

**REIMBURSEMENT AGREEMENT**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006, by and between \_\_\_\_\_ (“Developer”) and the City of West Jordan, a municipality and political subdivision of the State of Utah (the “City”).

**RECITALS**

WHEREAS, Developer desires to develop certain property located within the corporate boundaries of the City of West Jordan, Salt Lake County, Utah, as reflected in Exhibit “A” which is attached hereto and by this reference made a part hereof (the “Property”); and

WHEREAS, as a condition of development approval, Developer is required to and proposes to construct and install certain “Eligible Public Improvements” as defined in section 87-5-202 of the West Jordan Municipal Code; and

WHEREAS, The Parties agree that the Eligible Public Improvements are: lawfully required as a condition of development approval; reasonably anticipated to serve future development; located off-site or will create additional or excess capacity beyond the proportionate share attributable to Developer to reasonably service the proposed development at the City’s adopted level of service standards; and

WHEREAS, the City has adopted a policy, as set forth in section 87-5-201 of the West Jordan Municipal Code, that the proportionate share of the cost for public improvements should be allocated to all the properties creating the need for or benefiting from the public improvements; and

WHEREAS, Developer desires to be reimbursed for a proportionate share of the costs associated with the construction and installation of the Eligible Public Improvements which are reasonably anticipated to provide benefits to neighboring and surrounding properties (“Benefited Properties”), the owners of which are not currently participating in the cost of such Eligible Public Improvements; and

WHEREAS, some of the Eligible Public Improvements are System Improvements, as defined in section 87-5-202 of the West Jordan Municipal Code, for which the Developer may receive partial reimbursement from Impact Fees collected by the City; and

WHEREAS, City and Developer desire to identify those Eligible Public Improvements that are System Improvements and to clarify the portion of such System Improvements for which reimbursement may be made available through Impact Fees; and

**[Optional]** WHEREAS, some of the Eligible Public Improvements are street improvements for which the West Jordan Municipal Code requires Developer to acquire and deed to the City protection strips not less than one foot in width, which protection strips shall be dedicated to public use or otherwise transferred in accordance with the terms of this Reimbursement Agreement; and

WHEREAS, reimbursements are authorized by the West Jordan Municipal Code section 87-5-201 for the purpose of implementing the policies stated therein, and City and Developer desire to enter into this Reimbursement Agreement that permits Developer to be reimbursed for a proportionate share of the costs associated with the construction and installation of Eligible Public Improvements that benefit the Benefited Properties.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement and are made a part hereof.
2. Developer's Obligations.
  - a. Developer shall, at its own expense and in accordance with the requirements of the West Jordan Municipal Code, Federal and State laws and regulations, approved engineering construction drawings, the requirements of the City Engineer, and all other conditions of development approval, construct and install or cause to be constructed and installed the Eligible Public Improvements identified in the attached Exhibits "B" and "C" as "Eligible System Improvements" and "Eligible Projects Improvements," collectively referred to herein as "Eligible Public Improvements".
  - b. Developer shall, at its own expense, acquire necessary real property interests for the construction and installation of the Eligible Public Improvements and shall dedicate the acquired real property interests and Eligible Public Improvements to City, in a form approved and acceptable to the City Attorney.
  - c. Developer understands and agrees that Eligible Public Improvements will not be reimbursable unless they are approved by City in advance of development in accordance with City's ordinances, rules, regulations, and engineering standards and specifications.
  - d. Developer further understands and agrees that Eligible Public Improvements identified herein are the only improvements for which reimbursement will be made available with respect to the development of the Property, the legal description of which is set forth on Exhibit "A".
  - e. **[Optional]** The Developer shall acquire and dedicate to the City, by warranty deed, the protection strips identified in the attached Exhibit "D". Said protection strips shall be owned by the City, but shall not be dedicated for use by the public until such time as the conditions for release of said protection strips, as set forth in this Reimbursement Agreement, have been met.
3. Cost Allocation and Collection from Benefited Properties for Eligible Project Improvements.

a. The Parties agree that the properties reasonably anticipated to benefit from the construction and installation of the Eligible Project Improvements (Partially Reimbursable from Benefited Properties) are limited to those Benefited Properties identified in Exhibit "E", and cost allocation and collection shall be limited to only the Benefited Properties.

b. City shall allocate costs to the Benefited Properties as set forth in Exhibit "C". The allocation is based on: \_\_\_\_\_ [i.e. **frontage, zone, area, lot, impervious area, number of connections, other fair and equitable criteria**].

c. City shall require owners of the Benefited Properties that seek City approval to develop, subdivide or build, to pay to the City the appropriate allocated costs identified herein, prior to granting any development, subdivision, conditional use, or site plan approval and prior to the City issuing any building permit, with respect to the Benefited Properties. The parties acknowledge, understand and agree that: (i) the City has no duty to collect and is not responsible to enforce this Reimbursement Agreement against any Benefited Property or person; and (ii) the City is not responsible or liable if an approval, permit or action is granted inadvertently to a Benefited Property or person, unless done intentionally and by fraud.

4. Reimbursement Payments.

a. Upon collection of the allocated costs from the Benefited Properties as set forth herein, City shall pay the collected amount as a Reimbursement Payment to Developer. Notwithstanding anything in this Reimbursement Agreement to the contrary, the City shall have no obligation to make any Reimbursement Payment to Developer until the allocated costs are actually received by City. The parties acknowledge, understand and agree that: (i) the City is not directly responsible or liable for any Reimbursement Payment to Developer, other than to account for sums received; (ii) the City is not responsible in the event this Reimbursement Agreement is determined by a court of competent jurisdiction to be unenforceable.

b. Impact fee reimbursements for System Improvements identified in Exhibit "B" shall be paid in accordance with Section 89-6-413 of the West Jordan Municipal Code, attached hereto as Exhibit "G" and incorporated herein by reference.

c. No reimbursement, whether from Benefited Properties or from impact fees, shall be due to Developer until:

i) The applicable Eligible Public Improvements have been fully installed, inspected, and approved by the City, and the real property and Public Improvements have been dedicated to the City by lawful conveyance through plat, warranty deed or other method acceptable to the West Jordan City Attorney;

ii) Developer has submitted the documentation required by this Reimbursement Agreement evidencing actual costs of the Eligible Public Improvements; and

iii) Such reimbursement is required by the terms of this Reimbursement Agreement and the West Jordan Municipal Code.

5. Reimbursement Amount.

a. Maximum Reimbursement.

i) The maximum reimbursement for the Eligible Public Improvements shall be the lesser of: (1) the actual costs of Eligible Public Improvements as evidenced by the documentation submitted in accordance with the terms of this Reimbursement Agreement, or (2) the estimated costs of the Eligible Public Improvements as set forth in the attached Exhibits "B" and "C", or as said sum is amended under the terms of this Reimbursement Agreement.

ii) "Actual Costs" means the costs actually incurred or expended to construct or install the Eligible Public Improvements, which costs shall include the cost of the real property, and disbursements to general contractors, engineers, surveyors, construction management and inspection, and land planners. Actual Costs shall not include financing costs, interest or expenses incurred or expended for the acquisition of real property, except the purchase price.

iii) The maximum reimbursement for Eligible Public Improvements, shown in Exhibits "B" and "C", are estimates only and shall, if actual costs are less, be decreased in accordance with actual costs. Estimated costs shall not be increased, except by written amendment to this Reimbursement Agreement, in accordance with the amendment provisions set forth herein. In order for an amendment to be considered by City, change orders and similar situations and circumstances must have been pre-approved, in writing, by the City.

iv) The maximum reimbursement for acquisition of real property interests shall be 115% of a City-approved MAI-certified appraisal, provided to City at Developer's expense. In no event shall the reimbursement for real property acquisition exceed the lesser of: (1) the actual cost of the real property; or (2) 115% of the appraisal.

v) Developer shall provide to the City documentation, acceptable to the City Attorney, demonstrating the actual costs incurred by the Developer for the acquisition, construction and installation of Eligible Public Improvements, including acquisition of real property interests. Documentation shall include but not be limited to: receipts, checks, vouchers, bills, statements, bid documents, change orders, payment documents, and all other information necessary for the City to determine the actual costs incurred. Developer's failure to submit the required documentation shall result in rejection of the undocumented claimed amount.

b. Interest. No interest shall be included in the amount of the reimbursement, and no interest shall be paid to developer by the City or any other person on any amounts due under this Agreement.

6. Ownership of Eligible Public Improvements. City shall own the Eligible Public Improvements in fee title absolute, together with the lands and rights-of-way dedicated to the City. Ownership shall be with the City upon: (i) completion of construction of the Eligible Public Improvements by Developer; (ii) completion of applicable warranty periods; and (iii) inspection, approval and written acceptance by the City. The City will assume responsibility for all maintenance, repair and replacement of the Eligible Public Improvements once they are completed by Developer and accepted by the City, subject to any applicable warranty periods.

7. Term of Agreement. This Reimbursement Agreement shall terminate ten years following the effective date of the Reimbursement Agreement or at such earlier time as the cumulative reimbursement amount reaches the maximum reimbursement. No reimbursement shall be due or payable after said ten year period.

8. **[Optional]** Release of Protection Strips.

a. The City may dedicate the Protection Strips or sections thereof for use by the public, or otherwise transfer title, upon the satisfaction of the following conditions:

i) The City has approved the final plans for development of the Benefited Property that is situated immediately adjacent to and which shares a common boundary with the protection strip; and

ii) The City has collected the allocated costs for Eligible Public Improvements from the owner of the Benefited Property as set forth in the attached Exhibit "C" for the affected parcel of land.

b. The parties agree that so long as the proportional amount of the Eligible Public Improvement costs have been paid by the owner of the Benefited Property, the City may dedicate all or a portion of the protection strips to public use or transfer title thereto, as may be appropriate in the City's sole discretion. The parties further agree that, notwithstanding any provisions of this Reimbursement Agreement to the contrary, after ten years the City shall be entitled to dedicate any remaining portions of the protection strips to public use or otherwise transfer ownership, without the payment of further compensation to Developer.

c. It shall be the responsibility of City to prepare, execute, deliver and record such documentation as may be reasonably necessary in the opinion of the City Attorney to effect the dedication or transfer of such protection strips.

9. Effect of Agreement. Nothing in this Reimbursement Agreement shall be construed to relieve Developer of any obligations imposed on Developer by Federal, State or local laws, ordinances, regulations, or standards.

10. Waiver and Covenant Not to Sue. Developer specifically agrees to accept the reimbursement specified herein as full and final payment of all claims against the City or any Benefited Property. Developer hereby waives any rights or claims against the City for reimbursement of any kind or source other than as set forth herein. Developer further agrees to hold City harmless from any and all costs associated with this Reimbursement Agreement, including the allocated costs, if any, which are not collected from the Benefited Properties.

11. Assignment. Neither the Reimbursement Agreement nor any of its provisions, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities and without the prior written consent of City.

12. Entire Agreement. This Reimbursement Agreement contains the entire agreement and understanding of the parties with respect to reimbursement to Developer for the Eligible Public Improvements and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the parties with regard to any reimbursements to Developer from the City.

13. Binding Effect. This Reimbursement Agreement shall be binding upon the parties hereto and their respective officers, employees, representatives, agents, members, successors, and assigns.

14. Validity and Severability. If any section, clause, or portion of this reimbursement Agreement is declared invalid by a court of competent jurisdiction for any reason, the remainder shall not be affected thereby and shall remain in full force and effect, except paragraphs 3, 4 and 5.

15. Amendment. This Agreement may be amended only in a writing signed by the parties hereto.

16. Controlling Law, Jurisdiction and Venue. This Reimbursement Agreement shall be governed by the laws of the State of Utah. Venue shall be in Salt Lake County, Utah.

**IN WITNESS WHEREOF**, the parties hereto have executed this Reimbursement Agreement as of the day and year first hereinabove written.

**CITY:**

**ATTEST:**

By: \_\_\_\_\_  
Name: David B. Newton, Mayor

\_\_\_\_\_  
City Recorder

Date: \_\_\_\_\_

