

INDIAN SCHOOL ROAD REIMBURSEMENT AGREEMENT

THIS INDIAN SCHOOL ROAD REIMBURSEMENT AGREEMENT (this "Agreement") is entered into this ____ day of _____, 2015, by and between the CITY OF GOODYEAR, an Arizona municipal corporation (the "City"), and RP PV III LLC, a Delaware limited liability company ("RPPV"). City and RPPV are sometimes herein after referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. RPPV owns certain real property in the City of Goodyear located on the north and south sides of the Indian School Road alignment between Loop 303 and the eastern boundary of Maricopa County Tax Assessor's Parcel No. 501-01-004M, which real property is legally described in Exhibit A attached hereto (the "Property").

B. RPPV is responsible for constructing half-street improvements to Indian School Road along the portion of the Property adjacent to the north side of the Indian School Road alignment (the "Northern Indian School Road Half-Street Improvements"), *except for* one of the three lanes that will comprise the entire Northern Indian School Road Half-Street Improvements.

C. RPPV is also responsible for constructing half street improvements to Indian School Road along the portion of the Property adjacent to the south side of the Indian School Road alignment (the "Southern Indian School Road Half-Street Improvements"), *except for* one of the three lanes that will comprise the entire Southern Indian School Road Half-Street Improvements.

D. The City is responsible for constructing (i) one of the three lanes that will comprise the entire Northern Indian School Road Half-Street Improvements (i.e., the lane that is not RPPV's responsibility as described in Recital B above); (ii) one of the three lanes that will comprise the entire Southern Indian School Road Half-Street Improvements (i.e., the lane that is not RPPV's responsibility as described in Recital C above); and (iii) a raised median, without landscaping, between the eastern boundary of Maricopa County Tax Assessor's Parcel No. 501-01-004M east to Sarival Avenue (all of the foregoing being hereinafter collectively referred to as the "City Indian School Road Improvements").

E. The improvements comprising the Northern Indian School Road Half-Street Improvements, the Southern Indian School Road Half-Street Improvements and the City Indian School Road Improvements (collectively, the "Project Improvements") are described with particularity in the plans entitled "Paving, Grading, and Storm Drain Improvement Plans for West Indian School Road" approved by the City Engineer on March 25, 2015 (such plans, subject to any modification thereof as may hereafter be approved by the City Engineer, being hereinafter referred to as the "City Approved Plans").

F. RPPV is undertaking the construction of various improvements in connection with the development of the Property, including the completion of the improvements to Indian School Road adjacent to the Property. The Parties have determined that it would be beneficial to both Parties to have RPPV construct all of the Project Improvements (including the City Indian School Road Improvements) pursuant to a single construction project. The Parties have also determined that the City Indian School Road Improvements will constitute one-third (1/3) of the overall cost of the entire Project Improvements.

G. As a result of the foregoing, the parties now desire to enter into this Agreement in order to set forth the terms on which (i) RPPV will construct and complete the Project Improvements, and (ii) the City will reimburse RPPV for a portion of the cost of the Project Improvements, all in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RPPV and the City agree as follows:

1. Incorporation of Recitals. The Recitals stated above are true and correct and are incorporated herein by this reference.

2. Effective and Expiration Date. This Agreement shall become effective (the "Effective Date") on the later of the two dates on which each Party executes this Agreement, as set forth below its signature. The City Clerk of the City of Goodyear is authorized to insert (and shall insert) the Effective Date on the first page of this Agreement, following the execution of this Agreement by both Parties. This Agreement shall automatically terminate and expire at the earlier of (i) the completion of the Project Improvements (as evidenced by the City's issuance of a Letter of Acceptance accepting the Project Improvements for maintenance by the City), or (ii) thirty (30) months from the Effective Date of this Agreement, which shall be extended by the amount of any extension of time allowed for the completion of the Project Improvements pursuant to Section 3.4. Such automatic termination and expiration shall not release the City from its obligation to pay any amount due and owing to RPPV under this Agreement which then remains unpaid. Notwithstanding the foregoing automatic termination and expiration, each Party agrees to join in the execution, delivery and recordation, within ten (10) days after request by the other Party, of an instrument confirming such expiration and termination.

3. The Project.

3.1 RPPV agrees to construct the Project Improvements or cause the Project Improvements to be constructed in accordance with the City Approved Plans. In addition, the construction of the Project Improvements shall comply with the best standards and practices as identified in City of Goodyear Engineering Department Design Standards & Policy Manual and with all other applicable federal, state, and local laws, rules, regulations, and requirements, including permit requirements.

3.2 RPPV shall comply with applicable state of Arizona and/or City of Goodyear public bid requirements, including, but not limited to Title 34 of the Arizona Revised Statutes for any work on the Project Improvements for which reimbursement is to be provided by the City pursuant to this Agreement, and such compliance shall be a condition precedent to the City's reimbursement obligation under this Agreement.

3.3 RPPV shall enter into the contract(s) for the work and materials comprising the Project Improvements (each, a "Contract"). Each Contract shall include the following minimum terms:

3.3.1. require that the Project Improvements under such Contract be constructed consistent with the City Approved Plans; and

3.3.2. require the approval of the City Engineer for any changes to such Contract that will result in a deviation from the City Approved Plans; and

3.3.3. require that the Project Improvements under such Contract be constructed in a good and workmanlike manner; and

3.3.4. require the contractor under such Contract to warrant that the completed Project Improvements under such Contract are built in accordance with the City Approved Plans identified in such Contract; and

3.3.5. require the contractor under such Contract to post payment bonds guaranteeing payments to all of its subcontractors; and

3.3.6. identify the City of Goodyear as a third party beneficiary of such Contract; and

3.3.7. require the contractor to: (a) defend, indemnify, save and hold harmless the City of Goodyear, its officials, directors, officers, employees, attorneys, agents, and representatives from and against any and all claims, actions, enforcement proceedings, liabilities, injuries, death, losses, damages, judgments and/or expenses of any kind (including, but not limited to, costs of claim processing, investigation, litigation, attorneys' fees, court costs, and costs of appellate proceedings) (hereinafter referred to as "Claims") to the same extent as the foregoing is provided to RPPV pursuant to such Contract.

3.4 Contract(s) for the construction of the Project Improvements shall be entered within six (6) months of the Effective Date of this Agreement. The construction of the Project Improvements shall be completed within twenty-four (24) months after the Effective Date of this Agreement (subject to extension due to due to weather, acts of God, unavailability or shortage of labor or materials, national emergency, fire or other casualty, natural disaster, war, terrorist acts, riots, acts of violence, labor strike, or other cause beyond the reasonable control of RPPV).

3.5 RPPV shall fulfill the City's obligations pursuant to A.R.S. § 9-461.14(A), which sets forth requirements that must be followed if projects that are funded in whole or in part with public funds that may impact existing utilities. The City shall fulfill the City's obligations pursuant to A.R.S. § 9-461.14(B).

3.6 After final acceptance by the City of the Project Improvements (as evidenced by issuance of the City's Letter of Acceptance), the City shall be responsible for operating and maintaining the Project Improvements.

4. Reimbursements.

4.1 Provided the Project Improvements are procured, designed and constructed pursuant to the terms of this Agreement, and subject to RPPV's compliance with the other terms and conditions of this Agreement, the City agrees to reimburse RPPV for the City Indian School Road Improvements in an amount equal to one-third (1/3) of the actual costs incurred by RPPV for the design and construction of the Project Improvements, subject to the following:

- The City's reimbursement obligations are limited to the actual costs incurred for the line item categories on Exhibit B attached hereto, which exhibit reflects estimated costs for the project. Exhibit B is attached hereto solely for the purpose of delineating the types of line item costs for which the City will provide reimbursement hereunder, it being understood by the Parties that actual costs of those line items may vary from the estimate in Exhibit B.
- The City's reimbursement obligation hereunder is capped at \$500,000.
- The City's reimbursement obligation shall be due and payable on or before fifteen (15) days after the date on which (i) RPPV has provided to the City the documentation under Paragraph 4.2, and (ii) the City has completed its final inspection of the Project Improvements and RPPV has delivered written notice to the City stating that all punch-list items noted in that inspection have been completed.

4.2 RPPV shall provide documentation as reasonably requested by the City to substantiate compliance with statutory procurement requirements and the costs of the City Indian School Road Improvements.

5. Incorporation of Exhibits. All Exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

6. Conflicts of Interest. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511, as amended. In the event that the City elects to exercise its rights under A.R.S. § 38-511, as amended, the City agrees to immediately give notice thereof to RPPV.

7. No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between RPPV and the City. No term or provision of this Agreement is intended to, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no other person, firm, organization or corporation shall have any right or cause of action hereunder.

8. Notices and Filings. Any and all notices, filings, approvals, consents or other communications required or permitted by this Agreement shall be given in writing and personally delivered or sent by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

The City:

City of Goodyear
14455 W. Van Buren Street, Suite D101
Goodyear, AZ 85338
ATTN: Director of Engineering Department

copy to:

City of Goodyear
ATTN: City Attorney
190 North Litchfield Road
Goodyear, Arizona 85338
ATTN: City Attorney

RPPV:

RPPV III LLC
6720 N. Scottsdale Rd., Ste 250
Scottsdale, Arizona 85352
ATTN: Sean Walters

copy to:

Maguire, Pearce & Storey, PLLC
2999 N. 44th Street, Suite 650
Phoenix, Arizona 85018
ATTN: Lesa J. Storey

or to any other addresses as any of the Parties hereto may from time to time designate in writing and deliver in a like manner. Notices, filings, consents, approvals and communications shall be deemed to have been given as of the date of delivery if hand delivered, or as of twenty-four (24) hours following deposit in the U.S. Mail, postage prepaid and addressed as set forth above.

9. Further Acts. Each of the Parties shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

10. Representations and Warranties by RPPV. RPPV hereby represents and warrants to the City that (i) RPPV is a duly organized, validly existing limited liability company authorized to do business in the State of Arizona, and (ii) the transactions contemplated by this Agreement and the execution and delivery of all documents required herein, and RPPV's performance hereunder, have been duly authorized pursuant to all requisite approval requirements under its limited liability company agreement.

11. Representations and Warranties by the City. The City hereby represents and warrants to RPPV that (i) the City is a duly organized, validly existing municipal corporation in the State of Arizona, and (ii) the transactions contemplated by this Agreement and the execution and delivery of all documents required herein, and the City's performance hereunder, have been duly authorized by all requisite actions of the City.

12. Authority. Each Party signing this Agreement represents that it has full legal power, authority and right to execute, deliver and perform its obligations under this Agreement and each Party's performance hereunder and that the transaction contemplated hereby and the execution of the Agreement has been duly authorized by all requisite actions on the part of such Party and no remaining action is required to make this Agreement binding on the Parties.

13. Requirements for Modifications. This Agreement may not be changed, modified or rescinded except in writing as agreed to and signed by the Parties hereto.

14. Headings. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

15. Representation of Counsel. The terms and provision of this Agreement represent the result of negotiations between the Parties, each of whom has been represented by counsel of its own choosing, and none of whom has acted under any duress or compulsion, whether economic or otherwise. Consequently, the terms and provisions of this Agreement shall be construed according to their customary meanings, and the Parties hereby waive the application of any rule of law (common law or otherwise) that ambiguous or conflicting terms are to be resolved against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of same.

16. No Waivers for Delay. Neither the failure nor delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, nor any act, omission or course of dealing between the Parties shall operate as a waiver or estoppel of any right, remedy or condition under this Agreement. The Parties may waive rights, remedies, and/or conditions provided in this Agreement only by a writing executed by the Party or Parties against whom the waiver is sought to be enforced

17. Mediation. If a dispute arises out of or is related to this Agreement or breach thereof, the Parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation, or some other form of dispute resolution. In the event the Parties cannot agree upon the selection of a mediator within seven (7) days, any Party may request a presiding judge of the Maricopa County Superior Court to assign a mediator from a list of Mediators maintained by the Arizona Municipal Risk Retention Pool. The terms of this Paragraph 17 shall survive the expiration and/or termination of this Agreement.

18. Venue. The Parties agree that any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be governed by the laws of the State of Arizona. The Parties further agree that the venue for any dispute, controversy, claim or cause of action arising out of or related to this Agreement shall be Maricopa County and that any action filed shall be heard in a court of competent jurisdiction located in Maricopa County. The Parties expressly waive the right to object, for any reason, to the venue of Maricopa County. The terms of this Paragraph 18 shall survive the expiration and/or termination of this Agreement

19. Waiver of Jury Trial. **UNLESS EXPRESSLY PROHIBITED BY LAW, EACH OF THE CITY AND RPPV KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS AGAINST THE OTHER PARTY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND/OR THE TRANSACTIONS IT CONTEMPLATES, AND AGREES THAT ANY AND ALL ACTIONS OR OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS IT CONTEMPLATES, AND/OR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THIS WAIVER APPLIES TO ANY ACTION OR OTHER LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT TORT OR OTHERWISE. EACH PARTY ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COMPETENT COUNSEL.** The terms of this Paragraph 19 waiving the right to a jury trial shall survive the expiration and/or termination of this Agreement.

20. Attorneys' Fees. In the event of any litigation between the Parties in connection with this Agreement, the Party prevailing in such action shall be entitled to recover from the other Party all of its costs and fees of litigation, whether or not they would be recoverable costs pursuant to court rule, together with reasonable attorneys' fees, which shall be determined by the court. In the event both Parties are awarded relief, such costs and fees shall be awarded as the court may determine. The terms of this Paragraph 20 shall survive the expiration and/or termination of this Agreement.

21. Severability. Any provision of this Agreement that is declared void or unenforceable shall be severed from this Agreement, and the remainder of this Agreement shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses any of the Parties from undertaking any contractual commitment to perform any act hereunder, this Agreement shall remain in full force and effect, but the provision

requiring an act to be performed hereunder shall be deemed to permit the Parties to perform the action at its discretion, if such a construction is permitted by law. The Parties hereto agree that they will, in any case, work to implement and abide by the intent of this Agreement except where specifically prohibited by law.

Signatures, Acknowledgments and Exhibits Continued on Following Pages

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY:

CITY OF GOODYEAR,
an Arizona municipal corporation

By: _____

Brian Dalke,
Its: City Manager

Date of City execution: _____, 2015

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by Brian Dalke, the City Manager of the City of Goodyear, an Arizona municipal corporation, on behalf of said corporation.

Notary Public

My Commission Expires:

ATTEST:


Approved as to Form

City Clerk

City Attorney

RPPV:

RP PV III LLC,
a Delaware limited liability company

By: 
Sean T. Walters, its Vice President

Date of RPPV execution: June 10, 2015

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 10th day of June, 2015, by Sean T. Walters, the Vice President of RP PV III LLC, a Delaware limited liability company, on behalf of said company.


Notary Public

My Commission Expires:

3/14/2017



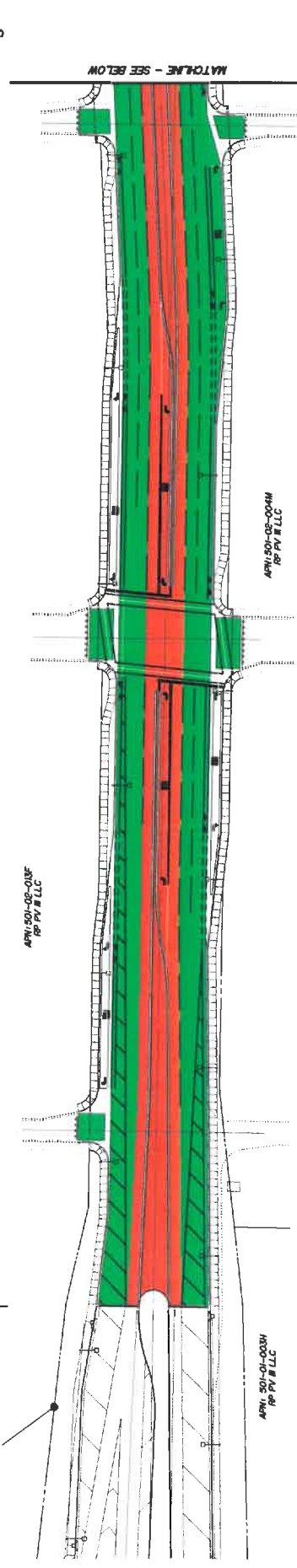
EXHIBIT A
Legal Description of RPPV Property

(see attached)

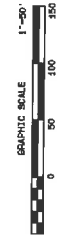
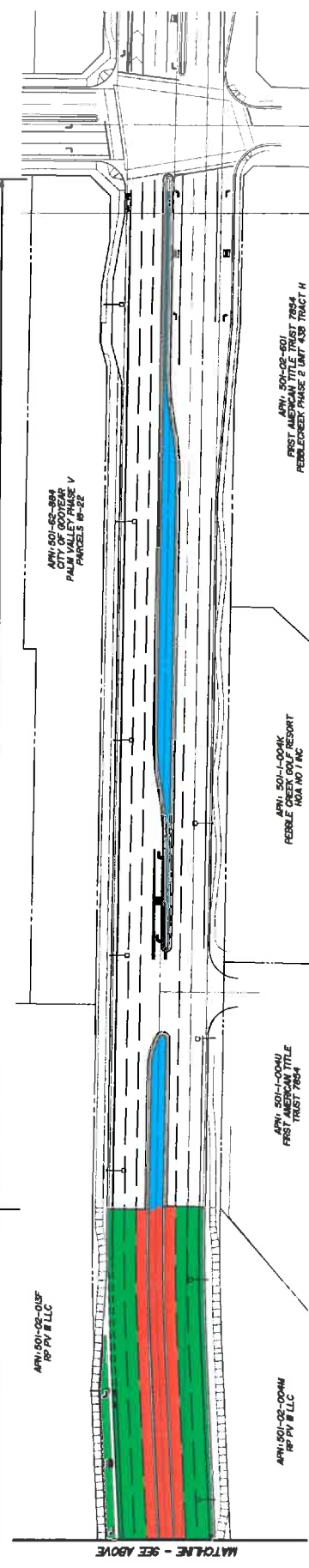


ADIAN SCHOOL ROAD
PER PROPOSED IMPROVEMENTS

INDIAN SCHOOL ROAD
PER SR 303 IMPROVEMENTS



INDIAN SCHOOL ROAD
PER PROPOSED MEDIAN IMPROVEMENTS

**INDIAN SCHOOL ROAD
PER PROPOSED IMPROVEMENTS**

CITY OF GOODYEAR BENCH MARK

CITY OF GOODYEAR BRASS CAP IN HAWKSHOLE INTERSECTION
OF BARNALL AVENUE AND CAMELBACK ROAD THE NORTHEAST
CORNER OF SECTION 84, T8N, R9E.
ELEVATION = 1282.45 FEET (NAVD 83 DATUM) (FIELD)
ELEVATION = 1281.9 FEET (NAVD 83 DATUM)

**INDIAN SCHOOL ROAD
CITY OF GOODYEAR, ARIZONA**

**INDIAN SCHOOL ROAD
DEVELOPMENT AGREEMENT EXHIBIT**

GOODWIN!		DATE:		DATE:	
MARSHALL		OCTOBER 1984		DATE:	
		DATE:		DATE:	

PLANNING-PLANNING-SYSTEM

SHEET: 1 of 1

THIS DOCUMENT IS FOR
ATTENTION RENEWAL ONLY.
IT IS NOT ATTACHED FOR
ADAMS, CONSTRUCTION,
OR PLANT PURPOSES.

Two writing days before you die
CALL FOR THE BLUE STAKES
802-263-1100
1-800-STAKE-IT
CENTRAL MISSOURI COUNTY

INDIAN SCHOOL ROAD

CONTACT:
RP PVM LLC
6720 North Scottsdale Road
Suite Number 250
Scottsdale, AZ 85253-4424
Telephone 480-905-0770

LEGEND



**"RP" PV 11 LLC" PAVEMENT
(2 OUTER LANES IN EACH DIRECTION,
RIGHT TURN LANES, & DRIVEWAYS)**



"CITY OF GOODYEAR" PAYMENT
(1 INNER LANE IN EACH
DIRECTION, LEFT TURN LANES,
MEDIAN BREAK & MEDIAN)



MEDIAN IMPROVEMENTS

EXHIBIT B

Line Item Categories

	Indian School Road, Loop 303 To Sarival Avenue		
1	Permits and fees	\$	18,853
2	Utility oeversize reimbursement	\$	-
3	Clearing and grubbing	\$	36,625
4	Plant salvage	\$	-
5	SWPPP	\$	14,000
6	Dust control	\$	11,500
7	Grading	\$	82,950
8	Parkway grading	\$	-
9	Import/export	\$	-
10	Inspection and testing	\$	12,720
11	Staking	\$	12,720
12	Sewer installation	\$	-
13	Water pipe	\$	-
14	Water installation	\$	-
15	Non-potable installation	\$	-
16	Well development	\$	-
17	Dry utility installation	\$	45,000
18	Street light installation	\$	30,600
19	Traffic signal pullboxes	\$	-
20	Paving installation	\$	681,109
21	Concrete installation	\$	280,760
22	Paving and concrete reapiir	\$	10,000
23	Storm drain pipe	\$	-
24	Storm drain installation	\$	16,320
25	Landscape	\$	-
26	Retaining and view walls	\$	-
27	Automatic gates	\$	-
28	Entry monuments	\$	-
29	Mailboxes	\$	-
30	Signage	\$	35,981
31	Prohct management, development fees	\$	31,065
32	Golf course		
33	Amenitie-Ramada, rest rooms		
34	Amenities-FFE		
35	Pool. Spa		
36	Courts		
37	Amenities-site		
38	Amenities-Site lighting		
39	Property maintenance		
40	Builder reimbursements		
41	warranty		
42	Bonds		
43	Permit Fees (based on Permit Fee Scheudle)	\$	17,276
44	Plan Review fees (to date)	\$	8,180
45	Engineering Design (Goodwin and Marshall)	\$	43,960
46	Engineering Design - Remaining on Contract	\$	2,100
47	Street Light Design (GTR Engineering)	\$	2,150
48	Other permits and approvals	\$	10,000
	Sales tax	\$	53,433
		\$	1,457,302
	City portion at 1/3	\$	485,767
	Sunbelt portion at 2/3	\$	971,534.91