

# REPORT

To the Honorable Mayor and City Council  
From the City Manager

July 11, 2005

**Subject**

Approval of Agreement for Construction of Improvements and Cost Reimbursement for 468 Grand Street (Redeemer Lutheran Church).

**Recommendation**

By motion, approve and authorize execution of a Construction of Improvements and Cost Reimbursement Agreement with Redeemer Lutheran Church of Redwood City, owners of record of said real property located at 468 Grand Street, Redwood City, California.

**Background**

On December 7, 2004, the Planning Commission approved the Planned Development Permit, Architectural Permit, and a Tentative Map to allow the development of consolidated school facilities consisting of a two-story classroom building, and improvements to existing church facilities and the site as a whole. The existing property is currently developed with a church and a K-8 school (Redeemer Lutheran Church & School).

There are three residential structures with garages located on the church property along Hudson Street, which will be demolished to provide space for the proposed 16,580 square foot two-story academic building. Other improvements include reconfiguring the parking lot; the construction of interior corridors connecting the existing buildings to the other buildings; installation of landscaping; a new interior staff parking lot; and improvements to the right-of-way including street trees and sidewalk improvements.

Although the new building fronts on Hudson Street, the church property encompasses portions of Harrison Street and Grand Street. The curbs and sidewalks along these sections of the street have been raised and cracked due to roots from the mature trees that front the property. Staff is recommending, and the Church has agreed, that they will replace the broken sidewalk, curbs and gutters along the other two streets, and they have asked that the City reimburse them for replacement of those sections of the sidewalk and curbs as part of the City-wide Tree Preservation and Sidewalk Repair Program. This area would be targeted for eventual reconstruction under the Tree Preservation Program, and it makes sense to do all the repair work concurrently with this project. Instead of full repair and costs at a later date, this agreement will allow the City to reimburse the owner only 50% of the cost of reconstructing the curbs and sidewalks along a portion of Harrison Street and Grand Street. Public Works Services is in agreement with this approach, as it is consistent with other similar sites.

The developer's engineer, BKF Engineers/Surveyors/Planners, completed the plans and specifications of the facilities improvements to the satisfaction of the Engineering and Construction Department.

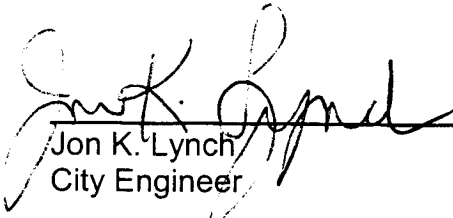
The property owner will post bonds in the amount of \$315,100.00 for all of the work associated with this project.

**Alternative**

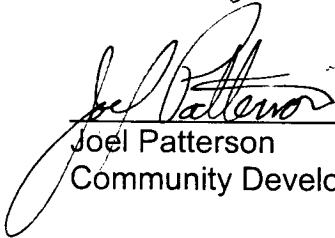
Do not require the on-site and off-site improvements, which would be contrary to public policy.

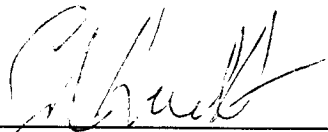
**Fiscal Impact**

The cost impact to the City's Tree Preservation and Sidewalk Repair Program would be an amount not-to-exceed \$30,764.00. These funds are obtained from the Utility Users Tax, and there is sufficient budget to pay for this work.

  
\_\_\_\_\_  
Jon K. Lynch  
City Engineer

  
\_\_\_\_\_  
Chu Chang  
Manager, Engineering & Construction

  
\_\_\_\_\_  
Joel Patterson  
Community Development Services Director

  
\_\_\_\_\_  
Ed Everett  
City Manager

**AGREEMENT  
FOR  
CONSTRUCTION OF IMPROVEMENTS & COST REIMBURSEMENT  
[468 Grand Street – Redeemer Lutheran Church]**

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between the CITY OF REDWOOD CITY, a charter city and municipal corporation of the State of California (“City”), and REDEEMER LUTHERAN CHURCH OF REDWOOD CITY, a non-profit religious corporation, and the owner of record of said real property located at 468 Grand Street, Redwood City, California (“Owner”);

**WITNESSETH:**

**WHEREAS**, Owner proposes to construct certain real property improvements at 468 Grand Street (the “Property”), situated in the City of Redwood City, County of San Mateo, State of California, consisting of a parking lot and a consolidated school facility; and

**WHEREAS**, Owner has requested that construction of certain improvements (as defined below), be constructed at the Property, which improvements are to be constructed in accordance with, and as required by, the plans, specifications, and details hereinafter described; and

**WHEREAS**, Owner has requested the City to share in the cost of replacing sidewalks along a portion of the Church property, damaged as a result of roots from City-maintained trees; and

**WHEREAS**, the City’s Tree Preservation and Sidewalk Repair Program has funding to repair tree-damaged sidewalks.

6.1B-4

**NOW, THEREFORE**, in order to ensure satisfactory performance by Owner of Owner's obligations under Article VII, Chapter 29, General Street Improvements, of the Code of the City of Redwood City (the "City Code"), and in consideration of the approval of the improvements for the Property, the parties hereto agree as follows:

**1. Improvements.** Owner shall, at its own cost and expense, construct all of the improvements ("Improvements"), furnish all the materials, and do all the work hereinafter described in accordance with, and as provided for in, the plans prepared for by Owner by Brian Vargas Foulk and Associates, entitled, "Facilities Improvements for 468 Grand Street," as well as City's revised specifications entitled, "Engineering Standards of the City of Redwood City," adopted October 13, 2003, which plans and specifications are on file in the office of the City Engineer. The Improvements shall be constructed in strict compliance with the provisions of Article VII, Chapter 29 of the City Code. If a conflict exists between the plans and specifications and City Code Chapter 29 in regard to the standard for a particular improvement, the stricter standard shall govern to the extent of such conflict. Owner shall complete all of the Improvements, subject to such exceptions and time extensions allowable under paragraph 10 of this Agreement, on or before July 11, 2006. The Improvements shall include, but are not limited to, all of the following:

- (a) grading, paving
- (b) curbs, gutters, and sidewalks
- (c) water service, complete
- (d) sewer system, complete
- (e) storm drainage system, complete

- (f) landscaping and irrigation system, complete
- (g) signing, striping, markings, complete
- (h) street lighting, complete
- (i) joint utility trench, complete

and all other work improvements, or construction required by or mentioned in the above-mentioned plans and specifications, conditions of permits and all construction, appurtenances, and improvements necessary as reasonably determined by the City Engineer to complete the Improvements.

2. **Security.** Owner shall, prior to the commencement of any work on the Improvements, furnish to City and file with the City Clerk a bond or instrument of credit of the kind described in Government Code Sections 66499, et seq., securing the faithful performance of all work and the construction of the Improvements mentioned in this Agreement within the time herein specified. The amount of said security shall be Three Hundred Fifteen Thousand One Hundred Dollars (\$315,100.00). Owner shall likewise, prior to the commencement of any work on the Improvements, furnish and file with the City Clerk a bond, deposit, or instrument of credit of the kind described in Government Code Sections 66499, et seq., securing the payment by Owner of all bills for labor and materials incurred in the construction of the Improvements and the doing of all other work herein agreed to be done by Owner, with respect to the Improvements. The amount of said security shall be Three Hundred Fifteen Thousand One Hundred Dollars (\$315,100.00). The aforementioned security shall include, in addition to the principal amounts, a guarantee of the payment of costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by City in the event of successful

enforcement of such security. All bonds shall be issued by a corporate surety admitted in the State of California. Bonds or instruments of credit shall be furnished and filed by the Owner.

3. **Hold Harmless**. Owner shall indemnify, defend and hold harmless the City, its Council, boards, commissions, officers, agents, employees and volunteers, from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) of every nature arising out of, or in connection with, Owner's performance of work hereunder or its failure to comply with any of its obligations contained in the agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

4. **Insurance**. Owner will obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with construction of the Improvements by Owner or Owner's agents, representatives, employees or subcontractors. The insurance will be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A:-V."

4.1 **Coverages and Limits**. Owner will maintain the types of coverages and minimum limits indicated below, unless Risk Manager or City Manager, in consultation with the City Attorney approves a lower amount. These minimum amounts of coverage will not constitute any limitations or cap on Owner's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by Owner pursuant to this Agreement are adequate to protect Owner. If Owner believes that any required insurance coverage is inadequate, Owner will obtain such additional insurance coverage, as Owner deems adequate, at Owner's sole expense.

4.1.1 Commercial General Liability Insurance. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits will apply separately to the work under this Agreement or the general aggregate will be twice the required per occurrence limit.

4.1.2 Automobile Liability. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

4.1.3 Workers' Compensation and Employer's Liability. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury. Workers' Compensation and Employer's Liability insurance will not be required if Owner has no employees and provides, to City's satisfaction, a declaration stating this.

4.2. Additional Provisions. Owner will ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

4.2.1 For Commercial General Liability Insurance and Automobile Liability Insurance, City, its officers, agents, volunteers and employees will be named as additional insureds.

4.2.2 Owner will obtain occurrence coverage.

4.2.3 This insurance will be in force during the life of the Agreement and any extensions of it and will not be canceled without thirty (30) days prior written notice to City sent pursuant to the Notice provisions of this Agreement.

4.3 Providing Certificates of Insurance and Endorsements. Prior to City's execution of this Agreement, Owner will furnish certificates of insurance and endorsements to City in the form acceptable to City.

4.4 Failure to Maintain Coverage. If Owner fails to maintain any of these insurance coverages, then City will have the option to declare Owner in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. Owner is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from Owner or deduct the amount paid from any sums due Owner under this Agreement.

4.5 Submission of Insurance Policies. City reserves the right to require, at anytime, complete and certified copies of any or all required insurance policies and endorsements.

4.6 Primary Coverage. For any claims related to the Improvements and this Agreement, the Owner's insurance coverage will be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, will be in excess of Owner's insurance and not contributory with it.

4.7 Reduction in Coverage/Material Changes. Owner will notify City thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies.

**5. Ownership of Improvements.** It is agreed that title and ownership of all Improvements constructed for the benefit of City and Owner hereunder by Owner shall vest absolutely in City and Owner respectively upon completion and acceptance of such Improvements by City.

**6. Work Subject to Approval.** The Improvements and all associated work shall be subject to the approval of, and acceptance by, the City Engineer before the release of any security required herein. Reference is hereby made to (a) those certain revised specifications entitled, "Engineering Standards of the City of Redwood City", adopted October 13, 2003, and (b) those certain plans on file in the office of the City Engineer entitled, "Facilities Improvements for 468 Grand Street," for a more particular description of the work and Improvements generally described in this Agreement. Said plans and specifications referenced in this paragraph are hereby incorporated herein and made a part of this Agreement. Upon completion of the Improvements, and prior to the release of any security required herein, Owner shall furnish City with a complete set of plans and drawings showing the Improvements in their actual or "as built" condition and location.

**7. Guarantee of Workmanship and Materials.** Owner agrees that if, within a period of one (1) year after final acceptance of any work done under this Agreement, the Improvements furnished and/or installed or constructed or caused to be constructed by Owner, or any of the work done under this Agreement, fails to fulfill any of the requirements of this Agreement, or the plans and specifications referenced herein, Owner shall, upon receipt of a request in writing from City directing the work to be done, without delay and without any cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the Improvements or work. Should Owner fail to act promptly to make such repair, replacement, or reconstruction, or otherwise to act in accordance with this requirement to repair, replace, or reconstruct, or should the exigencies of the case require that repair, replacement, or reconstruction be made before Owner can be notified, the City may, at its option, make the necessary repair, replacement, or reconstruction or perform the necessary work, and Owner shall pay to City the actual cost of thereof plus fifteen (15) percent.

Notwithstanding any provision to the contrary as set forth in this Agreement, Owner shall not be responsible for repair, replacement, or reconstruction of any Improvements, necessitated by Acts of God, acts of third parties (other than Owner, its agents, employees, or contractors) beyond Owner's ability to control, civil emergencies, natural disasters, or similar acts or events.

**8. Security to Insure Guarantee.** Owner agrees, as a condition precedent to City's acceptance of any of the Improvements which are the subject of this Agreement, to furnish and file with the City Clerk a bond or deposit in the amount of Thirty-One Thousand Five Hundred Ten Dollars (\$31,510.00) for all expressly conditioned

Improvements to secure Owner's compliance with the provisions of Paragraph 7 hereof, for a period of one (1) year after final acceptance of the work done under this Agreement. The bond or deposit shall be furnished by Owner.

**9. Deposit for Plan Check and Inspection.** Owner shall deposit with City the sum of Eighteen Thousand Seven Hundred Sixty-Four Dollars and 40/100 (\$18,764.40) ("Deposit"), less all amounts previously paid to City by Owner for such services, to compensate City for all engineering, inspection, plan check, laboratory and field testing, construction, and other services furnished by City in connection with the Improvements. Owner understands that the Deposit is an estimate and further agrees to pay to City the actual cost of providing such services, in accordance with the City's current fees. Owner agrees to complete payment of such additional sum or sums for the services provided by City, if any, within ten (10) days after billing by City of the additional sum to be paid and agrees that the amount payable shall be increased by ten (10) percent in the event payment is not made within such ten (10) day period. Any part of the Deposit or such additional sum or sums not utilized by City shall be returned promptly to Owner.

**10. Time Extensions/Immunity from Acts of God.** Owner shall not be in default of any provision of this Agreement or subject to any penalty hereunder where timely performance or timely compliance is prevented by Acts of God, including natural disasters, and/or unusually inclement weather, civil emergencies, inability to obtain materials (except for such inability occasioned by the act, or failure to act, of Owner), change in governmental regulations, or similar acts which are beyond Owner's reasonable ability to control; however, Owner shall be obligated to perform or comply

within a reasonable time after the event or action which precluded Owner from timely performance no longer exists.

11. **Independent Contractor**. It is mutually understood and agreed that neither Owner nor any of Owner's agents or contractors are, or shall be, considered to be agents or employees of the City of Redwood City in connection with the performance of Owner's obligations under this Agreement.

12. **Assignability**. This Agreement shall inure to and be binding on the successors, assigns, and heirs of the parties hereto. Owner may assign this Agreement subject to City's approval, which shall not be unreasonably withheld.

13. **Reimbursement**. Owner shall carry out the replacement of curbs and sidewalks along the property frontage of Grand Street and a portion of the curb and sidewalk along a portion of Harrison. Owner shall cause its contractors and any subcontractors to pay prevailing wages in the construction of said Improvements as those wages are determined pursuant to Labor Code Section 1720 et seq., and implementing provisions of Labor Code Section 1720 et seq., and implementing regulations of the Department of Industrial Relations. Owner shall and shall cause its contractors and any subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. Copies of the currently applicable per diem prevailing wages are available from the City of Redwood City, Public Works Department, 1400 Broadway, Redwood City, California 94064. During the construction of the Improvements, Owner shall and shall cause its contractors to post at the work site the applicable prevailing rates of per diem wages.

6.1B-12

Subject to satisfactory evidence of prevailing wages having been paid, City agrees to reimburse Owner for fifty percent (50%) of the cost of replacing curbs and sidewalks noted above. The City's share of that cost will be at the rate of current bid prices for its own contractors doing curb and sidewalk repair, but the total sum to be reimbursed by City shall not exceed Thirty Thousand Seven Hundred Sixty-Four Dollars (\$30,764.00), based on final quantities to be determined by the City Engineer.

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

CITY OF REDWOOD CITY, a charter city and municipal corporation of the State of California  
1017 Middlefield Road  
Redwood City, CA 94063

By: \_\_\_\_\_  
Ed Everett, City Manager

ATTEST:

\_\_\_\_\_  
Patricia Howe, City Clerk

REDEEMER LUTHERAN CHURCH OF REDWOOD CITY, a California non-profit religious corporation  
468 Grand Street  
Redwood City, CA 94063

By: \_\_\_\_\_

Title: \_\_\_\_\_