

IMPROVEMENTS AND REIMBURSEMENT AGREEMENT

07-272-0001 thru 0048

THIS AGREEMENT is made and entered into as of the 7th day of ~~December~~ ^{January}, 2008, ²⁰⁰⁹, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the "City," and **RAINEY DEVELOPMENT INC.**, a Utah corporation, hereinafter referred to as the "Developer."

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
01/22/2009 11:06 AM
FEE \$73.00 Pgs: 9

RECITALS:

a. Developer is the owner of approximately 16.76 acres of land (the "Property") located within the City upon which Developer has received approvals for the Tuscany Village Subdivision;

b. Developer and the City have entered into a Development Agreement for the Tuscany Village Subdivision dated ~~June 3, 2008~~, (the "Development Agreement"), which agreement sets forth the obligations and covenants of the parties relating to the development of the Property.

c. Within the Development Agreement the parties have agreed upon certain reimbursements to be paid to Developer for the construction of infrastructure and improvements. The parties now desire, consistent with the terms of the Development Agreement, to set forth specifically their understanding relating to such reimbursements.

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.

2. **Reimbursement for Improvements.** In accordance with the Development Agreement, the Parties hereby agree that Developer shall be reimbursed as follows:

a. Concrete Curb and Gutter and Asphalt Paving. With reference to installation of a curb and gutter and asphalt widening and other improvements as set forth in Paragraph 3.b.iii. of the Development Agreement, the City hereby agrees to reimburse to Developer the actual cost of installing concrete curb and gutter and asphalt paving abutting the entire length of the frontage of Davis County, Parcel No. 07-070-064. Cost estimates for all reimbursement amounts are set forth in Exhibit "X" attached hereto and by this reference made a part hereof. The costs therein represent approximate amounts. Upon completion of the installation of the improvements, Developer shall submit to the City an invoice and such other documentation of costs as may be reasonably required by the City to verify the actual cost of

installing the improvements. The City shall reimburse Developer's costs for these improvements within 30 days of receipt of an invoice which is reasonably supported by proper documentation.

b. Reimbursement for Other Improvements. With reference to Developer's commitment to construct the improvements set forth in Paragraphs 3.b.ii., 3.c.iv., 3.f.i., and 3.g. of the Development Agreement, the City hereby agrees to reimburse Developer as follows:

i. Pursuant to City ordinance and as permitted by law, the City shall assess and collect a transportation impact fee, storm drainage impact fee and a culinary water impact fee on all development activities within the Property and development activities on those lands located throughout the City. The amount of the impact fees shall be determined by the City in its absolute and sole discretion, based on the City's Capital Facilities Plans adopted or to be adopted by the City for the applicable service area which includes the Developer's Project together with an impact fee analysis as required under the Impact Fee Act of Utah.

In the event any law or court decision hereafter prohibits, limits or eliminates impact fees, the City shall not be obligated to assess or collect impact fees other than those authorized by the then existing law and/or any applicable court decisions. Upon completion of the storm drainage improvements referenced in paragraph 3.g. of the Development Agreement, the City hereby agrees to reimburse Developer the initial sum of Eighteen Thousand Dollars (\$18,000.00) as a partial reimbursement for the storm drainage improvements. The remainder of the storm drainage improvements reimbursement, due to Developer shall be paid or credited as set forth herein, below. Subject to the foregoing, the City will reimburse or credit Developer on a quarterly basis for the actual, reasonable cost, without markup, incurred by Developer in designing and constructing the system improvements set forth in this subparagraph 2.b. by granting Developer's project a credit against the transportation impact fees, storm drainage impact fees and culinary water impact fees which become due hereafter and to the extent Developer's proportionate incurred and reimbursable cost exceeds the impact fee due by remitting to Developer one-half of the respective impact fees which may be collected hereafter by the City on land located in the City within the service areas designated herein which are served by the system improvements described in this paragraph 2.b. which are installed and/or constructed by Developer.

In the event the City is obligated to make other expenditures for system improvements or reimbursements from impact fees collected, fifty percent (50%) of the impact fees collected, net of direct expenditures, shall be divided by the City among the outstanding system improvement agreements in proportion to the original amounts due. Notwithstanding anything in this Agreement to the contrary, the City shall have no obligation to make any reimbursement to the Developer until the above-referenced impact fees from the Property or lands located within the applicable service area are actually received by the City.

The City shall not be obligated to pay interest to the Developer on amounts reimbursed from or credited against impact fees. Developer hereby agrees to accept those above-referenced impact fees actually collected by the City and/or credited to the Developer as provided herein as

full and final reimbursement and satisfaction of all sums due to Developer from the City and hereby agrees to hold the City and its officers, employees, agents and representatives harmless for any amounts claimed by Developer for reimbursement in the event the City is unable to collect the aforesaid impact fees. Impact fees reimbursed hereunder to Developer shall be solely for the purposes for which such fees were collected.

ii. No reimbursement or credit shall be due hereunder to Developer until:

(a) The system improvements described herein for which reimbursement is requested or credits given have been fully completed, inspected and approved by the City; and

(b) The provisions of this Agreement require such reimbursement and/or credits; and

(c) The Developer has provided the City with copies of receipts, checks, vouchers, bills, statements and other information necessary for the City to determine the actual costs incurred by the Developer in installing and constructing the improvements as set forth in this Paragraph 2., and within Paragraph 3. of the Development Agreement between the parties.

3. **Entire Agreement.** This Agreement contains the final and complete expression of the parties relating in any manner to the subject matter hereof, and other matters as set forth in this Agreement. Except as to those terms expressly cited herein, no prior agreements or understanding pertaining to the same shall be valid or of any force or effect and the covenants and agreements of this Agreement shall not be altered, modified or added to except in writing signed by the City and Developer.

4. **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, officers, employees, agents, successors in interest, and assigns.

5. **Validity and Severability.** If any section, clause or portion of this 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.

6. **Amendment.** This Agreement may be amended only in writing, signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first above written.

ATTEST:

FARMINGTON CITY

Margy L. Lomax
City Recorder

By: Scott C. Harbertson
SCOTT C. HARBERTSON, Mayor

RAINEY DEVELOPMENT, INC.

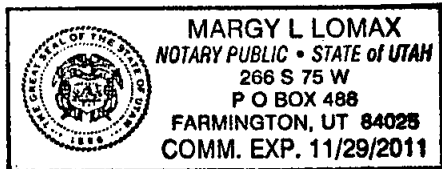
By: Bruce J. Jabor
Its: MANAGER



CITY ACKNOWLEDGMENT

STATE OF UTAH)
) :ss.
COUNTY OF DAVIS)

On the 7th day of ~~December, 2008~~ January 2009, personally appeared before me Scott C. Harbertson, who being duly sworn, did say that he is the Mayor of **FARMINGTON CITY**, a municipal corporation of the State of Utah, and that the foregoing instrument was signed in behalf of the City by authority of its governing body and said Scott C. Harbertson, acknowledged to me that the City executed the same.

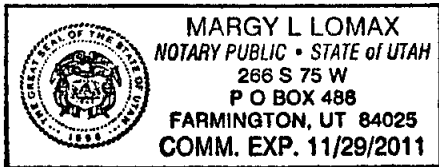


Margy L. Lomax
Notary Public

RAINEY DEVELOPMENT, INC. ACKNOWLEDGMENT

STATE OF UTAH)
)
:SS.
COUNTY OF DAVIS)

On the 7th day of ~~December~~ January 2008, ⁹ personally appeared before me
Brock Johnston who being by me duly sworn did say that
he/she is the Manager of **RAINEY DEVELOPMENT, INC.** and that the
foregoing instrument was signed in behalf of said corporation by authority of its Board of
Directors; and he/she acknowledged to me that said corporation executed the same.



Margy L. Lomax
Notary Public

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EXHIBIT X

Water Line

South of 1600 South to Lund Lane

City Portion

Linear Foot to Lund Lane		464
Cost of Upgrade 8" to 10"	\$	<u>4.55</u>
City Portion 100%	\$	2,111.20

Total Cost of 8" to Lund Lane		
City Portion 50%	\$	7,976.90

Cost of Upgrade 8" to 10" North of Project		
Linear Foot		220
Cost of Upgrade 8" to 10"	\$	<u>4.55</u>
City Portion 100%	\$	1,001.00

Total City Portion \$ 11,089.10

Anticipated Farmington Development Fee	\$	90,552.00
Immediate Reimbursement Commitment to Rainey	\$	(11,089.10)
Remaining amount due and payable from Rainey as part of Subdivision Fees	\$	79,462.90

*These are estimates only. The reimbursements shall be calculated from actual costs.

EXHIBIT X

Frontage Road Improvements

Costs

North of 1600 West

Strip Ground to New ROW on Frontage Road	\$ 1,208.00
Import Fill to Establish Subgrade	\$ 3,561.00
Re-Work the excavation of detention ponds	\$ 2,090.00
Expansion of Sidewalk from 5' to 8'	\$ 1,450.00
12" of Roadbase & 4" of Asphalt	\$ 3,212.00
Total City Portion (To be reimbursed with City Street fees to Rainey)	\$ 11,521.00

South of 1600 West

Strip Ground to New ROW on Frontage Road	\$ 400.00
Import Fill to Establish Subgrade	\$ 4,000.00
30" Curb & Gutter With 6" Roadbase	\$ 1,885.00
4" Sidewalk	\$ 3,082.80
12" of Roadbase & 4" of Asphalt	\$ 4,726.75
Additional Traffic Control	\$ 476.00
Total City Portion (Immediate Reimbursement to Rainey)	\$ 14,570.55

*These are estimates only. The reimbursements shall be calculated from actual costs.

EXHIBIT X**Storm Drain**

	Total Cost	City Portion (42%)
36"	\$ 56,284.80	
30"	\$ 38,794.00	
27"	\$ 7,449.40	
24"	\$ 20,097.36	
48" Manhole	\$ 25,044.00	
60" Manhole	\$ 14,100.00	
Total	\$ 161,769.56	\$ 67,943.22
Anticipated Farmington Development Fee		\$ (27,884.16)
Immediate Reimbursement Commitment to Rainey (see MAX)		\$ (18,000.00)
Reimbursement Agreement Amount (City to Rainey)		\$ 22,059.06

*These reimbursements have been calculated from actual costs.

Boundary Description

Beginning at a point on the East Boundary of an 80 ft. Wide Frontage Road to the I-15 Highway which point is $N89^{\circ}13'22''E$ 343.50 ft. along the Quarter Section Line and $N0^{\circ}10'51''E$ 929.59 ft. along the centerline of said Frontage Road and $N89^{\circ}26'37''E$ 40.00 ft. from the West Quarter Corner of Section 31, T.3N., R.1E., S.L.B. & M. and running thence $N0^{\circ}10'51''E$ 202.56 ft. along said East Boundary of a Frontage Road; thence East 1,160.38 ft.; thence $N8^{\circ}35'19''W$ 225.08 ft.; thence East 819.20 ft. to a point on the West Boundary of State Highway 106 (a 66 ft. wide road); thence along said west boundary of Highway 106 in the following two courses: (i) $S0^{\circ}03'35''E$ 525.96 ft., (ii) Southerly 24.25 ft. along the arc of a 5,762.65 ft. radius curve to the left through a central angle of $0^{\circ}14'28''$ (chord bears $S0^{\circ}10'49''E$ 24.25 ft.); thence $S89^{\circ}59'01''W$ 1,257.60 ft.; thence $N12^{\circ}42'00''W$ 135.17 ft. along the East Boundary of the Old Bomberger Railroad Right of way; thence $S89^{\circ}26'37''W$ 659.95 ft. to the point of beginning.

Containing 16.7608 Acres.