

## Agreement to Commence Construction

### Prior to Final Plat Approval

#### Packet Contains

#### **Agreement**

- Contract between Mesa County and the Developer to complete the improvements as required prior to acceptance of Final Plat.

#### Land Development Code § 3.6.5 | Final Plat

After approval of a Final Plan, a Final Plat application for the subdivision may be submitted.

- A. Public Improvements/Development Improvements Agreements  
Before approval of a Final Plat, the applicant must install all required public and private improvements in accordance with the approved improvements construction plans or execute a Development Improvements Agreement to install such improvements, in accordance with Section 3.16

#### **Attachments:**

- Property Legal Description - Exhibit A
- Lien Holders' Ratification and Approval- Exhibit B
- Costs of Construction - Exhibit C
- Guarantee – Exhibit D

**Do not record this page**

# AGREEMENT TO COMMENCE CONSTRUCTION

## PRIOR TO FINAL PLAT APPROVAL

Project File No.: (Project Number)

Project Name: (Project Name)

This Agreement to Commence Construction Prior to Final Plat Recording (the “Agreement”) is entered into effective the date that this Agreement is recorded in the real property records of the Mesa County Clerk and Recorder’s Office (the “Effective Date”) by and between (Developer Name), a Colorado corporation (the “Developer”) and Mesa County, Colorado, a political subdivision of the State of Colorado (the “County”). The Developer and the County shall be collectively referred to herein as the “Parties.”

### RECITALS:

1. The Developer has obtained Final Plan approval to subdivide property within the County to be known as Development Name (the “Development”), which property is more particularly described on **Exhibit A** attached and incorporated by this reference (the “Property”); and
2. The Mesa County Land Development Code (the “Code”) states that before approval of a Final Plat, the applicant must install all required public and private improvements in accordance with the approved improvements construction plans or execute a Development Improvements Agreement to install such improvements; and
3. The Developer is seeking approval to commence and complete construction of public and private improvements associated with the Development prior to approval and recording of the Final Plat; and
4. The County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of the public and private improvements; and
5. The purpose of this Agreement is to protect the County from assuming the cost to complete the public and private improvements required for the Development. There are no third party beneficiaries to this Agreement, including, without limitation, materialmen, laborers, or others providing work, services or material to the Development, or lot or home buyers in the

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Development;

6. The Developer's lienholder has ratified this Agreement pursuant to the Lien Holders' Ratification and Approval attached hereto and incorporated herein as **Exhibit B**; and

7. This Agreement is authorized by the State law and the Code.

**NOW, THEREFORE**, for valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

## **I. DEVELOPER'S OBLIGATION**

**Improvements:** The Developer will design, construct, and install, at the Developer's sole cost and expense, all on-site and off-site development improvements (the "Improvements"). The Improvements are those items listed on the Cost of Construction, attached hereto and incorporated herein as **Exhibit C**; as shown on the approved Final Plan, Construction Plans and Specifications ("Construction Documents"); and all other improvements incidental or appurtenant to the development of the Development. The Developer's obligation to complete the Improvements will be in conformance with the time schedule defined by this Agreement and will be independent of any obligations of the County contained herein.

### **Financial Security:**

**A. Site Restoration:** To secure the restoration of the Property should the Developer default in the performance of its obligations under this Agreement (an "Event of Default"), and to provide the County the funds necessary to remove any Improvements constructed or partially constructed and/or restore the Property, if the County determines in its sole discretion that such removal and restoration is necessary, the Developer will deposit with the County, on or prior to the Effective Date, a financial security in the amount of \$2,500 per disturbed acre as a restoration guaranty (the "Restoration Guaranty"), in one of the forms described below and attached hereto and incorporated herein as **Exhibit D**. If the County determines that an Event of Default has occurred, the County, in its sole discretion, may access the Restoration Guaranty after the following: (a) the provision of written notice ("Written Notice") to the Developer stating the nature and extent of the alleged default with particularity, the steps that must be taken to come into compliance with this Agreement, a

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reasonable opportunity (not less than 30 days) for the Developer to cure the alleged default (the “Cure Period”), and notification of the County’s choice to restore the Property; and (b) the passage of the Cure Period. The Restoration Guaranty may take the form of one of the following options:

- Option A.** Irrevocable Letter of Credit in the amount of \$ \_\_\_\_\_
- Option B.** Cash in the amount of \$ \_\_\_\_\_, to be escrowed by the County Treasurer
- Option C.** Performance bond in the amount of \$ \_\_\_\_\_

**Option A: Irrevocable Letter of Credit** - An irrevocable letter of credit (the “Letter of Credit”) will be issued by a financial institution (“Bank”) in the total dollar amount as shown in the Cost of Construction, and the Letter of Credit will be reviewed for acceptance as the Guaranty by the County’s Attorney. The Letter of Credit will be payable at sight to the County and will bear an expiration date not earlier than one (1) year from the Effective Date of this Agreement. The Letter of Credit will be payable to the County at any time upon presentation of (i) a sight draft drawn on the issuing bank to which the County is entitled to draw pursuant to the terms of this Agreement and the Letter of Credit; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement and has failed to cure the default as provided herein; and (iii) the original Letter of Credit.

**Option B: Cash** - Cash in the form of a cashier’s check or bank draft payable to the County in the total dollar amount as required for the Restoration Guaranty will be deposited with the County’s Treasurer and held in escrow. The County is entitled to draw upon these funds, pursuant to the terms of this Agreement. The funds will be disbursed to the County in full or in part, upon presentation of: (i) a request for disbursement; and (ii) a certification executed by an authorized representative of the County stating that the Developer is in default under this Agreement and has failed to cure the default as provided herein; or (iii) as otherwise provided by the cash escrow agreement.

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**Option C: Restoration Bond** - A Restoration Bond shall be issued upon which the County will be entitled to draw pursuant to the terms of this Agreement in the total dollar amount as required for Restoration Guaranty. The funds will be disbursed to the County in full or in part, upon presentation of: (i) a request for disbursement; and (ii) a certification executed by an authorized representative of the County or designee stating that the Developer is in default under this Agreement and has failed to cure the default as provided herein; or (iii) as otherwise provided by the bond agreement. The performance bond shall be reviewed by the County's Attorney for acceptance as Guarantee.

Any funds obtained by the County as a result of accessing the Restoration Guaranty shall be used to: (a) cause the restoration of the Property in to substantially the same condition as existed prior to the commencement of the Improvement construction; and (b) pay the reasonable costs and expenses of the County in connection with an Event of Default, including reasonable attorney's fees. The unused surplus of the Restoration Guaranty, if any, will be promptly returned to the Developer or the Bank, as appropriate. The County shall have no obligation or duty to utilize or expend any other funds or assets of the County for the restoration of the Property or the completion of any of the Improvements.

**Standards:** The Developer will construct the Improvements according to the accepted Construction Documents, this Agreement, and all applicable Mesa County standards, policies and procedures. The Developer shall instruct any contractor or construction manager working in the Development to provide timely notice to the Developer, the applicable contractor, and the Mesa County Development Engineering Department whenever such individual becomes aware that an Improvement does not conform to County Standard Specifications, accepted Construction Documents, or is otherwise suspected as being defective.

**Release of Liability, Indemnification and Warranty:**

**A. Release of Liability:** Neither the County nor any officer or employee of the County shall be liable or responsible for any accident, loss or damage happening or occurring on or to the Improvements prior to the completion and acceptance of the same by the County. It is further agreed and understood that at all times prior to the completion and acceptance of the

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Improvements by the County, each of the Improvements not accepted shall be under the sole responsibility and charge of the Developer.

**B. Indemnification:** Except with respect to the negligence or willful misconduct of the County or any of its officers, agents or employees, the Developer hereby agrees to indemnify and save harmless the County and its officers, agents and employees from any and all suits, actions or claims of every nature and description arising from or as a result of the performance and/or default of the Developer under this Agreement. The Developer agrees to pay any and all judgments rendered against the County on account of any such suit, action or claim, together with all reasonable expenses and attorney's fees incurred by the County in prosecuting or defending such suit, action or claim. This paragraph will survive through the warranty period specified herein. The Developer is not an agent of the County.

**C. Warranty:** The Developer warrants that the Improvements, each and every one of them, are installed in a good and workmanlike manner in accordance with the Construction Documents, and will be free from defects for a period of eighteen (18) months from the date of the County's acceptance of each particular Improvement. During the warranty period, the Developer shall make all needed repairs or replacements due to defective materials or workmanship for the Improvement constructed pursuant to this Agreement. The Developer shall warrant the repair work as being installed in a good workmanlike manner for a period of eighteen (18) months from the date of the County acceptance of the repair work. The Developer shall provide an additional guaranty (the "Warranty Guaranty") in the form of a Letter of Credit, cash deposit, or Warranty Bond in the amount of fifteen (15) percent of the Cost of Construction. The Warranty Guaranty shall be equal to **\$(Warranty Guaranty)**.

**Commencement and Completion Periods:** All Improvements shall be completed within one (1) year from the Effective Date of this Agreement ("Completion Period"). All repairs and replacements needed as part of the Developer's warranty shall be completed within 90 days of notification by the County that repairs or replacements are required.

**Compliance with Law:** The Developer will comply with all relevant federal, state and local laws and regulations in effect at the time of Final Plan approval when fulfilling obligations under this Agreement.

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## II. COUNTY'S OBLIGATION

**Notice of Defect:** If the County becomes aware of a defect in the Improvements, either through notification from the Developer or a contractor, or through the County's own observations, the County will issue a Notice of Deficiencies to the Developer and the issuer of the Guaranty. The Developer will have thirty (30) calendar days from the date of such notice to correct the defect. If inclement weather or circumstances beyond the Developer's control prevent correction within that time period, the Developer may apply for an additional thirty (30) calendar day extension. The extension must be received by the Mesa County Development Engineering department in writing not later than fourteen (14) calendar days prior to the expiration of the current correction period. If subsequent extensions are requested, the County will not issue further Notices and the Developer must request extensions no later than fourteen (14) calendar days before the expiration of the current correction period. The extension will be reviewed by the Development Engineering department for compliance with the time schedule and improvements costs as represented on Cost of Construction herein and for compliance with the County Standards, Specifications, and the accepted Construction Documents. If an extension is not approved, the County may declare a condition of default and issue an Affidavit of Lapse of Agreement stating that this agreement is void and requiring that the Developer enter into a new development improvements agreement and provide a Guaranty for the full Cost of Construction prior to resuming construction of the Improvements.

**Notice of Non Compliance with Completion Date:** The County shall issue the Developer a Notice of Deficiencies not earlier than thirty (30) calendar days before the Completion Date. If inclement weather or circumstances beyond the Developer's control prevent construction within the completion period, the Developer may request a twelve (12)-month extension to the completion period. The Developer must submit a written request indicating cause and reason for an extension to the Development Engineering Department not later than fourteen (14) calendar days after receipt of said Notice.

The Development Engineering Department will review the extension request for compliance with the Mesa County Land Development Code, County Standards and Specifications, Mesa County Project Files, and Construction Documents and provided that the Guarantee is also

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extended in the amount of the current costs for those improvements and extended for the change in the completion date, an accepted extension may be executed by an addendum to this agreement. If an extension of time is not approved by Development Engineering, Development Engineering may issue an Affidavit of Lapse of Improvements Agreement stating that this agreement is void and requiring that the Developer enter into a new development improvements agreement and provide a Guarantee for the full Cost of Construction prior to resuming construction of the Improvements.

**Acceptance of Improvements:** Execution of this Agreement by the County is not a guarantee that the County will accept the Improvements or Final Plat. The County's acceptance of improvements is conditioned on the presentation by Developer of:

- 1) the required signatures of acceptance by all entities serving the constructed improvements;
- 2) clear documentation and testing demonstrating that the improvements have been completed per the accepted Construction Documents and County Standards and Specifications;
- 3) surveyed as-built drawings showing the Improvements in their final locations and elevations and accurately showing all utility and lateral locations and other pertinent information;
- 4) the Warranty Guaranty; and
- 5) a document or documents, for the benefit of the County, showing that the Developer owns the improvements in fee simple, that there are no liens or encumbrances on the property or Improvements, and that all obligations to Contractors and Subcontractors in connection with the Improvements have been discharged.

Acceptance of any improvements does not constitute a waiver by the County of any rights it may have on account of any defect in or failure of the improvement that is detected or which occurs after the acceptance.

**Final Plat Approval and Recording:** Once the Improvements are completed, the Developer

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may submit application to the County for Final Plat approval. The Final Plat must be prepared in accordance with the County and State requirements. The locations of rights-of-way and easements shown on the Final Plat must be consistent with the as-built locations of related utilities, shared irrigation facilities, roadways, shared driveways, or other improvements. The Final Plat shall not be approved by the county until the County has received, reviewed, and approved the documentation required for acceptance of Improvements.

### III. OTHER PROVISIONS

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

- a. Developer's failure to complete each portion of the Improvements in conformance with the Completion Period or as extended; the County may not declare a default until a thirty (30) calendar day notice ("Notice of Deficiency") has been given to the Developer or any time extension requests have been denied;
- b. Developer's failure to demonstrate reasonable intent to correct defective construction of any improvement within the applicable correction period; the County may not declare a default until Notice of Deficiency has been given to the Developer and thirty (30) calendar day correction period has elapsed; the County may declare a default after subsequent approved correction periods have lapsed without such Notice unless Developer applies for an extension no later than fourteen (14) calendar days and that request is approved;
- c. Notification of 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 or foreclosure of any lien against the Property or a portion of the Property; the County may immediately declare a default without prior notification to the Developer; or
- d. Notification to County by lender with a lien on the property of Developer's default on this obligation; the County may immediately declare a default without prior notification to the Developer.

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**Measure of Damages:** The measure of damages for breach of this Agreement by Developer will be the reasonable cost of satisfactorily completing the Improvements. For improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Cost of Construction will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the security amount shall establish the maximum amount of the Developer's liability.

**County's Rights Upon Default:** When any Event of Default occurs, the County may draw upon the Restoration Guaranty or the Warranty Guaranty, as applicable. The County will have the right to perform work or contract with a third party to perform work to stabilize the disturbed areas on the Property or to perform warranty repairs. The Developer grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of inspection, site restoration, stabilization, and warranty repairs, as applicable. Any restoration efforts or warranty repairs performed by the County or a third party at the County's request do not imply any acceptance of liability or responsibility for current or future conditions of the Property. In addition, the County may enjoin the sale, transfer, or conveyance of the property until the Improvements are completed, the Property is stabilized, or the warranty repairs are completed, as applicable.

When any Event of Default occurs, the County may revoke Final Plan approval for the Development. After revocation of Final Plan approval any further development of the Property will require a new approval from the County.

These remedies are cumulative in nature and are in addition to any other remedies the County has at law or in equity.

**No Waiver:** No waiver of any provision of this Agreement 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 a written amendment to this Agreement signed by both the County 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 County'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.

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**Amendment or Modification:** The parties to this Agreement may amend or modify this Agreement only by written instrument executed on behalf of the County by the Development Engineering department and in agreement with the County Attorney and by the Developer or authorized officer. Such amendment or modification will be properly notarized and recorded as an amendment to the agreement, before it may be 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 the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

**Vested Rights:** The County does not warrant by this Agreement that the Developer is entitled to any other approval(s) required by the County, if any, before the Developer is entitled to commence construction of the Development or to transfer ownership of Property in the Development.

**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.

**Scope:** This Agreement constitutes the entire agreement between the parties and no statements, promises or inducements that are not contained in this Agreement will be binding on the parties.

**Time:** For the purpose of computing the Completion Period, and time periods for County action, such times in which war, civil disasters, or acts of God occur or exist will not be included if such times prevent the Developer or County from performing its obligation under the Agreement.

**Severability:** If any part, term, or provision of this Agreement is held by the courts 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 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 County. Such approval may not be

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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 running with the Property. There is no prohibition on the right of the County to assign its rights under this Agreement.

**Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

**If to Developer:**

\_\_\_\_\_  
Developer's Name

\_\_\_\_\_  
Developer's Mailing Address

**If to County:**

Mesa County Development Engineering  
P.O. Box 20,000 Dept. 5022  
Grand Junction, CO 81502-5001

**Recordation:** County will record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

**Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.

**Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any civil action commenced by either party to this Agreement whether arising out of or relating to the Agreement will be deemed to be proper only if action is commenced in District Court for Mesa County. The developer expressly waives right to bring such action in or to remove such action to any other court whether state or federal.

**Mediation:** Dispute resolution outside the court system shall be by a closed mediation with the Mesa County Board of County Commissioners as mediators. Resolutions to the dispute will be

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executed by a signed recorded amendment to this Agreement. The amendment will contain the disputed subject matter and clearly indicated the resolution and requirements for both parties. Additionally, use of mediation will waive the rights by both parties to access the courts regarding the specific issue that is the subject of mediation. No mediation fess will be paid by either party and neither party shall be awarded attorney's fees, or damages.

**Extinguishment:** This Agreement shall be extinguished only through formal acceptance of the improvements per the provisions of this Agreement or through entering an Extinguishment Agreement between the County and the Developer.

SAMPLE ONLY

Developer\_\_\_\_  
Mesa County\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed per the effective date as indicated.

**Developer**

Company Name: \_\_\_\_\_

By: \_\_\_\_\_ Signature \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by (Developer Name)

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**Mesa County**

Development Engineering

By: Dana Brosig P.E. Signature \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by Dana Brosig

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

EXHIBIT A

**PROPERTY LEGAL DESCRIPTION**

Please insert after this page the Legal Description of the Property

SAMPLE ONLY

EXHIBIT B

**LIEN HOLDERS' RATIFICATION AND APPROVAL**

The undersigned has reviewed this Agreement to Commence Construction Prior to Final Plat Approval for \_\_\_\_\_ and approves the terms of the Agreement.

By: \_\_\_\_\_  
\_\_\_\_\_

State of Colorado - County of Mesa

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

By: \_\_\_\_\_  
\_\_\_\_\_

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_

Notary Public



EXHIBIT C

**COSTS OF CONSTRUCTION**

Please insert after this page the Cost of Construction from Mesa County Development Engineering Standard Template. Only this form will be accepted by Mesa County

SAMPLE ONLY

Exhibit C

**CONSTRUCTION COST SCHEDULE**

◆ Only This Form Will Be Accepted By The County Engineering Division ◆

Subdivision: \_\_\_\_\_

Project Number: \_\_\_\_\_

Description	Total Cost
1. EARTHWORK/ SET-UP	\$0.00
2. STORMWATER CONTROL STRUCTURES	\$0.00
3. STREET IMPROVEMENTS	\$0.00
4. STORMWATER SYSTEM	\$0.00
5. SANITARY SEWER	\$0.00
6. WATER SYSTEM	\$0.00
7. IRRIGATION	\$0.00
8. LANDSCAPING	\$0.00
9. OTHER	\$0.00
10. GENERAL CONDITIONS	\$0.00
<b>Subtotals</b>	<b>\$0.00</b>

Construction Management @ 3 % of the subtotal	\$0.00
Supervision of all installations @ 2 % of the subtotal	\$0.00
<b>Total Estimated Cost of Improvements and Supervision</b>	<b>\$0.00</b>

Prepared By: \_\_\_\_\_ Date: \_\_\_\_\_

Firm: \_\_\_\_\_

Cost estimates have been reviewed by Mesa County Planning and are acceptable as shown

Development Engineer: \_\_\_\_\_ Date: \_\_\_\_\_

**CONSTRUCTION COST SCHEDULE**

◆ Only This Form Will Be Accepted By The County Engineering Division ◆

#	DESCRIPTION	Qty	UNIT	Unit Cost	SUBTOTAL	TOTAL	
Subdivision:		Project Number:					
<b>1. EARTHWORK/ SET-UP</b>							<b>\$0.00</b>
1.1	Mobilization		LS	\$ -			
1.2	Clearing and Grubbing		LS	\$ -			
1.3	Unclassified Excavation & Overlot Grading, Including Detention Pond Facility		LS	\$ -			
1.4	Embankment Material (borrow)		CY	\$ -			
1.5	On-site demolition and/or removal-specify work (may include subsets)		LS	\$ -			
1.6	Off-site demolition and/or removal-specify work (may include subsets)		LS	\$ -			
1.7	Mirafi 140N Geotextile (Specify Use)		SF	\$ -			
1.8	Trench stabilization and dewatering		LS	\$ -			
1.9	Utility Relocation		LS	\$ -			
<b>2. STORMWATER CONTROL STRUCTURES</b>							<b>\$0.00</b>
2.1	Vehicle Tracking Pad		LS	\$ -			
2.2	Concrete Wash Out Facilities		LS	\$ -			
2.3	Erosion Control Berms Along Perimeter		LS	\$ -			
2.4	Inlet Protection & Curb Socks		LS	\$ -			
2.5	Outlet Protection		LS	\$ -			
2.6	Dust Control						
<b>3. STREET IMPROVEMENTS</b>							<b>\$0.00</b>
3.1	Subgrade Reconditioning per Geotech Report		SY	\$ -			
3.2	Subgrade Stabilization per Geotech Report		SY	\$ -			
3.3	Geotextile - <b>Tensar BX1200 or Equal</b>		SF	\$ -			
3.4	<b>8" Class IV Base Under Asphalt Pavement at (location). Moisture Conditioned and Compacted</b>		SY	\$ -			
3.5	<b>4" Thick Asphalt Pavement, Grade SX Binder 64-22, 75 Gyration</b>		SY	\$ -			
3.6	<b>12" Class IV Base Course under utility Asphalt Patch at (location).- Moisture Conditioned and Compacted</b>		SY	\$ -			
3.7	<b>3" Thick Asphalt Patch at (location), Grade SX Binder 64-22, 75 Gyration</b>		SY	\$ -			
3.8	2'-0" Curb and Gutter, includes 6" of Class VI - Moisture Conditioned and Compacted		LF	\$ -			
3.9	6'-6" Monolithic Mountable Curb, Gutter & Sidewalk, includes 6" Class VI Thickness Base Per County Detail		LF	\$ -			
3.10	Concrete Intersection Corner, Including 8" Thk V-Pan, 8" Class VI and reinforcement		SY	\$ -			
3.11	Concrete Valley Pan, 6" Thick Concrete over 6" Class VI - Moisture Conditioned and Compacted		SY	\$ -			
3.12	Detached Sidewalk or Path- <b>5" Concrete w/ 6" of Class VI Base, w/ 6x6 - 6/6 Steel Welded Wire Fabric</b>		SY	\$ -			
3.13	Off-site- Concrete Curb, Gutter & Sidewalk Adjacent to (off-site location)- Match Existing Conditions		SY	\$ -			
3.14	ADA Detectable Mats		EA	\$ -			
3.15	Driveway/concrete repair		LS	\$ -			
3.16	Mailbox Pad- <b>6" Concrete with 6" Class VI Base, with 6x6 Steel Welded Wire Fabric, includes embedded bolts</b>		SY	\$ -			
3.17	<b>4" Conduit Sleeves, includes trenching, backfill &amp; compaction (2 Crossings @ 50' Each)</b>		LF	\$ -			
3.18	Dry Utility Trenching & Backfill		LF	\$ -			
3.19	Stop Signs, Including Post & Base		EA	\$ -			
3.20	Street & Destination Signs, Including Post & Base		EA	\$ -			
3.21	End of Road Markers		EA	\$ -			
3.22	Streetlights		EA	\$ -			
3.23	Road Striping		LS	\$ -			

#	DESCRIPTION	Qty	UNIT	Unit Cost	SUBTOTAL	TOTAL
<b>1. EARTHWORK/ SET-UP</b>						\$0.00
<b>4. STORMWATER SYSTEM</b>						\$0.00
4.1	<i>Pipes</i>					
4.1.1	8" Storm Sewer Pipe, Including excavation, backfill and compaction- PVC		LF	\$ -		
4.1.2	12" Storm Sewer Pipe, Including excavation, backfill and compaction- PVC		LF	\$ -		
4.1.3	18" Storm Sewer Pipe, Including excavation, backfill and compaction- PVC		LF	\$ -		
4.1.4	48" Storm Sewer Pipe, Including excavation, backfill and compaction- RCP		LF	\$ -		
4.2	<i>Inlets</i>					
4.2.1	8" Flared End Section-PVC		EA	\$ -		
4.2.2	12" Flared End Section- PVC		EA	\$ -		
4.2.3	18" Flared End Section- PVC		EA	\$ -		
4.2.4	Single Storm Drain Inlet for Mountable Curb, Including grate/frame, grouting		EA	\$ -		
4.2.5	Double Storm Drain Inlet for Mountable Curb, Including grate/frame, grouting		EA	\$ -		
4.2.6	12" Area Storm Drain		EA	\$ -		
4.2.7	18" Area Storm Drain		EA	\$ -		
4.3	<i>Manholes</i>					
4.3.1	48" Diameter Manhole		EA	\$ -		
4.3.2	60" Diameter Manhole		EA	\$ -		
4.3.3	72" Diameter Manhole		EA	\$ -		
4.3.4	Manhole with box base		EA	\$ -		
4.4	Detention Pond Outlet Structure		EA	\$ -		
4.5	Seeding- detention pond		LS	\$ -		
4.6	Riprap-detention pond		LS	\$ -		
4.7	Connection to Existing Stormsewer		LS	\$ -		
4.8						
<b>5. SANITARY SEWER</b>						\$0.00
5.1	<i>Pipes</i>					
5.1.1	8" Sanitary Sewer Main Pipe, SDR-35 PVC, including excavation, backfill and compaction		LF	\$ -		
5.1.2	4" Sanitary Sewer Services, including excavation, backfill, compaction and installation of Cleanout at ROW		LF	\$ -		
5.2	<i>Manholes</i>				\$ -	
5.2.1	48" Diameter Manhole		EA	\$ -		
5.2.2	60" Diameter Manhole		EA	\$ -		
5.2.3	48" Diameter "Drop" Manhole (Epoxy Lined per CSD)		EA	\$ -		
5.2.4	Connection to Existing Manhole		EA	\$ -		
5.3	Concrete Encasement		LF	\$ -		
5.4	Abandonment of Existing Sanitary Sewer Service		EA	\$ -		
5.5						
<b>6. WATER SYSTEM</b>						\$0.00
6.1	<i>Pipes</i>					
6.1.1	4" Water Main, including misc fittings, tracer wire, trenching, bedding, backfill & compaction		LF	\$ -		
6.1.2	6" Water Main, including misc fittings, tracer wire, trenching, bedding, backfill & compaction		LF	\$ -		
6.1.3	8" Water Main, including misc fittings, tracer wire, trenching, bedding, backfill & compaction		LF	\$ -		
6.1.4	3/4" Water Services, including Tap Saddle, Corp stop and copper and earthwork		LF	\$ -		
6.1.5	Offsite Water Line- 8" Water Line including misc fittings, tracer wire, trenching, bedding, backfill & compaction		LF	\$ -		
6.2	<i>Valves</i>					
6.2.1	4" Water Valve		EA	\$ -		
6.2.2	6" Water Valve		EA	\$ -		
6.2.3	8" Water Valve		EA	\$ -		
6.3	<i>Fixtures</i>		LS	\$ -		
6.4	Blow-Offs		EA	\$ -		
6.5	Water Connection to Existing Water Line		EA	\$ -		
6.6	Fire Hydrants, including misc fittings, tracer wire, valve, trenching, bedding, backfill & compaction		EA	\$ -		
6.7					\$ -	

#	DESCRIPTION	Qty	UNIT	Unit Cost	SUBTOTAL	TOTAL
<b>1. EARTHWORK/ SET-UP</b>						\$0.00
<b>7. IRRIGATION</b>						\$0.00
7.1	4" Irrigation Main- Class 160 PVC		LF	\$ -		
7.2	2" Irrigation risers		EA	\$ -		
7.3	4" Irrigation cleanouts		EA	\$ -		
7.4	Fittings and Valves		EA	\$ -		
7.5	Pump System and Vault		EA	\$ -		
7.6	Water Storage Facility, if needed		EA	\$ -		
7.7	Flow Measuring Device, if needed		EA	\$ -		
7.8	Irrigation other (thrust blocks, elbows, etc)		EA	\$ -		
7.9	Irrigation system testing		EA	\$ -		
7.10						
<b>8. LANDSCAPING</b>						\$0.00
8.1	Landscaping, including all plantings, surface treatments (per landscape plan)		LS	\$ -		
8.2	Fencing or Screening		LS	\$ -		
8.3	Irrigation system		LS	\$ -		
<b>9. OTHER</b>						
<b>TOTAL CONSTRUCTION COST</b>						\$0.00
<b>10. GENERAL CONDITIONS</b>						\$0.00
10.1	Surveying		LS	\$ -		
10.2	Geotechnical Material Testing & Inspections		LS	\$ -		
10.3	Construction Traffic Control		LS	\$ -		
						\$0.00

EXHIBIT D

**FINANCIAL SECURITY FOR SITE RESTORATION**

Please insert the proper Financial Security Agreement after this page

SAMPLE ONLY

## EXHIBIT D

**Sample to be followed in issuance of Letter of Credit to Mesa County and shall be printed on the Banking Institution Letter Head**

Mesa County, Colorado  
P.O. Box 20,000  
Grand Junction, CO. 81502-5022

Re: Irrevocable Standby Letter of Credit Number: \*\*\*\*\*  
Project Name/Phase: Project Number: \*\*\*\*\*  
Subdivision: \*\*\*\*

To Whom It May Concern:

At the request and for the account of Insert Developer's Name, a Development Improvements Agreement Petitioner (the "Petitioner"), Insert Lender's Name (the "Lender"), hereby establishes this irrevocable standby letter of credit (the "Letter of Credit") in favor of the beneficiary and holder, Mesa County, Colorado (the "County") in the principal amount of \$\*\*\*\*\*, US Dollars (the "Maximum Available Credit"). Subject to all of the terms and conditions of this Letter of Credit, the Maximum Available Credit, or such lesser amount as the County may request from time to time, shall be made available upon presentation of the County's draft at sight drawn upon the Lender as follows:

1. The County shall present to the Lender a properly executed written request signed by the Mesa County Development Engineer, in the form attached hereto as Exhibit A (the "Draw Request"), with a copy of each Draw Request sent to the Petitioner.

2. Not less than thirty (30) days prior to submitting a Draw Request (the "Cure Period"), The County shall provide the Petitioner a written notice of default specifying the obligation(s) under the DIA that the Petitioner has failed to complete (the "Default Notice"), including citations to the specific section(s) of the DIA which create such obligations, and including specific descriptions of the incomplete obligations to which the portion of the Maximum Available Credit to be requested in the Draw Request shall be applied. The Petitioner may attempt to cure the default during the Cure Period. The County, in its sole discretion, shall determine if a default has been cured, and if not, may then present a Draw Request to the Lender.

3. Each Draw Request must be accompanied by (1) a certification by the County Development Engineer that the Petitioner is in default under the terms and conditions set forth in the Development Improvements Agreement that was entered into by and between the Petitioner and the County (the "DIA"), and (2) this original

Letter of Credit. This original Letter of Credit shall be returned to the County if any Draw Request has not exhausted the Maximum Available Credit.

4. Each Draw Request shall state with specificity the obligation(s) the Petitioner has failed to complete, shall include citations to the specific section(s) of the DIA which create such obligations, shall include specific descriptions of the incomplete obligations to which the portion of the Maximum Available Credit requested in the Draw Request shall be applied, and shall include such documentation as the Lender may reasonably require to verify the cost of such incomplete obligations, including without limitation, stamped engineering drawings and plans, and current private sector bids obtained on a competitive bidding basis. Should the Petitioner dispute the existence of a default as specified in a Draw Request, the County and the Petitioner shall submit the issue of the existence of a default to binding arbitration or some other resolution process acceptable to the Petitioner and the County prior to the Lender becoming obligated to fund the Draw Request.

5. This Letter of Credit shall remain a valid, enforceable and continuing obligation of the Lender pursuant to its terms unless the County shall have presented Lender with this original Letter of Credit marked "Satisfied and Released," thereby releasing the Lender from all further liability under this Letter of Credit, or until such time as the Maximum Available Credit shall have been disbursed. This Letter of Credit shall not be dependent upon or affected by the Petitioner's insolvency or bankruptcy, its disruption or discontinuance as a legal entity, or the change, death or incapacity of its members, officers, shareholders or owners.

6. Upon receipt by the Lender of a Draw Request in strict conformity with the terms and conditions of this Letter of Credit, including the receipt of all necessary supporting documentation, Lender shall have up to thirty (30) days to process the Draw Request and make payment to the County. Payment of any Draw Request funding shall be by wire transfer or such other commercially reasonable method as the County may designate in writing.

7. This Letter of Credit is not a forfeiture obligation, and in no event shall Lender's liability hereunder exceed the reasonable cost to complete and satisfy the Petitioner's incomplete obligations contained in the DIA, as specified in the Draw Request, or the aggregate amount of the Maximum Available Credit, whichever is less. The County shall refund to the Lender any balance remaining from a Draw Request after application by the County of the sums necessary from the proceeds to pay all costs, expenses and liabilities, including attorney's fees, incurred in satisfactorily completing the incomplete obligations specified in the Draw Request.

8. Venue for any legal action to enforce or interpret this Letter of Credit shall be in the Mesa County District Court, Grand Junction, Colorado, and the Lender, the Petitioner and the County consent to the jurisdiction of such court. The substantially prevailing party in any such legal action shall be entitled to receive from any other party(s) its reasonable attorney's fees and costs incurred therein. This Letter of Credit



shall be interpreted in accordance with the laws of the State of Colorado.

9. This Letter of Credit is issued and subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce, Publication No. 400, to the extent that it does not conflict with Article 5 of the Uniform Commercial Code for the State of Colorado.

The Lender hereby acknowledges and agrees that all Draw Requests drawn under and in compliance with the terms of this Letter of Credit shall be honored by Lender and payment made as required in this Letter of Credit.

The Lender shall immediately inform the County in the event Lender is placed into receivership, becomes insolvent, or files for bankruptcy. Upon receipt of such notice, the County may consider the Lender in default under this Letter of Credit, and require Lender or its successor to issue a new irrevocable letter of credit or take such other actions as may reasonably be necessary to secure the County's obligations under this Letter of Credit.

LENDER

\*\*\*\*\*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

State of Colorado \_\_\_\_\_ )

County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,

20\_\_\_\_ by \_\_\_\_\_ of \_\_\_\_\_ a

\_\_\_\_\_ corporation, on behalf of the corporation.

Notary's official signature

\_\_\_\_\_  
Commission Expiration

**EXHIBIT A  
TO LETTER OF CREDIT  
FORM OF DRAW REQUEST**

\_\_\_\_\_, 20\_

\*\*\*\*\* (Insert Lender's Name)

Attention: \_\_\_\_\_

Re: Letter of Credit in favor of Mesa County, Colorado.

To Whom It May Concern:

The undersigned, as the Development Engineer for Mesa County, Colorado, on behalf of Mesa County, Colorado, the holder of that certain letter of credit issued by \*\*\*\* (Insert Lender's Name), dated \*\*\*\*, 2015 ("Letter of Credit"), hereby states as follows:

1. \*\*\*\* (Insert Developer's Name) ("Petitioner") has failed to complete the improvements or fulfill its obligations (collectively a "Default") required pursuant to the Development Improvements Agreement by and between Petitioner and Mesa County, Colorado, dated \*\*\*\*, 2015, and such Default is more specifically described as follows:

\*\*\*\*\*

2. This Draw Request in the sum of \$\*\*\*\*, is not in excess of the Maximum Available Credit under the Letter of Credit, it accurately represents the amounts necessary to remedy the Default, as shown by the supporting documentation attached hereto, and it shall reduce the Maximum Available Credit under the Letter of Credit by such amount.

3. Please cure Petitioner's Default, or in the alternative, please transfer the funds requested herein to Mesa County, Colorado to \*\*\*\*\* *(Insert name of depository bank)*, with the following account information:

\*\*\*\*\* *(Insert wiring account information)*

MESA COUNTY, COLORADO

By: \_\_\_\_\_

Title: Development Engineer

SAMPLE ONLY

## EXHIBIT D

### SITE RESTORATION CASH DEPOSIT AGREEMENT

This agreement is entered into by and between Mesa County, Colorado (“County”), and \_\_\_\_\_ (“Developer”).

#### RECITATIONS

The Developer has requested to be allowed to construct certain improvements (“Improvements”) to \_\_\_\_\_ (“Development”) prior to Final Plat approval and recording, under an Agreement to Commence Construction Prior to Final Plat Approval (“Agreement”) which is attached hereto and incorporated herein.

Mesa County has required and the Developer has agreed to provide a financial security to be used for site restoration and stabilization in the event of default, in the amount of \$2,500 per disturbed acre, or a total amount of \$\_\_\_\_\_. This amount shall be referred to in this Agreement as the “Funds”.

The parties wish to insure that the Funds are disbursed only to pay for the Improvements or cost incidental to completing the Improvements.

#### TERMS

The parties, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Funds for Site Restoration:** Developer hereby provides to the County a cashier’s check or certified check drawn on a local bank in the amount of \$\_\_\_\_\_. The Funds are to be held by the County’s Treasurer and will not be paid out or disbursed to the or on behalf of the Developer except as set forth in this Agreement. The County will retain all interest earned on the escrow deposits.
- 2) **Disbursement of Funds:** The County will disburse the Funds only upon extinguishment of the Agreement through formal acceptance of the Improvements per the provisions of the Agreement, except as provided by Default of Owner.
- 3) **Default by Owner:** Upon default of the Developer on this obligation or default on the Agreement, the County shall cease disbursement of the Funds to the Developer except to the County under the terms of this Agreement.
- 4) **Default Notification:** The Developer shall notify the Mesa County Representative in writing within seven (7) calendar days of the following:
  - a) 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;
  - b) Default on this obligation;

- c) Foreclosure of any lien against the Property or a portion of the Property or conveyance of the Property in lieu of foreclosure.
- 5) **County's Rights Upon Default:** See section 15 of the Agreement
- 6) **Developer Consent:** Developer consents to disbursements and other conduct authorized by the provisions of this Agreement.
- 7) **Successors and Assigns:** This agreement shall be binding on the heirs, successors, receivers and assigns of all parties and shall terminate when the County has accepted the Improvements and has extinguished the Agreement, or upon receipt by the County of the full amount of the remaining undisbursed funds as requested upon default, or 91 days after the filing of an Affidavit of Lapse of Improvements Agreements, whichever comes first.
- 8) **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing or seven (7) calendar days after notice is deposited with the U.S. Postal Service, certified, and return receipt requested, and addressed as follows:

**If to Developer:**

[Redacted]

**Developer's Name**

[Redacted]

**Developer's Mailing Address**

**If to County:**

Mesa County Development Engineering  
P.O. Box 20,000, Dept. 5022  
Grand Junction, CO 81502-5001

- 9) **Immunity:** Nothing contained in this Agreement constitutes a waiver of the County's sovereign immunity under any applicable state law.
- 10) **Attorney's Fees:** Should either party be required to resort to litigation to enforce the terms of the 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 the court awards relief to both parties, the attorney's fees may be equitably divided between the parties by the decision maker.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**MESA COUNTY**

By: Dana Brosig P.E.  
Title: Development Engineer

Date: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by Dana Brosig

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**DEVELOPER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2018, by **(Developer's Name)**

Witness my hand and official seal.  
My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

SAMPLE ONLY