

**REIMBURSEMENT AGREEMENT
[DEVELOPMENT]**

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

RECITALS

WHEREAS, Developer has developed 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 constructed and installed certain “Eligible Public Improvements” as defined in section 87-5-202 of the West Jordan Municipal Code and identified in Exhibit “B”; and

WHEREAS, The Parties agree that the Eligible Public Improvements identified in Exhibit “B” 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 Eligible Public Improvements identified in Exhibit “B” are System Improvements, as defined in section 87-5-202 of the West Jordan Municipal Code, for which the Developer may receive 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 reimbursement that may be made available through Impact Fees.

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, at its own expense, constructed and installed or caused to be constructed and installed the Eligible Public Improvements identified in the attached Exhibit “B”.
 - b. Developer, at its own expense, acquired necessary property interests for the construction and installation of the Eligible Public Improvements and dedicated the acquired property interests and Eligible Public Improvements to City.

3. Reimbursement Payments.

- a. 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 “C”, and incorporated herein by reference.
- b. No reimbursement 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 or 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.

4. 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 Exhibit “E”, or as said sum is amended under the terms of this Reimbursement Agreement.
 - ii) The estimated costs for Eligible Public Improvements, shown in Exhibit “E”, 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.
 - iii) 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.
 - iv) 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, 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.

5. 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.

6. Term of Agreement. This Reimbursement Agreement shall terminate at such time as the cumulative reimbursement amount reaches the maximum reimbursement amount set forth herein above.

7. 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.

8. 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 for the Eligible Public Improvements identified herein. 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 costs, if any, which are not collected from other properties that may benefit from such Improvements.

9. 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.

10. 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 identified in Exhibit "B" 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 for such Improvements.

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

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

13. 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: Bryan D. Holladay, Mayor

City Recorder

Date: _____

DEVELOPER:

By: _____
Name, Title: _____
(Print or Type)

Date: _____

ACKNOWLEDGEMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this day personally appeared before me _____, to me known to be the _____ of _____, the limited liability company that executed the within and foregoing instrument, and acknowledged the instrument to be the free and voluntary act and deed of said limited liability company for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute said instrument on behalf of said limited liability company.

Dated: _____, 2006.

Notary Public in and for the State of _____

My appointment expires _____

EXHIBIT A
PROPERTY TO BE DEVELOPED

EXHIBIT C

Sec. 89-6-413. Reimbursement for System Improvements.

(a) Improvements specifically listed but not yet built in the City's Capital Facilities Plan (CFP) may be constructed by the developer out of the CFP-planned sequence if such construction is acceptable to the City and does not create unreasonable collateral hardships to the infrastructure system. The developer may request a reimbursement agreement, pursuant to provisions of Sections 87-5-201 through 87-5-208 of the West Jordan Municipal Code, with the City to recover eligible costs which shall not exceed the costs upon which the impact fees were established. The reimbursement agreement shall establish a priority for the included improvements, and eligible costs may be reimbursed from impact fees collected, after higher priority projects in the respective CFP have been adequately funded.

(b) In no event shall the reimbursement exceed the actual cost of public improvements.

(c) *Storm drainage connection* . Payment of a storm drainage impact fee or dedication of land in lieu thereof does not relieve the developer of the responsibility to provide the necessary storm drainage improvements between a development and the nearest defined natural drainage channel or other existing storm drainage improvements capable of handling runoff from within the development. Such improvements shall be constructed in accordance with City and county flood control master plans. (Enacted by Ord. No. 03-40, 07-15-2003; Ord. No. 03-64, (a)&(b), 10-21-2003)