

RESOLUTION NO. 2004-92

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE MAYOR TO EXECUTE REIMBURSEMENT
AGREEMENT NO. 2004-03 WITH REYNEN & BARDIS DEVELOPMENT, LLC
FOR PRIVATELY CONSTRUCTED PUBLIC FACILITIES IN THE
ELK GROVE ROADWAY FEE PROGRAM**

WHEREAS, the City of Elk Grove will allow for reimbursements of its roadway fees included in the Elk Grove Roadway Fee Program for facilities constructed by developers; and

WHEREAS, Reynen & Bardis Development, LLC will construct traffic signal and associated roadway improvements that are included in the Roadway Fee Program and will be eligible for reimbursements under the conditions of the Reimbursement Agreement No. 2004-03; and

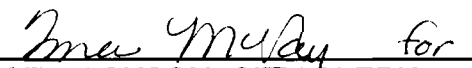
NOW, THEREFORE, BE IT RESOLVED the City Council of the City of Elk Grove hereby authorizes the Mayor to execute Reimbursement Agreement No. 2004-03 with Reynen & Bardis Development LLC.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 19th day of May 2004.



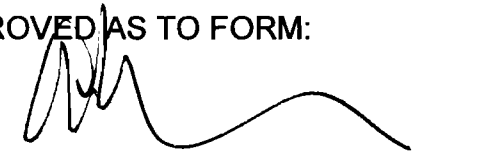
SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:



PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

CITY OF ELK GROVE
REIMBURSEMENT AGREEMENT
FOR PRIVATELY CONSTRUCTED PUBLIC FACILITIES INCLUDED IN THE
ELK GROVE ROADWAY FEE PROGRAM

Agreement No. RC2004-03

This Agreement, dated as of _____, 2004, by and between the City of Elk Grove, a municipal corporation (the "City"), and Reynen & Bardis Development, LLC (the "Developer"),

WITNESSETH:

WHEREAS, Chapter 16.95 of the Elk Grove Municipal Code established development fees and special funds as part of the City's Roadway Fee Program (the "Roadway Fee Program");

WHEREAS, Chapter 16.95.090 of the Elk Grove Municipal Code authorizes the City to enter into reimbursement agreements for the construction of any facilities designated in the Roadway Fee Program upon application of property developers;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Developer hereby agree as follows:

Section 1. Project Scope

Subject to the terms of this Agreement, the City agrees to provide reimbursement of funds to the Developer for the acquisition and installation of the improvements listed in Exhibit A (the "Improvements").

Section 2. Reimbursement Amount

The City agrees to reimburse the Developer for acquisition and/or installation of the Improvements an amount based on the lesser of:

- i) the actual construction cost of eligible facilities, as determined by the City, in its sole discretion, through its review of the construction contract for the Improvements, plus an allowance for soft costs in the amount of twenty-five (25) percent of the actual construction cost determined by the City, and.
- ii) the total of allowable costs, based on the cost schedules set forth in the Roadway Fee Program and amendments and updates thereto, listed in Exhibit B (unless this total amount is increased pursuant to an amendment to this Agreement).

Funds will be reimbursed without interest.

Section 3. Reimbursement Timing

- a. **Reimbursement Priority.** As set forth in Chapter 16.95 of the Elk Grove Municipal Code, developers who have constructed improvements reimbursable from one or more of the funds associated with the Roadway Fee Program (the Fund(s)) shall be reimbursed in the order in which their respective improvements are formally accepted by the City, as the City determines there are adequate monies in the corresponding Fund(s).
- b. **Payment Preconditions.** No payment from the Fund(s) shall be made unless all of the following conditions, together with any other conditions set forth in this Agreement, have been met to City's satisfaction:
 - (i) City has given final approval to and has formally accepted the Improvements as complete;
 - (ii) City, in its sole discretion, has determined that there are adequate monies available in the applicable Fund(s) associated with the Roadway Fee Program.

Section 4. Process and Procedures

Developer's construction contracts, construction work, and requests for reimbursement relating to the Improvements shall be performed in conformance with the City's most current "Reimbursement Policies and Procedures for Privately Constructed Public Facilities" document, which is available from the City Engineer. Developer shall be responsible for complying with all applicable laws, codes, and regulations relating to contracting and construction procedures for publicly funded public works projects.

Section 5. Limited City Obligation

The obligations arising from this Agreement are neither a debt of the City nor a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the fees collected for the Improvements. Neither the General Fund nor any other fund of the City, except the applicable fund(s) associated with the Roadway Fee Program, shall be liable for the payment of any obligations arising from this Agreement. The credit or taxing power of the City is not pledged for the payment of any obligation arising from this Agreement. The Developer shall not compel the forfeiture of any of the City's property to satisfy any obligations arising from this Agreement.

Section 6. Conveyance of the Improvements

Once the Improvements are accepted and deemed satisfactory by the City, the Improvements automatically become the property of the City. The Developer shall take any and all actions necessary to convey to the City and vest in the City full, complete and clear title to the Improvements.

Section 7. Delivery of Plans and Specifications

Prior to final acceptance of the Improvements by the City, the Developer shall deliver to the City copies of all plans, specifications, shop drawings, as-built plans, operating manuals, service manuals, warranties and other documents relating to the design, construction, installation, and operation of the Improvements.

Section 8. Liens, Claims, and Encumbrances

Prior to final acceptance of the Improvements by the City, the Developer shall provide a written guarantee and assurance to the City that there are no liens, claims, or encumbrances on the Improvements, together with unconditional final releases from all contractors and material suppliers, and with copies of invoices and corresponding checks issued by the Developer for all items for which reimbursement is requested under this Agreement for the Improvements. Notwithstanding any other provision or term of this Agreement, the City shall have no obligation to make any reimbursement payments until the Developer has cleared any and all liens, claims and encumbrances from the Improvements and provided the required documentation, guarantee and assurance in writing, to the satisfaction of the City.

Section 9. Warranty and Repair

(a) Warranty. The Developer hereby warrants the Improvements as to materials and workmanship and, should any failure of the Improvements occur within a period of one year after final acceptance thereof by the City, the Developer shall promptly cause the needed repairs to be made without cost to the City.

(b) Repair. The City is hereby authorized to make such repairs if the Developer fails to make or undertake with due diligence the aforesaid repairs within twenty (20) days after the City has given written notice of such failure. In case of emergency where, in the sole opinion of the City Engineer, delay would cause serious hazard to the public, the necessary repairs may be made or lights, signs and barricades erected, without prior notice to the Developer. In all cases of failure of the Improvements within the warranty period where the City has taken action in accordance with this paragraph, the Developer shall reimburse the City as appropriate for all costs, direct and indirect, incurred by the City.

Section 10. Indemnity

The Developer, by execution of this Agreement, specifically agrees to assume the defense of, indemnify, and hold harmless the City and its officers, employees, consultants, and agents from and against all liabilities, actions, damages, claims, losses or expenses of every type and description, including attorneys' and consultants' fees and expenses (collectively "Liabilities"), to which they may be subjected or put, by reason of, or resulting from, the acquisition or installation of the Improvements, except Liabilities arising from the sole negligence or willful misconduct of the City. This indemnification shall extend to Liabilities occurring after this Agreement is terminated as well as while it is in force.

Section 11. No Third Party Beneficiary

The City and the Developer enter into no contract or agreement with any general contractor, subcontractor, or other party by entering into this Agreement; nor is any general contractor, subcontractor, or other party a third party beneficiary of this Agreement; and the City shall have no obligation to pay any general contractor, subcontractor, or other party for any work that such general contractor, subcontractor, or other party may do pursuant to the plans and specifications for the Improvements.

Section 12. Notice

Any notice, payment, or instrument required or permitted by this Agreement to either party shall be deemed to have been received when personally delivered to that party or seventy-two (72) hours following deposit of the same in any United States Post Office, first class, postage prepaid, addressed as follows:

City:	City of Elk Grove Public Works 8400 Laguna Palms Way Elk Grove, CA 95758 Attn: City Engineer	With a copy to:	City of Elk Grove Administrative Services 8400 Laguna Palms Way Elk Grove, CA 95758 Attn: Finance Administrator
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Developer: Reynen & Bardis Development, LLC
9848 Business Park Drive, Suite H
Sacramento, CA 95827
Attn: Gary Parker

Either party hereto may, by notice given hereunder, designate a different address to which subsequent notices, payments, and instruments shall be delivered to it.

Section 13. Term

The term of this Agreement shall start as of the date first written above and shall remain in effect until all the terms and conditions contained in this Agreement have been satisfied.

Section 14. Captions

Captions to Sections of this Agreement are for convenience purposes only, and are not part of this Agreement.

Section 15. Severability

If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

Section 16. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. The City's agreement to carry out the requirements of this Agreement is made in reliance upon the reputation, creditworthiness, and expertise of the Developer. Therefore, the Developer's interests herein may not be assigned without the prior, express, written consent of the City.

Section 17. Governing Law; Venue

This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this

Agreement, the venue for any legal action shall be with the appropriate court in the County of Sacramento, State of California.

Section 18. Entire Agreement

This Agreement contains the entire agreement between the parties with respect to the matters contained herein and may be amended only by subsequent written agreement signed by both parties.

Section 19. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but both of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and the year first written above.

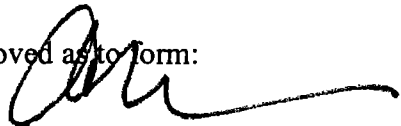
CITY OF ELK GROVE

By: _____
Sophia Scherman, Mayor

Attest:

Peggy E. Jackson, City Clerk

Approved as to form:



Anthony Manzanetti, City Attorney

REYNEN & BARDIS DEVELOPMENT, LLC

By: _____
Signature

John L. Reynen

Print Name

Manager

Title

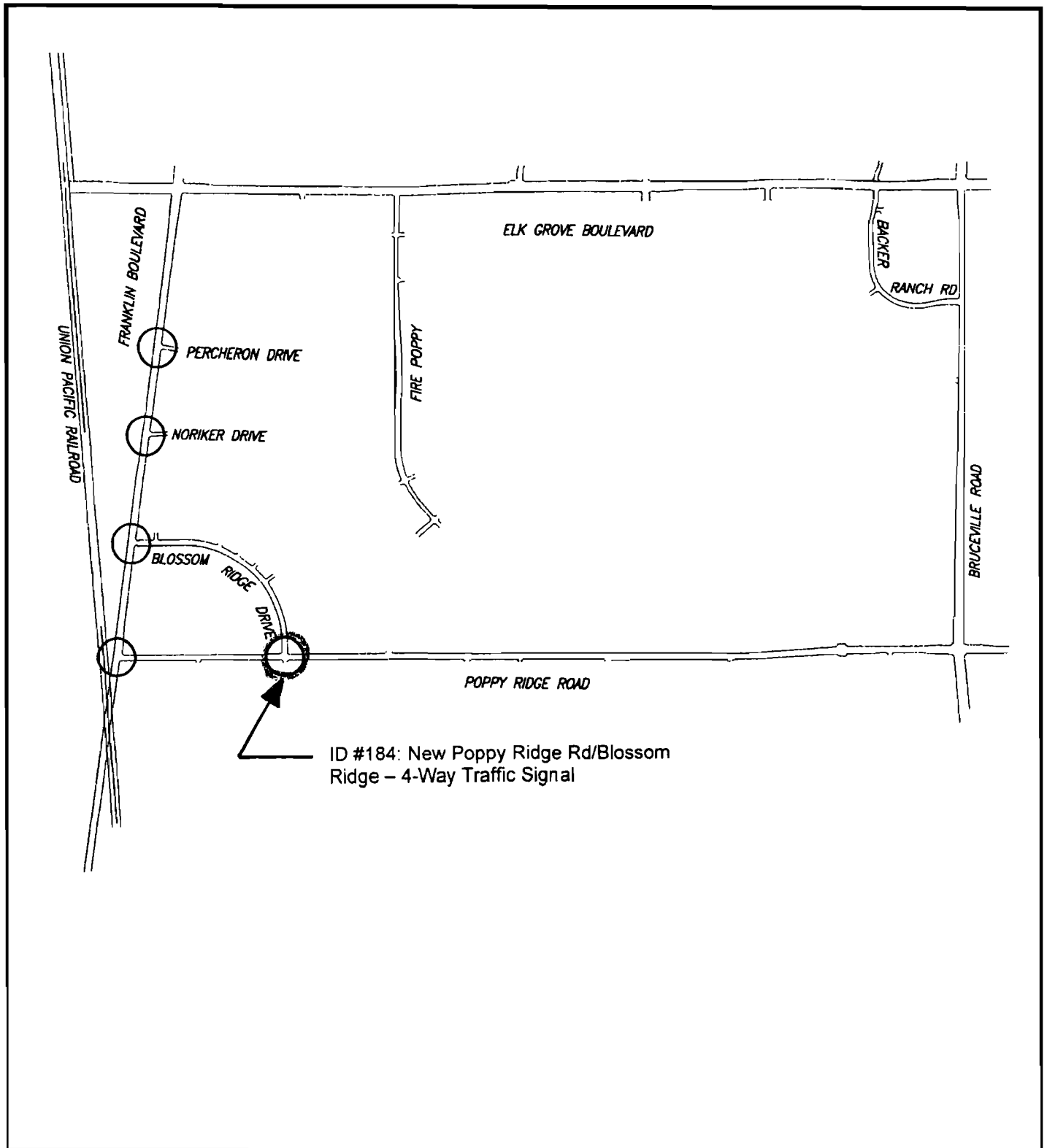
By: _____
Signature

Print Name

Title

**EXHIBIT A
ROADWAY FEE PROGRAM**

**FRANKLIN BLVD – ELK GROVE BLVD – POPPY RIDGE ROAD PHASE 1
REYNEN & BARDIS, LLC**



**EXHIBIT B
AGREEMENT NO. RC2004-03**

ROADWAY FEE PROGRAM

ID #184 New Poppy Ridge Road & Blossom Ridge

4-Way Traffic Signal

Project Name: Franklin Blvd - Elk Grove Blvd - Poppy Ridge Road Phase 1

Submitted By: Reynen & Bardis, LLC

ALLOWED IN THE FEE PROGRAM

Description		Qty	Unit	Unit \$	Total \$
A	Traffic Signal 4-Way	1.00	EA	220,000.00	220,000.00

220,000.00

Contingency (15%): 33,000.00

Engineering and Permits (25%): 55,000.00

\$ 308,000.00

CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2004-92

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

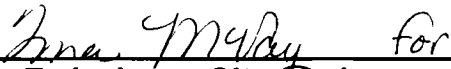
I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 19th day of May 2004 by the following vote:

AYES 5: COUNCILMEMBERS: Scherman, Soares, Briggs, Cooper, Leary

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 0: COUNCILMEMBERS:



Peggy E. Jackson, City Clerk
City of Elk Grove, California