

**CITY OF FORT LUPTON
CITY COUNCIL**



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Michael Sanchez, Ward 3

Zo Stieber, Mayor

David Crespin, Ward 1
Tommy Holton, Ward 2
, Ward 3

AM 2020-012

APPROVAL OF THE SUBDIVISION IMPROVEMENTS AGREEMENT WITH LUPTON VILLAGE ONE, LLC FOR THE COURTYARDS AT LUPTON VILLAGE PUD.

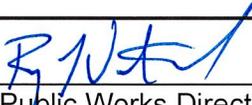
- I. **Agenda Date:** Council Meeting – January 7, 2020

- II. **Attachments:**
 - a. Resolution 2020R0xx.
 - b. Development Agreement.

- III. **Summary Statement:**

Approval of the Subdivision Improvements Agreement between the City of Fort Lupton and Lupton Village One, LLC, for the Courtyards at Lupton Village PUD.

IV. **Submitted by:**



Public Works Director

V. **Finance Reviewed**



Finance Director

VI. **Approved for Presentation:**



City Administrator

VII. **Attorney Reviewed**

Approved

Pending Approval

VIII. **Certification of Council Approval:**

City Clerk

Date

IX. Detail of Issue/Request:

This development agreement was drafted for the Lupton Village PUD (LUP2019-0032 & Plan No.: PPL2019-0001) approved by City Council on December 2, 2019, which is located west side of South Rollie Avenue, south of the Salud facility.

Improvements are for the construction of water, sanitary sewer main extensions and storm drainage system improvements. Also included are completion of S. Rollie Avenue road sections adjacent to the subdivision. Approximate cost of this agreement for construction is \$6,808,279.50 which includes a 10% contingency.

Resolution 2019R080, approved by Council on December 2, 2019 requires the applicant to enter into a Subdivision Improvements Agreement.

X. Legal/Political Considerations:

Not Applicable

XI. Alternatives/Options:

- *Approve Resolution*
- *Do not approve Resolution*

XII. Financial Considerations:

None

XIII. Staff Recommendation:

Staff recommends approval of this Subdivision Improvement Agreement between the City of Fort Lupton and Lupton Village One, LLC.

RESOLUTION NO. 2020Rxxx

A RESOLUTION OF THE CITY COUNCIL OF FORT LUPTON APPROVING THE LUPTON VILLAGE ONE, LLC SUBDIVISION IMPROVEMENTS AGREEMENT OF THE LUPTON VILLAGE COURTYARDS PUD SUBDIVISION LOCATED IN THE FORT LUPTON COMMUNITY CENTER SUBDIVISION, WELD COUNTY, COLORADO.

WHEREAS, the City Council Resolution No. 2019R080 approved the Lupton Village PUD Subdivision with conditions December 2, 2019; and

WHEREAS, Developer is required to construct certain public improvements as a condition of subdivision approval for the Development; and

WHEREAS, the City Council finds that the Subdivision Improvement Agreement is in conformance with the Fort Lupton Land Use Plan, zoning code and is consistent with the goals and policies therein; and

NOW THEREFORE BE IT RESOLVED that the Fort Lupton City Council reviewed the Public Improvement Agreement with supporting documentation. Based upon review of the applicable policies and goals in the Fort Lupton Land Use Plan, review of the Zoning Regulations, and analysis of staff comments, the City hereby approves the Lupton Village One, LLC Subdivision Improvement Agreement and authorizes the Mayor to sign.

APPROVED AND PASSED BY A MAJORITY VOTE OF THOSE ELECTED TO THE CITY COUNCIL THIS 7th DAY OF JANUARY 2020.

City of Fort Lupton, Colorado

Zo Stieber, Mayor

Attest:

Maricela Pena, City Clerk

Approved as to form:

Andy Ausmus, City Attorney



COME PAINT YOUR FUTURE WITH US

Public Works

130 S. McKinley Avenue
Fort Lupton, CO 80621
www.fortluptonco.gov

Phone: 303.857.6694
Greeley: 970.346.0326
Fax: 303.857.0351

SUBDIVISION IMPROVEMENTS AGREEMENT FOR THE COURTYARD AT LUPTON VILLAGE

THIS AGREEMENT is made and entered into this _____ day of _____, by and between the CITY OF FORT LUPTON, a municipal corporation, in the County of Weld, State of Colorado, hereinafter referred to as the "City," and **Lupton Village One, LLC**, hereinafter referred to as "Developer", together referred to as the "Parties".

WHEREAS, the Developer submitted a Subdivision Plat for the Subdivision entitled "Lupton Village, Case No. LUP2019-0032 & Plan No.: PPL2019-0001 (the "Development"), which Plat depicts the proposed project (the "Development") to be constructed by Developer on the property depicted on the PUD, which is the "Subject Property"; and

WHEREAS the PUD was approved by the City of Fort Lupton City Council on December 2, 2019 by Resolution No. 2019R080; and

WHEREAS, Developer is required to construct certain public improvements (the "Improvements") as a condition of subdivision approval for the Development; and

WHEREAS, Section 17-23(c) of the City of Fort Lupton Municipal Code requires that a subdivision agreement for public improvements be executed by the Developer and the City and recorded in the office of the Weld County Clerk and Recorder; and

WHEREAS, Section 17-23(f)(7) of the City of Fort Lupton Municipal Code requires that the installation of the required public improvements be guaranteed in the form of letter of credit, cash, or other suitable means, which have been approved by the City Attorney.

NOW, THEREFORE, in consideration of the foregoing, the Parties promise, covenant and agree as follows:

1.0 **GENERAL CONDITIONS**

1.1 Development Obligation. Developer shall be responsible for performance of the covenants set forth herein. Unless as otherwise amended within this agreement, the Developer shall be responsible for performance of all requirements in this agreement.

1.2 Engineering and Surveying Services. Developer agrees to furnish, at its expense, all necessary engineering and surveying services relating to the design layout and construction of the improvements (the "Improvements") depicted on Exhibit "A" and Exhibit "B" attached hereto and fully incorporated herein by this reference. Said engineering services shall be performed by or under the supervision of a Registered Professional Engineer or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law, and shall conform to the standards and criteria for

public improvements as established and approved by the City as of the date of submittal to the City.

1.3 Construction Standards. Developer shall construct all Improvements required by this Agreement, in accordance with plans and specifications approved in writing by the City, in conformance with all applicable codes and ordinances as adopted by the City, and in full conformity with the City's construction and specifications applicable at the time of actual construction.

1.4 Development Coordination. Unless specifically provided in this Agreement to the contrary, all submittals to the City or approvals required of the City in connection with this Agreement shall be submitted to or rendered by the City Administrator, or his designee, who shall have general responsibility for coordinating development with Developer.

1.5 Construction Acceptance and Warranty. No later than ten (10) days after the Improvements are completed, Developer shall request and the City shall provide inspection by the City. If Developer does not request this inspection within ten (10) days of completion of the Improvements, the City may conduct the inspection without the approval of Developer. Developer shall provide "as-built" drawings no later than thirty (30) days after the Improvements are completed. If the Improvements completed by Developer are satisfactory, the City shall grant construction acceptance ("Construction Acceptance") within ten (10) days of the Developer's submission of "as-built" drawings, which shall be subject to final acceptance ("Final Acceptance") as set forth herein. If the Improvements completed by Developer are unsatisfactory, the City shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Construction Acceptance within ten (10) days from the date of City inspection. Developer shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Developer does complete the repairs, replacements, construction or other work required, Developer shall request a re-inspection of such work within ten (10) days to determine if Construction Acceptance can be granted. The City shall provide either Construction Acceptance or written notice of additional repairs, replacements, construction or other work required to receive Construction Acceptance within ten (10) days of the re-inspection date. The City shall issue no certificate of occupancy until the City has granted the Construction Acceptance.

1.6 Final Acceptance. At least thirty (30) days before one (1) year has elapsed from the issuance of Construction Acceptance, or as soon thereafter as weather permits, Developer shall request a Final Acceptance inspection. The City shall inspect the Improvements and shall notify the Developer in writing of all deficiencies and necessary repairs. After Developer has corrected all deficiencies and made all necessary repairs identified in said written notice, the City shall issue to Developer a letter of Final Acceptance.

1.7 Testing and Inspection.

(a) At all times during construction of the public improvements, the City shall have access to inspect materials and workmanship, and all materials and work not conforming to the approved plans and specifications shall be repaired or removed and replaced at Developer's expense so as to conform to the approved plans and specifications.

(b) The Developer will be responsible for oversight of the construction of the public improvements. The Developer shall solicit and retain a third-party engineer or inspector, solely at Developer's cost, to perform oversight, provided the engineer/inspector's qualifications are

approved by the City prior to commencement of construction of the public improvements. The Developer will provide the resume of a Civil Engineer, or other qualified inspector(s), of the construction and installation of such improvements before construction may begin. The City Engineer or the City's designee shall determine the amount of oversight required, after consultation with the Developer.

(c) All testing required by the City's "*Standards and Specifications for the Design and Construction of Public Improvements*" shall be the responsibility of the Developer. All test reports shall be provided to the City Engineer.

(d) All work shown on the Improvements plans requires inspection by the City. Inspection services are provided Monday through Friday, except legal holidays, from 8:00 a.m. to 4:00 p.m. During the hours listed above and except as otherwise provided for in advance, inspections shall be scheduled a minimum of three (3) business days in advance.

1.8 Indemnification and Release of Liability. Developer agrees to defend, indemnify and hold harmless the City, its officers, employees, agents or servants, and to pay any and all judgments rendered against said persons on account of any suit, actions or claim caused by, arising from, or on account of acts or omissions by the Developer, its officers, employees, agents, consultants, contractors and subcontractors; provided, however, that Developer's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents or servants of the City. Said obligation of Developer shall be limited to suits, actions or claims based upon conduct prior to Final Acceptance by the City of the construction work. Developer acknowledges that the City's review and approval of plans for development of the Subject Property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and no specific relationship with, or duty of care to, the Developer or third parties is assumed by such review approval.

1.9 Insurance OSHA. Developer shall furnish to the City upon request proof thereof that all employees and contractors engaged in the construction of Improvements are covered by adequate Worker's Compensation Insurance and Public Liability Insurance and shall require faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

(a). **OSHA Requirements.** Developer agrees that it alone bears the responsibility for providing a safe and healthy work environment and shall provide its employees with adequate orientation and training to safely perform the scope of work set forth in this contract. Developer's Contractor shall at all times comply with the safety and health regulations of the Occupational Safety and Health Act of 1970 (29 CFR 1926) including all amendments and modifications thereto. In the event there is a conflict between the safety and health provisions of federal, state or local regulations, the more stringent provision shall prevail. Developer acknowledges and agrees that with respect to the scope of work under this contract, Developer's Contractor shall comply with all obligations and assume all responsibilities for its actions as required by all OSHA rules and regulations. The Contractor shall adhere to all federal, state and local safety and health regulations, laws and ordinances and shall comply with all obligations and assume all responsibilities imposed upon the "controlling contractor" as such term is defined and construed under all OSHA rules and regulations.

2.0 CONSTRUCTION OF IMPROVEMENTS

2.1 Rights-of-Way, Easements and Permits. Before the City may approve construction plans for any Improvements herein agreed upon, Developer shall acquire, at its own expense, all rights-of-way and easements depicted on the Plat, as required by the City for the construction of the Improvements. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by deed, easement, license, agreement in form and substance acceptable to the City Administrator or the Administrator's designee. All title documents shall be recorded at the Developer's expense.

3.0 INFRASTRUCTURE IMPROVEMENTS

3.1 Public Improvements

The Developer agrees to construct public improvements (the "Improvements"), within the Subdivision, depicted on Exhibit "A" attached hereto and fully incorporated herein by this reference. The Developer shall be responsible for providing the City with a Security Bond, Letter of Credit, or cash deposit with the City (the "Security") guaranteeing installation of the Improvements that are not completed prior to issuance of the first building permit. The amount shall be one hundred twenty-five percent (125%) of the applicable phased estimated cost of the required Improvements per approved Construction Drawings. The City may accept portions of the Improvements, reducing the Security for each portion completed and accepted by the City, to no less than twenty-five percent (25%) of the actual or estimated construction costs, whichever is greater, for each completed system. Each Improvement phase shall define a system, i.e. roadways system, sewer system, water system. The remaining twenty-five percent (25%) percent for each system shall be retained to secure the Developer's warranty during the designated warranty period. A warranty period of two (2) years shall apply to all public improvements. The City shall release or return the Security to the Developer within Thirty (30) days of receipt of the Conditional Acceptance as provided in paragraph 1.5 herein, less the twenty-five percent (25%) of construction costs to be retained during the warranty period. Upon Final Acceptance of the Improvements as provided in paragraph 1.6 herein, the twenty-five percent (25%) Security retained during the warranty period shall be released or returned to the Developer within Thirty (30) days of issuance of the Final Acceptance.

4.0 LANDSCAPE, PARK AND TRAIL IMPROVEMENTS

The Developer agrees to construct certain Landscape, Park and Trail improvements located within the Subdivision (the "Landscape, Park and Trail Improvements") per the approved P.U.D. referenced as Exhibit "C" attached hereto and fully incorporated herein by this reference, as part of the Improvements. No more than thirty (30) building permits for lots shall be issued until the Landscape, Park and Trail improvements are complete or surety is provided. The surety shall be in the amount of one hundred twenty-five percent (125%) of the estimated cost of the Landscape, Park and Trail Improvements as shown on Exhibit "B", or portion thereof, for improvements that do not have construction acceptance at the time of application for the first (1st) building permit. Surety in the amount of 25% shall be provided, at the time of recording, for improvements that have received construction acceptance under the terms of this agreement. The Landscape, Park and Trail Improvements are depicted in the Construction Drawings for The Courtyard Lupton Village, attached as Exhibit "D" hereto and incorporated herein by reference.

5.0 SPECIFICATIONS.

All street improvements, curb, gutter and sidewalks and appurtenances thereto, water mains, sewer mains and stormwater improvements shall be constructed and installed so as to meet or exceed City-approved plans, specifications and the Improvements described on Exhibit "A" Public Improvements and Exhibit "B" Off-site Improvements. All streets within the Subdivision shall be constructed to City Standards and Specifications per the approved Construction Plans and based upon a site-specific geotechnical study and pavement design. All streetscaping will meet the requirements of the Fort Lupton Subdivision Regulations. Detention pond improvements will be required at the time of construction on the site as determined by the Phase III Drainage Study submitted.

6.0 OTHER REQUIREMENTS

6.1 Trash, Debris, Mud. Developer agrees that, during construction of the Development and Improvements described herein, Developer shall take any and all steps necessary to control trash, debris and wind or water erosion in the Development. Developer agrees to take any and all steps necessary to prevent the transfer of mud or debris from the construction site into public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the City. If these requirements are not met, the developer will be responsible for reimbursing the City for any costs incurred by the City in mitigating impacts of trash, debris, and mud.

6.2 Erosion Control and Sedimentation Plan. Developer agrees to submit an erosion control and sedimentation plan for review and approval by the City Engineer prior to commencement of construction on the site. Each individual lot will require erosion control measures be taken. Colorado State permits required shall be the responsibility of the Developer.

7.0 MISCELLANEOUS TERMS

7.1 Local Codes and Ordinances. In addition to any of the items listed in this Agreement, all construction in the Development is subject to all local Codes and Ordinances as adopted by the City subject to exceptions agreed or granted.

7.2 Recording of Agreement. The City shall record this Agreement at Developer's expense in the office of the Clerk and Recorder, County of Weld, State of Colorado, and the City shall retain the recorded Agreement.

7.3 Binding Effect of Agreement. This Agreement shall run with the land included within the Development and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

7.4 Modification and Waiver. No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any section of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

7.5 Notices. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

CITY: City of Fort Lupton
Attention: City Administrator
130 South McKinley Avenue
Fort Lupton, Colorado 80621

DEVELOPER: Lupton Village One, LLC
Attn: Fred Croci
PMB 330
1540 Main Street, #218
Windsor, CO 80550

or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

7.6 Force Majeure. Whenever Developer is required to complete construction, maintenance, repair or replacement of Improvements by an agreed upon deadline, the City shall grant a reasonable extension of time if the performance cannot, as a practical matter, be completed in a timely manner due to acts of God or other circumstances constituting force majeure or beyond the reasonable control of the Developer.

7.7 Approvals. Whenever approval or acceptance of a matter is required or requested of the City pursuant to any provisions of this Agreement, the City shall act reasonably in responding to such matter, and no such approval or acceptance shall be unreasonably withheld or delayed.

7.8 Title and Authority. Developer warrants to the City that it is the record owner of the Subject Property upon which the Development shall be constructed or is acting in accordance with the authority of the owner. The undersigned further warrants to have full power and authority to enter into this Agreement.

7.9 Severability. This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that any provision of this Agreement is held to be violative of city, state or federal laws and hereby rendered unenforceable, either party, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

