

SECOND AMENDMENT TO AGREEMENT

This SECOND AMENDMENT TO AGREEMENT (Agreement) is made and entered into this 16th day of January, 2018 by and between PARADISE HILLS PARTNERSHIP (“Developer”) and the CITY OF GRAND JUNCTION, a Colorado municipal corporation (“City”) (collectively, the Parties). Developer’s address is 1015 N 7th Street, Grand Junction, Colorado 81501. The City’s address is 250 N. 5th Street, Grand Junction, Colorado, 81501.

RECITALS:

This Agreement amends an agreement entered into by the Parties on October 7, 1999 and first amended by the Parties on January 31, 2003, recorded with the Mesa County Clerk and Recorder at Book 2680, Page 306 and at Book 3270, Page 189, Reception No. 2102674, respectively (these are referred to collectively herein as the Original Agreement).

Developer is the owner of certain property located in the City of Grand Junction that is described in Exhibit A to the Original Agreement (the Property). The Property has been and is being subdivided and developed over several phases in a development project known as Summer Hill Subdivision (the Subdivision), in accordance with an approved preliminary plan and subsequent approved plats/replats of the property.

The Original Agreement governs the Parties’ respective responsibilities with respect to the crossing of Leach Creek by Amber Spring Way. In the Original Agreement, the City and the Developer agreed to certain construction standards for the Amber Spring Way / Leach Creek crossing improvements and to share in those costs equally. More specifically, the Parties agreed that the Leach Creek crossing would be constructed using concrete pipe culvert comparable to that installed by the City under Summer Hill Way between 26-1/2 Road and the Subdivision (“Comparable Construction”), unless the City chose to pay for more expensive materials and/or construction methods, for which the City would bear the cost.

In consideration of their mutual obligation, benefits, duties and promise stated in the Original Agreement and in this Second Amendment, the Parties agree, and the Original Agreement is hereby amended, as follows:

1. The “Comparable Construction” is two 68” X 43” Horizontal Elliptical Reinforced Concrete Pipe (HERCP) Culverts, plus appropriate testing, inspection and as-built drawings related to the same.
2. In addition to the “Comparable Construction,” the City will require one additional 68” X 43” HERCP to increase the factor of safety and meet the FEMA requirement of less than 0.5 feet of rise for the 1% chance Base Flood Elevation (BFE) (Additional Improvements”). The Additional Improvements will be at the City’s expense.
3. The cost *estimate* to perform “Comparable Construction” is \$108,206.82. The Parties’ will share the *actual costs* of the “Comparable Construction” equally.

4. The Developer shall execute a Development Improvements Agreement (DIA) and provide security to the City in accordance with that DIA in the amount of \$54,103.41 (50% of the *estimated* costs of the "Comparable Construction.")
5. The City will reimburse the Developer 50% of the *actual costs* of construction (currently estimated at \$54,103.41, however the actual costs may vary from that estimate) when the improvements are initially accepted by the City (initial acceptance is defined in the DIA), provided that the Developer has given the City complete and accurate records documenting such costs.
6. The estimated cost of the "Additional Improvements" is \$31,605.12 and includes the pipe, flared end sections, rip rap, and the City's pro-rata share of related miscellaneous items. The City will reimburse the Developer 100% of the *actual* cost of the Additional Improvements when the improvements are initially accepted by the City, provided that the Developer has given the City complete and accurate records documenting such costs.
7. The City will also, as previously agreed, reimburse the Developer \$5,000.00 toward piping the Foxen Court outfall. This amount will be paid to the Developer at initial acceptance.
8. Developer will warrant all improvements for a period of one year following initial acceptance of the improvements by the City. Release of security shall be governed by the terms of the DIA.
9. This Agreement may be recorded in the office of the Clerk and Recorder of Mesa County, Colorado, and, if so recorded shall run with all of the Property and shall be binding upon and inure to the benefit of the Developer, the City, and each of their successors in interest and assigns.

SIGNED:

DEVELOPER, Paradise Hills Properties, LLC

CITY OF GRAND JUNCTION

 By: Kevin Bray, Manager

 By: Greg Caton, City Manager

ATTEST: _____
 Secretary

ATTEST: W Wukelman
 City Clerk

