that agreement has not been fully discharged and 3) agreement has expired; and 4) the parties still desire and intend for the City and the Developer to continue under specific, negotiated and mutually agreeable terms for the payment of the TCP Fee and 5) the City and the Developer do hereby enter into this agreement (hereafter "TCP Agreement") providing for current terms for the payment of the TCP Fee all as more particularly described herein.

Under this TCP Agreement, in order to secure the payment of the TCP Fees, the Developer or its successor in interest agrees to pay \$1435.00 per lot for all lots platted after November 1, 2014 for Summer Hill (or the name of the development if it changes) until the project is fully developed in accordance with the approved plan in file #RZP-1999-032 as revised by PFP-2008-183, which documents are incorporated by this reference as if fully set forth.

There shall be no interest or carrying cost paid by or charged to the Developer under this Agreement.

The City has agreed to accept payments of the TCP Fee all as in accordance with this Agreement.

The City and the Developer stipulate and agree that there is sufficient consideration for the making and enforcement of this Agreement and for and as a novation of the former agreement.

NOW THEREFORE, the City and the Developer agree as follows:

1. The foregoing recitals are incorporated herein and form a material part and understanding of this agreement.
2. The TCP Fee due and owing to the City for each and every lot shall be paid on a per lot basis in the amount of \$1435.00.

3. In order to ensure that the TCP Fee is paid to the City the City shall not issue a planning clearance/building permit for any lot until the TCP Fee (and other applicable fees and charges) have been paid in full or otherwise guaranteed or the payment satisfied in accordance with City policy then in effect.
4. If the Developer fails to secure a planning clearance/building permit for each and every lot for any or for no reason on or before August 31, 2024, the City may declare this Agreement void and exercise its rights under the Code to collect the TCP Fee and/or any other fees on the same basis for any new or subsequent development in accordance with the Code then in effect.
5. Such right to declare this Agreement void shall be exercised by the City providing written notice to the Developer that the Agreement has expired.
6. Except as otherwise specifically provided herein, this Agreement may be altered, amended or modified in writing only, signed by the parties hereto.
7. 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 including but not limited to the value of in-house counsel and 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.
8. 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.
9. The parties acknowledge that the terms of the City's 2010 Zoning and Development Code establishing the TCP Fee are made a part hereof and incorporated herein. The Developer may rely on this Agreement and assert it as a defense to any increase or proposed increase in the TCP Fee that may be applicable to the Summer Hill development project on or before September 1, 2024.

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

Properties, LLC
PARADISE HILLS PARTNERSHIP

By:  _____

CITY OF GRAND JUNCTION

By:  _____