



STAFF REPORT

DATE: December 10, 2020

TO: Honorable Mayor and City Council

FROM: John Penrod, City Attorney

SUBJECT: CONSIDERATION OF A RESOLUTION TO APPROVE AN IMPROVEMENT REIMBURSEMENT AGREEMENT WITH LANDMARK EXCAVATING, INC. FOR INSTALLING 900 SOUTH STREET IMPROVEMENTS.

RECOMMENDED MOTIONS

Motion to approve Resolution No. ____ that approves an Improvement Reimbursement Agreement with Landmark Excavating, Inc. for installing 900 South street improvements.

BACKGROUND

Landmark Excavating, Inc. installed approximately 965 linear feet of 900 South street improvements in the Ashton Springs Subdivision. Under Springville's Transportation Impact Fee Facilities Plan and Impact Fee Analysis, a portion of the 900 South street improvements are to be paid with impact fees to serve new development in Springville. The IFFP and IFA has designated 900 South as a minor collector street and requires the City to pay for the difference of a residential local street (59 feet wide) and a minor collector street (72 feet wide) when a minor collector street is within a residential subdivision.

Based on the requirements of the IFFP and IFA, the proposed Improvement Reimbursement Agreement is to reimburse Landmark Excavating, Inc. for 13 feet of width of 900 South for installing the 900 South street improvements. The cost for installing the 13 feet width of street improvements for a distance of 965 linear feet is \$76,529.79.

FISCAL IMPACT

The City will pay Landmark Excavating, Inc. the amount of \$76,529.79, which amount is in the City's Transportation Impact Fees fund. However, the City Council will be required to amend the budget in a future budget amendment to properly budget the amount..

Attachments: Proposed Resolution with Agreements

RESOLUTION #2020-XX

A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT WITH LANDMARK EXCAVATING, INC.

WHEREAS, Landmark Excavating, Inc. installed approximately 965 linear feet of 900 South street improvements as part of the Ashton Springs Subdivision; and

WHEREAS, under the Transportation Impact Fee Facilities Plan and Impact Fee Analysis, a portion of the 900 South street improvements (13 feet of width) is to be paid for with impact fees, which portion is the difference between a residential local street (59 feet wide) and a minor collector street (72 feet wide); and

WHEREAS, the amount of impact fees owed to Landmark Excavating, Inc. for installing the 900 South improvements is \$76,529.79; and

WHEREAS, the Springville City Council finds that the proposed Agreement is in harmony with the City's Transportation IFFP and IFA and complies with the law.

NOW, THEREFORE, BE IT RESOLVED BY THE SPRINGVILLE CITY COUNCIL:

SECTION 1. Agreement Approval. The Agreement, substantially in the form attached as Exhibit A, is approved and shall be executed by Springville City.

SECTION 2. Effective Date. This resolution shall become effective immediately upon passage.

PASSED AND APPROVED this 15th day of December 2020.

Richard J. Child, Mayor

Attest:

Kim Crane, City Recorder

EXHIBIT A

IMPROVEMENT REIMBURSEMENT AGREEMENT ASHTON SUBDIVISION 900 SOUTH STREET IMPROVEMENTS

**IMPROVEMENT REIMBURSEMENT AGREEMENT
ASHTON SUBDIVISION 900 SOUTH STREET IMPROVEMENTS**

THIS AGREEMENT is entered into effective this ____ day of _____, 2020, by and between **SPRINGVILLE CITY**, a municipal corporation of the State of Utah, 110 South Main Street, Springville, Utah 84663 ("City"), and **Landmark Excavating, Inc.**, a Utah corporation, located at 256 North Main Street, Ste. B, Alpine UT 84004 ("Developer").

RECITALS

- A. Developer is the developer of Ashton Springs Subdivision, located at approximately 900 South 750 West, in Springville City, Utah County, Utah, and is shown on the Ashton Springs Subdivision Plans attached as Exhibit A (the "Subdivision").
- B. As part of the Subdivision's improvements, Developer installed approximately ____ linear feet of 900 South (the "900 South Improvements"). The 900 South Street is a minor collector, a portion of which is funded by transportation impact fees. According to the Transportation Impact Fee Facilities Plan and Impact Fee Analysis, the impact fees pay for a width of 13 feet of 900 South, which is the difference between a residential local street (59 feet wide) and a minor collector (72 feet wide).
- C. City will pay Developer upsizing costs for the 900 South Improvements in the amount of \$76,529.79. That amount is for the upsizing necessary to serve future development.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms as more fully set forth below, Developer and City agree to the following:

- 1. **Recitals Affirmed.** The parties each certify the correctness and accuracy of the facts recited above and adopt the same as a statement of their principal reasons for entering this Agreement.
- 2. **Manner of Performance.** This Agreement only addresses the installation and reimbursement for the 900 South Improvements. This Agreement does not modify Developer's requirements for the installation of any and all other improvements required to be installed as part of the Subdivision.

A. **Compliance with Plans and Laws.** Developer guarantees that Developer has installed of the 900 South Improvements to completion (the "Work") (a) in a good and workmanlike manner, (b) in conformance with the Construction Plans, which have been approved by the City, and (c) in compliance with all applicable laws, statutes, ordinances, resolutions, the Springville Municipal Code (the "City Code"), rules, regulations, and official policies of the City governing the use, density and intensity of the uses of land

within the City, and the design, improvement, and public works construction standards and specifications applicable to the development of land within the City. This Agreement does not modify any requirement Developer has to develop the property pursuant to City Code.

B. Materials and Labor. Developer has furnished all materials, supplies, tools, equipment, labor, and other services necessary for construction and completion of the 900 South Improvements as described herein. In the event that any other entity claims to have installed any of the 900 South Improvements, Developer shall indemnify, defend and hold the City harmless on such a claim.

C. Improvement Warranty. Developer has executed an improvement warranty for the one (1) year improvement warranty period and post a ten percent (10%) cash deposit, surety bond, letter of credit, or other similar security that is acceptable to the City's City Administrator in accordance with Section 14-5-205 of the City Code.

D. Insurance. Developer agrees to obtain and maintain general public liability insurance and property damage insurance with City named as an additional insured, at the rate of Two Million Dollars (\$2,000,000) for each occurrence and Four Million Dollars (\$4,000,000) aggregate during construction of the Project.

E. Inspections. Developer shall ensure and has ensured that all inspections necessary for the 900 South Improvements under the City Code have or will be timely requested. Developer understands and agrees that failure to request a proper inspection may result in the removal of 900 South Improvements at the sole cost and expense of Developer. The City shall perform inspections as soon as possible and otherwise in good faith following the applicable request in accordance with the City Code.

3. Reimbursable Costs.

City will pay Developer the amount of 76,529.79 for the 900 South Improvements (the "Reimbursement Costs") as shown in the itemized cost breakdown on Exhibit B. Developer agrees that the Reimbursement Costs includes any and all amounts owed to Developer for the 900 South Improvements. City will pay Developer the Reimbursement Costs within 30 days of the effective date of this Agreement.

4. Miscellaneous.

- Notices. Any notice which is required or which may be given pursuant to this Agreement is sufficient if in writing and given by hand-delivery or sent to a party by (i) certified or registered mail, postage prepaid, or (ii) nationally recognized overnight carrier (*e.g.* FEDEX), addressed as first set forth above. A party may change the address for notice to it by giving a notice pursuant to this Section.
- Authority and Authorization. Developer hereby represents and warrants to City that the execution and delivery of this Agreement by Developer and the performance of

the terms hereof by Developer, have been duly authorized through proper action and, upon full execution hereof, this Agreement will be binding on and enforceable against Developer.

- **Future Action.** Nothing in the Agreement shall limit the future exercise of the police power by City in enacting zoning, subdivision, development, transportation, environmental, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement; provided, however, that subject to Developer's performance of its obligations hereunder, Developer shall have the vested right to develop the Project.
- **Other Laws.** Developer may be responsible to fulfill other federal, state and local laws, including, but not limited to Workers Compensation and Occupational Safety and Health Administration regulations. Developer agrees to comply with all laws during construction of the 900 South Improvements.
- **Assignment.** Neither this Agreement nor any of the provisions, terms or conditions hereof can be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of City, which shall not be unreasonably withheld.
- **Attorney Fees.** In the event this Agreement or any of the exhibits hereto are breached, the party at fault agrees to pay the attorney fees and all costs of enforcement of the non-breaching party.
- **Severability.** Should any portion or paragraph of this Agreement be declared invalid or unenforceable, the remaining portions or paragraphs of the Agreement shall remain valid and enforceable.
- **Modification.** Modification of this Agreement shall only be effective if agreed upon, in writing, and approved by the City Council and Developer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

SPRINGVILLE CITY

Attest

By: _____
Richard J. Child, Mayor

By: _____
Kim Crane, City Recorder

DEVELOPER - LANDMARK EXCAVATING, INC.

By: _____

EXHIBIT A
Ashton Springs Subdivision Plans

EXHIBIT B
Itemized Reimbursement Costs

Canyon Springs Plat 'B' - 900 South Impact Fee Reimbursement

965.75

Item	#	Unit	Unit Cost	Total Cost
4" Asphalt	12554.75	sf	\$ 1.45	\$ 18,204.39
8" UTBC	12554.75	sf	\$ 0.85	\$ 10,671.54
18" Sub Base	12554.75	sf	\$ 1.50	\$ 18,832.13
Property	0.2882	ac	\$ 100,000.00	\$ 28,821.74

TOTAL	\$ 76,529.79
--------------	---------------------

Note: Based on 13' width increase. Costs based on Landmark Pay-App.