

AGREEMENT FOR
SEDIMENT/EROSION CONTROL
BEST MANAGEMENT PRACTICES (BMPs)
WITH IRREVOCABLE LETTER OF CREDIT

RELATING TO THE DEVELOPMENT OF:

THIS AGREEMENT, dated this _____ day of _____, 20____, between the City of Loveland, Colorado, a Municipal Corporation (hereinafter called "City") and _____ hereinafter called "Developer"), WITNESSETH:

WHEREAS, Developer has or intends to apply for a Stormwater Quality Permit ("Permit") on property legally described as on Exhibit "A" attached hereto and incorporated herein ("Property"); and

WHEREAS, Chapter 13.20 of the Loveland Municipal Code requires that as a condition for the issuance of a Permit, Developer shall be required to provide security in the form of cash deposit or an irrevocable letter of credit; and

WHEREAS, the amount of the security shall be based upon the estimated cost of the work required to ensure compliance with the Permit's terms and conditions and requirements of this Chapter 13.20 of the Loveland Municipal Code; and

WHEREAS, in determining the cost of work, a 15% contingency shall be included; and

WHEREAS, the City is willing to issue said Permit upon the agreement of the Developer herein set forth, and subject to all requirements, terms and conditions of the ordinances of the City and other applicable laws, rules and regulations; and

WHEREAS, City and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by City in connection with its granting of said Permit, and that such matters are necessary to protect, promote and enhance the public welfare; and

WHEREAS, it is further mutually acknowledged that City is entitled to other assurance that the matters hereinafter agreed to will be performed as agreed by Developer, and in that regard, Developer will furnish City a letter from a bank or other financial institution acceptable to City.

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained, it is agreed as follows:

1. All sediment and erosion control Best Management Practices (BMPs), to be properly installed, maintained and removed upon required site stabilization, and other BMPs described or identified on Exhibit "A," shall be completed by Developer according to the applicable standards, rules and regulations of the City, and in compliance with the accepted Sediment/Erosion Control Plans for _____ Property, as on file with the City.

2. It is estimated that the cost of satisfaction of the BMPs herein described will not exceed _____ (\$_____). Developer will furnish City a letter of credit from a bank or other financial institution ("issuer") acceptable to City, guaranteeing that funds in the amount of the aforesaid estimated cost are held by it for the account of Developer for the purpose of securing Developer's promise to properly install, maintain and remove the BMPs according to the applicable standards, rules and regulations of the City, and in compliance with the accepted Sediment/Erosion Control Plans for _____ Property, as on file with the City and perform all matters herein agreed to be performed to the City's satisfaction.

The letter of credit shall strictly comply with Exhibit "B" attached hereto and incorporated herein. If Developer does not properly install, maintain and remove the BMPs herein described, and perform all matters herein agreed to be performed to the City's satisfaction, City shall be entitled to draw down such funds under the letter of credit as it deems appropriate for the purpose of properly installing, maintaining or removing the BMPs itself or by contract with a third party. Should City not require all funds that it draws to properly install, maintain or remove the BMPs, it shall refund the balance to Developer. However, nothing herein shall in any way limit the Developer's obligations hereunder, and Developer shall, in any event, remain liable for properly installing, maintaining and removing the BMPs described herein and for payment for the actual cost of all work and materials utilized in the installation, maintenance and removal of said BMPs, notwithstanding the estimated cost in sentence one of this paragraph. If Developer properly installs, maintains and removes the BMPs and upon completion of the project and final inspection of the BMPs by the City, the City will return Developer's letter of credit to the issuing financial institution.

3. It is understood that the amount of Developer's letter of credit may be reduced, in the City's sole discretion, prior to the completion of the project upon a determination by the City that the Developer has properly stabilized a portion of the project area in accordance with the accepted Sediment/Erosion Control Plans.

4. In the event that Developer breaches its obligations under this Agreement, the City shall be entitled to direct and consequential monetary damages, equitable relief, including specific performance, and such other remedies at law or in equity as may be available under applicable law. In the event of litigation relating to or arising out of this Agreement, the prevailing party whether plaintiff or defendant shall be entitled to recover its costs and reasonable attorneys' fees from the non-prevailing party.

5. This Agreement, and the terms, conditions and covenants herein contained, shall be deemed to complement and shall be in addition to the conditions and requirements of the ordinances of the City of Loveland and other applicable laws, rules and regulations. Notwithstanding anything herein contained to the contrary, Developer, in developing the subject property shall fully comply with all applicable ordinances, rules, regulations, standards and laws.

6. Upon execution of this Agreement by the parties hereto and upon submittal of the Developer's letter of credit to City, and provided all other conditions not herein contained have been met by Developer, City agrees to grant the subject Permit.

EXHIBIT "A"

Exhibit "B"

INSERT FINANCIAL INSTITUTION NAME & LETTERHEAD

IRREVOCABLE LETTER OF CREDIT NO. insert financial institution LOC number

ISSUE DATE:

APPLICANT: **Insert name of Developer**

BENEFICIARY: City of Loveland
Public Works Department
Stormwater Engineering Division
2525 West 1st Street
Loveland, CO 80537

AMOUNT: **Insert amount from Exhibit A**

MATURITY DATE: **Insert date one year from date of issue**

Dear Sir or Madam:

We hereby establish our irrevocable Letter of Credit in your favor in the amount of \$ **insert amount from Exhibit A**. The purpose of this Letter of Credit is to secure performance of an Agreement for Sediment/Erosion Control Best Management Practices (BMPs) for **insert subdivision name** dated **leave blank City will fill in when agreement is signed**, 2005 between the City of Loveland and **insert name of Developer**.

You are hereby authorized to draw on sight on **insert name of financial institution**, by drafts, up to the aggregate amount of \$ **insert amount from Exhibit A**. Such total amount may be reduced, at the sole discretion of the City, from time to time, as a result of the completion of a portion of the BMPs by **insert name of Developer**.

The sole condition for payment of any draft drawn against this Letter of Credit is that the draft be accompanied by a letter, on the City's letterhead, signed by the City Manager, Public Works Director, or other City designee to the effect that **insert name of Developer** is in default of Developer's obligations pursuant to the Agreement for Sediment/Erosion Control Best Management Practices (BMPs). In the event of wrongful dishonor, we will reimburse the City for all court costs, investigative costs and reasonable attorney fees incurred by the City in enforcing this letter of credit. We further agree that jurisdiction and venue for any legal action enforcing this letter of credit shall be in the District Court of Larimer County, Colorado.

We hereby agree with drawers and endorsers, and bona fide holders of drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

Multiple drafts may be presented.

This Letter of Credit will be automatically extended without amendments for one year from the present, and each future expiration date thereof, unless Issuer delivers written notice

within ninety (90) days prior to any such expiration date to the City of Loveland of its intents not to renew this Letter of Credit. Any such notice shall be in writing and shall be delivered with an acknowledged receipt, either in hand or by certified mail.

This Letter of Credit is not transferable.

This Letter of Credit sets forth in full our understanding, and such undertaking shall not in anyway be modified, amended, amplified, or limited by reference to any document, instrument or agreement referred to herein, except for such certificate and draft(s) referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for such certificate and draft(s).

Except so far as otherwise expressly stated herein, this Letter of Credit shall be subject to Article 5 of the State of Colorado Uniform Commercial Code (UCC) and the Uniform Customs and Practice for Documentary Credits (2006 Revision), International Chamber of Commerce Publication No. 600 (UCPDC). To the extent of any conflict between the UCC and the UCPDC, the UCC shall control.

Signed this _____ day of _____, 2005 on behalf of **insert name of financial institution.**

Name, Title
Name of financial institution

On behalf of **insert name of Developer**, I hereby authorize **insert name of financial institution** to pay the City of Loveland, all, or a portion of this Letter of Credit upon receipt by **insert name of financial institution** of the letter described in paragraph 3 above, and waive any claims or defenses which I may have to the payment to the City of Loveland by **insert name of financial institution.**

Name, Title
Authorized Agent of **insert name of Developer**