

ELK CREEK AREA WATER SYSTEM CONSTRUCTION AGREEMENT

THIS AGREEMENT, made on December 22nd, 1994, between the TOWN OF NEW CASTLE, Colorado, hereinafter referred to as "Town;" ELK CREEK HOMEOWNERS ASSOCIATION, of P. O. Box 518, New Castle, County of Garfield, State of Colorado, hereinafter referred to as "Homeowners Association;" THREE ELK RUN, L.L.C. (Ed McCune/Dirk Larsen), of P. O. Box 182, 681 East Main Street, New Castle, County of Garfield, State of Colorado, hereinafter referred to as "Three Elk Run;" and ESTHER and KAZIMIERZ KOZAK, ROBERT KOZAK and MARIA CARRION-KOZAK, NATHAN KING and ALINA KING, of 0095 Peach Court, New Castle, County of Garfield, State of Colorado, hereinafter collectively referred to as "Kozaks."

I

RECITALS

A. The parties agree that the Town shall supply water, as stated herein, to a total of one hundred (100) users, sixty-five (65) of which are in Elk Creek Development and fourteen (14) of which are to be in the proposed Three Elk Run Subdivision, with the remaining twenty-one (21) users, including Esther and Kazimierz Kozak, being outside the boundaries of either of these subdivisions. All one hundred (100) users are located outside the boundaries of the Town of New Castle Municipal limits in Garfield County, State of Colorado.

B. The Town agrees to construct a new water system for the purposes of up-grading the water storage capacity and fire protection capabilities for the property owners located as stated above, constructing and utilizing a system to be known as the Elk Creek Area Water System.

II

ADMINISTRATION

A. The parties agree that the Town will administer the projected bid process and all expenditures related to construction of the water system and reporting to the State of Colorado. Expenditure of funds in excess of \$304,666.00 shall not be incurred without written agreement of Town, Homeowners Association and Three Elk Run.

B. The parties agree that upon completion of the water system, which includes inspection and approval by the Town's engineer as to construction of the water system, the Town will

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assume ownership and operation of all newly constructed water lines as outlined in the Town of New Castle, Elk Creek Area Water System Improvements drawings, as drawn and engineered by Peter Belau of Enartech, Inc.

C. The Town shall not be responsible for any delay in the installation of said water system resulting from shortage of labor or materials, strikes, war, riot, weather conditions, governmental rule, regulation, or order, including orders or judgments of any court, act of God, or any other condition beyond the control of the Town. The Town may, in the event it is unable to obtain supplies, material or labor for all of its construction requirements, allocate materials and labor to the construction project that it, in its sole discretion, deems most important towards completion of the water system project, and any delay in construction hereunder resulting from such allocation shall be deemed a cause beyond the Town's control.

III

EASEMENTS

A. The Homeowners Association, upon signing this contract, agrees to vacate all their water lines and water tank easements upon the Kozaks' property and Three Elk Run's property, located adjacent to the Elk Creek Development, north of the Town, when replacement water line easements have been deeded from the Kozaks and Three Elk Run to the Town, and upon delivery of water service via the Elk Creek Water System.

B. Kozaks, upon signing this contract, agree to deed to the Town a water line easement upon their property located north of the Town, for purposes of installation, maintenance or future replacement of the Elk Creek Area Water System.

C. Three Elk Run, upon signing this contract, agrees that upon recordation of the Final Plat for the Three Elk Run Subdivision, easements for water line and water storage tank will be provided to the Town of New Castle for the purposes of installation, maintenance and/or future replacement of the Elk Creek Area Water System.

D. Kozaks and Three Elk Run, upon signing this contract, agree to allow the Homeowners Association to remove the existing water lines or water tanks in place on the date of this contract provided the following conditions are met: (1) prior to the removal of the water lines and storage tanks, the Homeowners Association agrees that it shall give a minimum written notice of seven (7) calendar days to the owners of the properties which may be affected by the removal of water lines and storage tank(s); (2)

should the Homeowners Association elect not to remove water lines and storage tanks within a three (3) year period from the signing of this contract, this provision is waived by the parties and the water lines and storage tanks shall become the property of the property owners as of that date; (4) that any and all property which is or has been disturbed by the removal of water lines and water storage tanks are repaired and reseeded with weed free, native plant seed; (5) and that upon the completion of the Elk Creek Area Water System, the Homeowners Association will be held harmless from any and all claims or liability arising out of, or connected with, the said water lines and storage tank(s), except as outlined in this sub-section (D) and sub-section (E).

E. Upon removal of said water tanks, the Homeowners Association agrees not to disturb soils outside of the water tank and water line easement locations and to perform reclamation and revegetation of said water line and water tank easement locations and any affected land areas needed due to the removal of said water tanks and/or water lines at the Homeowners Association's expense.

IV

FUNDING

A. It is agreed between the parties that the Town will commit the \$120,000.00 combination State Grant/Loan monies toward the construction of the Elk Creek Area Water System.

B. It is agreed between the parties that cash contributions to the construction of the new water system project will be made by the parties as follows;

- (1) Homeowners Association - \$16,500.00;
- (2) Three Elk Run agrees to commit funding up to \$168,166.00.

C. In administering the construction project, the Town shall make contract payments when due, first utilizing State Grant/Loan monies, next Homeowners Association cash contributions, and finally Three Elk Run cash contributions.

D. It is acknowledged between the parties that the following contributions have or will be made by the parties toward the construction of the water system as follows:

- (1) Three Elk Run:
 - (a) Negotiated with and hired a professional grant writer, Mike Blair, in the amount to date of \$1,050.00, for

the application and subsequent award of a State Impact Assistance Grant, wherein the Town was awarded a combination loan in the amount of \$60,000.00 and a cash grant in the amount of \$60,000.00 for the construction of the water system.

(b) Will provide necessary easements for waterline and storage tank.

(c) Will provide topographic, design and easement surveys for project construction through Three Elk Run Subdivision.

(2) Homeowners Association:

(a) Will vacate their existing water line and storage tank site which runs through and on property presently owned by Kozaks and Three Elk Run.

(3) Kozaks:

(a) Will provide easements for water lines and pump house as indicated on the Elk Creek Area Water System Plan as designed by Enartech, Inc., said easement being reciprocal for the relinquishment of water line easement presently owned by the Homeowners Association.

(b) Will provide a survey of said water line easement, to replace the easement to be vacated by the Elk Creek Homeowners Association as stated above.

E. It is acknowledged by the parties that funds from a \$60,000.00 loan and \$60,000.00 grant from the State of Colorado, Department of Local Affairs, which was obtained through the Town, will be utilized for the construction of the water system. The Homeowners Association and Three Elk Run agree to pay to the Town all costs, including principal and interest associated with the \$60,000.00 loan from the State of Colorado, Department of Local Affairs, for the construction of the water system.

F. Repayment of the loan with respect to the above-named parties shall be as follows:

(1) Homeowners Association shall be responsible for 65% of the repayment of the loan principal and interest;

(2) Three Elk Run shall be responsible 35% of the repayment of the loan principal and interest, and as further outlined in the following subsections.

G. However, at the time a lot within the Three Elk Run Subdivision is sold, the new owner of said lot shall assume 1% of the repayment of loan principal and interest to the Town, with the

35% repayment responsibilities of Three Elk Run reduced accordingly. Additionally, at the time a new water user outside of the Elk Creek or Three Elk Run Subdivisions is added to the water system, said user shall assume 1% of the repayment of loan principal and interest to the Town with the 35% loan principal and interest repayment responsibilities of Three Elk Run being reduced accordingly.

H. All parties acknowledge and agree that said loan shall be in effect for a period of ten (10) years, beginning September 1, 1995. It is agreed by the parties that all payments concerning the loan shall be made to the Town on a monthly basis until the loan has been repaid in full. The Town agrees to incorporate billing for loan repayment with regular water use billings.

I. It is acknowledged between the parties that all new water users which are added to the Elk Creek Area Water System after the date of this contract shall pay to the Town an out-of-town water tap fee and a cash contribution recoupment fee equal to 1/35 of the aggregate cash contributions of Homeowners Association and Three Elk Run. The Town agrees to distribute the cash contribution recoupment fees to the Homeowners Association and Three Elk Run in proportion to each party's cash contribution made towards the total funding associated with the construction of the water system.

J. All parties acknowledge that no cash contribution recoupment fees will be collected from the sixty-five (65) potential users in the Elk Creek Development, or the fourteen (14) potential users in the Three Elk Run Subdivision.

V

WATER SUPPLY

A. The Town shall be responsible only to make available to the Homeowners Association and Three Elk Run such water at such pressure as may be available at the point of delivery as a result of the Town's normal operation of its expanded water distribution system.

B. Concerning fire protection capabilities, it is agreed between the parties, that since the Town is supplying water, extra territorially to the Elk Creek Development and the Three Elk Run Subdivision, the appropriate county and/or fire district gallon per minute (gpm) fire flow rates regulations will be utilized. The Town may temporarily discontinue the flow of water in the main at the point of delivery in order to repair, maintain, improve or

replace the main or other portions of the Town's water distribution and supply system from which the main is dependent for its supply.

C. No provision in this Agreement shall be construed to diminish water service quality to Elk Creek Development, as defined in Water Agreement of June 2, 1992 between the Town and the Homeowners Association.

VI

WAIVER OF CLAIMS

A. Homeowners Association and Three Elk Run shall not assert any claim hereunder against the Town for loss or damage which may result from the inadequacy or non-availability of water as to both pressure and quantity.

VII

TERM OF AGREEMENT

A. This agreement shall continue among the parties until such time as the State of Colorado loan is paid in full and the twenty-one (21) users outside the boundaries of the subdivisions have been added to the Elk Creek Area Water System with payment of all recoupment fees as set forth in Paragraph IV.H., above.

VIII

CHANGES AND MODIFICATIONS

A. This agreement can only be changed or modified by written agreement between the parties.

IX

ATTORNEY FEES

A. Should legal action be needed to enforce any of the provisions of this contract, it is agreed between the parties that any breaching party or parties shall be liable to any non-breaching party or parties for their reasonable attorney fees, costs and

STATE OF COLORADO)
) ss
COUNTY OF GARFIELD)

SUBSCRIBED AND SWORN to before me this 22nd day of DECEMBER, 1994, by WYMAN BONTRAGERAS PRESIDENT of ELK CREEK HOMEOWNERS ASSOCIATION.

Witness my hand and official seal.

My commission expires: 11-12-95

Ram Jaws
Notary Public

Esther Kozak 12/22/94
Esther Kozak, Individually Date

Kazimierz Kozak 12/22/94
Kazimierz Kozak, Individually Date

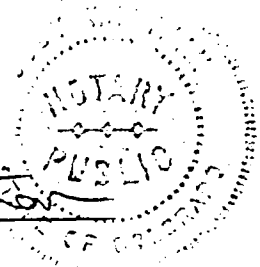
STATE OF COLORADO)
) ss
COUNTY OF GARFIELD)

SUBSCRIBED AND SWORN to before me this 22nd day of December, 1994, by ESTHER KOZAK and KAZIMIERZ KOZAK.

Witness my hand and official seal.

My Commission Expires: 4-18-98

Jody Whitman
Notary Public



Robert Kozak 12-22-94
Robert Kozak, Individually Date

Maria Carrion-Kozak 12/22/94
Maria Carrion-Kozak, Individually Date

[Handwritten mark]

