

This document should be submitted with the private improvement financial assurance estimate with obligation deadlines determined in coordination with the City Planner for the project.

**FINANCIAL ASSURANCES AGREEMENT
For Private Improvements**

APPLICANT: _____
PROPERTY OWNER: _____
SUBDIVISION: _____
TYPE OF WORK: _____
PROJECT NAME: _____

DATED: _____
DEPT.: _____

Please complete the following. Any incomplete agreements will not be accepted by the City of Colorado Springs ("City"). This agreement will not be effective until the financial assurance has been submitted to the City with any required forms and this completed agreement has been accepted by the City.

I, the undersigned, on behalf of myself/ _____ (insert name of entity) ("Applicant") and the owner of the subject property ("Property Owner"), if different, hereby deposit a financial assurance with the City in the form of (choose only one) bond, letter of credit, money (includes money order or check), assignment of certificate of deposit, or escrow agreement in the amount of \$_____. Said financial assurance is intended to secure the performance Applicant's obligation to complete certain improvements, as detailed on the attached Exhibit A, (the "work") in the _____ Subdivision. (Exhibit A must include a detailed assurance estimate with specific amounts listed for the applicable outstanding items at the development, which must be approved by an authorized representative of the City.) Applicant understands and agrees that if the work is not completed by _____ (date) (the "deadline"), that the City may make a demand on, call or cash the financial assurance, and use the funds so collected to complete the work secured by the financial assurance without making a demand or obtaining Applicant's or Property Owner's consent or the consent of any other individual or entity. In the event that the financial assurance is a bond and the work has not been completed by the deadline provided herein, the City may work with the bonding company to have the work completed, without Applicant's or Property Owner's consent or the consent of any other individual or entity and without keeping Applicant or Property Owner or any other individual or entity informed as to the status of the project.

Applicant and Property Owner further understand and agree that if the work is not completed by the deadline herein and the City, or its contractor, agent, or representative, undertakes to complete the work, that the City has permission to enter property and to make such improvements to the property identified on Exhibit A (the "property") as the City sees fit to complete the work. If the City completes the work, the City has no further obligation to maintain the work after the installation of said work is complete. In the event the financial assurance is insufficient to cover the costs associated with completing the work, Applicant agrees to be personally liable for the difference between the financial assurance and the costs incurred to complete the work. The City may invoice Applicant for any such deficit and Applicant agrees to pay such invoice within sixty (60) days of receipt of such invoice. Property Owner consents to placement of a lien on the Property in the event that the invoice is not timely paid.

Applicant and Property Owner shall indemnify and hold harmless the City, its enterprises and elected officials, officers, employees, agents and volunteers from and against all liabilities or claims arising out of this agreement or the subject matter hereof. There are no intended third-party beneficiaries to this agreement. No waiver of default by the City shall operate as a waiver of subsequent defaults. If any term of this agreement shall be found to be unlawful, it shall not affect the other terms of this agreement. This agreement shall be interpreted under the domestic laws of the State of Colorado, and the Charter, City code, Ordinances and Rules and Regulations of the City of Colorado Springs. Exclusive venue and jurisdiction for any dispute shall be with the Colorado District Court

for El Paso County. The City may provide notice to the Property Owner or Applicant through any of the methods provided for below.

This agreement creates a joint and several obligation of Applicant and the Property Owner. Property Owner agrees to give actual written notice of this agreement to any party to which Property Owner transfers the property. The obligations of this agreement may only be assigned by the Applicant or Property Owner with the advance written consent of the City, such consent not to be unreasonably withheld, but which may be reasonably conditioned. In the event of an attempted assignment without consent, Applicant, Property Owner and the attempted assignee shall be jointly and severally liable for the obligations of this agreement.

In the event the work is completed by the deadline herein and the City has approved and/or accepted the required improvements, the City may release the entire financial assurance or, at the sole discretion of the City, release a portion of the financial assurance and retain a portion of the financial assurance as retainage or to secure maintenance obligations related to the improvements. It is Applicant's responsibility to notify the City when the work is completed and request inspection of the work. In the event that Applicant does not request an inspection of the work by the deadline, the City will assume that the work has not been completed or that the financial assurance has been abandoned. The City has no obligation to initiate an inspection to determine whether the work has been completed. If the City initially assumes that the work has not been completed, but later determines that the work was completed but that the City was not notified as such, the City may determine that the financial assurance has been abandoned. The City has no obligation to attempt to locate the Applicant or the Property Owner other than as required by law.

In the event that I am entering into this agreement on behalf of myself as an individual, the City may only release my financial assurance to me or to a representative that I designate in a notarized writing, provided that I submit such writing to the City prior to the release of the financial assurance. In the event that either Applicant or the Property Owner is a legal entity, the City may release the financial assurance to the individual executing this agreement as a representative of the entity, an individual designated by the entity in a notarized writing delivered to the City prior to the release of the financial assurance, or to the entity's registered agent as identified in the Colorado Secretary of State's records. Applicant may assign its interest in a financial assurance, but not its obligations under this agreement except as set forth above, to a third party, provided that such assignment is in writing on a form approved by the City and received by the City prior to the release of the financial assurance.

In the event the City determines that the financial assurance has been abandoned, the financial assurance will be deemed "unclaimed property" and disposed of in accord with Part 7, Article 5 of Chapter 1 of the Colorado Springs City Code.

Applicant or the Property Owner shall notify the City if either is aware or becomes aware that it is not in compliance with this agreement.

I, the undersigned, represent and warrant that I have the full power, capacity and authority to execute and deliver this agreement on behalf of Applicant and/or Property Owner and to perform the obligations hereunder. I further represent and warrant that this agreement has been duly authorized, executed and delivered by me on behalf of Applicant and/or Property Owner, and constitutes the legal, valid and binding obligation of Applicant and/or Property Owner, enforceable against Applicant and/or Property Owner in accordance with its terms. If I am executing this agreement on behalf of the Applicant and/or Property Owner, I have attached a fully-executed Statement of Authority, which indicates that I have been authorized to act on behalf of the Applicant and/or Property Owner, as the case may be.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first written above.

APPLICANT:

Signature

Printed name

Title

Entity

Address

City, state, zip

Phone

Email

PROPERTY OWNER (if different than Applicant)

Signature

Printed name

Title

Entity

Address

City, state, zip

Phone

Email

CITY:

The City of Colorado Springs

Accepted by:

By: _____

Name

Title

Date

Approved as to Form:

City Attorney's Office

EXHIBIT A TO FINANCIAL ASSURANCE AGREEMENT
DETAILED ASSURANCE ESTIMATE