



PITCHFORK

SUBDIVISION IMPROVEMENTS AGREEMENT

This Agreement is entered into this 29th day of October, 2001, between the Town of Mt. Crested Butte, Colorado (hereinafter "Town"), and Pitchfork LLC, a Colorado limited liability company (hereinafter "Developer").

WHEREAS, the subdivision regulations of the Town provide that no final plat showing improvements not yet completed shall be approved until the Developer has submitted a subdivision improvement agreement guaranteeing the construction of the uncompleted required improvements; and

WHEREAS, the subdivision regulations provide that suitable collateral, in an amount stipulated in the subdivision improvements agreement, shall accompany the final plat submission to ensure completion of the improvements according to design and time specifications, which collateral may be in the form of an irrevocable letter of credit adequate to guarantee the completion of the improvements or other suitable form; and

WHEREAS, the Developer herein proposes to file the final plat of Pitchfork (hereinafter "Subdivision") which will require the completion of construction of a road system, a water system, a sanitary sewer collection system and an electrical system; and

WHEREAS, the parties hereto mutually agree that the Developer shall furnish an irrevocable letter of credit adequate to guarantee the completion of the required improvements or other suitable collateral.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions herein contained, the parties agrees as follows:

1. **REQUIRED IMPROVEMENTS**. That the Developer, as a condition of approval by the Town of the final plat of the Subdivision, hereby agrees to construct the following improvements not later than the dates set forth hereafter:

A. **Streets, Drainage and Utilities**. The following improvements, the unit costs for which are detailed on attached **Exhibit A**, to be built in accordance with plans and specifications of Del-Mont Consultants, Inc. as



previously approved by the Town and the Mt. Crested Butte Water and Sanitation District, at a total estimated cost of \$89,934, with a date of completion of December 1, 2001, except for a portion of paving and shallow utilities, which shall be completed by December 1, 2002:

<u>Item</u>	<u>Item Cost</u>	<u>Running Total</u>
Shallow Utilities	\$ 8,333	\$ 8,333
Street Construction	2,735	11,068
Concrete Construction	78,866	89,934

B. **Electrical Service**. Underground electrical distribution lines within the Subdivision to be built in accordance with the plans and specification of Del-Mont Consultants, Inc. as previously approved by the Town, at a total estimated cost of \$37,555 and with a date of completion of December 1, 2002.

C. **Bus Stop and Shelter**. A bus stop and shelter within the Subdivision to be built in accordance with plans and specifications previously approved by the Town, at a total estimated cost of \$8,000 and with a date of completion of December 1, 2002.

D. **Gazebo**. A gazebo adjacent to Lot 12 to be built in accordance with plans and specifications previously approved by the Town, at a total estimated cost of \$4,850 and with a date of completion of December 1, 2002.

E. **Erosion Control**. Erosion control during construction, at a total estimated cost of \$8,500.00.

F. **Lot Corner Surveying**. Surveying and setting corners for all lots at a total estimated cost of \$4,950.

The total estimated cost of construction for all of the above services, including a 10% contingency, is estimated to be \$169,168 as set forth on attached **Exhibit A** and incorporated herein by reference.



515597 11/02/2001 11:29A 559

3 of 9 R 45.00 D 0.00 N 0.00 Gunnison County

2. **Default in Performance.** The applicable procedures required under the ordinances of the Town pertaining to the inspection and acceptance of the above improvements shall pertain under this Agreement. In the event of any default by Developer, the Town may apply to the District Court for Gunnison County for the appointment of a receiver to operate the Developer's business for the sole purpose of completing the construction of the required improvements, and such receiver shall have authority to perform all acts reasonably necessary to construct such improvements, including use of the irrevocable letter of credit for the above purposes. Alternatively, the Town may elect either to complete the construction of such improvements in the manner provided, or it may hire a third party to complete such work in such manner.

3. **Security.** To guarantee the performance of this Agreement, the developer shall, upon recording of the Plat for the Subdivision in the Gunnison County records, deliver an irrevocable letter of credit to the Town as security to guarantee the completion of the construction of the aforesaid improvements or other suitable collateral, and which shall be available to such receiver or the Town, as the case may be, to pay for any and all expenses, including court costs, legal fees, court-determined receiver's allowances, and other costs of the receivership, if any, which may be incurred in completing the construction of the improvements, whether such funds are advanced directly to the Developer, or to a receiver, or to the Town, as the case may be.

4. **Date of Completion.** The improvements shall be completed as set forth in paragraph 1, subject to:

A. Any extension of time granted in accordance with the provisions of paragraph 6 hereof; and

B. Acts of God and any cause beyond the reasonable control of Developer including, without limitation, labor disputes, laws, regulations or orders of any governmental entity, orders of court, inability to obtain any required authorization, acts of war or conditions arising out of or attributable to war, riot, civil strife, insurrection or rebellion, strike, fire, explosion, earthquake, storm, flood, or other adverse weather condition, delay or failure by suppliers or materialmen, contractors, or sub-contractors or shortage of or inability to obtain labor, supplies or materials.



5. **Release of Security.** Upon partial completion of the construction of the improvements, the Developer, upon submitting a statement of partial completion certified by Developer's registered professional engineer, shall be entitled to written release by the Town, within five (5) days following the engineer's certification, of so much of the security as shall be proportional to the work completed based on the engineer's estimate set forth on **Exhibit A**, less twenty-five percent (25%) thereof as retainage ("Retainage"). Upon full completion of the construction of all required improvements as set forth in paragraph 1, above, all securities shall be released and returned to the Developer, within five (5) days following the engineer's certification, less only the required Retainage. The Developer may obtain a release of the twenty-five percent Retainage upon furnishing substitute collateral satisfactory to the Town to guarantee the Retainage amount.

6. **Extension of Time.** If the Developer is unable to complete the construction of the required improvements within the allotted time, he may obtain a reasonable extension of time within which to do so upon the following conditions:

A. That an unconditional guarantee or other security satisfactory to the Town is given to guarantee the construction of the improvements within the new time period requested; and

B. That the Town determines that it would not be detrimental to the interests of the Town or the owners of the units in the Subdivision to allow such extension.

7. **Standards of Performance.** The parties agree that the Developer shall construct the water system and sewage collection system referred to in subparagraph 1A, above, in accordance with the requirements of the Mt. Crested Butte Water and Sanitation District. When such work has been done by the Developer or his authorized contractor, inspected and certified to by the Mt. Crested Butte Water and Sanitation District, Developer's obligation to the Town shall be at an end and Developer's guarantee shall be surrendered for cancellation. Developer agrees that he will not complete the improvements in such manner that the improvements may be covered up or otherwise unavailable for inspection without first having the same inspected by the Mt. Crested Butte Water and Sanitation District.



515597 11/02/2001 11:29A 559

5 of 9 R 45.00 D 0.00 N 0.00 Gunnison County

8. **Notice of Litigation.** Nothing contained in this section shall prevent either party from obtaining a judicial determination of the violation of its rights under this section; provided, however, that thirty (30) days notice in writing must be given to the other party, advising the other party of the alleged violation, and if the matter is not resolved by the parties within such thirty-day period, then the other party shall be free to resort to legal action as to the matters stated in the notice.

9. **Time of Essence.** It is mutually agreed that time of performance is an essential part of this Agreement, and that all the terms, covenants and conditions herein shall extend to and become obligatory upon the successors and assigns of the respective parties hereto.

10. **Assignment.** The Developer shall not have the right to assign his duties and obligations, rights and privileges under this Agreement to any third party without the prior written consent of the Town, which consent may be withheld by the Town unless the prospective assignee can demonstrate to the Town's satisfaction financial ability to fully perform all of the Developer's duties and obligations under this section.

11. **Attorneys' Fees.** It is agreed that if any action is brought in a court of law by any party to this Agreement as to the enforcement, interpretation, construction or arbitration of this Agreement or any document provided for herein, the prevailing party in such action shall be entitled to reasonable attorneys' fees as well as all costs incurred in the prosecution or defense of such action.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date first above written.

DEVELOPER

Pitchfork LLC, a Colorado limited liability company

By: William E. Coburn, II
William E. Coburn, II, Managing Member

**TOWN OF MT. CRESTED BUTTE,
COLORADO**

By: [Signature]
Mayor

Attest: [Signature]
Clerk

EXHIBIT A



DEL-MONT CONSULTANTS, INC.

ENGINEERING SURVEYING

542 Main St. • P.O. Box 486 • Montrose, CO • 81402 • (970) 249-2251 • Fax (970) 249-2342 • delmont@ocinet.net

October 8, 2001



Mr. Chuck Stearns
Town Manager
Town of Mt. Crested Butte
P.O. Drawer "D"
Mt. Crested Butte, CO 81225

515597 11/02/2001 11:29A 559
6 of 9 R 45.00 D 0.00 N 0.00 Gunnison County
Fax 349-6326

Re: Pitchfork PUD: Engineer's Opinion of Work Remaining

Dear Mr. Stearns:

Delmont Consultants, Inc., has been asked to provide an Engineer's Opinion regarding the amount of work remaining to be completed under terms of the Subdivision Improvement Agreement between the Town of Mt. Crested Butte and Coburn Development, Inc.

To the best of the Delmont's knowledge, information, and belief, elements of work valued at

\$1,139,973.00

under terms of the Subdivision Improvement Agreement has been substantially completed in general conformance with the Plans and Specifications, or eliminated from the scope of the work, leaving infrastructure valued at

\$153,789.00

remaining to be completed. These items of the work are summarized below:

Contract Bid Items:	Improvement Agreement Amount	Amount Substantially Complete	% Substantially Complete	Value of Work Remaining	Notes
Mobilization	\$18,500.00	\$18,500.00	100%	\$0.00	
Earthwork	\$140,750.00	\$140,750.00	100%	\$0.00	
Sewer System	\$268,517.00	\$268,517.00	100%	\$0.00	
Water System	\$227,305.00	\$227,305.00	100%	\$0.00	
Storm Drain System	\$105,252.00	\$105,252.00	100%	\$0.00	
Shallow Utilities	\$41,667.00	\$33,334.00	80%	\$8,333.00*	
Street Construction	\$184,839.00	\$182,104.00	98.5%	\$2,735.00**	
Concrete Construction	\$146,632.00	\$67,766.00	46%	\$78,866.00***	
Retaining Walls	\$22,000.00	\$22,000.00	100%	\$0.00****	
Electrical Service	\$112,000.00	\$74,445.00	66%	\$37,555.00*****	
Bus Stop	\$8,000.00	\$0.00	0%	\$8,000.00	
Gazebo	\$4,850.00	\$0.00	0%	\$4,850.00	
Erosion Control	\$8,500.00	\$0.00	0%	\$8,500.00	
Lot Corner Surveying	\$4,950.00	\$0.00	0%	\$4,950.00	
Totals:	\$1,293,762.00	\$1,139,973.00	88%	\$153,789.00	



DEL-MONT CONSULTANTS, INC.



515597 11/02/2001 11:29A 559

7 of 9 R 45.00 D 0.00 N 0.00 Gunnison County

Engineer's Opinion of Work Remaining / Town of Mt. Crested Butte / 10-08-01 / page 2 of 2

***Shallow Utilities:** Power & phone cables have not yet been installed to serve the lots on the uphill side of Big Sky Road. An estimated 80% (\$33,334) of the power has been installed, leaving approximately 20% (\$8,333) worth of work remaining to be trenched & backfilled.

****Streets:** Subgrade prep, subbase gravel, and base course gravel (\$132,451) are substantially complete. Asphalt paving (\$52,266) is complete except for 1 minor asphalt repair and resolution of a drainage problem on the west end of Pitchfork Street. It is the Engineer's opinion that release of 100% of the subgrade, subbase, and base course items (\$132,451), and 96% of the paving funds (\$49,653), for an item total of \$182,104, (96.5%) is appropriate at this time.

*****Concrete Construction:**

The valley pan work (\$56,968) is substantially complete except for resolution of a drainage problem on the west end of Pitchfork Street. It is the Engineer's opinion that release of 95% of the valley pan funds (\$56,020) is appropriate at this time.

About 10% (185 lf) of concrete parking strip has been completed adjacent lots #4 & #5. This work was valued at \$6922, including subgrade prep and base course gravel, in the Subdivision Improvement Agreement (see attached page).

Approximately 161 sy of bikepath adjacent Pitchfork Street was erroneously included in the concrete flatwork item in the original infrastructure estimate. That work is not part of the required improvements, and should be removed from the subdivision improvement agreement. This work, including subgrade preparation and base course gravel, was valued at \$5,826.

The concrete construction items completed or deleted currently total of \$67,767.

******Retaining Walls:** This item has been deleted from the work. Geotechnical constraints limiting the placement of fill on lots #7 - 12 have eliminated the need for these walls. There is no remaining purpose to hold these funds (\$22,000).

*******Electrical Service:** GCEA (Fax to CDI dated 10/10/01) indicates that \$74,445 worth of work has been completed and charged against the cash deposit held by GCEA for construction of the power lines in the Pitchfork Project.

Please call if you have any questions.

Respectfully,

Jay A. Thoe, p.e.

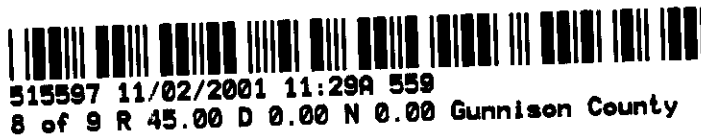
Cc: Bill Coburn, Fax 349-1369

CONSTRUCTION COST BREAKDOWN

FOR

Pitchfork Bus Stop

Preliminary Estimate Preliminary
 Revised Estimate \$8,000.00
 \$0.00



EXPENSE ITEMS	A	CODE	PRELIMINARY ESTIMATE	REVISED ESTIMATE
Plans, Specs		141-0130	\$600.00	X
Engineering		141-0130	\$200.00	X
Plan Check Fee		143-1060	\$200.00	X
Building Permit Fee		143-1010	\$500.00	X
Material Transportation		143-7005	x	X
Foundation Survey		143-2021	\$100.00	X
Foundation Excavation		143-2001	\$300.00	X
Concrete Pumper		143-3425	na	X
Foundation Labor		143-2120	\$1,200.00	X
Foundation Concrete		143-2110	incl	X
Mesh & Rebar		143-2150	incl	X
Waterproofing		143-2200	na	X
Drain		143-2230	incl	X
Backfill/Grading		143-2001	incl	X
Structural Slab		143-3405	na	X
Gypcrete		143-3430	na	X
Framing Materials		143-3110	\$1,500.00	X
Ext. Trim & Siding Mat.		143-4810	incl	X
Framing Labor		143-3120	\$1,600.00	X
Equipment		144-9500	na	X
Ext. Trim & Siding Labor		143-4820	incl	X
Roofing		143-4010	\$600.00	X
Gutter/ Downspout		143-3511	na	X
Masonry Trim		143-4816	na	X
Flatwork Material		143-3410	na	X
Flatwork Labor		143-3420	na	X
Electrical Labor & Material		143-3720	na	X
Electrical Fixtures		143-6710	na	X
Insulation & Labor		143-4700	na	X
Paint Labor & Material		143-4920	\$1,200.00	X
Site Organization		143-7001	na	X
Walks/Patio Brick		143-7313	na	X
TOTALS			\$8,000.00	\$0.00

CONSTRUCTION COST BREAKDOWN FOR Pitchfork Gazebo

Preliminary Estimate	Preliminary
Revised Estimate	\$4,850.00
	\$0.00



515597 11/02/2001 11:29A 559
9 of 9 R 45.00 D 0.00 N 0.00 Gunnison County

EXPENSE ITEMS	A	CODE	PRELIMINARY ESTIMATE	REVISED ESTIMATE
Plans, Specs		141-0130	\$300.00	X
Engineering		141-0130	\$100.00	X
Plan Check Fee		143-1060	\$100.00	X
Building Permit Fee		143-1010	\$250.00	X
Material Transportation		143-7005	x	X
Foundation Survey		143-2021	\$50.00	X
Foundation Excavation		143-2001	\$150.00	X
Concrete Pumper		143-3425	na	X
Foundation Labor		143-2120	\$600.00	X
Foundation Concrete		143-2110	incl	X
Mesh & Rebar		143-2150	incl	X
Waterproofing		143-2200	na	X
Drain		143-2230	incl	X
Backfill/Grading		143-2001	incl	X
Structural Slab		143-3405	na	X
Gypcrete		143-3430	na	X
Framing Materials		143-3110	\$750.00	X
Ext. Trim & Siding Mat.		143-4810	incl	X
Framing Labor		143-3120	\$800.00	X
Equipment		144-9500	na	X
Ext. Trim & Siding Labor		143-4820	incl	X
Roofing		143-4010	\$300.00	X
Gutter/ Downspout		143-3511	na	X
Masonry Trim		143-4816	na	X
Flatwork Material - stairs		143-3410	\$850.00	X
Flatwork Labor		143-3420	na	X
Electrical Labor & Material		143-3720	na	X
Electrical Fixtures		143-6710	na	X
Insulation & Labor		143-4700	na	X
Paint Labor & Material		143-4920	\$600.00	X
Site Organization		143-7001	na	X
Walks/Patio Brick		143-7313	na	X
TOTALS			\$4,850.00	\$0.00