



Public Works

130 S. McKinley Avenue
Fort Lupton, CO 80621

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PUBLIC IMPROVEMENTS AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____ **2020**, 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 **Fort Lupton Fire Protection District**, a political subdivision of the State of Colorado, hereinafter referred to as "Developer", together referred to as the "Parties".

WHEREAS, Developer submitted the Site Plan for development of Parcel Number 147117302001 (the "Plan"), Fort Lupton Fire Station #3 Site Plan (Lot 1, Villano Minor Subdivision) on November 1, 2019, (LUP2019-0037; SPR2019-0014) which Plan depicts the proposed project (the "Development") to be constructed by Developer on the property depicted on the plan, which is the "Subject Property"; and

WHEREAS, City council approved the site plan for development on February 4, 2020 with Resolution 2020R025 with condition to enter into a Public Improvements Agreement for Off-Site Improvements, and

WHEREAS, Developer is required to construct certain public improvements (the "Improvements") as a condition of site plan approval (Resolution 2020R025 approved February 4, 2020) for the Development; and

WHEREAS, Section 17-23(c) of the City of Fort Lupton Municipal Code requires that a subdivision improvement agreement for the 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" 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 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 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"), which shall be subject to final acceptance ("Final Acceptance") as set forth in Section 1.6, below. 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. 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 reinspection of such work to determine if Construction Acceptance can be granted. 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 two (2) years have 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 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. To the extent permitted by law, 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).

1.10 No Waiver Of Governmental Immunity. The City and Developer, its elected officials, officers and employees are relying upon, and do not waive or intent to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. Sec. 24-10-101 et seq. as amended or otherwise available to the City. Nothing herein shall operate as a waiver of any right the City or Developer has of governmental immunity under Colorado law which is specifically herein reserved.

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 Plan, 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, or plat dedication 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 OFFSITE INFRASTRUCTURE IMPROVEMENTS

3.1 The Developer agrees to construction of certain improvements located outside of the Site Plan (the “Offsite Improvements”) depicted on **Exhibit “A”** attached hereto and fully incorporated herein by this reference. The Certificate of Occupancy (CO) shall not be approved until the offsite 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 Offsite Improvements, or portion thereof, for improvements that do not have construction acceptance at the time of request of CO. 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 remaining twenty-five percent (25%) percent for each system shall be retained to secure the Developer’s warranty during the two (2) year warranty period.

3.2 The Offsite Improvements are summarized as follows: Roadway improvements – East Half of the roadway section for South Rollie Avenue along the west property line frontage. Detached concrete sidewalk 10-feet wide and drainage borrow ditch.

3.3 The improvements shall be coordinated with future improvements by other development requirements along South Rollie Avenue.

4.0 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 and specifications. All public Right of Way streets within the Subdivision (improvements described on Exhibit “A” offsite Improvements) shall be constructed to City Standards and Specifications and based upon a site-specific geotechnical study and pavement design. All streetscaping will meet the requirements of the Fort Lupton Subdivision Regulations. A retention pond or other approved system that meets the current standards and specifications of the City of Fort Lupton will be required at the time of construction on the site as determined by the approved Phase III Drainage Study submitted.

5.0 OTHER REQUIREMENTS

5.1 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.

5.2 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.

6.0 MISCELLANEOUS TERMS

6.1 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.

6.2 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.

6.3 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.

6.4 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.

6.5 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: Fort Lupton Fire Protection District.
Fire Chief Phil Tiffany
1121 Denver Ave
Fort Lupton, Colorado 80621

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.

6.6 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.

6.7 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.

6.8 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.

6.9 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.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized officials to place their hands and seals upon this Agreement the day and year first above written.

THE CITY OF FORT LUPTON, a Municipal Corporation

By: _____
Zo Stieber, Mayor

ATTEST:

By: _____
Maricela Peña, City Clerk

APPLICANT:

By: _____
Phil Tiffany, Fire Chief

State of Colorado)
) ss
County of Weld)

The foregoing instrument was acknowledged before me this ____ day of _____, 2020 by Phil Tiffany, the Fire Chief of the Fort Lupton Fire Protection District, a political subdivision of the State of Colorado.

Notary Signature

Seal

EXHIBIT A

OFFSITE INFRASTRUCTURE IMPROVEMENTS

Type of Improvement	Description	Estimated Cost	Total Surety (125%)
Streets	S Rollie Ave		
	Asphalt Paving & Grading	\$120,000	\$150,000
	10' Detached Sidewalk	\$18,000	\$22,500
	Signage & Striping	\$5,000	\$6,250
	Revegetation	\$3,000	\$3,750
	Misc. const. items	\$25,000	\$31,250
	Total	\$171,000	\$213,750

THIS COST ESTIMATE IS AN ENGINEERS OPINION OF PROBABLE COST FOR CONSTRUCTION OF THE EASTERN HALF OF S. ROLLIE AVENUE ALONG THE FRONTAGE OF LOT 1, VILLANO MINOR SUBDIVISION. THE ENGINEER HAS PREPARED THIS ESTIMATE USING OUR KNOWLEDGE OF GENERAL CONSTRUCTION COSTS. IT IS UNDERSTOOD BY THE OWNER THAT THE ENGINEER PREPARING THIS OPINION OF PROBABLE COST HAS NO CONTROL OVER MEANS AND METHODS AND ACTUAL CONSTRUCTION COSTS. THE OWNER SHALL ONLY USE THIS INFORMATION AS AN ESTIMATE FOR BUDGETING AND NOT A BID. FOR ACTUAL CONSTRUCTION COSTS THE OWNER SHALL SOLICITE CONTRACTOR BIDS FROM QUALIFIED CONTRACTORS.

