

DEVELOPER GIFT AGREEMENT



Falcon Fire Protection District
Headquarters
7030 Old Meridian Road
Falcon, CO 80831
719-495-4050
www.falconfirepd.org

The Falcon Fire Protection District is very concerned with the Districts ability to protect the accelerated growth within out protection boundaries.

The Falcon Fire Protection District Board of Directors believes that in is in the best interest of Property, the development that will occur on this property, and the citizens that will live, work and/or conduct activities on this property, for the Falcon Fire Protection District to acquire the capital facilities and make the capital purchase necessary to provide fire prevention, fire suppression and emergency response to the Property and its future citizen.

As such the Board of Directors will not provide a letter of commitment without the acceptance of this Developer Gift Agreement

For an electronic copy of this agreement please contact the Falcon Fire Headquarters.

DEVELOPER GIFT AGREEMENT

This Developer Gift Agreement ("**Agreement**") is entered into by and between _____ [**Name of Developer**]_____, a _____ corporation ("**Developer**"), and the Falcon Fire Protection District, a quasi-municipal corporation and political subdivision of the State of Colorado ("**District**"). The Developer and the District shall be referred to collectively as the "Parties" and individually as a Party".

I. Recitals

Whereas, the Developer is the 100% fee owner of certain real property located within the District's jurisdiction, and more specifically identified on the vicinity map and legal description attached as Exhibit A to this Agreement ("**Property**"). The Developer plans to develop the Property for ___[residential? commercial? mixed use?]____.

Whereas, the Developer and the District believe it is in the best interests of the Property, the ___[residential? commercial? mixed use?]____ development that will occur on the Property, and the residents, business owners and citizens that will live, work and conduct business or other activities within the Property, for the District to acquire the capital facilities to provide fire prevention, fire suppression, emergency rescue, emergency medical, ambulance and emergency hazardous materials services (collectively, "**Emergency Services**") to the Property and other areas within the District's jurisdiction.

Whereas, pursuant to C.R.S. §32-1-1001(1)(l), the District's Board of Directors ("**Board**") is authorized to accept gifts made to the District upon such terms or conditions as the Board may approve.

Whereas, the Developer wishes to gift to the District the total amount of _____ (\$_____) to assist the District in acquiring the capital facilities to provide Emergency Services to the Property and other areas within the District's jurisdiction; however, due to financial considerations, the Developer cannot presently gift the total amount to the District.

Whereas, the District Board is willing to accept the Developer's gift upon the terms and conditions contained in this Agreement.

Now, therefore, for and in consideration of the promises, covenants and agreements contained herein, Developer and the District agree as follows:

II. Agreement

1. Irrevocable Gift.

By signing this Agreement, the Developer asserts its present intent to, and does, hereby irrevocably gift to the District the total amount of _____ (\$_____) to assist the District in acquiring capital facilities to provide Emergency Services to the Property and other areas within the District's jurisdiction ("**Gift**"). The Developer shall make the Gift to the District as follows:

a. The Developer shall pay Three Hundred and Fifty Dollars (\$350.00) (the "**Lot Release Amount**") to the District in cash, wire transfer or certified funds within 10 business days of the Developer closing on the sale of a residential lot within the Property to any individual or entity, but in all events prior to the issuance of a building permit for the construction of a home on the Lot. Under no circumstances shall the Developer assess an "impact fee", "fire services charge", or other similar type of fee, charge or assessment to the purchaser as part of the sale in order to generate the \$350.00 payment.

b. The Developer shall pay to an amount equal to \$_____ x _____ (the "**Lot Release Amount**") to the District in case, wire transfer or certified funds within 10 business days of the Developer closing on the sale of a commercial lot within the Property to any individual or entity, but in all events prior to the issuance of a building permit for the construction of a commercial building on the Lot. Under no circumstances shall the Developer assess an "impact fee", "fire services charge", or other similar type of fee, charge or assessment to the purchaser as part of the sale in order to generate the payment.

c. The Developer's Gift obligation under this Agreement shall be deemed fully satisfied when the installment payments the Developer has made to the District equal or exceed the total value of the Gift.

2. Facilities, Apparatus and Gift Fund.

The District shall deposit the Developer's installment payments in the District's Facilities, Apparatus and Gift Fund ("FAEG Fund"). The District Board has imposed the following conditions and restrictions upon the FAEG Fund:

a. The FAEG Fund shall be separate from all other District funds. The FAEG Fund shall be managed by the District Board, directly or through those individuals or entities to whom the Board has expressly delegated duties and authority;

b. Only money gifted from individuals or entities to assist in the construction of facilities, and the purchase of apparatus and equipment, for the District's provision of Emergency Services shall be deposited into, maintained in, or expended from, the FAEG Fund;

c. A separate account with a financial institution authorized to conduct banking activities in the State of Colorado shall be established for all monies received by the FAEG Fund;

d. Monies received by the FAEG Fund shall be held and invested in accordance with Colorado laws governing the investment of public funds, including but not limited to C.R.S. §24-75-601.1, *et seq.*; and,

e. If at any time the District Board, in its sole discretion, determines the goals and purposes for which the FAEG Fund have been accomplished, the District Board may terminate the FAEG Fund and transfer all remaining FAEG Fund monies to the District's General Fund, or such other Fund as the District Board may establish, to meet the District's general administrative and operational needs; provided that, before taking such action, the District Board shall hold a public meeting on the proposed termination of the FAEG Fund. At least 5 business days before the public meeting, notice of the public meeting shall be published once in a newspaper of general circulation within the District's jurisdiction.

3. No Waiver of Taxes, Fees, Charges and Assessments.

The Developer acknowledges and agrees that its Gift to the District pursuant to this Agreement does not relieve it or any future property owners within the Property from their obligation to pay any *ad valorem*, specific ownership or other tax, or any fee, charge, rate, toll or assessment the District is authorized to levy, impose or assess against the Property by law now or in the future.

4. Recordation of Agreement.

Upon the Parties' execution of this Agreement, the District shall record this Agreement in the real property records for El Paso County. Upon the payment of a Lot Release Amount with respect to any individual Lot or group of Lots, the District shall execute and deliver to the Developer such documents as the Developer reasonably requires to evidence such payment and the release of such Lot from the terms and provisions of this Agreement. Upon receipt of the total amount of the Gift (\$_____) from the Developer, the District shall file a document in the real property records for El Paso County stating that the Developer's Gift obligation under this Agreement has been fully satisfied and that this Agreement has terminated. This Agreement is subject to easements, restrictions, reservations, right-of-way and encumbrances of record.

5. Default.

If the Developer fails to make a Gift payment in the amount and at the time required by this Agreement, the District may file an action against the Developer in the District Court for El Paso County to compel the Developer's specific performance of this Agreement. The District shall be awarded its reasonable attorneys' fees, costs and expenses incurred in any action brought under this paragraph 5.

6. Representations.

a. The Developer represents it has the right, power and authority to enter into this Agreement, and that it is voluntarily doing so without threat or coercion by the District or any of its directors, officers, employees, volunteers, agents and representatives. The Developer expressly states that the moneys it is gifting to the District is not an impact fee, or any other statutory fee, charge or assessment imposed by the District by statute, and that the Developer's

sole reason for making the Gift is to assist the District in constructing capital facilities for the provision of Emergency Services, which will benefit the Property and the community. The individual(s) executing this Agreement on Developer's behalf has all requisite authority to bind Developer.

b. The District represents it has the right, power and authority to enter into this Agreement. The individual(s) executing this Agreement on the District's behalf have all requisite authority to bind the District.

7. **Assignment.** Neither Party may assign its rights and duties under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Notwithstanding anything to the contrary contained herein, the Developer shall have the right to convey the Property prior to platting and convey to its affiliates and others in connection with its financing or landbanking transactions without payment of any portion of the Gift of Lot Release Amount, provided that any such conveyance(s) of the Property pursuant to this Paragraph 7 shall be expressly conditioned upon, and subject to, the individual or entity purchasing/receiving the Property expressly taking assignment of, and legally assuming, by appropriate written agreement all of the Developer's Gift obligations or the other terms and conditions of this Agreement.

8. **Notices.** Any notices, requests or other communications required or permitted by this Agreement shall be in writing and shall be delivered (a) by United States registered or certified mail, return receipt requested, postage prepaid; (b) by delivery via a nationally recognized overnight courier service that obtains receipts or a recognized same day courier service that obtains receipts; or (c) by delivery via electronic (facsimile) transmission with receipt confirmation by telephone and with an original sent by first class mail. A Party shall address a notice to the other Party at its address set forth below its signature, or such other address(es) (and facsimile numbers) as may be changed by a Party by written notice in accordance with this paragraph 8. A notice, request or other communication sent by registered or certified mail shall be deemed delivered on the third day after the date of deposit in the United States Mail.

9. **Additional Terms and Conditions.** Colorado law governs this Agreement. This Agreement is the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may only be amended by a document signed by the Parties. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives, successors, and permitted assigns. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. In any dispute arising from or relating to this Agreement, the prevailing Party shall be awarded its reasonable attorney's fees, costs and expenses, including any attorneys' fees, costs and expenses incurred in collecting upon any judgment, order or award. This Agreement may be executed in several counterparts and by facsimile, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have duly signed, sealed and delivered this Agreement on the dates specified beside their signatures.

Dated as to Developer: _____ [Name of Entity]
By: _____
Name: _____
Title: _____

Address: _____
Phone: _____
Fax No. _____

Dated as to the District: _____ FALCON FIRE PROTECTION DISTRICT,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
Name: _____
Title: _____

Address: 7030 Old Meridian Road
Falcon, CO 80831
Phone: (719) 495-4050
Fax No.: (719) 495-3112

EXHIBIT A

Legal Description and Vicinity Map