

**NORTH CAROLINA  
WAKE COUNTY**

**THOROUGHFARE FACILITY FEE  
RIGHT-OF-WAY AND STREET IMPROVEMENT  
REIMBURSEMENT CONTRACT**

This Contract made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the City of Raleigh, a municipal corporation hereinafter referred to as "**the City**" and \_\_\_\_\_ hereinafter referred to as "**the Applicant,**" including its **successors and assigns.**

**WITNESSETH:**

1. WHEREAS, the Applicant has engaged in development of real property located at \_\_\_\_\_ and the Applicant has submitted plans and data to the City for the development of said property to be known as \_\_\_\_\_, which was approved on \_\_\_\_\_ as set forth in City file number \_\_\_\_\_.
2. The Applicant has conveyed \_\_\_\_\_ square feet of additional right-of-way and \_\_\_\_\_ square feet of permanent slope easement along \_\_\_\_\_ which is eligible for reimbursement. Said conveyances are recorded at Wake County Registry in Book of Maps \_\_\_\_\_, Page \_\_\_\_\_, recorded on the \_\_\_\_\_. At the time of the dedication, the right-of-way was zoned \_\_\_\_\_.
3. WHEREAS, the Applicant has constructed and otherwise improved the street cross section within the public right-of-way along \_\_\_\_\_ linear feet of \_\_\_\_\_ seeks reimbursement from the City pursuant to the City's Uniform Development Code ("UDO"), Sec. 8.6.3, Reimbursements.
4. WHEREAS, the Applicant has submitted to the City an itemized list of costs for which it seeks reimbursement.
5. WHEREAS, the total reimbursable amount for this Contract is \$ \_\_\_\_\_.
6. WHEREAS, the public improvements specified above is a Priority-1 reimbursement located in Thoroughfare Facility Fee Benefit Area Number \_\_, in accordance with the City's approved facility fees program.
7. WHEREAS, pursuant to Article II, Sec. 2.14 of the City of Raleigh Charter, the City is authorized to provide for the payment of any existing legal indebtedness of the City of Raleigh and of any binding legal obligation that may from time to time be made by the City, and to appropriate funds for that purpose.

## REIMBURSEMENT TO THE APPLICANT

**NOW, THEREFORE, in consideration of the above and mutual promises exchanged and agreed to herein, the parties hereby agree to the following terms and conditions:**

8. The Applicant is eligible for the reimbursement amount specified in Paragraph 5 above and the City shall reimburse the Applicant for such amount in accordance with Sec. 8.6.3 of the UDO as follows:
  - a. Payments made to the Applicant pursuant to the terms herein will be made within the month of March or September, which ever month first follows the date of execution of this Contract.
  - b. The minimum payment for each of the first five (5) annual contract payments shall be \$1,000 (One Thousand Dollars) or the unpaid reimbursable contract amount, whichever is less.
  - c. If funds remain in the reimbursement account established by the City for the appropriate thoroughfare benefit area after payments have been made in accordance with Paragraph 8 (b). above, then each Priority-1 contract shall be paid either 20% (twenty percent) of each original reimbursable contract amount or a pro rata share based on a ratio of the original reimbursable amount of this contract to total original reimbursable amounts for all Priority-1 contracts in the same thoroughfare benefit area when there are insufficient funds in the reimbursement account to pay 20% (twenty percent) to all Priority-1 contracts within the thoroughfare benefit area. Monies paid pursuant to Paragraph 6(b) above shall be counted to determine if 20% (twenty percent) of the original reimbursable contract amounts have been paid.
  - d. If funds remain in the reimbursement account established by the City for the appropriate thoroughfare benefit area after all Priority-1 contracts in the same thoroughfare benefit area have been paid 20% (twenty percent) of their original reimbursable contract amount as set forth in paragraph 8(c) above, then Priority-2 contracts in that thoroughfare benefit area will be paid a pro rata share based on a ratio of the original reimbursable amount of this contract to total original reimbursable amounts for all Priority-2 contracts in the same thoroughfare benefit area. No Priority-2 contract paid pursuant to Paragraphs 8(b) and 8(c) above shall receive an annual payment in excess of 20% (twenty percent) of the original reimbursable contract amount.
  - e. If funds remain in the reimbursement account established by the City for the appropriate thoroughfare benefit area after all Priority-2 contracts in the appropriate thoroughfare benefit area have been paid up to 20% (twenty percent) of their original reimbursable contract amount pursuant to Paragraph 8(d) above, then Priority-1 contracts in that benefit area will be paid in full in chronological order, with the oldest contract being paid in full first. The age of the contract shall be determined from the date of execution.

- f. If funds still remain in the reimbursement account established by the City for that benefit area after all Priority-1 contracts in the appropriate thoroughfare benefit area have been paid in full pursuant to Paragraph 8(e) above, then Priority-2 contracts in that benefit area which are at least five (5) years old will be paid in full in chronological order, with the oldest contract being paid in full first. The age of the contract shall be determined from the date of execution.
- g. All reimbursement payments from the City shall be subject to the provisions of the City Code relating thereto, including forfeiture of reimbursement provisions stated in the Code.

**GENERAL PROVISIONS**

- 9. Any payment to the Applicant made pursuant to this Contract shall be deemed paid when placed in the U.S. Mail with appropriate first-class postage and addressed as follows:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

It is the responsibility of the Applicant to notify the City of any change of address or substitute payee.

- 10. Payments shall be made payable to: “ \_\_\_\_\_ ”
- 11. The Applicant, its successors and assigns, hereby forever waive any right to withdraw or revoke any public use or dedication of right of way or street improvements stated herein.
- 12. The City agrees to annually place thoroughfare facility fee monies into reimbursement accounts for each appropriate thoroughfare benefit area. The percentage of thoroughfare facility monies placed in reimbursement accounts shall be determined by the Raleigh City Council in its sole discretion. This provision shall not prevent the City from placing other monies in reimbursement accounts if it so chooses.
- 13. If, through any legislative enactment, judicial act or combination thereof, the City is prevented from collecting revenues for street improvements, the City shall be fully discharged from making reimbursements.
- 14. Priorities for thoroughfare projects shall be determined by the Raleigh City Council in its sole discretion as reflected in adopted plans and capital budgets of the City. Contract priorities shall be set from the thoroughfare priorities which existed at the time of execution of this Contract. The contract priority of this Contract shall be the same priority as the thoroughfare improvement priority set out in Paragraph 6, above. Once established, the priorities for this contract shall remain unchanged

notwithstanding any changes made in priorities, plans, and capital budgets by the City.

15. The benefit area established in Paragraph 6 of this Contract shall be determined at the time of execution of this Contract and shall remain unchanged notwithstanding any later changes made to the boundaries of the benefit areas, including the placing of the property into an entirely different benefit area. But monies collected from facility fees and monies which are made available for reimbursement shall be based on the most current Thoroughfare Facility Fee Benefit Area boundaries. The boundaries of the benefit areas shall be determined by the Raleigh City Council in its sole discretion, and nothing in this Contract shall limit or otherwise restrict boundary changes.
16. The Applicant may assign the proceeds from this agreement to third parties provided all such assignments are in writing, signed by the Applicant, and received by the City Manager at least two months in advance of any payment.
17. This agreement may only be amended in writing with the mutual consent of both parties.
18. This agreement shall be binding upon the parties, their heirs, successors, and assigns.
19. It is specifically agreed, as part of the consideration of the signing of this agreement, that the parties hereto, their agents, officials, employees or servants will not discriminate in any manner on the basis of race, color, creed or national origin with reference to the subject matter of this agreement, no matter how remote. The parties hereto further agree in all respects to conform with the provisions and intent of Ordinance No. 1969-889 duly adopted by the City of Raleigh, North Carolina. The provision of this ordinance, being incorporated for the benefit of the City of Raleigh and its residents, may be enforced as set out in said ordinance and as provided by law. These provisions shall be binding on the successors and assignees of the parties hereto with reference to the subject matter of this contract.
20. All matters relating to this contract shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.
21. Payment of compensation specified in this Contract, its continuation or any renewal thereof, is dependent upon and subject to the allocation or appropriation of funds to the City for the purpose set forth in this Contract.
22. By entering into this Contract, the Applicant waives any right to reimbursement relating to the aforesaid public street improvements and right of way dedication or conveyance except as set out herein.

23. This Contract, and any documents incorporated herein, represent the entire Contract between the parties and suspend all prior oral or written statements, agreements or Contracts between the parties to the extent that they are inconsistent with the terms herein.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have caused this instrument to be duly executed the day and year first above written.

BY: APPLICANT

BY: \_\_\_\_\_ (SEAL)

Name and Title: \_\_\_\_\_

CORPORATE NOTARY ACKNOWLEDGEMENT

STATE:

COUNTY:

I, \_\_\_\_\_, a Notary Public for said County and State do hereby certify that \_\_\_\_\_, Managing Member of \_\_\_\_\_, a limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

(Seal)

Notary public

My Commission Expires:

\_\_\_\_\_

ATTEST:

BY: THE CITY OF RALEIGH

\_\_\_\_\_  
Gail G. Smith  
City Clerk & Treasurer

\_\_\_\_\_  
Ruffin Hall  
City Manager

**(SEAL)**

APPROVED AS TO FORM:

\_\_\_\_\_  
(Associate) CITY ATTORNEY

**STATE OF NORTH CAROLINA**

**CITY ACKNOWLEDGEMENT**

**COUNTY OF WAKE**

This is to certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came Gail G. Smith, with whom I am personally acquainted, who, being by me duly sworn, says that she is the City Clerk, and Ruffin Hall is the City Manager of the City of Raleigh, the municipal corporation described herein and which voluntarily executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by said City Clerk and Treasurer and that the said seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary public

My Commission Expires:

\_\_\_\_\_

PRE-AUDIT CERTIFICATION:

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act. This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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City of Raleigh Finance Officer