

Three Springs

MEMORANDUM OF UNDERSTANDING

(02.01.09)

This Memorandum of Understanding (sometimes "MOU") is made and entered into by and between the City of Durango, Colorado, a Municipal Home-Rule Corporation ("City") and the Durango Fire and Rescue Authority ("Authority") for the purpose of clarifying their respective rights and obligations with respect to capital assets and improvements needed to provide fire protection services in the Three Springs and Grandview area.

On or about the 5th day of April, 2005, the City entered into the Three Springs Development Agreement ("Development Agreement") with the developer of the Three Springs project, GRVP, LLC. The Development Agreement contains several provisions which will provide funding to the Authority to assist it in satisfying capital needs required in connection with the fire protection services for growth occurring in the Three Springs and Grandview area. Specifically, Sections 5.14 and 6.12 of the Development Agreement state in pertinent part as follows:

5.14 Safety Purpose Dedications or Commitments. The Parties agree that facilities for police and fire protection shall be required to meet the needs of Three Springs, particularly as development progresses. Developer agrees to dedicate to the City for police and fire protection purposes a site approximately 1.9 acres in size, bordered on the west by the western boundary of the Property and located adjacent to and south of the Regional Medical Center and north of Traverse Road.

6.12 Fire and Law Enforcement Impact Fee; Rate, Escalation, and Purpose. Prior to the issuance of each building permit for any building improvement within the Project, the building permit applicant shall remit to the City a fire protection impact fee, at the base rate of \$0.465 per square foot of gross building area covered by that building permit. Said fee shall escalate three percent (3%) per year, with the first year beginning on the date of the issuance of the first building permit for the Project. Additionally, Developer agrees to pay to the City the sum of eight hundred thousand dollars (\$800,000) prior to the issuance of the first building permit for the Project, which, together with the fire protection impact fee set forth above in this Section (collectively "Fire and Law Enforcement Impact Fee"), is intended to and shall be deemed to satisfy Developer's obligation or duty to mitigate current and future Project impacts in relation to fire protection and law enforcement needs. The City shall account separately for revenues collected from the Fire and Law Enforcement Impact Fee, which revenues shall be used to fund capital improvements and equipment for public safety and fire protection in the Three Springs service area,

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including, but not limited to, improvements to and equipment primarily located at Stations 1, 5 and 7.

The purpose of this Memorandum of Understanding is to document the understandings and agreements between the City and the Authority with respect to three issues associated with the Three Springs development ("3S"): (1) the dedication by Developer of one 1.9 acre parcel to be used by the City for the provision of police services and by the Authority for the provision of fire protection services; (2) the use/division of the lump sum payment of \$800,000.00 paid by Developer to the City for police and for the Authority's provision of fire protection services associated with 3S; and (3) the payment, collection, and use of the per square foot fire protection impact fee payable by Developer with the issuance of building permits for 3S.

The understandings and agreements of the City and the Authority are as follows:

1. 1.9 Acres for 3S police station and fire station. The 1.9 acres have been set aside for the construction of a new police substation and a new fire station, with each station to be built based upon growth/need. The City shall determine the need for the construction of a new police substation, and the Authority shall determine the need for a new fire station. Unless otherwise agreed by the Parties in a signed writing, the Parties' agree that the City will use 0.95 acres for the police station and the Authority shall use 0.95 acres for the fire station all as generally depicted on *Exhibit A* attached hereto and incorporated herein.

- a. Fire Authority to Seek Subdivision. The Parties agree that the Authority will apply for a subdivision of the 1.9 acres into two separate 0.95 acres; in the event of subdivision approval, the City shall convey, subject to the terms hereof, the 0.95 acre tract (to be used for fire protection services) to the Authority. The City agrees to cooperate, as a property owner, in the Authority's subdivision process and further agrees that the long-term lease (described below) will not be construed against the Authority in the subdivision process.
- b. Lease: Concurrently with the execution of this MOU, the Parties shall enter a long-term lease between the City to the Authority for the 0.95 acres that will provide the Authority with right to use the property, subject to land use approvals, until such time as the subdivision process (contemplated above) is approved. The lease shall identify the leased area (which may be supplemented by survey), for a term of 99 years together with one automatic renewal by the Authority for a like term, nominal rent of ten dollars per year, and together with other terms consistent with those in other leases the Authority has with the City.
- c. Conditional Events.

- i. If the Authority is Succeeded by a Special Fire Protection District. In the event that the Authority is replaced/succeeded by a special district with taxing authority sufficient to meet its operational and capital expenses, the Parties agree that such fire protection district shall succeed the Authority and retain use of the 0.95 acres and improvements thereon.
- ii. Withdrawal by the City as Funding Partner of the Authority. In the event the City elects to withdraw from the Authority, the City will provide appropriate notice to the Authority as required by the establishing Intergovernmental Agreement ("IGA"). Further, the Parties shall honor the termination provisions of the IGA which require, among other things, "to cooperate in a good faith and timely manner to transfer assets so that the Contracting Parties and the Authority (if still in existence) can continue to provide adequate fire protection and emergency medical services to their constituents without a lapse or significant reduction in the provision of such services and in a manner which reflects an equitable return of the Contracting Parties' capital contributions, and distributions of property in-kind shall be valued at the fair market value of the property being distributed at the time of distribution."

In absence of any subsequent signed agreement to the contrary, the Parties agree that as part of an entire withdrawal/distribution plan, the City shall pay to the Authority "DFRA's Fair Market Value" equaling the fair market value of the land and all improvements to the 0.95 acres, if any, less four hundred thousand dollars (\$400,000.00) and less the value of the 0.95 acres. In the event the City issues a notice of withdrawal prior to DFRA's commencement of construction of any improvements on the 0.95 acres, then the distribution plan will require the Authority to convey its interest in the 0.95 acres to the City and refund the sum of \$400,000.00 to the City; however, in the event that the Authority, in reliance on the City's participation in DFRA, has spent sums on development and design plans for improvements to the 0.95, the City and DFRA shall, in good faith, agree upon a reduction to the refund due the City related to such reliance costs incurred.

The process of valuation shall be agreed upon by the Parties during the withdrawal period, but in absence of such

agreement, the Parties contemplate said valuation shall be by licensed appraiser(s) with the improvements being valued for the continued use of the improvements as a fire station (i.e. there shall be no discounting for alternative contemplated uses by the City, if any). As an example, if following notice of withdrawal, the Parties' agreed upon appraiser values the land and improvements at \$2,000,000 with the value of the land being \$1,000,000 and the value of the improvements being \$1,000,000, then the sum of \$600,000 (DFRA's Fair Market Value) is due from the City to the Authority (\$2,000,000, less \$400,000 contribution, less \$1,000,000 value of land).

Unless otherwise agreed by the Parties as part of an overall distribution plan contemplated by the IGA, upon receipt of payment to the Authority for DFRA's Fair Market Value of the improvements, the Authority shall terminate its lease with the City or convey the 0.95 acres with improvements to the City, whichever is applicable.

2. Fire and Law Enforcement Impact Fee for 3S.

a. Division and Use of the Lump Sum Payment of \$800,000 Paid by Developer: Concurrently with the execution of this MOU, the City shall pay to the Authority four hundred thousand dollars (\$400,000.00) together with interest accrued thereon from the payment made by Developer to the City for capital improvements for fire and police protection associated with 3S.

b. Per Unit Impact Fees (Three Springs Fire Protection Impact Fee).

i. Fees Already Collected by the City. Concurrently with the execution of this MOU, the City shall pay to the Authority all "per unit" 3S fire protection impact fees (initially in the amount of \$0.465 per square foot and now \$0.493 per square foot payable upon issuance of a building permit for 3S) collected through the last day of the fourth quarter (December 31, 2008) by the City. The Parties agree that the amount payable by the City to the Authority for fees collected through December 31, 2008 is \$109,203.62 together with interest accrued thereon.

ii. All Future Collections of Impact Fees. The Parties agree to negotiate in good faith to reach an agreement whereby the Authority may directly collect and account for said Per Unit Fire Protection Impact Fee. Until such time as the Parties agree upon and approve such an agreement for the

Authority's direct collection of the 3S Fire Protection Impact Fee, the City shall continue to collect all such per unit fees and pay them to the Authority within thirty (30) days of the end of each quarter (March 31, June 30, September 30 and Dec. 31 each year).

- iii. Use of Fire Lump Sum Payment and Per Unit Impact Fees. The Authority shall use all funds received as impact fees to fund capital improvements and equipment for public safety and fire protection in the 3S service area, including, but not limited to, equipment primarily located at Stations 1, 5 and 7 and improvements to such stations. The Authority shall account separately for the use of such proceeds.

3. Standard Provisions.


- a. Severability. If any provision of this Agreement is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.
- b. Governing Law; Jurisdiction. The terms and conditions of this Agreement shall be construed, interpreted and enforced in accordance with the applicable laws of the State of Colorado, irrespective of choice-of-law principles. If any legal action is necessary to enforce the terms and conditions of this Agreement, the parties agree that the jurisdiction and venue for bringing such action shall be in the appropriate court in La Plata County, Colorado.
- c. Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement between the parties and supersedes any and all prior oral representations, promises, covenants, understandings and other agreements, if any, between the parties and their agents and may not be modified in any manner except by an instrument in writing executed by both parties.
- d. Further Assurances. The parties shall execute and deliver such other documents and perform such further acts as shall be reasonably necessary or convenient to carry out and effectuate all the terms and conditions of this Agreement.
- e. Waiver. No failure by either party to exercise any right it may have shall be deemed to be a waiver of that right or of the right to

demand exact compliance with the terms of this Agreement. Any waiver of any term or condition of this Agreement must be duly authorized as reflected in a resolution of the party's governing council or board, and must be in writing and signed by the party waiving such right.

- f. Third Party Beneficiaries. The parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the parties to this Agreement shall have any right, legal or equitable, to enforce any provision of this Agreement.
- g. Binding Effect. This agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns, including, without limitation, any special district which is a successor to the Authority, or which otherwise provides fire, rescue and ambulance services to the Three Springs and Grandview area.

This Memorandum of Understanding is made and entered into this 2ND day of February, 2009.

City of Durango

By: 
Ron LeBlanc, City Manager

Durango Fire and Rescue Authority

By: 
Daniel Noonan, Fire Chief