

## Development Improvements Agreement- Updated

### PDF Contains

#### **Agreement**

- Contract between Mesa County and the Developer to complete the improvements as required

#### **Development Improvements Attachments:**

- Property Legal Description - Exhibit A
- Lien Holders' Ratification and Approval- Exhibit B
- Construction Cost Schedule- Exhibit C
- Guarantee Options- Exhibit D:
  - Option A - Letter of Credit (See Sample Format) requires approval by the Mesa County Attorney
  - Option B - Development Improvements Cash Deposit Agreement (See Sample Format with Draw Request)
  - Option C - Cash (See Sample Format with Draw Request)
  - Option D - Performance Bond, to be provided by the applicant, requires approval by the Mesa County Attorney

#### **Instructions:**

1. Before filling out this form ensure that the following are in place:
  - a. A Sample of the Development Improvements Agreement has been given to the Developer
  - b. The Construction Cost Schedule has been reviewed and approved by the Professional Engineer of Record and MC Development Engineering
  - c. The Developer has provided the appropriate Security Documentation and Lien Holders Ratification.
2. Review Construction Cost Schedule Estimate and Count Pages - Add Page Count to fill in form below

**DEVELOPMENT IMPROVEMENTS AGREEMENT**

Project File No.: (Project Number)

Project Name: (Project Name)

This Development Improvements Agreement (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), 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.”

**I. RECITALS:**

1. The Developer has obtained Final Plan approval for a Major Site Plan 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. Pursuant to Colorado Statute, C.R.S. §30-28-137, prior to final plat approval, the County must require a developer to either install all required public and private improvements in accordance with approved improvements construction plans or enter into an agreement with the County to install such improvements, and that the developer’s obligations to install such improvements must be secured by a guarantee
3. The Mesa County Land Development Code (the “Code”), in sections 3.6.5(A) and 3.7.3(A) requires that prior to final plat approval, a developer is to either install all required public and private improvements in accordance with approved improvements construction plans or enter into a development improvements agreement with the County to install such improvements, and that the developer’s obligations to install such improvements must be secured by a guarantee, all in accordance with section 3.16.1 of the Code.
4. The County seeks to protect the health, safety and general welfare of the community by

Developer\_\_\_\_\_

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

requiring a timely completion of these 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 the Agreement, including, without limitation, materialmen, laborers, or others providing work, services or material to the Development, or lot or home buyers in the Development; and
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**.

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

## **II. DEVELOPER'S OBLIGATION**

- 1. Improvements:** The Developer will design, construct, and install, at the Developer's sole cost and expense, all on-site and off-site development improvements described on the Construction Cost Schedule, 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 (collectively referred to as the "Improvements"). The Developer's obligation to complete the Improvements will be in conformance with the time schedule set forth in Section II(4)(d) of this Agreement and will be independent of any obligations of the County contained herein.
- 2. Financial Security:** To secure and guaranty the construction of the Improvements as required by this Agreement, the Developer shall deposit with the County as a construction guarantee (the "Construction Guarantee") in the amount of **\$(Total Cost)**, on or prior to the Effective Date, one of the following:

**Option A: Irrevocable Letter of Credit** - An irrevocable letter of credit attached hereto and

Developer\_\_\_\_\_

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

incorporated herein as **Exhibit D** (the "Letter of Credit"), which Letter of Credit shall be issued by a financial institution acceptable to the County ("LOC Issuing Bank") in the total dollar amount as shown in the Construction Cost Schedule. The Letter of Credit shall be payable at sight to the County and shall bear an expiration date not earlier than sixteen (16) months from the Effective Date of this Agreement. The Letter of Credit shall be payable to the County at any time upon presentation to the LOC Issuing Bank of (i) a sight draft drawn on the LOC 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: Development Improvements Cash Deposit Agreement** - A Development Improvements Cash Deposit Agreement, ("Cash Deposit Agreement") attached hereto and incorporated herein as **Exhibit D** shall be executed by a financial institution ("Cash Deposit Bank") acceptable to the County and the Developer. The Cash Deposit Agreement shall bear an expiration date not earlier than sixteen (16) months from the Effective Date of this Agreement and shall provide for segregation of Developer's loan proceeds by the Cash Deposit Bank. The County is entitled to draw pursuant to the terms of this Agreement, the funds to be disbursed to the County, in full or in part as otherwise provided by the Cash Deposit Agreement.

**Option C: Cash** - Cash in the form of a cashier's check or bank draft, issued by a bank acceptable to the County, and payable to the County in the total dollar amount as shown on the Construction Cost Schedule will be deposited with the County's Treasurer and held in escrow pursuant to a cash escrow agreement form attached hereto and incorporated herein as **Exhibit D** (the "Cash Escrow Agreement"). The County shall be entitled to draw upon the escrowed funds, pursuant to the terms of the Cash Escrow Agreement and this Agreement. The funds shall be disbursed to the County in full or in part, upon presentation to the County's Treasurer 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

Developer\_\_\_\_\_

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has failed to cure the default as provided herein; or (iii) as otherwise provided by the Cash Escrow Agreement.

**Option D: Performance Bond** - A performance bond acceptable to the County (the “Bond”) attached hereto and incorporated herein as **Exhibit D** shall be issued by a licensed surety bonding agency (the “Surety”), upon which the County shall be entitled to draw pursuant to the terms of this Agreement in the total dollar amount as shown in the Construction Cost Schedule. The Performance Bond shall bear an expiration date not earlier than sixteen (16) months from the Effective Date of this Agreement. The funds shall be disbursed to the County in full or in part, upon presentation to the Surety 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; or (iii) as otherwise provided by the Bond.

**Option E: Plat Hold** – A Plat Hold is an option for securing and guaranteeing the installation and construction of the Improvements. If the Developer desires to pursue the Plat Hold option, in lieu of entering into this Agreement, the Developer shall enter into an “Agreement to Commence Construction Prior to Final Plat Approval” with the County.

**3. Standards:** The Developer shall construct the Improvements in conformance with the Construction Documents, this Agreement, the Code, and all applicable Mesa County standards, policies and procedures. The Developer shall ensure that any contractor, subcontractor, or construction manager, working in the Development provides 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 the requirements of the Construction Documents, this Agreement, the Code, and all applicable Mesa County standards, policies and procedures, or is otherwise suspected as being defective or sub-standard.

Developer\_\_\_\_\_

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

**4. 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 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 officials, agents or employees, the Developer hereby agrees to indemnify and save harmless the County and its officials, agents and employees from any and all suits, actions, claims, damages or liability 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 costs, damages and judgments rendered against or assessed to 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 shall 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, ("Warranty Period"). During the Warranty Period, the Developer shall make all needed repairs or replacements to any of the Improvements constructed pursuant to this Agreement that are deemed defective by the County in its sole discretion. 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. Fifteen (15) percent of the Construction Cost Schedule will be held through the warranty period as a warranty guaranty (the "Warranty Guaranty"). If in lieu of the County retaining 15 (fifteen) percent of the Construction Cost Schedule for the Warranty Guaranty, the Developer may choose to post a separate security to guaranty any warranty repair or replacement

Developer\_\_\_\_\_

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requirements in the same form as the options provided for the financial security in Paragraph 2 of this Agreement, except that any such security shall bear an expiration date not earlier than 120 days after the completion of the Warranty Period. The Developer shall deposit with the County the Warranty Guaranty in the amount of \$(Total Warranty Guaranty), prior to the extinguishment of the Development Improvement Agreement or Agreement to Commence Construction Prior to Final Plat Approval.

**d. 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 ninety (90) days of notification by the County that repairs or replacements are required, subject to any time extensions required for weather delays or other delays approved in writing by the County.

**e. Compliance with Law:** The Developer shall comply with all applicable federal, state and local laws and regulations when fulfilling obligations under this Agreement.

### III. COUNTY'S OBLIGATION

**1. 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 shall issue a written notice describing such defect (“Notice of Deficiency”) to the Developer and the issuer of the Guaranty. The Developer will have thirty (30) calendar days from the date of the Notice of Deficiency to correct any defect described therein. 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 of Deficiency and the Developer must request extensions no later

Developer\_\_\_\_\_

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than fourteen (14) calendar days before the expiration of the current correction period. Any application for an extension will be reviewed by the Development Engineering Department for compliance with this Agreement 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, issue a written Notice of Termination of Agreement stating that this Agreement is terminated, require the Developer to enter into a new development improvements agreement, and provide additional financial security to secure and guaranty the full cost of the construction of the Improvements prior to resuming construction of the Improvements.

- 2. Notice of Non-Compliance with Completion Period:** If it becomes apparent to the County that the Developer will not complete the construction and installation of the Improvements within the Completion Period, the County shall issue the Developer a written notice of such failure to timely complete ("Notice of Failure to Timely Complete Improvements") not earlier than thirty (30) calendar days before the end of the Completion Period. If inclement weather or circumstances beyond the Developer's control prevent construction within the Completion Period, the Developer may request up to a maximum of a twelve (12)-month extension to the Completion Period. The Developer must submit a written request indicating the reason for the need for an extension to the Development Engineering Department not later than fourteen (14) calendar days after the date of the Notice of Failure to Timely Complete Improvements.

Prior to the County approving any request for an extension of the Completion Period, any Construction Guarantee provided pursuant to this Agreement shall also be extended to reflect the requested extended Completion Period, the amount of the Construction Guarantee shall be modified to reflect the then current costs for the Improvements remaining to be completed, and the Construction Guarantee shall be modified to reflect the extended Completion Date. The decision to extend the Completion Period shall be in the sole discretion of the County. Any accepted request for an extension of the Completion Period shall be executed by the Parties in a written addendum to this Agreement. If a request for an extension of the Completion Period is not approved by the County, and the Developer fails to complete the Improvements within the Completion Period, the County may issue written Notice of Termination of Agreement stating

Developer\_\_\_\_\_

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



that this Agreement is terminated, requiring that the Developer enter into a new development improvements agreement, and requiring the Developer to provide additional financial security to secure and guaranty the full cost of the construction of the Improvements prior to resuming construction of the Improvements.

**3. 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 the Improvements is conditioned on the presentation by Developer of:

- 1) A letter requesting acceptance of the Improvements; and
- 2) the required signatures of acceptance by all entities serving the constructed Improvements; and
- 3) documentation and testing satisfactory to the County demonstrating that the Improvements have been completed per the accepted Construction Documents; and
- 4) 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; and
- 5) the Warranty Guaranty; and
- 6) a document or documents, for the benefit of the County, showing that there are no mechanics liens or encumbrances on the Property or Improvements other than the lien holder(s) that has signed the plat, and that all obligations to Contractors and Subcontractors in connection with the Improvements have been discharged; and
- 7) a site visit performed by the Development Engineer and written approval of the work completed is issued by the County; and
- 8) A document or documents signed by the project's Engineer of Record and

Developer\_\_\_\_\_

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developer certifying that all improvements have been completed in accordance with the project plans and specifications.

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.

**4. Reduction of Construction Guarantee:** After the partial completion of Improvements and upon application of the Developer, the Construction Guarantee may be reduced by an amount equal to eighty-five (85) percent of the cost of the partial completion of the Improvements as shown on the Construction Cost Schedule and application submitted by the Developer. The Developer shall provide supporting documentation of partial completion including, but not limited to copies of paid invoices for such partial completion work, testing reports, signatures of acceptance from appropriate governing agencies, and such other documentation as the County may reasonably deem necessary to quantify the cost of the partially completed work. At the request of the Developer, the County will execute an amendment to this Agreement verifying the initial acceptance of the partially completed Improvements and waiving and releasing its right to draw on the Construction Guarantee per this Agreement to the extent of such amount. Upon the acceptance of all of the Improvements, the full balance that may be drawn under the Construction Guarantee shall be released minus the fifteen (15) percent of the Construction Cost Schedule held for the Warranty Guaranty. A Developer in default under this Agreement will have no right to such a reduction.

**5. Use of Proceeds:** The County shall use funds drawn under the Construction Guarantee or the Warranty Guarantee only for the purpose of completing the Improvements, correcting defects in or failure of the Improvements, or to pay the reasonable costs and expenses, including reasonable attorney's fees, of the County in connection with the enforcement of either Guarantee.

Developer\_\_\_\_\_

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**IV. OTHER PROVISIONS**

**1. Events of Default: The following conditions, occurrences or actions will constitute an event of default (“Event of 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, as it may be extended per this Agreement; the County may not declare a default until a Notice of Failure to Timely Complete Improvements has been given to the Developer and the Developer fails to cure failure to timely complete as provided herein, and the Developer’s time extension requests, if any, 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 an Event of Default until Notice of Deficiency has been given to the Developer and applicable correction period has elapsed; the County may declare an Event of Default after subsequent approved correction periods have lapsed without issuing additional Notices of Deficiency 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 an Event of Default without prior notification to the Developer; or
- d. Notification to County by a lender with a lien on the Property of Developer’s default on their debt secured by the property; the County may immediately declare a default without prior notification to the Developer.

**2. County's Rights Upon Default:** When any Event of Default occurs, the County may access the Construction Guarantee to the extent of the face amount of such Construction Guaranty, less eighty-five (85) percent of the estimated cost, as shown on the Construction Cost Schedule, of all Improvements previously accepted by the County. In the event an Event of Default occurs, the County shall have the right to perform work or contract with a third party to perform work to stabilize the disturbed areas on the Property, to take such actions

Developer\_\_\_\_\_

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

as may be reasonable to stabilize, weatherize, and otherwise protect and secure any incomplete Improvements, or to perform warranty repairs on completed Improvements. 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, protection and performance of 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 file a notice of lis pendens or take such other actions to enjoin the sale, transfer, or conveyance of the Property until the Improvements are completed, the Property is stabilized, the Improvements are protected and secure, or the warranty repairs are completed, as applicable.

When any Event of Default occurs, the County may revoke or deny Final Plan approval for the Development. After revocation of Final Plan approval, any further development of the Property shall require a reapplication for Final Plan approval in accordance with the Final Plan procedures set forth in the Code, and approval of the same by the County.

Alternatively, the County may initiate legal action to compel the compliance with this Agreement, the curing of any Event of Default, and the completion of the Improvements.

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

3. **Measure of Damages:** The measure of damages in the event of default under this Agreement by Developer will be the reasonable cost to the County of satisfactorily completing the Improvements. For Improvements upon which construction has not begun, the estimated costs of the Improvements as shown on Construction Cost Schedule will be prima facie evidence of the minimum cost of completion; however, neither that amount nor the amount of the Construction Security shall establish the maximum amount of the Developer's liability.
4. **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

Developer\_\_\_\_\_

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

expressly provided for in a written amendment to this Agreement signed by both Parties; nor will the waiver of any Event of Default under this Agreement be deemed a waiver of any subsequent Event of 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.

5. **Amendment or Modification:** The Parties may amend or modify this Agreement only by written instrument executed on behalf of the Parties. Such amendment or modification will be properly notarized and recorded as an amendment to this Agreement, before it may be effective.
6. **Attorney's Fees:** Should either party be required to resort to litigation or other legal action to enforce the terms of this Agreement, the substantially prevailing party shall be entitled to costs, including reasonable attorney's fees and expert witness fees, from the other party. If the court awards relief to both parties on a substantially equal basis, the attorney's fees may be equitably divided between the parties by the decision maker.
7. **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 any portion of the Property in the Development.
8. **Third Party Rights:** No person or entity, who or which is not a party to this Agreement shall have any right of action under this Agreement. There are no third party beneficiaries to this Agreement.
9. **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.
10. **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 their respective

Developer\_\_\_\_\_

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

obligations under this Agreement.

11. **Severability:** If any part, term, or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall 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 this Agreement.

12. **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 unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligation 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. The County will expressly release the original Developer's Construction Guarantee, Warranty Guarantee or other obligations under this Agreement if it accepts a replacement Construction Guarantee, Warranty Guarantee, or other obligation, from successor owner of the Property. However, no other act of the County shall constitute a release of the original Developer from its liability under this Agreement.

13. **Notice:** Any notice required or permitted by this Agreement will be deemed effective when personally delivered in writing, or three (3) calendar days after notice is deposited with the U.S. Postal Service, First Class Postage prepaid, or the date of receipt as noted on the certified receipt if sent via the U.S. Postal Service certified, and return receipt requested, and addressed as follows:

**If to Developer:**

(Developer's Address)

**If to County:**

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

14. **Recordation:** The County shall, at its cost, record a copy of this Agreement in the Clerk and Recorder's Office of Mesa County, Colorado.

Developer\_\_\_\_\_

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

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

16. **Personal Jurisdiction and Venue:** Personal jurisdiction and venue for any lawsuit commenced by either Party, arising out of or relating to this Agreement in any manner, shall be deemed to be proper only if such action is commenced in District Court for Mesa County, Colorado. The Developer expressly waives its right to bring such action in or to remove such action to any other court whether state or federal. This venue requirement does not preclude the Parties from participating in mutually agreed upon mediation or arbitration proceedings in lieu of or in addition to an action in District Court.

17. **Termination:** Except as otherwise provided herein, this Agreement may be terminated only through formal acceptance of the Improvements per the provisions of this Agreement or through written agreement of the Parties.

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: (Company)

By: (Developer's Name) Signature \_\_\_\_\_

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

by (Developer's Name) \_\_\_\_\_

Witness my hand and official seal.

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

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

**Mesa County**

By: Dana Brosig, Development Engineer Signature \_\_\_\_\_

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

by Dana Brosig, Mesa County Development Engineer.

Witness my hand and official seal.

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

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



EXHIBIT A

**PROPERTY LEGAL DESCRIPTION**

(Legal Description)

SAMPLE ONLY

EXHIBIT B

**LIEN HOLDERS' RATIFICATION AND APPROVAL**

The undersigned will ratify the final plat for Subdivision to be recorded with the Mesa County Land Records and approves the terms of this Development Improvements Agreement.

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

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

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

SAMPLE ONLY

EXHIBIT C  
**CONSTRUCTION COST SCHEDULE**

Please insert the proper Construction Cost Schedule after this page

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

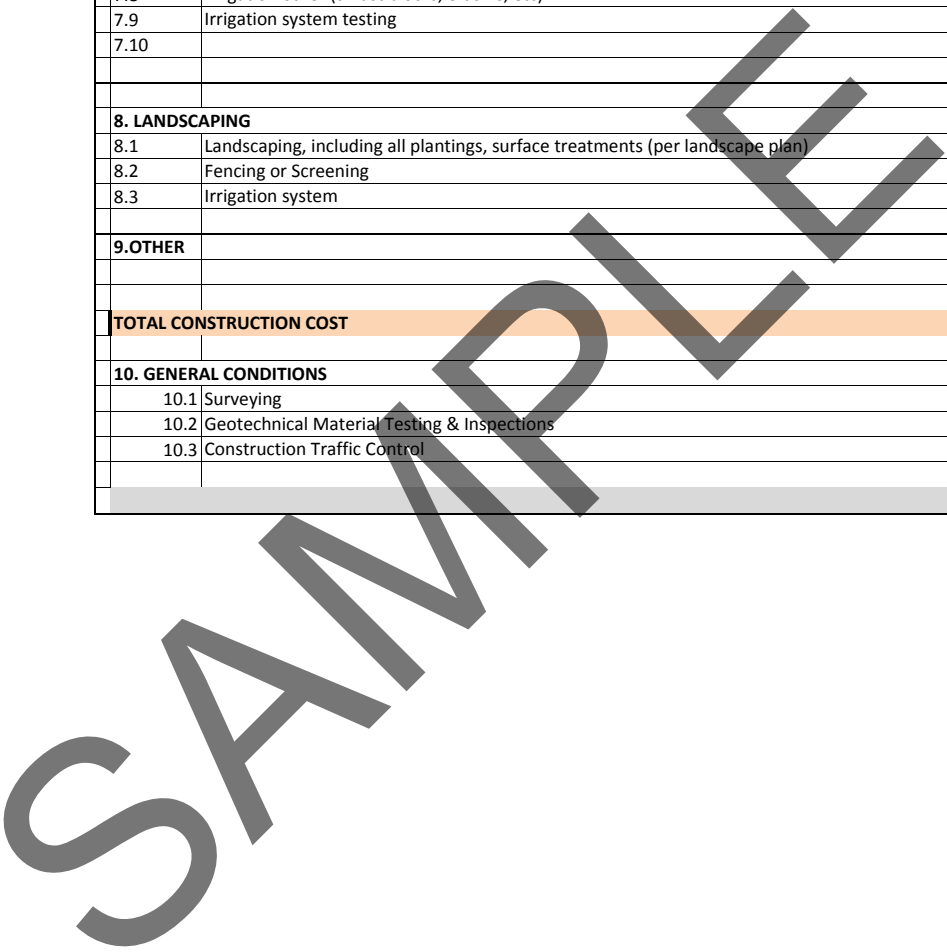
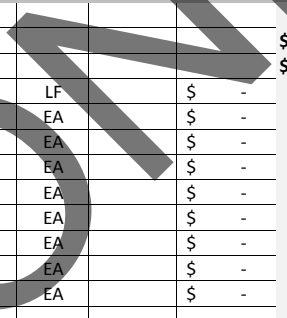
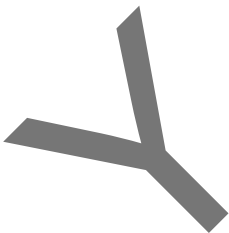
Development Engineer: \_\_\_\_\_ Date: \_\_\_\_\_

CONSTRUCTION COST SCHEDULE

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

Subdivision:		Project Number:					
#	DESCRIPTION	Qty	UNIT	Unit Cost	SUBTOTAL	TOTAL	
<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>				\$ -	
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  
**GUARANTEE**

Please insert the proper Guarantee Agreement after this page

SAMPLE ONLY



Exhibit D

**PERFORMANCE BOND**

Developer has been required by the County to construct certain improvements (“Improvements”) to **SUBNAME** (“Subdivision”) in accordance with the Mesa County Land Development Code, under a Development Improvements Agreement (“DIA”) which is attached hereto and incorporated herein.

County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of these Improvements and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

Per the attached Construction Cost Schedule, the total costs to complete the Improvements (“Funds”), inclusive to any construction engineering, permit fees or other cost required to complete the Improvements, is **\$XXXX**.

Attached is a copy of the Performance Bond to be held as a guarantee by Mesa County.

SAMPLE ONLY

## Exhibit D

### **CASH ESCROW AGREEMENT**

This agreement (“Agreement”) is entered into by and between Mesa County, Colorado, a political subdivision of the State of Colorado (the “County”) and **DEV NAME** (“Developer”).

#### **RECITATIONS**

Developer has been required by the County to construct certain improvements to **SUB** (“Subdivision”) in accordance with the Mesa County Land Development Code, under a Development Improvements Agreement (“DIA”) entered into by and between the County and Developer. Such improvements are defined in the DIA (“Improvements”).

County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of these Improvements and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

Per the attached Construction Cost Schedule, the total costs to complete the Improvements (“Funds”), inclusive to any construction engineering, permit fees or other cost required to complete the Improvements, is **\$XXXX**.

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

#### **TERMS**

In addition to the obligations and provisions in the DIA, the County and Developer, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

1) **Funds for Improvements:** Developer hereby provides to the County a cashier's check or certified check drawn on a local bank in the amount of **\$XXXX**. 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 the DIA. The County will retain all interest earned on the escrow deposits.

2) **Disbursement of Funds:**

In order for funds to be released, the Developer shall submit to Mesa County a Construction Guarantee Reduction Request and the appropriate supporting documentation (“Reduction Request”). Once all documentation has been received, the County shall approve or deny the Reduction Request and inform the Developer of their decision within 10 working days. If the Reduction Request is approved, the County shall request funds from the Treasurer's office within 5 business days and the Developer will receive a check from the MC Treasurer Office.

#### **DEVELOPER'S OBLIGATION FOR DISBURSEMENT**

a) The Developer shall submit to the County per the provisions of the DIA, Reduction Request form, see attached sample, for completed Improvements. The Reduction Request shall be completed, inclusive to all required signatures and attachments, verifications and conform to the

following:

- i) The amount of the Reduction Request upon the Funds shall not be greater than eighty-five (85) percent of the completed Improvements. The remaining fifteen (15) percent shall be held by the County as retainage through the Warranty Period unless the Developer chooses another form of guarantee for the Warranty Guarantee.
- ii) The Reduction Request shall state the Improvements that have been completed; also that the Engineer of Record has inspected the Improvements for which payment is requested; and that the work has been completed in accordance with the approved plans and specifications and that the sum requested to be disbursed is reasonable and consistent with the estimates which form the basis for the Agreement; and
- iii) All bills or invoices, which shall bear the name and address of the payee, for such Improvements.
- iv) All testing reports as required by the County's standards are attached for the Improvements.
- v) The Reduction Request shall contain signatures of acceptance by all entities serving the constructed Improvements.

#### **COUNTY'S OBLIGATION FOR DISBURSEMENT**

- a) The County shall review the Reduction Request for accuracy and content. The County may elect to request the Developer to amend the request prior to approval or denial.
  - b) The County may elect to provide a site observation to generally confirm the completeness of the Improvements.
  - c) The County will contact the Developer regarding the Reduction Request decision of acceptance. If the Reduction Request is accepted, the County will submit the approved request to the Mesa County Treasurer Office. If the Reduction Request is denied, the County will contact the Developer to convey the deficiency.
- 3) **Default by Developer:** Upon the Default of the Developer on this Agreement or default on the DIA, the County shall cease disbursement of the Funds to the Developer but may continue to disburse funds to the County under the terms of the DIA.

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

**Developer**

Company Name: **DEV NAME**

By: **DEV NAME**

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

**Mesa County**

Development Engineering

By: Dana Brosig

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by **DEV NAME** and Dana Brosig

Witness my hand and official seal.

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

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

SAMPLE ONLY

Exhibit D

**DEVELOPMENT IMPROVEMENTS CASH DEPOSIT AGREEMENT**

This agreement (“Agreement”) is entered into by and between Mesa County, a political subdivision of the State of Colorado (“County”), (**DEVELOPER NAME**) (“Developer”) and **BANK NAME** (“Cash Deposit Bank”)

**RECITATIONS**

Developer has been required by the County to construct certain improvements to **SUBDIVISION NAME** (“Subdivision”) in accordance with the Mesa County Land Development Code, under a Development Improvements Agreement (“DIA”) entered into by and between the County and the Developer. Such improvements as defined in the DIA (“Improvements”).

County seeks to protect the health, safety and general welfare of the community by requiring a timely completion of these Improvements and to limit the effects of uncompleted subdivisions, including premature subdivision which leaves property undeveloped and unproductive; and

Per the attached Construction Cost Schedule, the total costs to complete the Improvements (“Funds”), inclusive to any construction engineering, permit fees or other cost required to complete the Improvements, is **\$XXXX**.

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

**TERMS**

In addition to the obligations and provisions in the DIA, the County and Developer, for valuable consideration, the receipt and adequacy of which is acknowledged, agree as follows:

- 1) **Funds for Improvements:** Developer has opened an account in the amount of **\$XXXX** with the Cash Deposit Bank. The Funds are to be held by the Bank and will not be paid out or disbursed to the or on behalf of the Developer except as set forth in the DIA.
- 2) **Disbursement of Funds:**

In order for funds to be released, the Developer shall submit to Mesa County a Construction Guarantee Reduction Request and the appropriate supporting documentation (“Reduction Request”). Once all documentation has been received, the County shall approve or deny the Reduction Request and inform the Developer of its decision within 10 working days. If the request is approved, the County shall send a memo with the supporting documentation to the Cash Deposit Bank requesting a reduction in the Construction Guarantee.

**DEVELOPER'S OBLIGATION FOR DISBURSEMENT**

- a) The Developer shall submit to the County per the provisions of the DIA, a Reduction Request form, see attached sample, for completed Improvements. The Reduction Request shall be completed, inclusive of all required signatures and attachments, verifications and conform to the following:
  - i) The amount of the Reduction Request upon the Funds shall not be greater than eighty-five (85) percent of the completed Improvements. The remaining fifteen (15) percent shall be held by the County as retainage through the Warranty Period unless the Developer chooses another form of guarantee for the Warranty Guarantee.

- ii) The Reduction Request shall state the Improvements that have been completed; also that the Developers Engineer of Record has inspected the Improvements for which payment is requested; and that the work has been completed in accordance with the approved plans and specifications and that the sum requested to be disbursed is reasonable and consistent with the estimates which form the basis for the Agreement; and
- iii) All bills or invoices, which shall bear the name and address of the payee, for such Improvements.
- iv) All testing reports as required by the County's standards are attached for the Improvements.
- v) The Reduction Request shall contain signatures of acceptance by all entities serving the constructed Improvements.

#### **COUNTY'S OBLIGATION FOR DISBURSEMENT**

- a) The County shall review the Reduction Request for accuracy and content. The County may elect to request the Developer to amend the request prior to approval or denial.
- b) The County may elect to provide a site observation to generally confirm the completeness of the Improvements.
- c) The County will contact the Developer regarding the Reduction Request decision of acceptance. If the Reduction Request is accepted, the County will submit the approved request to the Bank. If the Reduction Request is denied, the County will contact the Developer to convey the deficiency.

#### **BANK'S OBLIGATION FOR DISBURSEMENT**

- a) The Bank may review the Reduction Request for accuracy and content. The Bank at its discretion may provide a site observation to confirm the completeness of the Improvements.
  - b) The Bank shall inform the Developer of its decision to release or deny the Reduction Request. Should the Bank deny the Reduction Request, the Bank shall inform both the Developer and the County of the deficiency.
- 3) **Default by Developer:** Upon the Default of the Developer on this Agreement or default on the DIA, the County shall notify the Bank of the Default. The Bank upon this notification shall cease disbursement of the Funds except to the County under the terms of the DIA.

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

**Developer**

Company Name: DEV NAME

By: DEV NAME

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

**Mesa County**

Development Engineering

By: Dana Brosig

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by DEV NAME and Dana Brosig

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

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

**Bank**

Bank Name: BANK NAME

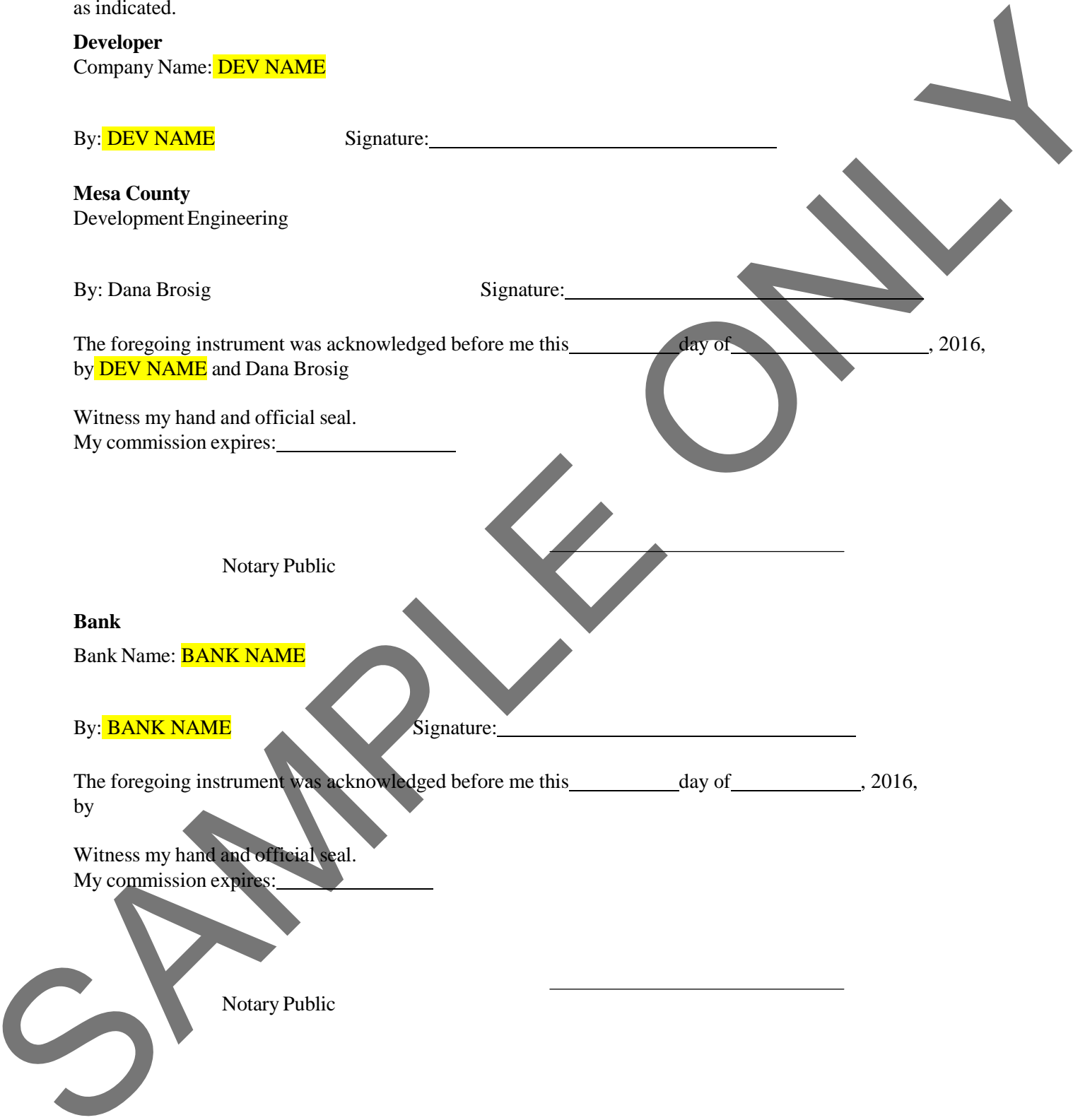
By: BANK NAME

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by

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

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



**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