

IMPROVEMENT CONTRACT AGREEMENT AND ASSURANCE OF PERFORMANCE

THIS AGREEMENT is entered into this: 21st day of July, 2004 by and between the:

City of Klamath Falls (hereafter referred to as "City")
226 South 5th Street
Klamath Falls, OR 97601
Phone: 541-883-5363
Fax: 541-883-5395

State of Oregon, County of Klamath
 Recorded 07/21/2004 2:34 p m
 Vol M04 Pg 47698-702
 Linda Smith, County Clerk
 Fee \$ 41.00 # of Pgs 5

and

OC
Sierra Development LLC. (hereafter referred to as "Owner")
P.O.Box 5077
Klamath Falls, OR 97601
Phone: 541-850-3131
Fax: 541-850-3130

RECITALS

A. Owner is the legal owner of the following named subdivision in Klamath County: Tract 1383, Sierra Heights Subdivision, City Master File # 2398W3 (hereafter referred to as "Subdivision").

B. As a precondition of the City's approval and recordation of the final plat of Subdivision, Owner is required:

- a. To construct the following described Improvements in compliance with the approved construction plans, City design review comments, current edition of the City of Klamath Falls Public Works Engineering Design Standards, all applicable laws, regulations, building codes, NEC codes, OSHA requirements, obtain all required permits and comply with the requirements of those permits, etc. and obtain City approval and acceptance of the following described improvements. The required Improvements are:

Engineered design, construction and installation of a complete and fully functional water booster pumping station, pump station building, water main line extensions, connections, and all associated appurtenances.

City Initials MSK

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Owner Initials HW

Pumping station is composed of one – Mitchell 3312 Tri-plex, packaged, skid mounted, water booster pump station, pre-assembled on a common fabricated epoxy coated elevated steel based, fusion bonded epoxy coated fabricated steel piping, 12 inch suction and discharge header pipes, suction butterfly valve and discharge wafer check and butterfly for each pump, pumps consisting of one Berkeley model B1WPS, cast iron, bronze fitted, end-suction pump, capable of pumping 10-50 GPM @ 116' TDH with a 5 HP, 3500 RPM, 460V, 3 phase, inverter duty & premium efficient rated motor, one Berkeley model B2TPMS, cast iron, bronze fitted, end-suction pump, capable of pumping 40-190 GPM @ 116' TDH with a 10 HP, 3500 RPM, 460V, 3 phase, inverter duty & premium rated motor, one Berkeley model B4GPBHS, cast iron, bronze fitted, end-suction pump, capable of pumping 1000 GPM @ 127 TDH with a 50 HP, 1750 RPM, 460 V, 3 phase, inverter duty premium efficient rated motor, 3-1/2" liquid filled, grade "A", suction & discharge pressure gauges, discharge pressure transducer and low suction pressure switch, 119 gal pressure tank with FDA approve air cell, 460V, NEMA 4 motor control center including motor circuit protectors with external operators for each pump, Allan Bradley Power-Flex variable speed drives for pumps 1 and 2, Allan Bradly SMC Dialog Plus soft starter for pump 3, Allan Bradly Micro Logix programmable controller and programming, HOA selectors, run lights, elapsed time meters, alarm lights, uninterruptible power supply, UL 508 label, UL QCZJ listed as a packaged pumping system, City witnessed shop performance testing of the entire pump station skid, obtain approval and acceptance by City personnel of such testing, install power supply lines, meter bases, panels, and all associated appurtenances, communications lines, recorded easements, etc. for City to operate said booster pump station, provide a 2 year warranty on booster pump station and building after obtaining approval and acceptance by City, Mitchell Lewis & Staver field start-up of booster pump station and provide on site training services to City personnel and City witnessed field performance testing of the entire pump station and building. To obtain City approval and acceptance of all proposed designs, quality of work, materials to be used in the construction and completion of the entire project (City project # 2398W3), including the booster pumping station, building, water main line extensions and all appurtenances for a fully functional water system for the Subdivision, as determined by the City (hereafter referred to as "Improvements").

- b. To obtain City's approval and acceptance of the Improvements as public infrastructure.
- c. City and Owner intend by this Agreement, subject to the approval by other City departments and the approval by Other entities, to allow approval and recordation of the final plat as far as the City's interests are concerned, thereby permitting Klamath County to issue building permits for lots (at its discretion), within the Subdivision, without requiring the immediate and prior completion of these Improvements.

AGREEMENT

1. Owner hereby agrees to construct and install the Improvements in accordance with all City standards, specifications, requirements, applicable building codes, laws and regulations, and all the conditions and requirements set forth on the final plat of the Subdivision.
2. Owner acknowledges and understands the City of Klamath Falls will not provide water to any part of the subdivision (including fire hydrants and individual lot water services), until the Improvements are completed in their entirety, fully functional, tested and accepted by the City.
3. Further, the Owner acknowledges and understands the City will bear no responsibility for lack of water service to any lot within the subdivision until this Agreement is completed. The Owner shall indemnify, defend and hold harmless the City, its officers and agents from any and all damages, costs, or expenses in law or equity that may at any time arise because of damages to property or personal injury and/or death, incurred by reason of or in the course of this agreement or performing said work for the Improvements, which may be occasioned by any negligent act or omission to perform any or all of the work contemplated under this agreement.
4. Construction of the Improvements shall be fully functional, tested and accepted in writing by the City prior to a date on which occupancy permits are issued for any home or building on any lot in the Subdivision.

5. The construction and installation of the Improvements, followed by the approval and acceptance by the City of all Improvement(s) shall be completed by Owner no later than 90 calendar days from the effective date of this agreement. Time is off the essence. Work shall not commence until a Site Construction permit is issued by the City of Klamath Falls for the booster pump station building and the Owner holds a pre-construction meeting with all parties involved (i.e., contractors, consultants, utility companies and respective government agencies). It is the Owner's responsibility to provide all required information to the City of Klamath Falls and Klamath County prior to the issuance of the Site Construction permit for the water booster pump station and all other required permits (including but not limited to a Klamath County Building Permit and a Klamath County Electrical Permit).

As of this date a Site Construction permit for the booster pump station has not been issued by the City, nor has the County approved the booster pump station building plans to issue a building permit or electrical permit for the booster pump station. Owner acknowledges that Klamath County approval must be based on the booster pump station building plans approved by the City, with the City's signature on each drawing page.

6. To assure performance of the Owner's obligations pursuant to this Agreement, Owner shall provide with this Agreement a performance guarantee, approved by the City of Klamath Falls, in the amount of \$132,878.00, naming the City as beneficiary. The Owner must at all times during the course of this agreement maintain a minimum of \$500,000 public liability insurance, with the City of Klamath Falls designated as "Additional Insured" with a certificate of insurance provided to the City of Klamath Falls Engineering Division (Fax: 541-883-5287).
7. In the event Owner does not timely complete, construct and install the Improvements, and each segment thereof, and obtain the approval and acceptance of the Improvements by City, all within the time frames set forth herein, City may, at its option, use whatever portion of said performance guarantee is necessary to pay for the cost of completing the Improvements to the extent required to have a fully functional, tested water system and as stated by the terms of this Agreement.
8. Upon full and complete performance of the terms of this Agreement by Owner, City shall forthwith surrender and return said performance guarantee to the Owner and the remainder of the principal sum (if any) of said guarantee not used by the City as permitted herein shall be the property of Owner.

9. In the event suit or action is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and all other fees, costs and expenses incurred in connection with the suit or action, including any appeals.
10. This agreement cannot be modified or changed except by written agreement.
11. This agreement cannot be transferred or assigned without express written approval from the City of Klamath Falls.

The terms of this Agreement are hereby accepted this 21st day of July, 2004.

By: [Signature]
City of Klamath Falls Public Works Director

Printed Name: Mike Kuenzi

By: [Signature]
Sierra Development LLC. Managing Member

Printed Name: MICHAEL L. WILMER

STATE OF OREGON)
) ss.
County of Klamath)

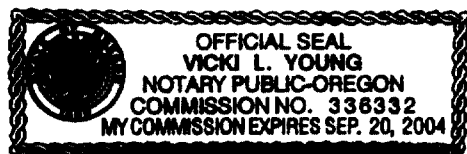
The instrument was acknowledge before me this 21st day of July, 2004, by Mike Kuenzi.



[Signature]
Notary Public of Oregon
My commission expires: 9-20-04

STATE OF OREGON)
) ss.
County of Klamath)

The instrument was acknowledge before me this 21st day of July, 2004, by Mike Kuenzi.



[Signature]
Notary Public of Oregon
My commission expires: 9-20-04