

City Council Staff Report



Subject: Reimbursement Agreement Between Bountiful City and Keller Family Properties, LLC, for the Reimbursement of Expenses for the Construction of Eagle Ridge Drive

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Dept: Legal

Date: April 13, 2021

Background

For years the City and its residents have planned for an extension of Eagle Ridge Drive that would connect to Bountiful Boulevard. Much of the land between Bountiful Boulevard and the existing Eagle Ridge Drive that is needed for the extension (the “Subject Property”) is owned by the Keller Family Properties, LLC. Rainey Homes has recently purchased portions of the Keller property and has developed those portions of land into single family neighborhoods. The Subject Property is currently under contract. Rainey Homes currently is under contract to purchase the Subject Property and intends to develop the remainder into single family residential homes as well. As part of that development, Rainey (or any developer) would be required to dedicate a public right of way to the City. Because it may take months or even years for the property to develop Bountiful City desires to enter into an agreement with the Kellers that would allow the City to construct a road on the Subject Property immediately. As part of the agreement the Kellers (or its successor) would be required to reimburse the City for the costs to build the road before any building permits would be issued by the City.

Analysis

In order for the Eagle Ridge Drive extension to be constructed the City will need to enter into a reimbursement agreement with the Keller Family Properties, LLC (property owners). The reimbursement agreement benefits both Bountiful City and the Kellers. The City and the public will get a much needed access point from Bountiful Boulevard to Eagle Ridge Drive and the Kellers get the benefit of a road being constructed on the property at today’s construction prices. The completion of the road will help alleviate traffic to and from the “B” down the existing Eagle Ridge Drive and will reduce emergency response times to the same area. Some of the highlights of the agreement are as follows:

- The City will design, construct, and install the public improvements, including curb, gutter, sidewalk, asphalt/pavement.
- The Kellers will dedicate the Subject Property to the City for a right of way along with a temporary construction easement to construct the public improvements.
- The Kellers will reimburse the City for the actual costs of building the road.
- The term of the Agreement will be 15 years.
- No interest shall accrue during the term.
- If full repayment is not made by the end of the term the outstanding amount owed will accrue interest at a rate of 5% per year.
- The agreement is binding on all successors and assigns and obligations will run with the land.

Department Review

This Staff Report was prepared by the City Attorney and reviewed by the City Manager.

Significant Impacts

Construction and completion of the road will have a significant positive impact on the neighborhoods north of Bountiful Boulevard and east of 1300 East. The road will provide for better circulation, reduce traffic in the existing neighborhoods, and allow for much faster and efficient public safety response times.

Recommendation

It is recommended that the City Council approve the Reimbursement Agreement with Keller Family Properties, LLC.

Attachments

- Reimbursement Agreement with Exhibits.

REIMBURSEMENT AGREEMENT

This Agreement is entered into this _____ day of _____, 2021, by and between Keller Family Properties, LLC, a Utah limited liability company (“**Owner**”), and Bountiful City, Utah, a municipality and political subdivision of the State of Utah (the “**City**”), and collectively referred to as the “**Parties**”.

RECITALS

WHEREAS, Owner owns that certain parcel of real property (the “**Property**”) located within the corporate boundaries of the City of Bountiful, Davis County, Utah, which is described in Exhibit “A”, which is attached hereto and incorporated by this reference;

WHEREAS, Owner desires to sell the Property to a developer for the purpose of constructing a residential development; and

WHEREAS, as a condition of development approval, Owner is required by City ordinance to dedicate a portion of the Property (“**Right-of-Way**”) as described in Exhibit “B” which is attached hereto and incorporated by this reference; and

WHEREAS, as a condition of development approval, Owner is required to construct and install certain public improvements (“**Eligible Public Improvements**”) as reflected in Exhibit “C” which is attached hereto and incorporated by this reference; and

WHEREAS, the Eligible Public Improvements are lawfully required as a condition of development approval and reasonably related to the development of the Property; and

WHEREAS, the Eligible Public Improvements will serve a critical public safety function for the community; and

WHEREAS, the City desires the Eligible Public Improvements to be constructed as soon as possible and is willing to construct the Eligible Public Improvements with all costs of said construction to be reimbursed by Owner as described herein; and

WHEREAS, Owner desires to reimburse the City for the costs to construct the Eligible Public Improvements on the Property as described herein; and

WHEREAS, the Parties desire to enter into this Reimbursement Agreement which obligates Owner to dedicate the Right-of-Way, permits the City to construct the Eligible Public Improvements, and obligates Owner to reimburse the City for the costs associated with the construction and installation of Eligible Public Improvements.

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. City Obligations.

- a. City shall design, construct, and install or cause to be constructed and installed the Eligible Public Improvements on the Property.
- b. City agrees to act in a commercially reasonable manner in connection with such construction improvements,
- c. City shall execute all applications, authorizations and other documentation as may be necessary to obtain such approvals from other government agencies and utility providers.
- d. City will be responsible to retain and oversee the engineers and other professionals to put together final plans and specifications for the Eligible Public Improvements, which shall be subject to written approval of Owner, which approval shall not be unreasonably delayed, conditioned, or withheld.
- e. If City determines to contract for construction of the Eligible Public Improvements City shall engage in competitive bidding for construction of the Eligible Public Improvements, in compliance with applicable City ordinances and state law.
- f. City shall obtain all necessary designs, plans, drawings, specifications, engineering, geotechnical testing, and any and all necessary studies, surveys, tests and investigations. City warrants the sufficiency of the foregoing as accurate, suitable and satisfactory for the proper performance of the work.
- g. City shall obtain all approvals and permits from City's own boards, commissions, departments, and the City Council, as applicable.
- h. City will advance funds to cover third party costs reasonably related to the project such as, without limitation, application fees, engineering fees, testing fees, environmental study fees, etc., or City may do so with its own staff. These fees will also be reimbursed by Owner.
- i. Construction of Eligible Public Improvements shall meet the City's standards and requirements for construction. City shall achieve substantial completion of the construction of the Eligible Public Improvements by June 30, 2022, weather permitting.
- j. The Eligible Public Improvements shall include installation in the public roadway of the following utility facilities subject to the discretion of the respective providers: electricity, street lights, natural gas, sanitary sewer, storm sewer, telephone, data transmission, culinary water, and irrigation water. Each such utility facility owned by the City shall be appropriately sized to accommodate the capacities reasonably expected for the future residential lots on the Property. The City does not guarantee the adequacy of the third-party utilities' ability or plans to meet demand. The Eligible Public Improvements shall include stubs of each of the foregoing utility lines at least 5 feet inside the Property for each of the future lots.
- k. The Eligible Public Improvements shall include the following roadway facilities: curb, gutter, sidewalk, and asphalt pavement.
- l. Owner hereby appoints City as Owner's agent for the purpose of making applications to other government agencies and utility providers, for all other entitlement and utility approvals as shall be required for construction of the Eligible Public Improvements.

- m. City shall be responsible for all oversight of the general contractor hired to construct the project.
- n. During the pendency of construction, City shall keep Owner informed of major design changes and construction change orders concerning the project.
- o. If within one year after the date of substantial completion of construction, any defective work or materials is found, Owner shall promptly notify City in writing, and City shall promptly correct the defective work at its own cost and time and bear the expense of additional services required for correction of any defective work for which it is responsible.
- p. City warrants that all materials used in constructing the Eligible Public Improvements shall be new and shall comply with the applicable specification, unless otherwise specified, of good quality, and free from defective workmanship and materials.
- q. City warrants that the Eligible Public Improvements shall be designed and constructed in strict compliance with all applicable City ordinances and design/construction standards. City shall cause its inspectors to inspect the Eligible Public Improvements, and either approve or require correction, during construction at the same times they would do so were the improvements constructed by a private party.
- r. City shall keep the Property free of materialmen's and mechanics' liens. If such a lien is recorded against the Property, City shall take whatever appropriate actions to pay, compromise, contest, litigate, or otherwise dispose of such third party claim in a manner that rids the Property and all portions thereof of such claims. Within sixty (60) business days after substantial completion of construction of the Eligible Public Improvements, City shall cause all contractors, subcontractors and suppliers to either cancel their online entries against the Property in the Utah Construction Lien Registry, or obtain final written lien waivers from each of them.

3. Owner's Obligations.

- a. Owner shall dedicate to City the Right-of-Way which shall constitute the footprint of the planned public roadway bisecting the Property, and in which the Eligible Public Improvements shall be constructed. The instrument of dedication of the Right-of-Way shall be by special warranty deed ("**Special Warranty Deed**") which is attached hereto as Exhibit "D" and incorporated by this reference.
- b. Owner shall execute and deliver to City the Special Warranty Deed within ten (10) business days after the effective date of this Agreement. Upon execution, the Special Warranty Deed shall be recorded at the Davis County Recorder's Office. Construction of the Eligible Public Improvements will not begin until the Special Warranty Deed is executed and recorded at the Davis County Recorder's Office.
- c. Owner shall grant to the City, its agents or assigns a temporary construction easement ("**Temporary Construction Easement**") upon the Property for the purpose of surveying, constructing, and improving the Eligible Public Improvements, a copy of which is attached hereto as Exhibit "E" and incorporated by this reference.
- d. As further provided in the Special Warranty Deed, Owner shall convey title to the Right-of-Way to the City free and clear of all claims, liens, security interests and other

monetary encumbrances. Within ten (10) business days of this Agreement's execution by both parties, Owner shall order, at its cost, a commitment for title insurance showing the status of title of the Right-of-Way, and showing (as of the date thereof) the liens, encumbrances, easements, restrictions, and other conditions affecting the Right-of-Way, and committing to issue an ALTA lender's policy of title insurance in standard form to insure good and marketable title in fee simple to the Right-of-Way, free and clear of any and all liens, mortgages, and monetary encumbrances, subject to exceptions for any of the following: (a) all covenants, conditions, restrictions, easements, rights-of-way, reservations and restrictions now of record; (2) discrepancies, conflicts in boundary lines, shortage in area, encroachments, easements, rights-of-way and any facts which a correct survey and inspection of the Right-of-Way would disclose and which are not shown by the public records; and (3) property taxes for 2021 and all subsequent years. The amount of insurance under that title policy shall be \$500,000. Except for the foregoing, Owner agrees to remove or revise any title exception to which City objects.

4. Reimbursement Amount. Owner shall reimburse to the City the City's actual costs ("**Actual Costs**") to design, construct, and install the Eligible Public Improvements. The City estimates the costs ("**Estimated Costs**") for the Eligible Public Improvements to be \$XXXXXXX; a breakdown of which is set forth in Exhibit "F", which is attached hereto and incorporated by this reference. The Estimated Costs are estimates only. The Actual costs may be different than the Estimated Costs and will be increased/decreased accordingly before being submitted to Owner for reimbursement. Owner shall only be responsible to reimburse City for the Actual Costs of Eligible Public Improvements that are constructed on the Property, and not beyond, however, Owner shall remain responsible for any building permit, inspection, impact fees, and any other fees that may apply to improving and constructing on the individual lots or subdivision.

5. Documentation of Actual Costs. Within sixty (60) calendar days after the substantial completion of construction of the Eligible Public Improvements, City shall provide to Owner documentation demonstrating the Actual Costs incurred by the City for the design, construction, and installation of Eligible Public Improvements.

6. Interest on Reimbursement Amount. No interest shall accrue or otherwise be required or included in the amount of the Actual Costs to be paid to the City so long as Owner fully reimburses the City within the Term of this Agreement as described herein.

7. Reimbursement Payments. Owner may make reimbursement payments of the Actual Costs in installments or pay in one lump sum, provided however that no building permits shall be approved by the City for the Property unless and until the total reimbursement for the Actual Costs is paid in full to the City.

8. Ownership of Right-of-Way and Eligible Public Improvements. The City shall own the Right-of-Way in fee title. Upon completion of the Eligible Public Improvements, the City shall be responsible for all maintenance, repair, and replacement of the Eligible Public Improvements which it owns. All maintenance, repair, and replacement of utilities owned by

third-party utility providers located within the Right-of-Way shall be the responsibility of the respective utilities.

9. Reimbursement to the City a Requirement of Subdivision Approval. Full reimbursement of the Actual Costs to the City shall be a condition of City's approval of the final subdivision plat for the Property.

10. Term of Agreement. Full reimbursement of the Actual Costs shall be made to the City on or before fifteen (15) years from the date of this Reimbursement Agreement or before any building permits are issued or approved for the Property by the City, whichever is first.

11. Interest on Late Payment. Any amount owed by Owner to the City for full reimbursement of the Actual Costs under this Reimbursement Agreement that is not paid within the Term set forth herein shall accrue interest at the rate of five percent per year from the end of Term. Accrued interest will be computed based on a 365-day based on the actual number of days elapsed in the period in which it accrues.

12. Vested Rights in the Property. It is understood and agreed that execution of this Agreement by the City shall constitute the sufficient, submitted, complete, and approved application contemplated by Utah Code § 10-9a-509. To the maximum extent permissible under the law, it is the intent both of City and Owner that the execution of this Agreement grants and vests in Owner all rights, consistent with City's general plan, City's zoning & subdivision codes, parks master plan, transportation master plan, and other specific plans ordinances and plans generally applicable throughout City, to develop the Property as provided in previously-approved preliminary subdivision plat for the Stone Creek Estates Subdivision Phase 4, including the density and uses, without modification or interference by City. The Parties intend that the rights granted to Owner under this Agreement are both contractual and as provided under the common law concept of "vested rights". Accordingly, Owner shall have the vested right, as of the date of this Agreement, to develop and construct the Project in accordance with that preliminary plat, subject to the other applicable provisions of the Bountiful Municipal Code (including final plat approval), state laws and regulations, and this Agreement. It is expressly understood by City that Developer and Owner may assign all or portions of its rights under this Agreement, provided such assignees agree in writing to be bound by the terms of this Agreement. In the event of any such assignment, Owner shall provide the City written notice of the assignment and provide the City with all applicable agreements or documentation necessary to enforce the provisions of this Agreement. The parties further agree that, notwithstanding Section 14-20-204(I) of the Bountiful City Code, which requires final subdivision approval from the City Council within one year after obtaining preliminary approval, the City's prior approval of the preliminary subdivision plat for Property shall not expire until the expiration of the term of this Agreement.

Any new land use or zoning applications amending or requesting changes to the currently approved preliminary plat or zoning ordinance shall be made under the Bountiful Municipal Code in effect at the time of application or amendment.

13. Effect of Agreement. Nothing in this Reimbursement Agreement shall be construed as a land use, subdivision, or building approval or to relieve Owner from any obligations imposed by Federal, State or local laws, ordinances, regulations, or standards.

14. Arm's Length Transaction. Owner affirms that this Reimbursement Agreement is an arm's length transaction and is not made under duress or the threat of eminent domain. Owner understands that this Reimbursement Agreement is a legally binding document and has had opportunity to retain and consult independent counsel.

15. Waiver and Covenant Not to Sue. Owner acknowledges that the Eligible Public Improvements serve a legitimate public interest, are reasonably related to the development of the Property, and lawfully required to be dedicated to the City as part of the subdivision process. Owner waives any rights or claims against and covenants not to sue the City for any claims of eminent domain or unlawful exactions of any kind.

16. Agreement Binding on All Successors in Title and Run with the Land. Owner hereby agrees and covenants that it is Owner's intent that this Reimbursement Agreement be binding upon all successors-in-title or interest to the Property, that it touches and concerns the Property, and shall run with the land. This Reimbursement Agreement shall be recorded at the Davis County Recorder's Office and shall bind any successors-in-title or interest to the Property to all obligations set forth in this Reimbursement Agreement.

17. Assignment. This Reimbursement Agreement and any of its provisions, terms or conditions may be assigned by Owner to any other party, individual or entity only upon the sale of the Property, with Owner assigning both the rights as well as the responsibilities hereunder, and the new owner of the Property agreeing in writing to be bound hereby. In the event of any such assignment, Owner shall provide the City written notice of the assignment and provide the City with all applicable agreements or documentation necessary to enforce the provisions of this Agreement.

18. Entire Agreement. This Reimbursement Agreement contains the entire agreement and understanding of the Parties and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the Parties with regard to any reimbursements to the City.

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

20. Validity and Severability. If any section, clause, or portion of this reimbursement 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.

21. Amendment. This Agreement may be amended only in a writing signed by the parties hereto and recorded at the Office of the Davis County Recorder.

22. Controlling Law, Jurisdiction and Venue. This Reimbursement Agreement shall be governed by the laws of the State of Utah. Venue shall be in Davis County, Utah.

23. Attorney’s Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Reimbursement Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.

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

OWNER:

Keller Family Properties, LLC
a Utah limited liability company

By: _____ Date _____
Gary L. Keller
Manager

STATE OF UTAH)
: ss.
COUNTY OF WASHINGTON)

On _____, 2021, Gary L. Keller personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same in his capacity as Manager of the Keller Family Properties, LLC.

Notary Public

CITY:

City of Bountiful
a municipality and political subdivision of the State of Utah

By: _____ Date _____
Randy C. Lewis, Mayor

ATTEST:

By: _____
Shawna Andrus, City Recorder

APPROVED AS TO FORM:

By: _____
Clinton Drake, City Attorney

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On _____, 2021, Randy C. Lewis personally appeared before me and proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same in his capacity as Mayor of the City of Bountiful, Utah.

Notary Public

EXHIBIT "A"
THE PROPERTY

A parcel of real property situate in Davis County, Utah, described as follows:

Beginning at a point . . . to the point of beginning.

APN: 04-047-0135

EXHIBIT "B"
RIGHT-OF-WAY

The following described real property situate in the City of Bountiful, Davis County, Utah

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF BOUNTIFUL BOULEVARD THAT IS SOUTH 00°55'39" WEST 530.21 FEET ALONG THE SECTION LINE AND NORTH 90°00'00" EAST 1992.86 FEET TO SAID NORTHEASTERLY LINE AND SOUTH 48°52'40" EAST 155.16 FEET ALONG SAID NORTHEASTERLY LINE FROM THE WEST QUARTER CORNER OF SECTION 21, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH, AND RUNNING THENCE EASTERLY 31.83 FEET ALONG A TANGENT, 20.00-FOOT-RADIUS CURVE TO THE LEFT THROUGH AN CENTRAL ANGLE OF 91°11'23", CHORD BEARING NORTH 85°31'38" EAST 28.58 FEET TO A POINT OF COMPOUND CURVATURE WITH A 303.00-FOOT-RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY ALONG SAID CURVE 206.74 FEET THROUGH AN CENTRAL ANGLE OF 39°05'39", CHORD BEARING NORTH 20°23'07" EAST 202.76 FEET TO A POINT OF TANGENCY; THENCE NORTH 00°50'18" EAST 315.95 FEET TO A POINT OF TANGENCY WITH A 530.00-FOOT-RADIUS-CURVE TO THE RIGHT; THENCE NORTHERLY ALONG SAID CURVE 230.49 FEET THROUGH A CENTRAL ANGLE OF 24°55'01", CHORD BEARING NORTH 13°17'48" EAST 228.68 FEET, TO A POINT OF TANGENCY; THENCE NORTH 25°45'19" EAST 254.68 FEET TO THE GRANTOR'S NORTH LINE; THENCE ALONG SAID LINE NORTH 89°58'27" EAST 57.93 FEET TO THE GRANTOR'S NORTHEAST CORNER; THENCE ALONG THE GRANTOR'S EAST LINE SOUTH 00°40'13" WEST 18.47 FEET; THENCE SOUTH 25°45'19" WEST 263.14 FEET TO A POINT OF TANGENCY WITH A 470.00-FOOT-RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY ALONG SAID CURVE 204.40 FEET THROUGH A CENTRAL ANGLE OF 24°55'01", CHORD BEARING SOUTH 13°17'48" WEST 202.79 FEET, TO A POINT OF TANGENCY; THENCE SOUTH 00°50'18" WEST 315.95 FEET TO A POINT OF TANGENCY WITH A 363.00-FOOT-CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG SAID CURVE 251.80 FEET THROUGH A CENTRAL ANGLE OF 39°44'36", CHORD BEARING SOUTH 20°42'36" WEST 246.78 FEET, TO A POINT OF REVERSE CURVATURE WITH A 20.00-FOOT-RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY ALONG SAID CURVE 29.42 FEET THROUGH A CENTRAL ANGLE OF 84°16'26", CHORD BEARING SOUTH 01°33'19" EAST 26.84 FEET, TO A POINT ON THE NORTH LINE OF BOUNTIFUL BOULEVARD; THENCE NORTHWESTERLY ALONG SAID LINE AND ALONG A NON-TANGENT, 533.00-FOOT-RADIUS CURVE TO THE LEFT 48.24 FEET THROUGH A CENTRAL ANGLE OF 5°11'09", CHORD BEARING NORTH 46°17'07" WEST 48.22 FEET, TO A POINT OF TANGENCY; THENCE ALONG SAID LINE NORTH 48°52'40" WEST 50.06 FEET TO THE POINT OF BEGINNING,

CONTAINS 1.450 ACRES..

A part of APN: 04-047-0135

EXHIBIT “C”
ELIGIBLE PUBLIC IMPROVEMENTS

EXHIBIT "D"
SPECIAL WARRANTY DEED

When recorded, please return to:
Bountiful City
795 South Main Street
Bountiful, Utah 84010

SPECIAL WARRANTY DEED

Keller Family Properties, LLC, a Utah limited liability company, Grantor, for and in consideration of Ten Dollars and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, hereby CONVEYS AND WARRANTS against all persons claiming by, through or under Grantor, but not otherwise to **Bountiful City**, a municipality and political subdivision of the State of Utah, Grantee, with address of 150 North Main Street, Bountiful, Utah 84010, all of grantor's right, title and interest in and to the following described real property situate in the City of Bountiful, Davis County, Utah (the "**Property**"):

BEGINNING AT A POINT ON THE NORTHEASTERLY LINE OF BOUNTIFUL BOULEVARD THAT IS SOUTH 00°55'39" WEST 530.21 FEET ALONG THE SECTION LINE AND NORTH 90°00'00" EAST 1992.86 FEET TO SAID NORTHEASTERLY LINE AND SOUTH 48°52'40" EAST 155.16 FEET ALONG SAID NORTHEASTERLY LINE FROM THE WEST QUARTER CORNER OF SECTION 21, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH, AND RUNNING THENCE EASTERLY 31.83 FEET ALONG A TANGENT, 20.00-FOOT-RADIUS CURVE TO THE LEFT THROUGH AN CENTRAL ANGLE OF 91°11'23", CHORD BEARING NORTH 85°31'38" EAST 28.58 FEET TO A POINT OF COMPOUND CURVATURE WITH A 303.00-FOOT-RADIUS CURVE TO THE LEFT; THENCE NORTHEASTERLY ALONG SAID CURVE 206.74 FEET THROUGH AN CENTRAL ANGLE OF 39°05'39", CHORD BEARING NORTH 20°23'07" EAST 202.76 FEET TO A POINT OF TANGENCY; THENCE NORTH 00°50'18" EAST 315.95 FEET TO A POINT OF TANGENCY WITH A 530.00-FOOT-RADIUS-CURVE TO THE RIGHT; THENCE NORTHERLY ALONG SAID CURVE 230.49 FEET THROUGH A CENTRAL ANGLE OF 24°55'01", CHORD BEARING NORTH 13°17'48" EAST 228.68 FEET, TO A POINT OF TANGENCY; THENCE NORTH 25°45'19" EAST 254.68 FEET TO THE GRANTOR'S NORTH LINE; THENCE ALONG SAID LINE NORTH 89°58'27" EAST 57.93 FEET TO THE GRANTOR'S NORTHEAST CORNER; THENCE ALONG THE GRANTOR'S EAST LINE SOUTH 00°40'13" WEST 18.47 FEET; THENCE SOUTH 25°45'19" WEST 263.14 FEET TO A POINT OF TANGENCY WITH A 470.00-FOOT-RADIUS CURVE TO THE LEFT; THENCE SOUTHERLY ALONG SAID CURVE 204.40 FEET THROUGH A CENTRAL ANGLE OF 24°55'01", CHORD BEARING SOUTH 13°17'48" WEST 202.79 FEET, TO A POINT OF TANGENCY; THENCE SOUTH 00°50'18" WEST 315.95 FEET TO A POINT OF TANGENCY WITH A 363.00-FOOT-CURVE TO THE RIGHT; THENCE SOUTHERLY ALONG SAID CURVE 251.80 FEET THROUGH A CENTRAL ANGLE OF 39°44'36", CHORD BEARING

EXHIBIT “E”

TEMPORARY CONSTRUCTION EASEMENT

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (“**Agreement**”) is made and entered by and between Keller Family Properties, LLC, a Utah limited liability company (“**Grantor**”), and Bountiful City, a municipality and political subdivision of the State of Utah (“**Grantee**”). This Agreement shall be effective as of the date of the last party executes the Agreement below.

RECITALS:

WHEREAS, Grantor owns a parcel of real property located in Bountiful City, Davis County, Utah, commonly referred to as Utah County Serial No. 04-047-0135, more particularly described as:

Beginning at a point . . . to the point of beginning.

(the "**Property**").

WHEREAS, Grantee is desirous to construct and maintain a public roadway across a portion of the Property; and

WHEREAS, Grantor is willing to grant a temporary construction easement across portions of the Property that lie adjacent to that roadway, according to the terms set forth in this Agreement.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Grant of Temporary Construction Easement by Grantor. Grantor hereby grants to Grantee the non-exclusive temporary right to use and cross such portions of the Property lying outside the public roadway as shall be reasonably and necessary to enable Grantee to grade, construct, install and improve the roadway improvements and utility facilities therein; SUBJECT TO all covenants, conditions, easements, right-of-way, reservations and restrictions now of record.

The grant of the temporary construction easement includes the right of Grantee and the “authorized users” to enter upon and use the easement area to grade, level, fill and drain the easement area; to excavate culverts, cuts, and slopes within the easement area; to remove trees, brush, undergrowth and other obstructions from the easement area; and to do all other acts and things which are reasonably necessary for or incidental to the enjoyment of the easement rights granted herein.

2. Authorized Users of Easement. The term “authorized users” of the temporary

construction easement are Grantee and its contractors, agents, employees, and invitees, representatives of other federal, state, and local governments and agencies, but not the general public. Any member of the general public who traverses across the Property shall be considered a trespasser. No such trespass, regardless of continuity or duration, shall serve to establish any prescriptive easement across the Property.

3. No Third Party Beneficiaries. Each of the property rights and easements granted in this Agreement shall be for the exclusive use of Grantee and its authorized users. No other property or person may benefit from or use the property rights and easements granted in this Agreement.

4. Reservation of Rights by Grantor. Grantor reserves the right to use the easement area for any purpose that does not interfere with the purpose of the temporary construction easement.

5. Maintenance of Easement. In its usage of the easement area, Grantee agrees to install such drainage and erosion control facilities as shall be reasonable and appropriate to prevent future damage to the remainder of the Property. All costs of construction and maintenance and similar activities required by this paragraph shall be borne solely by Grantee.

6. Indemnification by Grantee. Grantee shall indemnify, defend and otherwise hold Grantor harmless from and against any and all claims, including costs, expenses, attorney's fees and costs, which arise from or by reason of the use of the temporary construction easement herein granted to Grantee or from any activities contemplated by or undertaken in connection with this Agreement by Grantee or any other person claiming by, through or under Grantee.

7. Compliance With Law. At all times, all actions of Grantee and any of its agents, employees, contractors or other similarly situated persons, on or about the temporary construction easement, and all activities of Grantee contemplated by this Agreement shall be taken in full and strict compliance with all governmental requirements, statutes, regulations, and the common law. Grantee shall be responsible for compliance with all applicable federal, state, and local requirements, including compliance with all applicable federal, state, and local construction, bonding, labor and environmental laws and regulations.

8. Liens and Encumbrances. Grantee shall, at all times, keep the temporary construction easement area and the Property free from mechanics' lien claims or similar liens arising on account of any act by or on behalf of Grantee.

9. Term. The Parties understand and agree that the Trail Easement shall continue until the earlier of June 30, 2022 or the date Grantee substantially completes its construction of all public roadway and utility improvements through the Property. This Agreement is binding upon Grantor and Grantee, and their successors in interest or title in the Property. This temporary construction easement shall not be recorded.

10. Waiver. No waiver of conditions by a party or any default of the other party or failure of a party to timely enforce any provisions of this Agreement shall constitute a waiver of or constitute a bar to subsequent enforcement of the same or other provisions of this Agreement. No

provision in this Agreement shall be construed to prevent a party from exercising any legal or equitable remedy it may otherwise have.

11. Further Assurance. Each party, from time to time, shall execute, acknowledge, subscribe and deliver to or at the request of the other party such documents and further assurances as may reasonably be required for the purpose of evidencing, preserving or confirming the agreements contained herein.

12. Relationship of the Parties. The Parties shall not, by virtue of this Agreement nor by the act of any party, be deemed principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

13. Amendment. No modification of this Agreement shall be made or effective unless and until such modification is in a writing designated as an amendment hereto, executed by Grantee and Grantor, or their successors in interest or title in the Property.

14. Sole Agreement. This Agreement constitutes the sole agreement between the Parties regarding the subject hereof and supersedes any and all other agreements, whether oral or written, with respect to the obligations identified herein. The Parties acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any party or anyone acting on behalf of any party which is not embodied herein; and that no other agreement, statement, or promise not contained in this Agreement regarding the provisions of this Agreement shall be valid or binding.

15. Attorney's Fees. In the event either Grantor or Grantee commences litigation to enforce any of the terms and conditions of the Agreement, the unsuccessful party to such litigation shall pay, within thirty (30) days of the date when any judgment of any court of competent jurisdiction shall have become final and all rights of appeal therefrom have expired, all costs and expenses, including attorneys' fees incurred therein by the successful party, which costs and expenses shall be included in the amount of the judgment.

16. Venue and Jurisdiction. Each party consents to suit in the courts of the State of Utah in any dispute arising under the terms of this Agreement or as a result of operations related to the temporary construction easement. Each party agrees for itself and for its successors and assigns that any suit brought by it or its successors or assigns may be maintained only in the Utah State District Court in and for Davis County.

17. Capacity of Signers. Each individual executing this Agreement represents and warrants: (i) that he or she is authorized to do so on behalf of the respective party to this Agreement; (ii) that he or she has full legal power and authority to bind the respective party in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority; and (iii) that the execution, delivery, and performance by the respective party of this Agreement will not constitute a default under any agreement to which such party is a party.

IN WITNESS WHEREOF the authorized representatives of the parties set their hand on the date written below

GRANTEE:

Randy C. Lewis
Mayor

Date

ATTEST:

Shawna Andrus
City Recorder

GRANTOR:

Keller Family Properties, LLC
a Utah limited liability company

By: _____
Gary L. Keller
Manager

Date

**EXHIBIT “F”
ESTIMATED COSTS**