

Legislative #

180081

**SETTLEMENT AGREEMENT
AND
AGREEMENT FOR DEVELOPMENT OF PROPERTY**

THIS SETTLEMENT AGREEMENT AND AGREEMENT FOR DEVELOPMENT OF PROPERTY (“Agreement”) is made and entered into this _____ day of _____, 2018 (“Effective Date”), by and between the **GAINESVILLE COMMUNITY REDEVELOPMENT AGENCY**, a public body corporate and politic created pursuant to Part III of Chapter 163, Florida Statutes, whose mailing address is 802 NW 5th Avenue, Suite 200, Gainesville, Florida 32601 (“CRA”), **CITY OF GAINESVILLE, FLORIDA**, a municipal corporation, whose mailing address is Post Office Box 490, Gainesville, Florida 32627 (“City”), and **RIDGWAY ROOF TRUSS COMPANY** a Florida corporation, whose address is 235 SW 11th Place, Gainesville, Florida 32601 (collectively “Ridgway”) (City, CRA and Ridgway are collectively, “Parties”).

WHEREAS, City and CRA, acting as agent for the City of Gainesville, are redeveloping South Main Street, Gainesville, Florida, between the Depot Avenue Roundabout and South 16th Avenue (the “Project”); and

WHEREAS, Ridgway owns several parcels of property (“Ridgway Property”) upon which the company operates a truss manufacturing business; and

WHEREAS, Ridgway has made a claim for damages to the Ridgway Property as a result of City and CRA’s redevelopment of South Main Street; and

WHEREAS, the Parties desire to amicably resolve the dispute without resort to litigation.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and such other good and valuable consideration, the receipt of which is hereby acknowledged, Parties agree as follows:

Section 1. Recitals. The foregoing recitals are true and correct and are incorporated into and made a part of this Agreement as if fully set forth herein.

Section 2. Definitions.

Adequately Documented Request for Reimbursement must itemize the work performed within the right-of-way for the construction of the driveway apron in a format distinguishable from work performed on Ridgway Property for the construction of the driveway. Adequately Documented Request for Reimbursement must include:

- The form attached as Exhibit I
- Copies of any construction plans
- Permitting Documents
- Copies of each Contract for work or letter of retainer demonstrating that the service provider was hired or retained to perform work on the driveway apron

- Evidence demonstrating the actual itemized payments made to each service provider for work performed on the driveway apron.

Eligible Reimbursement Costs are those costs that are (i) paid by Ridgway to its engineers, surveyors, contractors and permit fees for work performed in the SW 6th Street right-of-way to construct a driveway apron; ii) are customary and reasonable for the Gainesville area as evidenced by prices paid by City or CRA over past three (3) years and in accordance with standard annual FDOT Price Indexes; (iii) do not include more than five percent (5%) for costs associated with the general conditions of construction; (iv) do not include more than eight percent (8%) for overhead and profit; and (v) costs paid by Ridgway to its attorneys for negotiating this Agreement and representation of Ridgway regarding the Project.

The Project is CRA and City's redevelopment of South Main Street, Gainesville, Florida, between the Depot Avenue roundabout and South 16th Avenue. The Project includes eliminating two lanes of traffic, eliminating driveway aprons, constructing medians, parking, trees, turn lanes, and a roundabout all within the existing right-of-way. The Project was designed and sealed by a Professional Engineer specializing in Traffic Engineering and with the firm of CHW. The Project was designed to be used by a WB - 67, which is the largest vehicle approved for road use in Florida by FDOT. The roundabouts have mountable curbs and large vehicles are legally permitted to mount the curbs in the roundabout. The Project includes the elimination of two driveway aprons that abutted the Ridgway property along South Main Street, the construction of a roundabout and the construction of a median all adjacent to Ridgway Property. The Project will not close 11th Place. Access to the Ridgway Property from Main Street via 11th Place will remain undisturbed and open for public use. A copy of the conceptual plan for The Project is attached as Exhibit H. A full scale version of the conceptual plan may be viewed at:

https://www.dropbox.com/s/4rvlhv9dh53ctxz/South%20Main%20Rendering_FINAL.pdf?dl=0

Ridgway is Ridgway Roof Truss Company, a Florida Corporation. The officers and directors of Ridgway are: President - Wells S. The Losen, Vice President - Karl The Losen, and Secretary Treasurer – Kay S. The Losen. The principal place of business of Ridgway is 235 SW 11th Place, Gainesville, Florida.

Ridgway Property consists of 7 parcels of property upon which Ridgway operates its truss company. All 7 parcels of property are owned by Ridgway. Ridgway does not lease or operate any other business on the Ridgway Property. The legal descriptions of each parcel of property are attached hereto as Exhibits A, B, C-1, C-2, D, E and F. A map showing the Ridgway Property is attached hereto as Exhibit G.

Section 3. Ridgway's Claim for Compensation. The Ridgway Property, except the parcel described in Exhibit F, is actively used by Ridgway Truss for its truss manufacturing business. The property described in Exhibit F is currently vacant, but is actively utilized by Ridgway for its truss manufacturing business.

As depicted on the map attached as Exhibit G, SW 6th Street borders Ridgway Property to the west. South Main Street runs along a portion of Ridgway Property for approximately 192 feet.

Florida Department of Transportation constructed two driveway aprons in the South Main Street right-of-way adjacent to Ridgway Property. Ridgway asserts the, driveway aprons were used by Ridgway prior to City and CRA eliminating the driveway aprons. 11th Place intersects Main Street and runs along the south side of Ridgway Property and ends at the main entrance to Ridgway Property. The major point of ingress and egress to the Ridgway Property from Main Street is 11th Place.

Ridgway manufactures wooden trusses and a variety of other wooden products on the Ridgway Property. Ridgway custom designs trusses and has constructed trusses up to 85 feet long. Ridgway uses semi-tractor trailers to haul the trusses from the Ridgway Property to its customers. Because the driveway aprons directly on Main Street have been eliminated with the redevelopment of South Main Street, Ridgway will only have one point of ingress and egress to the Ridgway Property, 11th Place.

Ridgway has retained counsel and made claim that the Project has substantially diminished access to Ridgway Property. This Agreement is for the purpose of resolving Ridgway's claims for compensation.

Section 4. Reimbursement of Costs as Settlement of Claim. City and CRA make no admission that the Project has substantially diminished access to Ridgway's Property. To avoid costly litigation and to settle Ridgway's claim, CRA, on its own behalf and as agent for City acting within full scope and authority, agrees to reimburse Ridgway for Eligible Reimbursement Costs of installing a driveway apron within the right-of-way connecting Ridgway's Property to SW 6th Street. Reimbursement to Ridgway will be made in accordance with the terms and conditions of this Agreement. The Parties agree that the maximum Eligible Reimbursement Costs Ridgway will receive pursuant to this Agreement is \$55,000.00.

Section 5. Release of Claim. Ridgway and its successors and assigns forever release, acquit, and discharge City and CRA, as well as their agencies, and their officers, elected officials, employees, agents, servants and successors, of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, attorney's fees, expenses, compensation, liabilities, and losses of every kind whatsoever which Ridgway now has or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen losses resulting from the Project

However, should Ridgway, after making a reasonable diligent effort, be unable to obtain the appropriate approvals and necessary permits from the governmental agencies having jurisdiction over the construction and permitting of the driveway apron from SW 6th Street onto the Ridgway property, this Release of Claim as set forth in this Section 5 is declared to be cancelled, terminated, void ab initio and shall have no force and effect as between the parties hereto.

Further should Ridgway fulfill its obligations as set forth in Section 6 below and CRA fail to timely reimburse Ridgway for Eligible Reimbursement Costs for any reason, including but not limited to, those set forth in Sections 7E below, this Release of Claim as set forth in this Section 5 is declared to be cancelled, terminated, void ab initio and shall have no force and effect as between the parties hereto.

Section 6. Ridgway's Obligations. To receive Eligible Reimbursement Costs:

A. Ridgway must construct a driveway across its property connecting the truss manufacturing area to SW 6th Street.

B. Ridgway must construct a driveway apron onto SW 6th Street from Parcel F.

C. Ridgway must obtain appropriate approvals and any necessary permits from each governmental agency having jurisdiction over the work to be performed, including City.

D. Ridgway must complete construction of the driveway apron on or before May 1, 2020.

E. Ridgway must submit an Adequately Documented Request for Reimbursement, to CRA within 60 days after final completion of the driveway apron.

F. If Ridgway fails to timely complete construction of the driveway apron on or before May 1, 2020, Ridgway will not be entitled to any reimbursement. In the event Ridgway fails to timely construct the driveway apron by May 1, 2020, the Release of Claim shall survive this Agreement.

Section 7. CITY and CRA's Obligations.

A. Funding. CRA acknowledges, represents, and warrants to Ridgway that CRA has approved and budgeted funding from its College Park/University Heights Redevelopment Trust Fund in the amount of \$55,000.00 to reimburse Ridgway for Eligible Reimbursement Costs.

B. Payment. Within 60 days of receipt of an Adequately Documented Request for Reimbursement, CRA shall reimburse Ridgway for Eligible Reimbursement Costs in an amount not to exceed \$55,000.00, provided Ridgway has complied with the terms of this Agreement.

C. Local Government Prompt Payment Act. All payments due under this Agreement and not paid within 60 days shall bear interest at the rate of one percent per month.

D. Dispute Resolution. In the event the Parties disagree regarding the amount of Eligible Reimbursement Costs, the Parties agree to submit the dispute to pre-suit mediation, as a condition precedent to filing a lawsuit.

E. Subordinate to CRA Debt. The budgeted and approved funds shall be subordinate in all respects to all debt service obligations of CRA under bonds or other forms of debt currently outstanding or to be issued in the future, which pledge tax increment incentive revenues on deposit in the College Park/University Heights Redevelopment Trust Fund. The obligations of CRA as to any funding required pursuant to this Agreement shall be limited to an obligation in any given fiscal year to budget and appropriate from legally available sums in its College Park/University Heights Redevelopment Trust Fund, pursuant to the requirements of Section 163.387, Florida Statutes, the funding that is

required during that fiscal year. CRA shall not be prohibited from pledging any legally available revenues in its College Park/University Heights Redevelopment Trust Fund for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of CRA pursuant to this Agreement.

F. City, in its proprietary capacity, shall cooperate with Ridgway and any successor-in-interest in securing all necessary licenses, permits, and governmental authorizations contemplated by this Agreement and necessary to the construction and completion of the driveway aprons, including the Building Permit, or other land development approvals. The City's obligations under this Paragraph shall not affect the City's right to act in regulatory matters in accordance with applicable laws or ordinances, and is expressly not a waiver of the City's lawful exercise of its police powers. Nothing herein shall be construed or deemed to contractually or otherwise obligate the City to approve any application or petition for development approval filed by or on behalf of Ridgway, or any successor-in-interest.

Section 8. Assignment. Ridgway may sell, convey, assign, or otherwise transfer or dispose of any of its rights, title, and interest in this Agreement upon approval of the City and CRA, which approval will not be unreasonable withheld.

Section 9. Resolving any Invalidity. The Parties hereby agree that in the event the College Park/University Heights Budgeted and Approved Funds are ever challenged by any person and held to be invalid by a court of competent jurisdiction, each will cooperate with the other, in good faith, to resolve the effects of such invalidity.

Section 10. Severability. Any provision of this Agreement held by a court of competent jurisdiction to be invalid, illegal, or unenforceable shall be severable and shall not be construed to render the remainder of this Agreement to be invalid, illegal, or unenforceable.

Section 11. Relationship. This Agreement does not evidence the creation of, nor shall it be construed as creating, a partnership or joint venture between the CRA and Ridgway or the City and Ridgway. Ridgway cannot create any obligation or responsibility on behalf of City or CRA or bind City or CRA in any manner. Neither the City nor CRA can create any obligation or responsibility on behalf of Ridgway or bind Ridgway in any manner. Each party is acting for its own account and has made its own independent decisions to enter into this Agreement and as to whether the same is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. Each party acknowledges that none of the other parties hereto is acting as a fiduciary for or an adviser to it in respect of this Agreement or any responsibility or obligation contemplated herein. Ridgway further represents and acknowledges that no one was paid a fee, commission, gift, or other consideration by Ridgway as an inducement to entering into this Agreement.

Section 12. Personal Liability. No provision of this Agreement is intended, nor shall any be construed, as a covenant of any official (either elected or appointed), officer, director, manager, employee, or agent of City or CRA in an individual capacity and neither shall any such individuals be subject to personal liability by reason of any covenant or obligation of City or CRA.

Section 13. Applicable Law and Venue. This Agreement shall be governed by and construed

in accordance with the laws of the State of Florida. Any action, in equity or law, with respect to this Agreement must be brought and heard in Alachua County, Florida.

Section 14. Amendment. This Agreement may not be amended, unless evidenced in writing and executed by all parties hereto.

Section 15. Notices. Any notices required to be given hereunder shall be effective upon receipt and sent by either hand-delivery, U.S. mail, first class, postage prepaid, by certified or registered mail (return receipt requested), or by a national overnight courier services to the following addresses:

To CRA: Gainesville Community Redevelopment Agency
 Attn: CRA Director
 802 NW 5th Avenue, Suite 200
 Gainesville, Florida 32601
 Telephone: (352) 334-2205

COPY TO: CRA Attorney
 City of Gainesville
 P.O. Box 490, MS 46
 Gainesville, Florida 36227-0490

To Ridgway: Wells The Losen
 Karl The Losen
 Ridgway Roof Truss Company, Inc.
 235 SW 11th Place
 Gainesville, Florida 32601

Section 16. Captions. The captions and headings of sections or paragraphs used in this Agreement are for convenient reference only and shall not limit, define or otherwise affect the substance or construction of provisions of this Agreement.

Section 17. Entire Agreement; Conflicts. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof. Any representations or statements heretofore made with respect to such subject matter, whether verbal or written, are merged herein.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, CITY, CRA and Ridgway have executed this Agreement as of the Effective Date.

Witnesses:

**CITY OF GAINESVILLE,
FLORIDA**

Print Name: _____

Anthony Lyons
City Manager

Print Name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Anthony Lyons, City Manager, City of Gainesville, Florida. He who is personally known to me OR has produced _____ as identification.

Print Name: _____
Notary Public-State of Florida

Witnesses:

**GAINESVILLE COMMUNITY
REDEVELOPMENT AGENCY**

Print Name: _____

Sarah Vidal-Finn
Director

Print Name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this _____ day of _____, 2018, by Sarah Vidal-Finn, Director, Gainesville Community Redevelopment Agency. She who is personally known to me OR has produced _____ as identification.

Print Name: _____
Notary Public-State of Florida

Witnesses:

RIDGWAY ROOF TRUSS COMPANY

Print Name: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ALACHUA

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____ (insert title), Ridgway Truss Company. She/he who is personally known to me OR has produced _____ as identification.

Print Name: _____
Notary Public-State of Florida