

AGREEMENT

THIS AGREEMENT is made and entered into this 7th day of July, 1998, by and between **OGDEN CITY**, a municipal corporation ("Ogden City") and **MUIRBROOK AND GODDARD, LLC**, a Utah Limited Liability Company, ("Muirbrook"), Lynn C. Muirbrook, and John R. Goddard.

IN CONSIDERATION of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. SUBJECT OF AGREEMENT

1.01 Purpose of Agreement. The purpose of this Agreement is to set forth the terms and conditions upon which Ogden City will allow Muirbrook to connect sanitary sewer and storm drain lines for Silver Springs Subdivision situated in the municipality of North Ogden into the respective sanitary and storm drain systems located within and operated by Ogden City and in furtherance of the Real Estate Purchase Contract between Ogden City and Muirbrook. Such connection is of substantial benefit to Muirbrook, Lynn C. Muirbrook, and John R. Goddard.

1.02 Parties to the Agreement.

(A) Ogden City. Ogden City is a municipal corporation, having its principal office at 2484 Washington Boulevard, Ogden, Utah 84401.

(B) Muirbrook and Goddard, LLC. Muirbrook and Goddard, LLC is a Utah Limited Liability Company, having its principal office at 1333 East 2550 North, North Ogden, Utah 84414.

1.03 Muirbrook Property. The Muirbrook property consists of approximately 19 acres identified by Weber County tax serial number 11-003-0001 and more particularly described in Exhibit A, attached hereto and incorporated by reference.

1.04 Special Improvement District. The Special Improvement District referred to herein is the Mountain Road Special Improvement District (S.I.D.), more particularly described in Exhibit B, attached hereto and incorporated by reference.

1.05 General Understanding. The parties acknowledge that this agreement memorializes those agreements and understandings between Ogden City and Muirbrook related to Muirbrook's petition to connect the sanitary sewer and storm sewer lines from Silver Springs Subdivision situated in North Ogden, Utah, to sanitary sewer and storm sewer systems recently constructed within Ogden City and in furtherance of the Real Estate Purchase Contract earlier entered into between Muirbrook and Ogden City.

1740887 BK2104 PG2899
DOUG CROFTS, WEBER COUNTY RECORDER
07-DEC-00 902 AM FEE \$.00 DEP JPM
REC FOR: OGDEN.CITY

11

The parties agree that Muirbrook shall be allowed to connect to the sanitary sewer and storm drain systems subject to (1) execution of an interlocal government agreement between Ogden City and North Ogden City regarding the provision of such services, (2) Muirbrook, his successors or assigns, paying a prorata share of the S.I.D. improvements; and (3) Muirbrook, his successors or assigns, paying the costs to extend sanitary sewer and storm drain systems for Silver Springs Subdivision to the sanitary sewer and storm drain lines constructed as part of the S.I.D. improvements, paying any connection fees, monthly billings or costs required by ordinance or administrative order related to such connections.

II. COST OF IMPROVEMENTS

2.01 Cost of Improvements. Muirbrook shall, by means of a special assessment or charge against the Muirbrook properties, participate in paying a prorata share of the cost of constructing sanitary sewer and storm sewer improvements in the S.I.D.

2.02 Method of Assessment. The improvement costs to be levied against the benefitting Muirbrook properties shall be on a per acre basis. The per acre cost has been estimated by the Ogden City Engineer to be as follows:

<u>Improvements</u>	<u>Estimated Assessment</u>	<u>Method of Assessment</u>
Storm Drainage	\$3,027	Per acre basis
Sanitary Sewer	2,122	Per acre basis

The final and total cost of constructing the improvements may be higher or lower than the engineer's estimated cost. It is agreed among and between the parties to this Agreement that Muirbrook's payments shall be based upon the estimated cost per acre of the improvements plus three percent (3%). The adjusted cost per acre is: Storm drainage -- \$3,118.00; and Sanitary Sewer -- \$2,186.00, or the actual finally determined fixed amount, whichever is lower.

2.03 Method of Payment. Muirbrook shall pay the cost of improvements in ten (10) equal installments with interest on the unpaid balance at the same rate or rates fixed by the Ogden City Treasurer for the S.I.D, or the whole or any part of the cost may be paid without interest within fifteen (15) days after the ordinance levying the assessment on S.I.D. properties becomes effective. The cost of improvements shall be allocated on an equitable basis to the individual lots created by Muirbrook, or its successors, with the aggregate total of such lots not to exceed sixty-one (61), and said allocation shall be "due on sale" of the individual lots, regardless of whether or not the lot is built upon. The parties agree that no building permit shall be issued by North Ogden City until and unless the per lot allocation has been paid in full. The "due on sale" proceeds shall apply to the annual payment in, and only in, the year in which the sale occurs. Payment of the per lot assessment shall be evidenced by an executed lien release recorded in the Weber County Records Office, with such lien release to be in form satisfactory to Ogden City and its attorneys. Annual installment

payments shall commence December 1, 1998. With respect to Silver Springs, Phase I, consisting of 18 lots, individual lots may be released by payment of \$1,490.42, per individual lot.

2.04 Security. As security for the financial assistance provided by Ogden City in facilitating, constructing and financing the storm sewer and sanitary sewer improvements, Muirbrook shall execute a promissory note in the total amount of the sanitary sewer and storm drain outstanding obligation, secured by a deed of trust on the entire parcel described in Exhibit A. The promissory note and trust deed shall be prepared by and in form and content satisfactory to the City. Partial releases of the trust deed shall be delivered on a lot-by-lot basis as payment in full for specific lots is received.

Ogden City agrees, subject to Muirbrook being in full compliance with all terms and conditions of this agreement and annexed Promissory Note and Trust Deed, to subordinate to a second position its interest in that certain property described in Exhibit "A" to this Agreement so that development financing may be obtained by Muirbrook. The subordination instrument shall be in form and content acceptable to the Ogden City Attorney.

2.05 Compliance with Laws. Muirbrook shall pay when due all taxes, assessments and governmental charges levied or assessed upon Muirbrook or levied or assessed against Exhibit A property as such taxes and charges become due and payable. Muirbrook shall comply with all applicable North Ogden planning and zoning requirements.

2.06 Events of Default. In the event Muirbrook does not comply with the terms of this agreement, the entire accelerated allocation assigned to the Muirbrook property together with interest at a rate of 12% per annum which shall accrue from the event of default shall be due and payable within 30 days of Muirbrook receiving written notice from Ogden City of such default. Events of default are described as follows:

- (i) the occurrence of any default by Muirbrook in any representations or warranties made herein; or
- (ii) any default by Muirbrook in the observance of any obligation undertaken pursuant to this Agreement and which remains uncured after written notice from Ogden City or North Ogden City to Muirbrook; or
- (iii) a general assignment for the benefit of creditors, any voluntary filing under any bankruptcy law or law for the benefit of creditors, or the entry of an order for relief in the case of an involuntary petition in bankruptcy shall constitute a default hereunder.

III. BILLING FOR SERVICES

3.01 **Billing.** It is understood and agreed that the monthly billing for sanitary and storm sewer services and the periodic payments by North Ogden City to Ogden City to shall be in accordance with that certain Interlocal Cooperation Agreement Between North Ogden City and Ogden City for the Provisions of Sanitary and Storm Sewer Services for the Silver Springs Subdivision dated the ___ day of _____, 1998.

IV. MISCELLANEOUS

4.01 **Miscellaneous.**

(A) In the event any one or more of the provisions contained in this Agreement, or in any documents which are the subject of this Agreement, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, unenforceability or illegality shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such provision had never been contained herein or therein.

(B) Ogden City may at any time extend the time of payment of the principal and/or interest under any of the terms and conditions of this Agreement and any extension so granted shall be deemed made in pursuance of this Agreement and not in modification hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement this
7th day of July, 1998.



ATTEST:


Florinda J. Bellett
City Recorder

OGDEN CITY, a Utah Municipal Corporation

By: Rocky J. Fluhart
Rocky J. Fluhart, Chief Administrative Officer

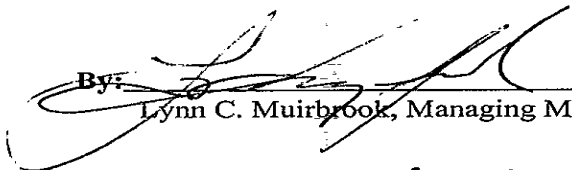
E# 1740887 BK2104 PG2902

APPROVED AS TO FORM:

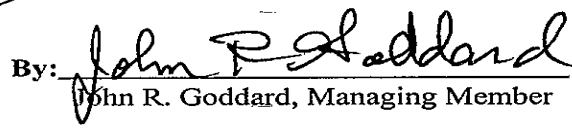


City Attorney

MUIRBROOK AND GODDARD, LLC

By: 

Lynn C. Muirbrook, Managing Member

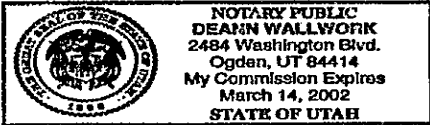
By: 

John R. Goddard, Managing Member

E# 1740887 BK2104 PG2903

ACKNOWLEDGMENTS

On this 7th day of July, 1998, personally appeared before me, Rocky J. Fluhart and Gloria J. Berrett, whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that Rocky J. Fluhart is the Chief Administrative Officer and Gloria J. Berrett is the City Recorder of Ogden City, a municipal corporation, and that the foregoing document was signed by them in behalf of said Ogden City, by authority, and said Rocky J. Fluhart and Gloria J. Berrett acknowledged to me that said Ogden City executed the same.

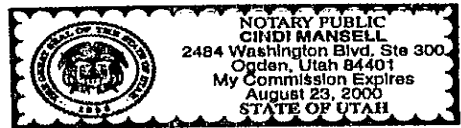


Deann Wallwork
NOTARY PUBLIC

STATE OF UTAH)
) :SS
COUNTY OF WEBER)

On the 1st day of July, 1998, personally appeared before me Lynn C. Muirbrook and John R. Goddard, the signers of the foregoing instrument, who duly acknowledged that they executed the same in their capacity as Managing Members of Muirbrook and Goddard, L.L.C., a Utah Limited Liability Company.

Cindi Mansell
NOTARY PUBLIC



1740887 BK2104 PG2904

EXHIBIT "A"

A part of the Northeast Quarter of Section 4, Township 6 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey:

Beginning at a point 423.29 feet North 89°26'08" West along the Quarter Section line from the Southeast Corner of said Quarter Section line; running thence North 89°26'08" West 1420.92 feet; thence North 0°28'58" East 590.11 feet to an existing fence; thence South 86°44'34" East 1520.53 feet along said fence to the West right-of-way line of Mountain Road; thence two (2) courses along said right-of-way line as follows; Southwesterly along the arc of a 1045.56 foot radius curve to the left a distance of 253.31 feet (Long Chord bears South 14°47'24" West 252.69 feet) and South 7°50'58" West 275.96 feet to the point of beginning.

GRANTOR DOES NOT WARRANT THE WEST APPROXIMATELY 22 FEET OF SAID PREMISES OUTSIDE THE EXISTING FENCE LINE AND EXTENSION THERETO.

11-003-0001
11-302-0001-0009
11-284-0001-0017

EXHIBIT "B"

11-205-0001-0009
11-206-0001-0009

DESCRIPTION OF THE DISTRICT

The District will be consist of the following described areas which are located within Ogden City limits:

11-275-0001-0013
11-276-0001-0010
11-257-0001-0016
11-254-0001-0010

All of Parcel ~~11-006-000~~, with the legal description as follows, located within Ogden City limits:

PART OF THE NORTHWEST QUARTER AND SOUTHWEST QUARTER OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING 128.04 FEET NORTH AND 511.50 FEET WEST OF THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 4; RUNNING THENCE SOUTH 0D15' WEST 1401.51 FEET; THENCE EAST 511.50 FEET, MORE OR LESS, TO THE EAST LINE OF THE SOUTHWEST QUARTER OF SECTION 4; THENCE NORTH 1273.47 FEET TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 4; THENCE NORTH 128.04 FEET TO A POINT EAST OF BEGINNING; THEN WEST 511.50 FEET TO BEGINNING.

All of Parcel ~~11-006-0002~~, with the legal description as follows, located within Ogden City limits:

PART OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT NORTH 660 FEET, NORTH 89D57'30" EAST 1897.66 FEET, NORTH 0D50' EAST 105 FEET AND NORTH 28D35' EAST 75.19 FEET AND NORTH 0D50' EAST 313.24 FEET AND NORTH 3D WEST 155.35 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 4; THENCE NORTH 0D50' EAST 700.51 FEET; THENCE NORTH 89D10' WEST 104.61 FEET; THENCE NORTH 76D02' WEST 61.61 FEET; THENCE NORTH 89D10' WEST 405.98; THENCE SOUTH 87D40' WEST 147.37 FEET; THENCE

11-206-0023
11-253-0001-0045
11-307-0001-0011
11-308-0001-0011

SOUTH 82D00' WEST 75.59 FEET; THENCE NORTH 62D45' WEST 85.00 FEET; THENCE NORTH 18D10' WEST 80.00 FEET TO THE MOST NORTHERLY CORNER OF LOT 11, BLOCK 12, EYRIE MEADOW SUBDIVISION NO. 2; THENCE NORTH OD51' WEST 30.00 FEET; LEAVING SAID SUBDIVISION; THENCE NORTH 89D09' EAST 369.04 FEET; THENCE NORTH 3D38'46" EAST 357.85 FEET ALONG AN EXISTING FENCE; THENCE NORTH OD17'35" EAST 251.69 FEET ALONG THE EAST EDGE OF AN EXISTING CONCRETE WALL; THENCE NORTH 89D50' EAST 683.38 FEET; THENCE SOUTH 1D20' WEST 1462.76 FEET; THENCE SOUTH 89D38' EAST 518.23 FEET; THENCE SOUTH 57.98 FEET; THENCE NORTH 89D38' WEST 703.32 FEET TO THE POINT OF BEGINNING.

All of parcel ~~11-005-0007~~, with the legal description as follows, located within Ogden City limits:

11-238-0001 to 0025 11-239-0001 to 0010 11-256-0001 to 0039

PART OF THE NORTHEAST QUARTER AND SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SECTION 4; RUNNING THENCE SOUTH 1651.65 FEET; THENCE SOUTH 83D30' EAST 1016.40 FEET; THENCE NORTH 47.52 FEET; THENCE NORTH 27D45' EAST 66 FEET; THENCE NORTH 15D EAST 145.20 FEET; THENCE NORTH 7D45' WEST 317.46 FEET; THENCE NORTH 27D30' EAST 55.44 FEET; THENCE WEST 3.58 CHAINS; THENCE NORTH 1199.22 FEET TO THE NORTH QUARTER SECTION LINE; THENCE NORTH 141.90 FEET; THENCE WEST 830.28 FEET, MORE OR LESS, TO A POINT 141.90 FEET NORTH OF BEGINNING, THENCE SOUTH 141.90 FEET TO THE BEGINNING

11-270-0025
11-277-0001 to 0019
11-278-0001 to 0012
11-288-0001 to 0019
11-303-0001 to 0023
11-278-0018, 0019, 0020

All of parcel ~~11-005-0012~~, with the legal description as follows, located within Ogden City limits:

DESC. INCOMPLETE

PART OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING 427.55 FEET WEST OF THE NORTHEAST CORNER OF SOUTHEAST QUARTER; RUNNING THENCE WEST TO THE EAST LINE OF BOARD OF EDUCATION OF OGDEN CITY PROPERTY, THENCE SOUTH 1D11' WEST 118.80 FEET; THENCE EAST TO THE WEST LINE OF MOUNTAIN ROAD; THENCE NORTH 7D22' EAST 118.80 FEET TO POINT OF BEGINNING.

All of parcel ~~11-005-0001~~, with the legal description as follows, located within Ogden City limits:

PART OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT ON THE QUARTER SECTION LINE 30 FEET WEST FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION; RUNNING THENCE SOUTH 7D22' WEST 423.45 FEET; THENCE NORTH 88D29' WEST 330.53 FEET TO EAST LINE OF COUNTY ROAD; THENCE NORTH 7D22' EAST 415.03 FEET; THENCE SOUTH 89D56'04" EAST 331.5 FEET TO THE PLACE OF BEGINNING.

All of parcel ~~11-005-0003~~, with the legal description as follows, located within Ogden City limits:

PART OF THE SOUTHEAST QUARTER OF SECTION 4, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT 15.75 CHAINS EAST: NORTH 12D27' EAST 1.41 CHAINS; NORTH 77D WEST 50.06 FEET AND NORTH 456.67 FEET FROM THE SOUTHWEST CORNER OF SAID QUARTER SECTION; RUNNING THENCE WEST 242.90 FEET; THENCE SOUTH 54D07' WEST 103.06 FEET; THENCE NORTH 7D12'06' EAST

11-268-0001 to 0016
11-269-0001 to 0023
11-270-0001 to 0025
11-278-0001 to 0027
11-279-0001 to 0031
11-294-0001 to 0023
11-005-0003

59.51 FEET. THENCE NORTH 83D28'23" EAST 167.08 FEET, THENCE NORTH 53D39'18" EAST 131.61 FEET, THENCE NORTH 45D00'09" EAST 120.21 FEET, THENCE NORTH 16D41'48" WEST 77.47 FEET, THENCE NORTH 47.52 FEET, THENCE NORTH 27 3/4D EAST 1.00 CHAIN, THENCE NORTH 15D EAST 145.20 FEET, THENCE NORTH 7 3/4D WEST 4.81 CHAINS, THENCE NORTH 27-1/2D EAST 0.84 CHAINS, THENCE WEST 3.58 CHAINS, THENCE NORTH 16.347 CHAINS TO THE SOUTHWEST CORNER OF PROPERTY CONVEYED TO THE STATE INDUSTRIAL SCHOOL OF UTAH BY DEED RECORDED IN BOOK 85, PAGE 186, THENCE EAST ALONG SAID PROPERTY TO THE WEST LINE OF MOUNTAIN ROAD, THENCE SOUTHERLY FOLLOWING THE WESTERLY LINE OF SAID MOUNTAIN ROAD, TO A POINT NORTH 13D13' EAST 574.00 FEET FROM THE SOUTH LINE OF SAID QUARTER SECTION, THENCE WEST 1008.16 FEET TO THE PLACE OF BEGINNING.

EXCEPT THAT PORTION CONVEYED TO JAY L STUBBLEFIELD AND WIFE IN BOOK 1416 OF RECORDS PAGE 103.

E# 1740887 BK2104 PG2908