

nw 26
wy 23
E 1/2 22
all 27

> 3n-1w

08-081-0002 thru 0004
08-073-0016, 0001, 0002, 0008, 0012 thru 0014
08-071-0001, 0003 thru 0005
08-069-0001 thru 0006, 0008 thru 0010

AMENDED REIMBURSEMENT AGREEMENT

08-070-0001 pt
08-083-0003, 0004

REC'D JUN 14 2001

THIS AMENDED REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into as of this 23rd day of May, 2001, by and between FARMINGTON CITY, a Utah municipal corporation, hereinafter referred to as "City," and BOYER WHEELER FARM, L.C., a Utah limited liability company, hereinafter referred to as the "Developer."

RECITALS:

1. The Developer is developing 719 acres of land situated at approximately 100 North and 1525 West within the City which is known as Farmington Ranches (the "Property"). The Property is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.
2. The Developer proposes to install certain public improvements within the Property and additional off-site public improvements in order to provide access, infrastructure and municipal services to the Property.
3. Some of the public improvements which will be installed by Developer will be "system improvements" as defined in the Utah Impact Fees Act, Title 11, Chapter 36 of the Utah Code Annotated, and will provide services in the future to certain properties located adjacent to the Property and the community at large.
4. The City and Developer have entered into a Development Agreement for Farmington Ranches dated the 31st day of August, 2000 ("Development Agreement") wherein the City agreed to enter into a mutually acceptable reimbursement agreement with Developer to reimburse and/or credit Developer from impact fees for a portion of the costs for system improvements installed by Developer.
5. The Developer has requested the City to reimburse Developer for a portion of the costs associated with the construction and installation of the system improvements which will benefit the Property and other neighboring properties.
6. Subject to the terms and conditions set forth in this Agreement, the City is willing to reimburse Developer for a portion of the costs incurred by Developer for the construction and installation of the system improvements as proportional to the benefit received by the neighboring properties in light of the total cost of installing or constructing the system improvements.

E 1669050 B 2830 P 1033
SHERYL L. WHITE, DAVIS CNTY RECORDER
2001 JUN 19 3:53 PM FEE 22.00 DEP MEC
REC'D FOR FARMINGTON CITY CORP

AGREEMENT

E 1669050 B 2830 P 1034

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer 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.** The Developer shall:

a. Install and construct or cause to be installed and constructed certain system improvements which are more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof. The estimated costs shown on Exhibit "B" for the system improvements are estimates only and shall be revised based on actual costs.

Developer shall construct and install, or cause to be constructed and installed, all of the system improvements described on Exhibit "B" at Developer's sole cost and expense and in accordance with requirements of the City Engineer and the City Ordinances in effect as of the date of this Agreement. Upon completion of the said system improvements and the inspection and acceptance of the same by the City, the City shall thereafter own the system improvements together with the lands and rights-of-way conveyed to the City by Developer. The Developer shall be obligated to construct and install all other required public improvements located within and required to serve the Property at Developer's sole cost and expense.

The Developer shall provide to the City copies of receipts, checks, vouchers, bills, statements and all other information necessary for the City to determine the actual costs incurred by the Developer in installing and constructing system improvements as set forth in Exhibit "B" attached hereto.

b. Due to inadequate existing culinary water capacity in the west Farmington area of the City, Developer agrees to advance to the City Three Hundred Forty Two Thousand One Hundred Twenty Eight and 47/100 Dollars (\$342,128.47) (the "Reimbursement Amount") in accordance with the Development Agreement to aid in the financing of the "Water System Development Project" as set forth in paragraph 9 of the Development Agreement between the City and the Developer dated August 31, 2000.

3. **City's Obligations.** The City's obligations to provide municipal services to the Property are subject to and conditioned upon the Developer performing its obligations under the Development Agreement, and complying with all of the provisions thereof, the requirements of the Planning Commission, City Council, City Engineer, and all City ordinances, rules and regulations which are in force on the date of this Agreement, including but not limited to the payment by the Developer of all fees and charges due to the City. Nothing contained herein shall exempt, release

or excuse Developer or its successors and assigns from paying any impact fees or other fees and charges required for development of the Property, or any portion thereof, pursuant to the ordinances and resolutions of the City, except where credits against such fees are granted hereunder to the Developer by the City.

4. **Reimbursement.** The City agrees to reimburse a portion of Developer's costs incurred pursuant to paragraph 2 above solely in accordance with the following:

a. Pursuant to City ordinance and as permitted by law, the City shall assess and collect impact fees on all development activities within the Property and development activities on those lands located in the City within the service areas designated by the City. The amount of the impact fees shall be determined by the City in its absolute and sole discretion.

b. Where authorized and permitted by law, the following impact fees will be assessed and collected by the City: park impact fees, transportation impact fees and culinary water impact fees. All such fees shall be determined by the City based upon a capital facilities plan adopted or to be adopted by the City for the service area which includes the Property together with an impact fee analysis as required under the Impact Fee Act of Utah. The service area for park impact fees and culinary water development impact fees is the entire City. The service areas for the transportation impact fees are those areas west of I-15. The City will collect impact fees on buildings and structures located on the Property and on lands located in the City within the service areas designated by the City which are served by the system improvements. 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 any impact fees other than those authorized by the then existing law and/or any applicable court decision(s). Subject to the foregoing, the City will reimburse or credit Developer on a quarterly basis for the Reimbursement Amount and for the actual reasonable costs incurred by the Developer in providing the system improvements described on Exhibit "B" by providing Developer a 100% credit for the above-referenced impact fees which become due on the Property hereafter and by remitting to Developer one-half of the above-referenced impact fees which may be collected hereafter by the City on the Property and from lands located in the City within the service areas designated by the City which are served by the system improvements installed or constructed by Developer. In the event the City is obligated to make other expenditures for system improvements or reimbursements for impact fees collected, the impact fees collected, net of direct expenditures, shall be divided among the outstanding system improvement agreements in proportion to the original amounts due. Reimbursements for system improvements shall have priority over reimbursements for oversizing. 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

Developer as provided herein as full and final reimbursement and satisfaction of all sums due 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 respectively.

- c. No reimbursement or credits shall be due hereunder to Developer until:
- (i) funds to be advanced by the Developer to the City have been paid to the City; and
 - (ii) with respect to the system improvements described on Exhibit "B," the system improvements for which reimbursement is requested or credits given have been fully installed, inspected and approved by the City; and
 - (iii) the Water System Development Project improvements have been fully installed, inspected and approved by the City; and
 - (iv) the provisions of this Agreement require such reimbursement and/or credits.

5. **Ownership and Maintenance.** Ownership of the system improvements which are subject of this Agreement as well as any other public improvements located on the Property shall be with the City after completion of construction of the same by the Developer and inspection and approval thereof by the City. The City will assume responsibility for maintenance, repair or replacement of the system and public improvements once they are completed by the Developer and accepted by the City subject to any applicable warranty periods.

6. **Collection Period.** It is further agreed that the City will collect the impact fees specified herein to the extent permitted by law for a period of ten (10) years from the date of this Agreement, or until such time as Developer's actual costs for the designated system improvements and the Reimbursement Amount have been paid in full, whichever occurs first ("actual costs" means the costs actually and reasonably expended to construct the system improvements excluding interest). The Developer specifically agrees to accept the impact fees specified above which are in fact collected and/or credited by the City during this period as full and final payment under this Agreement and hereby waives any rights or claims against the City for reimbursement of any kind or source other than as set forth herein provided the City is not in material breach of this Agreement.

7. **Conflict.** In the event of any conflict between the provisions of this Agreement and the Development Agreement entered into by the parties hereto, the terms and provisions of the Development Agreement shall be controlling. Nothing contained herein shall be deemed to modify or supersede the provisions of the Development Agreement.

8. **Entire Agreement.** This Agreement contains the entire agreement and understanding of the parties with respect to reimbursement to the Developer for lands, easements, trails, system improvements, public improvements and utilities, 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 and expressly supersedes and amends in its entirety the parties' Reimbursement Agreement dated August 31, 2000.

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

10. **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.

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

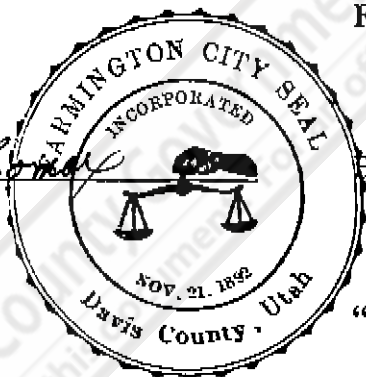
IN WITNESS WHEREOF, the parties hereto have executed this Amended Reimbursement Agreement as of the day and year first hereinabove written.

"CITY"

FARMINGTON CITY

ATTEST:

Margy L. Lomas
City Recorder



By: *Gregory J. Beel*
Mayor

"DEVELOPER"

BOYER WHEELER FARM, LC
a Utah limited liability company

By: *John W. Gardner*
Its: Manager

EXHIBIT "A" E 1669050 B 2830 P 1038

Legal Description of Property

Beginning at a point which is North $0^{\circ}15'24''$ West 680.20 feet along the Section line from the east quarter corner of Section 27, Township 3 North, Range 1 West, Salt Lake Base and Meridian, Davis County, Utah and running thence South $89^{\circ}27'22''$ West 658.74 feet; thence South $2^{\circ}02'47''$ East 167.88 feet; Thence South $11^{\circ}52'56''$ East 626.12 feet; thence North $89^{\circ}44'44''$ West 574.91 feet to the meander line of the Great Salt Lake; thence along said meander line the following 4 courses and distances: North $40^{\circ}00'00''$ West 1914.00 feet; North $03^{\circ}40'43''$ west 1280.83 feet, north $13^{\circ}00'00''$ West 2970.00 feet, North $09^{\circ}55'45''$ East 2415.76 feet to a section line: thence North $89^{\circ}51'10''$ East 2621.47 feet along said Section line; thence South $0^{\circ}09'07''$ East 1400.00 feet; thence North $89^{\circ}51'10''$ East 18.48 feet to a section line; thence North $0^{\circ}09'07''$ West along said Section line 1400.00 feet to the northeast corner of said Section 22, thence North $89^{\circ}45'48''$ east 1176.78 feet along the section line; thence South $0^{\circ}14'12''$ East 192.06 feet; thence North $89^{\circ}45'48''$ East 1327.06 feet to the west line of 1525 West Street; thence along said street line South $0^{\circ}01'15''$ West 2450.85 feet to a quarter section line; thence South $0^{\circ}09'56''$ East 805.74 feet along said street line; thence South $89^{\circ}14'58''$ West 1176.68 feet; thence South $0^{\circ}10'24''$ East 1802.72 feet; thence North $89^{\circ}49'35''$ East 1176.38 feet to the west line of 1525 West Street; thence along said west line South $0^{\circ}09'56''$ East 19.80 feet to the Section line; thence South $89^{\circ}49'35''$ West 1177.40 feet along the Section line to a fence line; thence along a fence line South $0^{\circ}03'29''$ West 587.41 feet to a fence corner; thence South $89^{\circ}52'45''$ West 1316.73 feet along a fence to the section line; thence along the section line South $0^{\circ}15'24''$ East 1374.04 feet to the point of beginning.
Containing 719.2 Acres

EXHIBIT "B"

System Improvements and Estimated Costs

Clark Lane Paving (15-foot-wide strip)

Clark Lane Estimated Reimbursable Expenses (1100 West to west side of D&RG tracks)

| | | |
|----|--|-----------------|
| 1. | 15' of 3" Asphalt Road Surface 350 ton at \$38/ton | \$13,300.00 |
| 2. | 15' of 8" Roadbase 850 ton at \$9/ton | 7,650.00 |
| 3. | 15' of 2' Road Excavation 1,335 cubic yards at \$5/cu. yd. | 6,675.00 |
| 4. | 15' of Road Cobble Subgrade 2,000 square yards at \$3/sq. yd. | 6,000.00 |
| 5. | 15' of Geo Fabric 2,000 square yards at 1.25 | <u>2,500.00</u> |

Total: \$36,125.00

Farmington Greens Share (24.3%) \$8,778.38

Farmington Ranches Share (75.7%) \$27,346.62

Cross Project Trail

Actual costs incurred when and if City decides to have Developer install improvements

Great Shoreline Trail

Actual costs incurred when and if City decides to have Developer install improvements