

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made by and between the CITY OF APPLETON, a Wisconsin municipal corporation (hereinafter referred to as “the City”) and APPLE TREE APPLETON FOUR, LLC, (hereinafter called “Developer”).

WITNESSETH:

WHEREAS, certain lands known as Apple Ridge Development (hereinafter defined below as the “Land”) are located in proximity to the City and are in the City’s future growth area; and

WHEREAS, each of the City and the Developer desire to set forth their respective duties and responsibilities with respect to the development of the Land.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

SECTION 1

Definitions

1.1 “Developer” shall mean Apple Tree Appleton Four, LLC, its successor, assigns, and/or designees.

1.2 “Development Control” shall mean the comprehensive supervision of construction of all Public Improvements within an Administrative Project Area as such supervision is necessary to insure conformity with the provisions of this Agreement. Development Control shall be exercised by the Developer, in accordance with all applicable state, federal laws and City ordinances, however the Developer shall have discretion on the selection of those contractors who perform such work within the scope of such ordinances. All construction of public improvements performed by the Developer shall be constructed according

to City standards. Construction of Public Improvements shall be inspected and approved by City employees.

1.3 The “Land” shall mean that real property described in *Exhibit A* attached to this Agreement.

1.4 “Off-Site” shall mean those Public Improvements which are outside the boundaries of the Land except for those Public Improvements which abut or are adjacent to the Land.

1.5 “Public Improvements” shall mean streets, curbs, gutters, sidewalks, bridges, culverts, drainage structures, stormwater ponds, water and sewer facilities, pumps, pump houses, lift stations, transmission and service lines, manholes, fire hydrants, traffic and street signs, street lighting, and other such improvements which are to be dedicated to the City for public use as required in either this Agreement or subsequent agreements entered into between the City and the Developer as well as ordinances of the City, which are applicable City-wide and not just to the Land; however, standards regarding parks and common ground dedicated to the City by the Owner Developer may have restrictions and standards which vary and/or may be more restrictive than the ordinances of the City, if agreeable to both parties hereto.

1.6 The “City” shall mean that Wisconsin home rule municipal corporation now known as the City of Appleton, Wisconsin, and shall include any successor entity to said municipal corporation.

1.7 “Lot” shall mean any platted lot or lot designated by Certified Survey Map within the Land which is designated for residential use.

1.8 “Homeowner” shall mean the owner of any Lot which shall or does utilize the Lot as the site of their family residence.

SECTION 2

Approving and Organizational Documents

2.1 The City has approved, or the City agrees to the extent provided herein, to approve and to subsequently execute where appropriate, the following:

(a) A resolution approving the execution of this agreement;

(b) The following shall be included therein as enforceable terms with the Developer being a beneficiary in these provisions: (a) the Land shall be permitted to be improved (including, but not limited to, landscaping and buildings) pursuant to the ordinances of the City; (b) the width of the dedicated roadways within the Land shall meet City requirements, which will be determined at time of platting; (c) City shall accept fee title, at the City's sole discretion, to the outlots indicated on the approved Final Plat designated as outlots for storm water ponds only (on a phase by phase basis subject to minor revisions by the Developer). The Developer shall deed title to all ponds within the Land, necessary for stormwater, to the City upon completion of construction and approval by City.

2.2 All of the above documents described in Section 2.1 shall be collectively referred to herein as the "Approving and Organizational Documents".

2.3 **Ponds. Maintenance.** Maintenance of the ponds and the landscaped perimeter within the outlots shall be the responsibility of the City. The parties recognize that the City's primary interest in the ponds is for the pond's use as regional stormwater retention facilities. Upon acceptance of said ponds by the City, the City shall be owner of the ponds and Developer will be able to drain stormwater into said ponds.

SECTION 3

Public Improvements and Assessments

3.1 Except for items identified in Exhibit C City Costs (non-assessable per Development Agreement) and City Costs (assessable), the Developer shall be responsible for the installation of the following in the Proposed Development, to the standards set forth by the City and pursuant to Section 4 below:

- (a) Sanitary sewer mains, manholes and laterals;
- (b) Water mains, valves, hydrants, hydrant leads, fittings, and services;
- (c) Storm sewer mains, manholes, catch basins, inlet leads, overland flow paths, yard drains, stormwater ponds and associated piping and laterals;
- (d) Storm water facilities necessary to meet storm water management requirements for the development;
- (e) Street excavation and graveling, terrace seeding, lot filling, grading and seeding and all associated construction site erosion control measures;
- (f) Street lights;
- (g) Temporary lift stations, forcemains and electrical services to the stations to serve the development; and
- (h) All other infrastructure required for development not specifically set forth in this agreement.

3.2 The Developer shall provide an estimate for items 3.1(a) – 3.1(h) prior to the installation of the items.

3.3 The Developer shall provide a fully executed and signed *Waiver of Special Assessment Notices and Hearing* in **Exhibit B**, acknowledging consent to pay Special

Assessment levied by the City for the following items to be furnished and/or installed by the City:

- (a) City administrative fees (plan review, inspections, etc.);
- (b) Sanitary Sewer Area Assessment;
- (c) Connection fees for watermain in Ballard Road as applicable;
- (d) Televising of sanitary and storm sewer lines;
- (e) Street Name Signs;
- (f) Traffic Control Signs;
- (g) Concrete Pavement abutting lots owned by the Developer at the time of concrete paving;
- (h) Sidewalks/sidepaths installed on lots owned by the Developer at the time of concrete paving.

An estimate of up-front City costs and associated special assessments to be paid by the Developer for items 3.3(a) – 3.3(h) is attached hereto at *Exhibit C*. The actual final costs for items 3.3(a) – 3.3(h) will be used as the basis for the amount of the special assessments billed to the Developer.

3.4 The Developer anticipates developing the land in three phases. Costs for the Sanitary Sewer Area Assessment shall be assessed to the Developer in three equal phases. Connection fees for watermain in Ballard Road shall be assessed as applicable with Phase 1 of the development. Said assessments shall be assessed as each plat is approved for each phase of the development.

3.5 The Developer shall provide the City with copies of all final costs, invoices, labor costs, the contract documents and specifications, design documentation, all contract

administration supporting documentation, an itemized list of all expenses for the installation of sanitary sewer, sanitary lift stations, forcemains, storm sewer, water main, service laterals, street excavation and graveling, and street lights for the Proposed Development. Said information provided by Developer shall meet City's Infrastructure Adjustment Form requirements. The Developer's design engineer, or alternative licensed surveyor shall perform the construction staking and the City shall inspect the same.

3.6 The Developer's contractor shall perform the testing of the water main, sanitary sewer, storm sewer and compaction of fill material placed in future roadway areas of the Proposed Development under the supervision of City of Appleton inspectors.

3.7 The Developer shall provide lien waivers to the City from prime contractor, subcontractors, suppliers and consultants within 60 days of the installation of the items in Section 3.1.

3.8 The Developer agrees to convey by deed or dedication to the City all the streets, roads, courts, avenues, drives, public ways, and storm water facilities in the Proposed Development. Developer further agrees to convey any public access ways by dedication or easement to the City. All public improvements contemplated in the final plat shall be constructed within areas to be dedicated to the City either by deed, dedication or easement as contemplated in the final plat and this agreement.

3.9 The Developer shall establish a level loop on the hydrant(s) in the Proposed Development and a copy of all benchmarks shall be provided to the City.

3.10 The City agrees to accept the dedication of all the Public Improvements in the Proposed Development, whether by deed, dedication or easement subject to the City's

Acceptance of the Public Improvements in accordance with and subject to the terms of the City's Subdivision Ordinance.

3.11 The Developer shall repair or replace, as directed by the City and to the City's satisfaction, at its own cost, any damage caused to City property by the installation of the improvements in the Proposed Development, which shall be completed within six (6) months notification by the City to the Developer of the need to repair or replace such damage.

3.12 In recognition of the environmental challenges of this site resulting in lower density development, the City agrees to waive the special assessment fee for temporary asphalt (estimated cost of \$532,500) for the Development. The City also agrees to an additional contribution of \$387,500 towards infrastructure upon completion of Phase III.

3.13 Concrete streets shall be installed on a street-by-street basis only after 90% of the lots have been issued building permits on each street or after a 7-year period from the date of official street opening, whichever comes first.

3.14 The schedule for the Proposed Development is set forth in Exhibit D shall be as follows:

(a) Unless otherwise approved by the City, infrastructure installation may commence after City approval of the Final Plat, Drainage Plan, Established Grades, Storm Water Management Plan, Construction Plans, Construction Specifications and procurement of all necessary City and Regulatory Agency permits.

(b) Building permits may be issued upon City approval and acceptance of all infrastructure. Streets must be officially opened to the public by the City Engineer prior to the issuance of building permits.

SECTION 4

Dedication and Warranty of Public Improvements

4.1 The Developer shall install and dedicate Public Improvements outside the Land, as are necessary to serve the Land. All public construction within the territory of the Development shall be dedicated in the manner specified by the City. The Developer shall be responsible to obtain any easements or dedications necessary for the installation of all required public utilities, including, but not limited to, sanitary sewer and water. In addition, the Developer shall be responsible to obtain any floodplain easements that may result from any increases in FEMA floodplain elevation. The parties agree to cooperate with all normal and necessary private utilities including, but not limited to, electricity, natural gas, telephone, and cable television by allowing them to utilize the easements, consistent with the needs of the other respective easement holders, for the installation and maintenance of their respective utilities. Public utilities within the Development Area shall be constructed at the expense of the Developer and without obligation of the City. All public improvements shall be constructed according to engineering plans and specifications approved by the City.

4.2 The City shall be responsible for future public improvements in Lightning Drive to ultimately serve the Development with gravity sewer.

4.3 The City shall accept for continual maintenance all Public Improvements and such other improvements which are mutually agreed to be constructed and dedicated to the public, as soon as the same are located within the Land and built to City standards.

4.4 Once agreed to by the City and the Developer, the plans and specifications for Public Improvements shall not be amended except by written change orders, pursuant to mutual

agreement. No change order for Public Improvements shall be made without prior written approval of the City, which approval shall not be unreasonably withheld.

4.5 Public Improvements within the Development may be constructed in phases, subject to prior approval by the City. Once the construction of improvements is completed, tested, and approved for any distinct portion of a phase the Developer may obtain building permits for that portion of said phase, provided such construction is pursuant to a City-approved construction phasing schedule.

4.6 The City shall install non-assessable and assessable public improvements identified respectfully in Exhibit C as “City Costs (non-assessable per Development Agreement)” and “City Costs (assessable)” pursuant to this agreement based on the schedule depicted in *Exhibit D* unless a modification is mutually agreed upon by both parties.

SECTION 5

Final Acceptance of Public Improvements

5.1 Final approval of the Public Improvements constructed within the Development, shall be obtained from the Director of Public Works or their designee.

5.2 Public Improvements which are to be constructed in phases shall be finally accepted in such phases.

SECTION 6

Water and Water Related Public Improvements

6.1 The Developer shall furnish a looped watermain to the boundary of the Land through Ridgehaven Lane. The City shall reimburse the Developer the actual cost to install the looped watermain not to exceed \$80,000. The Developer shall be solely responsible for the installation of utility improvements to provide water service to and within the Land including

any oversizing that may be required for the overall distribution system as determined by the Department of Public Works. The City shall contribute \$80,000 for the upsizing of 8” watermain to 12” watermain.

All plans and specifications for the design of the infrastructure and water improvements within the boundaries of the Land shall be subject to the approval of the City’s Department of Public Works prior to the beginning of construction. Such approval shall not be unreasonably withheld.

6.2 In instances where this Agreement, or the ordinances of the City or the rules and regulations of the City do not set forth criteria for particular uses for the water supplied to the Land by the City, the criteria for uses may be proposed by Developer subject to the City’s approval utilizing generally accepted criteria, which approval shall not be unreasonably withheld.

6.3 The parties agree to cooperate fully in all matters concerning the development of the water system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements necessary for such water system. It is agreed that the obtaining of such rights-of-way and easements outside the boundary of the Land is the responsibility of the City whether by voluntary agreement or condemnation. It is further agreed that providing of such rights-of-way and easements is the responsibility of the Developer within the boundaries of the Land.

SECTION 7

Sanitary Sewer

7.1 The City agrees that it shall provide such sewer utilities improvements, in Lightning Drive, up to the Land as may be required recouping the cost of same through normal

City assessment procedures. The Developer shall be solely responsible for providing sanitary sewer infrastructure on the Land including installation of any oversize sewer that may be required for the overall collection system as determined by the Department of Public Works.

7.2 The Developer shall provide temporary lift stations and forcemains and any necessary relocation of these facilities until the City provided gravity system is installed. The Developer shall be solely responsible for all costs related to the installation of sanitary sewer, temporary lift stations and temporary forcemains, within the Development. The City shall reimburse the Developer actual costs for the temporary lift stations, forcemains and relocations not to exceed \$175,000. All plans and specifications for the design of the infrastructure and sanitary sewer improvements within the boundaries of the Development shall be subject to the approval of the City's Department of Public Works prior to the beginning of construction.

7.3 Under any of the circumstances set forth herein, the City shall permit the Developer to connect with the City's sanitary sewer system at such reasonably accessible and economically feasible locations as determined by the City.

7.4 The parties agree to cooperate fully in all matters concerning the development of the sanitary sewer and sanitary sewer system, including, but not limited to, securing of permits, implementation of augmentation plans and acquisition of all rights-of-way and easements. It is agreed that the obtaining of such rights-of-way and easements is the responsibility of the Developer.

7.5 The Developer shall be responsible for the removal and abandonment of the temporary lift stations. The City shall be responsible for the abandonment of the temporary forcemains. The pumping equipment and control panels shall be retained by the Developer.

SECTION 8

Approvals, Permits, Plans and Plan Amendments

8.1 The parties agree to cooperate (i) in application for new permits or the amendment of existing permits, (ii) in the adoption of new plans and in the amendment of existing plans or plans approved in connection herewith, or (iii) in obtaining any and all other necessary or desirable certificates or approvals so as to effectuate the provisions of this Agreement.

8.2 Plats and plans requiring signatures of City officials shall be executed and recorded subsequent to the approval by the City Council and satisfaction of any conditions identified on the plat, provided (i) said plat or plan has been executed by all other required parties, (ii) the required fees for such plat or plan have been paid, (iii) other ordinance requirements pertaining to such plat or plan are currently being satisfied by Developer, and (iv) requirements of any applicable subdivision improvement agreement relating to such plat or plan are currently being satisfied by Developer, and are not in default. All such recording, filing and requirements shall be pursuant to those applicable specifications and requirements as described in the Wisconsin Statutes.

SECTION 9

Park Land Dedication

9.1 In lieu of dedication, Developer shall pay \$300 per lot in accordance with Appleton Municipal Code Sec. 17-29. Payment shall be made before approval may be affixed to the Final Plat.

SECTION 10

Streets

10.1 All streets within the Development shall be public streets and developed to current City of Appleton standards.

10.2 The Developer shall be responsible for design, permitting and construction of the bridges over Apple Creek. The City shall reimburse the Developer actual costs for the bridges in total not to exceed \$120,000 for each bridge.

10.3 Property owners shall install 5-foot sidewalk/10-foot sidepath within six months of issuance of certificate of use and occupancy permit. The City shall contribute \$80,000 towards the 10-foot sidepath.

10.4 The City shall work with the County to construct turn and by-pass lanes as required by Outagamie County. Costs associated with turn and by-pass lanes to be borne by City (estimated cost \$115,000).

SECTION 11

Stormwater

11.1 The Developer shall bear all costs associated with wetland delineation, stormwater management plans, erosion control plans, modeling, permitting, etc. to serve the Development.

11.2 The City shall accept responsibility for all detention ponds within the Land utilized in the storm water management plan conditioned upon being built to City's standards, and compliance with a maintenance manual, prepared by the Developer, for each detention pond. The City shall determine if each pond has been built to City's standards, and such standards shall include the establishment of self-sustaining native vegetation. Each pond shall be constructed

with a minimum ten-foot (10') buffer for access between the top of the pond slope and the adjacent property line.

SECTION 12

Annual Tax Guarantee

12.1 The City agrees to uniformly apply tax assessment procedures and practices with respect to the property and the Development in accordance with state law regarding property tax assessments. Notwithstanding the foregoing, Developer shall pay to the City the minimum real estate tax payment for the years and in accordance with the formula as set forth below. It is the intent of this provision that the Developers Minimum Real Estate Tax Payment shall be in such an amount as will fully amortize the City's \$1,690,000 contribution to the project over a 5-year period commencing with tax payments made in 2025, for the tax year 2024, and ending with the year 2032, for tax year 2031. The guaranteed value, for the purposes of this Agreement, is to be \$27,000,000.

12.2 The Minimum Real Estate Tax Payment shall be paid in the following manner: Commencing with the 2025 calendar year (for the tax year 2024) and for each calendar year thereafter to 2032, the Developer shall pay to the City the deficit, if any, between the amount of property taxes generated by the development and the amount of property taxes generated based on a \$27,000,000 assessed value (Minimum Real Estate Payment). If the amount of the actual real estate tax payments exceeds the Minimum Real Estate Tax Payment, no additional payment shall be due from Developer.

12.3 By August 15, starting with calendar year 2025, the City shall provide Developer with: (1) an itemization of the actual real estate tax payments received from the Development, and (2) a calculation in the amount, if any, by which the Minimum Real Estate Tax payment for

the Development for such calendar year exceeds the actual real estate tax payment allocable to the Development for the preceding calendar year. If for any given calendar year the Minimum Real Estate tax Payment exceeds the actual real estate tax payment, developer shall pay the amount of such excess to the City. If the amount of the actual real estate tax payment exceeds the Minimum Real Estate Tax Payment, no additional payment shall be due from Developer.

SECTION 13

Performance of Obligations – Remedies

13.1 Developer is entering into this Agreement and undertaking the obligations imposed upon the Developer herein contained in reliance upon the City’s supplying of sewer and water service to the Development as previously outlined herein including, but not limited, to as set forth in Exhibit C and Exhibit D. Performance of the obligations of the Developer hereunder is expressly conditioned upon the Developer being permitted by the City to develop the Land in substantial conformity with *Exhibit E*, as Land is acquired by the Developer and/or an entity controlled by the managing partner of the Developer and providing necessary infrastructure and services utilizing the water and sewer systems of the City.

13.2 It is understood and agreed by the parties hereto that the remedies provided in this Section and Agreement are not exclusive, and that the parties hereto shall have all available remedies in law or equity, including, but not limited to, specific performance and injunctive relief.

13.3 The Developer has agreed to enter into this Agreement in reliance on (i) the Master Development Plan for the “Land” being mutually agreed upon by the parties, and (ii) the City providing sewer and water service to the Development site as previously indicated.

SECTION 14

Notices

14.1 All notices, statements and other communications given hereunder shall be made in writing by personal delivery or by mailing the same by certified mail, return receipt requested, or by next day express delivery, addressed to the other as aforesaid, and the date of such personal delivery the next day if any express delivery, or the date five (5) days after such mailing shall be deemed the date on which such notice is effective. Except as otherwise specified herein, all notices sent to the City hereunder shall be directed to the attention of the Mayor.

CITY: Kami Lynch, City Clerk
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799
Telephone: 920/832-6443
Facsimile: 920/832-5823

With a copy to: James P. Walsh, City Attorney
City of Appleton
100 North Appleton Street
Appleton, WI 54911-4799
Telephone: 920/832-6423
Facsimile: 920/832-5962

DEVELOPER: Apple Tree Appleton Four, LLC
Attn:

With a copy to:

14.2 In addition to the notices hereinabove required, City agrees to notify Developer, pursuant to the provisions of this Section, of any action contemplated by the City which would materially affect the provisions set forth in this Agreement.

SECTION 15

Binding Effect

15.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

15.2 This Agreement is binding and runs with the land.

15.3 This Agreement may be amended only by mutual agreement of the parties.

15.4 This Agreement is contingent upon the property being annexed to the city of Appleton.

SECTION 16

Approval of Common Council

16.1 This Agreement was considered by the Common Council at their regular meeting held on _____, 2018, and approved by a vote of ____ for and ____ against.

DONE AND SIGNED this ____ day of _____, 2018, at Appleton, Wisconsin.

[SIGNATURES BEGIN ON NEXT PAGE]

CITY OF APPLETON

By: _____
Timothy M. Hanna, Mayor

ATTEST:

By: _____
Kami Lynch, City Clerk

STATE OF WISCONSIN)
 : ss.
OUTAGAMIE COUNTY)

Personally came before me this ____ day of _____, 2018, Timothy M. Hanna, Mayor and Kami Lynch, City Clerk, of the City of Appleton respectively, to me known to be the persons who executed the foregoing instrument and acknowledged the same in the capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____

APPROVED AS TO FORM:

James P. Walsh, City Attorney

APPLE TREE APPLETON FOUR, LLC

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____

STATE OF WISCONSIN)
 : ss.
_____ COUNTY)

Personally came before me this ____ day of _____, 2018,
_____ and _____, to me known to
be the persons who executed the foregoing instrument and acknowledged the same in the
capacity and for the purposes therein intended.

Printed Name: _____
Notary Public, State of Wisconsin
My commission is/expires: _____
City Law: A18-0513 Last Update: 09/28/2018



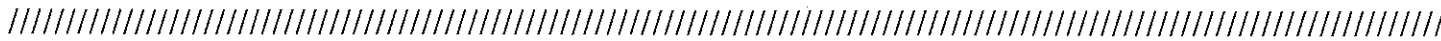
WAIVER OF SPECIAL ASSESSMENT NOTICES AND HEARING UNDER S. 66.0703 WISCONSIN STATUTES.

The undersigned owner(s) of property benefited by the following proposed public improvement to be made by the City of Appleton, Outagamie-Calumet-Winnebago County, Wisconsin, to wit:

The undersigned owner(s) of property benefited by the above proposed public improvement to be made by the City of Appleton, Outagamie-Calumet-Winnebago County, Wisconsin, in consideration of the construction of said improvement will benefit our property and consent to the levying of special assessments against our premises under S. 66.0703 of the Wisconsin Statutes, for the cost of such improvement.

In accordance with S. 66.0703 (7) of the Wisconsin Statutes, I/we hereby waiver all special assessment notices and hearings required by S. 66.0703 (7), and I /we herby further agree and admit that my (our) property is specially benefited by the above described municipal work or improvement as contemplated by Sec. 66.0703(7) Wisconsin Statutes.

Street Address _____ Signature of Owner _____ Date _____



OFFICE USE ONLY

FIELD NOTES:

Unit No. _____ Inspector/Surveyor Name _____

Date sidewalk/apron marked _____

Total amount of sidewalk to be replaced _____

Of that total, what amount is due to tree damage _____

Apron: Type of existing surface _____ Size of existing apron _____

Date given to Field Supervisor _____

Date returned to office _____

Exhibit D

Apple Tree Development - Schedule

9/27/2018

TASK	2018	2019	2020	2021	2022	City Contribution	
Developer hires consultant	X					\$ -	
Developer initiates wetland delineation	X					\$ -	
Developer annexes property, designs subdivision, plats, drainage plan, stormwater management, permitting, etc.	X					\$ -	
Development Agreement to Council	X					\$ -	
Developer designs lift stations/force mains	X					\$ -	
Developer installs temporary lift stations and forcemains	X					\$ 175,000	
Developer constructs Phase I infrastructure	X					\$ -	
Developer loops watermain	X					\$ 80,000	\$ 255,000
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Developer designs and permits bridge structure #1		X				\$ -	
Developer constructs bridge #1		X				\$ 120,000	
Developer completes grade & gravel		X				\$ -	
City constructs turn and by-pass lanes		X				\$ 115,000	
City share of 10-foot trail/sidewalk		X				\$ 40,000	
City share of 12" watermain		X				\$ 40,000	
City installs temporary asphalt Phase I		X				\$ 265,500	\$ 580,500
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Developer constructs Phase II			X			\$ -	
Developer designs and permits bridge structure #2			X				
Developer constructs bridge #2			X			\$ 120,000	
City share of 10-foot trail/sidewalk			X			\$ 40,000	
City share of 12" watermain			X			\$ 40,000	
City installs temporary asphalt Phase II			X			\$ 177,000	\$ 377,000
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Developer constructs Phase III				X		\$ -	
City installs temporary asphalt Phase III					X	\$ 90,000	
Additional contribution upon completion of Phase III					X	\$ 387,500	\$ 477,500
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Total City Contribution

\$ 1,690,000