

33a

DO NOT WRITE IN THE SPACE ABOVE THIS LINE, RESERVED FOR RECORDER
Prepared by: Douglas R. Marek, City of Ames Legal Department, 515 Clark, Ames, Iowa 50010 (Phone: 515-239-5146)

**A SUPPLEMENTAL AGREEMENT PERTAINING TO
SOUTH GATEWAY DEVELOPMENT SUBDIVISION
AND THE SOUTH DAYTON AVENUE
REALIGNMENT PROJECT**

THIS AGREEMENT, made and entered into this _____ day of September, 2008, by and between the CITY OF AMES, IOWA (hereinafter called "City"), and SOUTH DAYTON DEVELOPMENT, L.C., and its successors and assigns (hereinafter called "Developer"),

WITNESSETH THAT:

WHEREAS, the parties hereto previously entered into an agreement dated June 25, 2002, for subdivision platting and development of South Gateway Development Subdivision; and,

WHEREAS, pursuant to that previous agreement Developer is responsible for the cost to the City associated with the construction of the street segment described as Division I of South Dayton Avenue Realignment Project and depicted on the attached Figure A; and,

WHEREAS, the City has determined that it is now necessary to complete construction of to the South Dayton Avenue Realignment Project; and,

WHEREAS, the Developer has opted to pay cash in advance for the cost of construction of Division I, without special assessment; and,

WHEREAS, the Developer and the City now desire to specify the manner of payment by the Developer to the City for construction costs so that the project may proceed in a timely fashion.

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

I PURPOSE

A. It is the purpose of this Agreement to document, record, and give notice of a certain method of payment by the Developer to the City for the construction of Division I of the South Dayton Avenue Realignment Project, including Engineering Inspections fees as provided in the Ames Municipal Code, and to provide for the security of said payment pending completion of the construction.

B. This Agreement does not create or vest in any person or organization, other than the City, any rights or cause of action with respect to any performance, obligation, plan, schedule or undertaking stated in this Agreement, with respect to the Developer. This Agreement does not prevent the City from amending, modifying, or releasing the Developer from some or all of the provisions of this Agreement. No person shall have any cause of action or recourse against the City or Developer by reason of any such amendment, modification, or release.

II METHOD OF PAYMENT

A. Developer shall provide to the City by October 14, 2008, an irrevocable letter of credit or payment bond, in a form acceptable to the City Attorney, in an amount not less than six hundred twenty thousand dollars (\$620,000.00). In the event that the Ames City Council awards a contract for construction of Division I on or after October 14, 2008, in an amount greater than \$620,000.00, the Developer immediately shall provide a supplemental or replacement letter of credit or payment bond to secure the total amount of the contract for Division I plus amounts estimated by the City for Engineering and Construction Inspection fees as provided in the Municipal Code, Appendix F.

B. The City shall make payments to the contractor in accordance with the terms of the construction contract and shall draw down on the letter of credit for payments for work performed under Division I of the project. The City shall provide copies of all invoices and payments for Division I to the Developer at the time that payment is made to the construction contractor for construction work or to the City for Engineering and Construction Inspection fees.

C. If, during the progress of construction change orders are approved that increase the total costs of Division I, the Developer shall immediately provide to the City a supplemental or replacement letter of credit, payment bond, or cash to secure the remaining total amount of the contract for Division I plus estimated Engineering and Construction Inspection fees.

D. Upon final completion, payment, and project closeout of Division I, the City shall provide a final project accounting for Division I, including Engineering and Construction Inspection fees, and shall release to the Developer any remaining letter of credit or payment bond. If, upon completion, payment, and project closeout of Division I the remaining letter of credit or payment bond is insufficient to cover outstanding amounts owed by the Developer to the City under the terms of this agreement, said amounts shall constitute a debt and the Developer immediately shall make full payment in cash for such debt.

**III
CITY'S REMEDIES**

Upon the Developer's failure to comply with the terms of this agreement the City may terminate construction of Division I, initiate special assessment proceedings, or pursue debt collection or any other remedies available under the terms of the agreement dated June 25, 2002, for subdivision platting and development of South Gateway Development Subdivision.

**IV
COVENANT WITH THE LAND**

This Agreement shall run with the Site and shall be binding upon the Developer, its successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed effective as of the date first above written.

CITY OF AMES, IOWA

By _____
_____, Mayor

Attest by:

Diane R. Voss, City Clerk

STATE OF IOWA, STORY COUNTY ss:

On this _____ day of _____, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared _____ and Diane R. Voss, to me personally known, and, who, being by me duly sworn, did say that they are the Mayor and City Clerk, respectively, of the City of Ames, Iowa; that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation, by authority of its City Council, as contained in Resolution No. _____ adopted by the City Council on the _____ day of _____, 2008, and that _____ and Diane R. Voss acknowledged the execution of the instrument to be their voluntary act and deed and the voluntary act and deed of the corporation, by it voluntarily executed.

Notary Public in and for the State of Iowa

**SOUTH DAYTON DEVELOPMENT,
L.C.**

By: Brent Havercamp, Manager

Brent Havercamp, Manager

STATE OF IOWA, STORY COUNTY ss:

On this 9th day of October, 2008, before me, a Notary Public in and for the State of Iowa, personally appeared BRENT HAVERCAMP, to me personally known, who being by me duly sworn, did say that the person is one of the managers of SOUTH DAYTON, L.C., a Limited Liability Company, and that said instrument was signed on behalf of the Company by authority of the managers and the managers acknowledged the execution of said instrument to be the voluntary act and deed of the company by it and by the manager voluntarily executed.

Lynette Farnham

Notary Public in and for the State of Iowa

