



RESOLUTION NO. 19-39

A RESOLUTION OF TREMONTON CITY CORPORATION APPROVING THE 1st AMENDED HOLMGREN ESTATES EAST PHASE 7 SUBDIVISION DEVELOPMENT AGREEMENT

WHEREAS, the Developer desires to develop certain real property situated in the corporate city limits of Tremonton City, Box Elder County, State of Utah; and

WHEREAS, the Developer has submitted to the City all plats, plans (including utility plans), reports and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code; and

WHEREAS, the Developer and City hereto have agreed that the development of the property will require municipal services from the City to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Tremonton as a whole; and

WHEREAS, as authorized by 2.04.045 A. of the *Tremonton City Land Use Development Code* the City had administratively approved the Holmgren Estates East Phase 7 Subdivision Development Agreement which was recorded in the Recorder's Office of Box Elder County, Utah; and

WHEREAS, the previously approved Holmgren Estates East Phase 7 Subdivision Development Agreement did not include in Section 2. Special Conditions, the City's financial contribution to the Developer for upsizing of the storm drain system; and

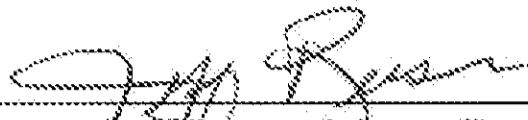
WHEREAS, Section 2.05.020 *Utility Upsizing*, of the *Tremonton City Land Use Development Code*, requires that the arrangements associated with the upsizing of utilities be the subject of an agreement; and

WHEREAS, under Section 3 of the previously approved Holmgren Estates East Phase 7 Subdivision Development Agreement there is a provision that allows the previously approved Subdivision Agreement to be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

NOW THEREFORE BE IT RESOLVED by the Tremonton City Council that the 1st Amended Holmgren Estates East Phase 7 Subdivision Development Agreement is approved as attached in Exhibit "A."

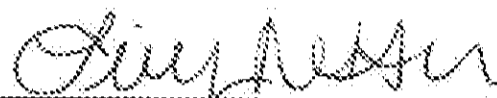
Adopted and passed by the governing body of Tremonton City Corporation this 6th day of August 2019.

TREMONTON CITY
A Utah Municipal Corporation



Roger Fridal, Mayor or Jeff Reese, Mayor Pro Tempore

ATTEST:



Linsey Nessen, City Recorder



EXHIBIT "A"

**1st AMENDED HOLMGREN ESTATES EAST PHASE 7
SUBDIVISION DEVELOPMENT AGREEMENT**

THIS SUBDIVISION DEVELOPMENT AGREEMENT (hereinafter "Agreement"), is made and entered into this 6 day of August, 2018, by and between the TREMONTON CITY, a body corporate and politic of the State of Utah, (hereinafter the "City") and HOLMGREN PROPERTIES LLC, (hereinafter "Developer") the City or Developer may be referred to individually as "Party" or collectively as Parties:

RECITALS

WHEREAS, Developer desires to develop certain real property situated in the corporate city limits of Tremonton City, Box Elder County, State of Utah (hereinafter sometimes referred to as the "Property" or "Development") and legally described as follows, to wit:

A PART OF THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 11 NORTH, RANGE 3 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ON THE SOUTHEASTERLY BOUNDARY LINE OF TREMONTON CITY CORPORATION PROPERTY RECORDED AS ENTRY NO. 337083 IN THE BOX ELDER COUNTY RECORDERS OFFICE ALSO BEING THE NORTHERN MOST CORNER OF LOT 60, HOLMGREN ESTATES EAST PHASE 4, ENTRY NO. 358090 LOCATED 1866.23 FEET NORTH 88°49'43" EAST ALONG THE SOUTH LINE OF SAID SECTION AND 1698.09 FEET NORTH 01°10'16" WEST FROM THE SOUTHWEST CORNER OF SAID SECTION 2;

RUNNING THENCE ALONG THE BOUNDARY OF SAID TREMONTON CITY PROPERTY THE FOLLOWING THREE (3) COURSES: (1) NORTH 48°44'49" EAST 88.24 FEET; (2) NORTH 26°09'10" WEST 45.95 FEET; AND (3) NORTH 86°25'49" WEST 35.20 FEET; THENCE NORTH 31°53'32" EAST 603.62 FEET; THENCE SOUTH 62°48'02" EAST 216.83 FEET; THENCE SOUTH 27°11'58" WEST 66.99 FEET; THENCE SOUTH 62°48'02" EAST 120.00 FEET; THENCE SOUTH 27°11'58" WEST 300.00 FEET; THENCE SOUTH 15°58'22" WEST 203.90 FEET; THENCE SOUTH 58°12'33" WEST 114.68 FEET; THENCE SOUTH 00°07'33" EAST 98.94 FEET; THENCE SOUTH 04°06'54" EAST 60.12 FEET; THENCE SOUTH 00°03'41" EAST 120.16 FEET; THENCE SOUTH 89°56'19" WEST 108.09 FEET TO THE SOUTHEAST CORNER OF SAID HOLMGREN ESTATES EAST PHASE 4; THENCE ALONG THE BOUNDARY OF SAID HOLMGREN ESTATES EAST PHASE 4 THE FOLLOWING NINE (9) COURSES: (1) NORTH 00°03'41" WEST 109.50 FEET; (2) NORTHEASTERLY TO THE RIGHT ALONG THE ARC OF A 10.50 FOOT RADIUS CURVE, A DISTANCE OF 16.49 FEET, CHORD BEARS NORTH 44°56'18" EAST 14.85 FEET, HAVING A CENTRAL ANGLE OF 90°00'00"; (3) NORTH 00°03'41" WEST 60.00 FEET; (4) NORTHWESTERLY TO THE RIGHT ALONG THE ARC OF A 10.50 FOOT RADIUS NON TANGENT CURVE, A DISTANCE OF 16.49 FEET, CHORD BEARS NORTH 45°03'42" WEST 14.85 FEET, HAVING A CENTRAL ANGLE OF 90°00'00"; (5) NORTH 00°03'41" WEST 53.58 FEET; (6) NORTHERLY TO THE RIGHT ALONG THE ARC OF A 220.00 FOOT RADIUS CURVE, A DISTANCE OF 64.31 FEET, CHORD BEARS NORTH 08°18'47" EAST 64.08 FEET, HAVING A CENTRAL ANGLE OF 16°44'58"; (7) NORTH 73°18'45" WEST 155.55 FEET; (8) NORTH 58°11'47" WEST 53.43 FEET; AND (9) NORTH 41°48'16" WEST 28.92 FEET (29.34 FEET BY RECORD) TO THE POINT OF BEGINNING. CONTAINING 6.294 ACRES.

WHEREAS, Developer desires to develop the Property and Developer has submitted to the City all plats, plans (including utility plans), reports and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code; and

WHEREAS, the Parties hereto have agreed that the development of the Property will require municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Tremonton as a whole; and

WHEREAS, the City has approved the Final Plat for recording with the Recorder's Office of Box Elder County, Utah, which was submitted by the Developer subject to certain requirements and conditions, which involved the installation of and construction of utilities and other municipal improvements in connection with the Property; and

WHEREAS, Utah Code 10-9a-102 provides the City's general land use authority to adopt ordinances, resolutions, rules, and may enter into development agreements.

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

SECTION I. GENERAL CONDITIONS

A. **Development Activities.** The terms of this Agreement shall govern all development activities of the Developer pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, pursuant to Utah Code Annotated (hereinafter "U.C.A.") § 10-9a-103(8), but be not limited to, the following: any change in the use of land that creates additional demand and need for public facilities. Furthermore, for purposes of this agreement only, "development activities" shall also include the following: (1) the actual construction of improvements, (2) obtaining a permit therefore, or (3) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct improvements thereon, none of which shall occur until execution of the Agreement and City approval of the Final Plat.

B. **Time Limitations for Improvements.** All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, streetlights, and trails shall be installed as shown on the Final Plat, Construction Drawings and in full compliance with the standards and specification of the City, at the time of approval of the Final Plat, subject to a two (2) year time limitation from the date of approval of the Final Plat, which is in compliance with Title II, Chapter 2.05 of the Tremonton City Land Use and Development Code. In the event that the Developer commences or performs any construction pursuant hereto after the passage of two (2) years from the date of approval of the Final Plat, the Developer shall resubmit the Final Plat and documentation supporting a new guaranty bond to the City Engineer for reexamination. Pursuant to U.C.A. § 10-9a-603, the City may then require the Developer to comply with the approved standards and specifications of the City at the time of resubmission.

After two (2) years from the date of approval of the Final Plat, if any development improvements have not been completed, the City, at its sole discretion, may use the guaranty bond money to complete development improvements.

C. **Culinary Water and Sewer Treatment Capacity.** The City, which includes the Tremonton City Culinary Water Authority and Tremonton City Sanitary Sewer Authority, does not reserve or warrant water capacity or sewer treatment capacity until the issuance of a building permit. Recording of the Final Plat, execution of this Agreement, and/or recording of any lot within the Development does not constitute a reservation or warranty for water capacity and/or sewer treatment capacity

D. **Fee-in-Lieu Payments.** In cases where a Developer shall be required by City Ordinance to install an improvement, but circumstances, as determined by the City Engineer, prevent the construction of the improvement, the Developer shall pay a fee-in-lieu of construction. The fee-in-lieu payment shall be the current cost of constructing the improvement as estimated by the City Engineer and formalized in Section 2- "Special Conditions in this Agreement." The fee-in-lieu payment shall be used towards the costs of installing the required improvements, the timing of when said improvement shall be constructed shall be at the sole discretion of the City and absolve the Developer from making the improvement in the future or paying the future cost of the required improvement.

E. **Off-Site Project Improvements.** Developer may be required to install off-site improvements without participation or reimbursement from the City or surrounding property owners. Such improvements are identified as "Project Improvements" as defined by Utah Code Annotated 11-36a-102 (14), which generally include improvements that are: 1) planned and designed to provide service for the Development; 2) necessary for the use and convenience of the occupants or users of the Development; and 3) improvements that are not identified or reimbursed as a "System Improvement" as defined by Utah Code Annotated 11-36a-102 (21).

F. **Secondary Water System.** In accordance with Utah Code Annotated 10-9a-508, subdivisions that require water service shall provide to the City, in addition to those requirements and improvements associated with culinary water, the necessary water shares in the Bear River Canal Company sufficient to meet the municipal needs that will be created by the Development. Said dedication of water shares shall occur prior to, or contemporaneous with, the approval for subdivision of Property. All such water share dedications shall occur prior to the recording of the subdivision with the Box Elder County Recorder. Developer shall also construct a secondary water transmission and distribution system in accordance with the City's construction standards sufficient to satisfy the existing and future uses of the occupants to be supplied by the City's Secondary Water System in the Development. The use of the water shares dedicated to the City by the Developer and connection of the Developer's installed secondary water distribution system within the Development to secondary water transmission lines constructed by the City, shall be at the sole discretion of the City.

G. **Building Permit Issuance.** No building permit for the construction of any structure within the development shall be issued by the City until all individual lots in the development are staked by licensed surveyor, the public water lines and stubs to each lot,

charged fire hydrants, sanitary sewer lines and stubs to each lot, street lights and public streets (including all weather access, curb, gutter, and pavement with at least the base course completed), serving such structure have been completed and accepted by the City.

H. **Certificate of Occupancy.** No Certificates of Occupancy shall be issued by the City for any structure within the development until gas lines to the structure are installed, street signs are installed, and all electrical lines are installed.

I. **Financial Responsibilities of Developer.** Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, and storm drainage facilities and appurtenances, and all streets, curbs, gutters, sidewalks, trails and other public improvements required by this Development as shown on the Final Plat, Construction Drawings and other approved documents pertaining to this Development on file with the City.

J. **Utility Line Installments.** Street improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all individual lot service lines (water and sewer) leading in and from the main to the property line, all electrical lines, and all communication conduits.

K. **Inspection by City Officials.** The installation of all utilities shown on the Final Plat and Construction Drawings shall be inspected by the Engineering Department and/or Public Works Department of the City and shall be subject to such department's approval. The Developer agrees to correct any deficiencies in such installations in order to meet the requirements of the plans and/or specifications applicable to such installation. In case of conflict, the Tremonton City Public Works Standards shall supersede the Final Plat and Construction Drawings, unless written exceptions have been made.

L. **Form of Recorded Drawings.** The Developer shall provide the City Engineer with two (2) certified Record Plan Drawings upon completion of each phase of the construction. Utilities will not be initially accepted prior to as-built drawings being submitted to and approved by the City of Tremonton. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

M. **Developer Compliance with EPA and other Regulations.** The Developer specifically represents that to the best of its knowledge all property dedicated (both in fee simple and as easements) to the City associated with this Development (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Part 261, and that such property as is dedicated to the City pursuant to this Development, is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any governmental authority or any third Party, pertaining to the disposal of hazardous substances,

pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Development, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the public improvements constructed on the dedicated property, except to the extent that such circumstances are the result of the acts or omissions of the Developer. Said indemnification shall not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with this Development. The City agrees to give notice to the Developer that he must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City of first receives a notice of such claim under the Utah Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

N. **City Ownership Rights.** The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Development Agreement waive) its rights as property owner. The City's rights as owner may include without limitation those rights associated with the protection of the City Property from damage, and/or the enforcement of restrictions, limitations and requirements associated with activities on the City Property by the Developer as an easement recipient.

O. **Developer Vesting.** Developer, by and through execution of this agreement, receives a vested right to develop the number of lots shown and configured on the Final Plat, without interference from the City, so long as development is completed in accordance with the plans specifically shown on the Final Plat, Construction Drawings and pursuant to the statutory requirements codified by Utah State and Tremonton City Codes. Furthermore, following execution of the Agreement, Developer's right to develop and construct in accordance with the statutory requirements at the time of execution of the Agreement shall be deemed vested.

SECTION 2. SPECIAL CONDITIONS

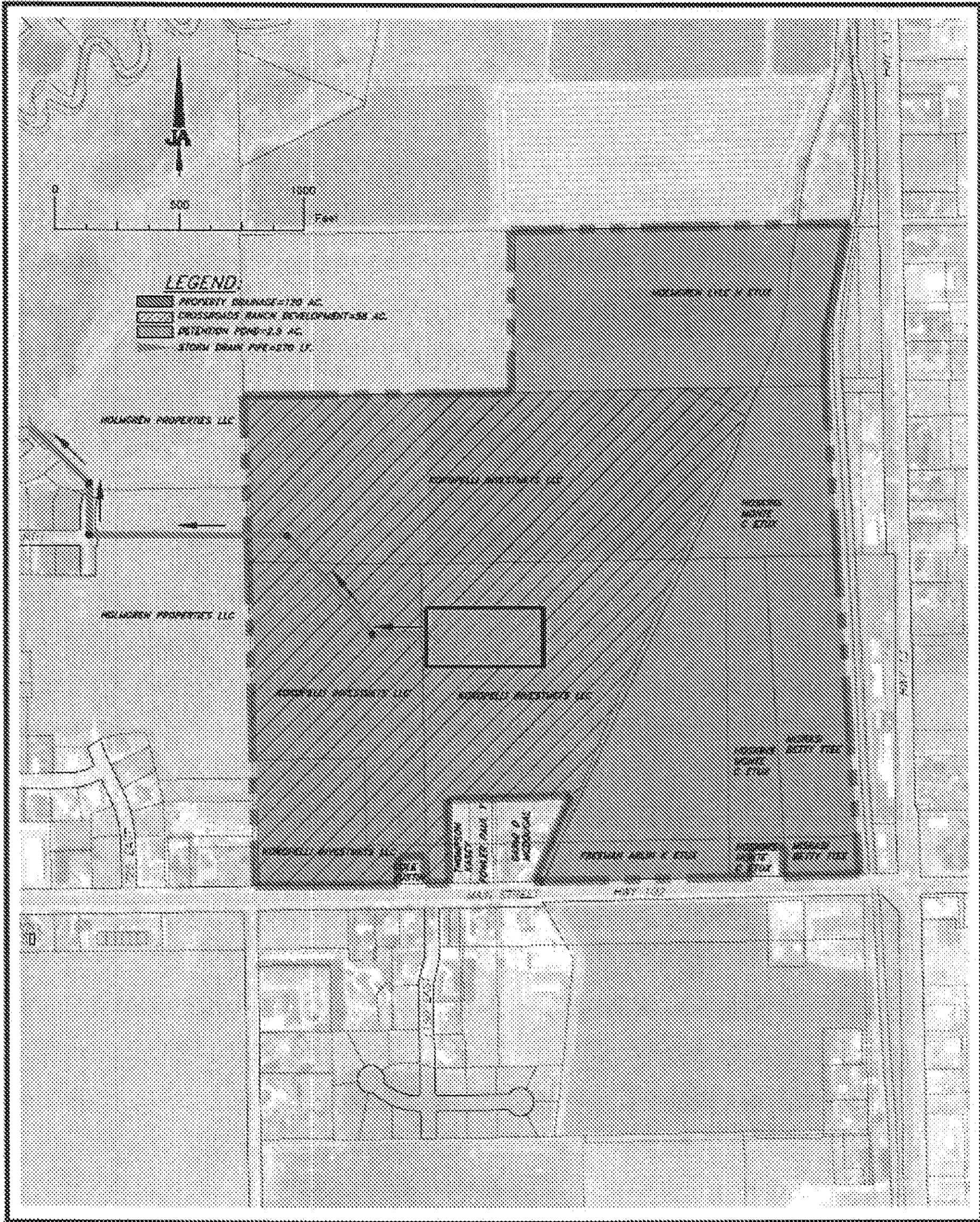
A. **Fee In Lieu Payments for Chip Seal and Fog Coat.**


1. That the Developer make a fee in lieu for payment in the amount of \$9,630.00 for chip seal and fog coat prior to recording the subdivision plat.

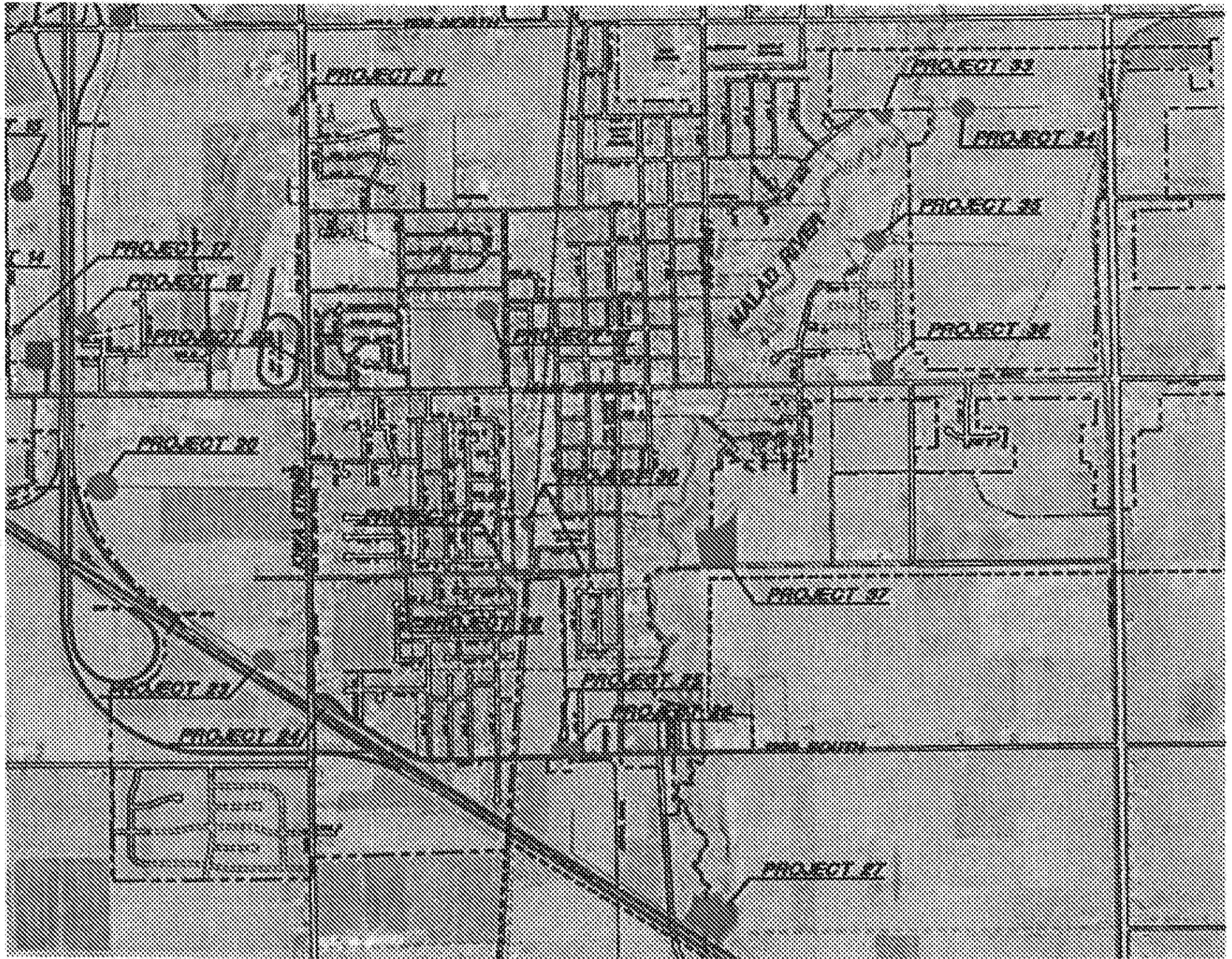
B. **City's Contribution for Upsizing Storm Drain System.**

1. As part of the subdivision approval, the Developer shall install a System Improvement (as defined by Utah Code 11-36a-201(21) (B)) to the storm drain system that is larger than the storm drain needs of the Development to convey stormwater from future development that will occur to the west

of Developer's subdivision (please see map below). Also shown below is a map and cost estimate for Project 36 from the November 2013 Impact Fee Facilities Plan, adopted by Ordinance No. 14-01. Project 36 is a regional storm drain basin and piping (System Improvement) that will occur with future development to the west of the Developer's subdivision. As specified in Section 2.05.020 *Utility Upsizing*, of the *Tremonton City Land Use Development Code*, the City shall participate in the cost of upsizing of the storm drain system with the amount of the City's participation being the actual costs between the storm drain improvements needed to service the Developer's subdivision and those improvements required by the City. The City and Developer has determined that the City's participation for upsizing the storm drain system is \$29,996 (please see invoice below) which is the actual cost paid by the Developer in excess of the Holmgren Estates East Phase 7 project improvements for storm drain.



 <p>JONES & ASSOCIATES CONSULTING ENGINEERS 5080 Fashion Point Drive South Ogden, Utah 84403 (801) 476-9767 www.jonesci.com</p>	<p>TTMONTON CITY CORPORATION</p>	<p>SHEET:</p>
	<p>CROSSROADS RANCH</p>	<p>1</p>
	<p>EXHIBIT</p>	<p>OF 1 SHEETS</p>



Tremonton City Corporation
2013 Capital Facilities Plan Update
Storm Drainage
 Preliminary Estimate of Probable Costs
 Project No : 36
 Location : Main Street 700 E.
 Description : Regional Detention Basin and Piping

Item	Description	Quantity	Unit	Unit Price	Total Amount
1	Furnish & Install 30" R.C.P.	2,600	l.f.	\$60.00	\$156,000.00
2	Furnish & Install 42" R.C.P.	1,570	l.f.	\$120.00	\$188,400.00
3	Manhole/Cleanout	6	ea.	\$3,000.00	\$18,000.00
4	Construct Detention Basin	3.7	AM	\$30,000.00	\$111,000.00
5	Property Acquisition	1.5	Ac	\$60,000.00	\$90,000.00
6	Construct Inlet/Outlet Structure	2	Ea	\$10,000.00	\$20,000.00

				SUBTOTAL	\$583,400.00
				30%± Contingency & Engineering	\$175,020.00
				TOTAL	\$758,420.00

DEVELOPER'S ESTIMATED COST

1	Furnish & Install 18" R.C.P.	4,170	l.f.	\$35.00	\$145,950.00
2	Manhole/Cleanout	6	ea.	\$3,000.00	\$18,000.00

				SUBTOTAL	\$163,950.00
				30%± Contingency & Engineering	\$49,185.00
				TOTAL DEVELOPER'S COST	\$213,135.00
				TOTAL CITY PORTION	\$545,285.00

RUPP TRUCKING ENT INC.
7905 W 9600 N
TREMONTON, UT 84337

Phone # (435) 257-7333

INVOICE #
20572

BILL TO

TREMONTON CITY CORP
 102 SOUTH TREMONT STREET
 TREMONTON, UT. 84337

SHIP TO

HOLMGREN PH 7

DATE 9/10/2018

DUE DATE
9/10/2018

DESCRIPTION	AMOUNT
30" ADS W PIPE ZONE BACKFILL 600 LF X \$43.21	25,926.00
TRENCH BACKFILL 200 CYDS X \$18.50	4,070.00

Total	\$29,996.00
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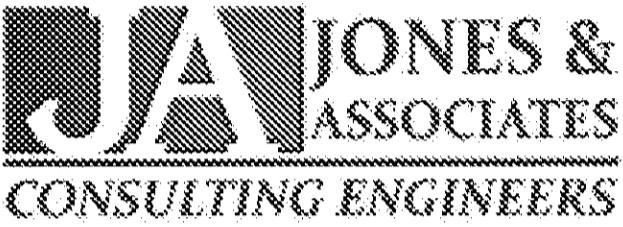
Payments/Credits \$0.00

Balance Due \$29,996.00

All goods and/or services are purchased for the amount stated, and will be paid for within 30 days of delivery. After 30 days the account is overdue and the balance shall bear interest at the rate of 1 1/2% per month. If thereafter, this account is referred to an attorney, the buyer shall pay all costs of collection, including reasonable attorney's fees and court costs.

C. Dedication of Secondary Water System and Water Shares.

1. In accordance with Section 2.06.105 of the Tremonton City Land Use Code, subdivisions that require water service shall provide to the City, in addition to those requirements associated with culinary water, the necessary water shares in the Bear River Canal Company and shall construct a secondary water transmission and distribution system sufficient to satisfy the existing and future uses of the occupants to be supplied by the City's Secondary Water System in the proposed development. The number of Bear River Canal Company Water Shares is

<p>DEVELOPMENT - WATER SHARES REQUIRED Holmgren East Phase 7 Tremonton City</p>	
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Lot Number	Lot Size (sf)	Lot Size (acres)	Shares Required
Lot 77	12,950	0.297	0.19
Lot 78	11,668	0.268	0.16
Lot 79	13,682	0.314	0.19
Lot 80	14,977	0.344	0.22
Lot 81	12,992	0.298	0.19
Lot 82	12,000	0.275	0.16
Lot 83	12,000	0.275	0.16
Lot 84	12,000	0.275	0.16
Lot 85	16,097	0.370	0.25
Lot 86	16,918	0.388	0.25
Lot 87	17,735	0.407	0.25
Lot 88	18,556	0.426	0.29
Lot 89	19,377	0.445	0.29
Lot 90	20,110	0.462	0.30
Lot 91	16,039	0.368	0.25
Total Shares Required			3.31

SECTION 3. MISCELLANEOUS

A. **Construction Site Safety.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation

Requirements, OSHA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed.

B. Construction Site Waste. The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

C. Compliance with City Building Inspector, City Engineer, and City Public Works Director. The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.

D. Protection Strips and Undevelopable Lots. Developer covenants and warrants that they have not, or will not in the future, unlawfully divide real property in such a way that a parcel of property is created or left behind that cannot be developed according to the requirements of Tremonton City Land Use Ordinances, or other applicable laws. Examples of a parcel of property that is created or left behind that cannot be developed include, but are not limited to, spite strips or protection strips, which are parcels created or left for the sole purpose of denying another property owner access to their property, parcels with insufficient square footage, parcels with insufficient buildable area, parcels that do not meet the requirements of Tremonton City Land Use Ordinances, and parcels that do not abut on a dedicated street. When a Developer unlawfully divides property, the Developer agrees, as a remedy, to dedicate and otherwise deed ownership of these undevelopable parcels of land to the City, within thirty (30) days of the City's written request.

E. Consequences of Developer non-compliance with Final Plat and the Agreement. The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat and Construction Drawings, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement, and the City may place liens on vacant lots still owned by the Developer

and or withhold such building permits and certificates of occupancy as it deems necessary to ensure performance in accordance with the terms of the Agreement.

F. **No Waiver of Regulation(s).** Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

G. **Severability of Waivers.** A waiver by any party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

H. **City Council Budgetary Discretion.** All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Tremonton City Council, in its discretion.

I. **Covenants Run with the Land.** This Agreement shall run with the Property, including any subsequent, approved, amendments to the Final Plat of all, or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

J. **Liability Release.** With limitations pursuant to Utah Code Annotated § 10-9a-607, in the event the Developer transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding property owner shall be bound by the terms of this Agreement.

K. **Default and Mediation.** Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either Party shall fail to perform according to the terms of this Agreement, such Party may be declared in default. In the event that a Party has been declared in default hereof, such defaulting Party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance or; (c) avail itself of any other remedy at law or equity.

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before commencement of action in any Court of law. In any such event, defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in Paragraph III.D of this Agreement.

L. **No Third-Party Beneficiaries.** Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third Party or Parties, and no third Party or Parties shall have any right of action hereunder for any cause whatsoever.

M. **Applicable Laws.** It is expressly understood and agreed by and between the Parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Utah and the City of Tremonton, Utah.

N. **Notice.** Any notice or other communication given by any Party hereto to any other Party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other Party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City: Tremonton City
102 S. Tremont Street
Tremonton, UT 84337

With a copy to: Daines & Jenkins, LLP
108 North Main Street
Logan, UT 84321

If to the Developer: Lyle Holmgren
762 East David Drive
Tremonton, Utah 84337

Notwithstanding the foregoing, if any Party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity or address to which notices under this Agreement are to be sent as provided above, such Party shall do so by giving the other Parties to this Agreement written notice of such change.

O. **Word Meanings.** When used in this Agreement, words of the masculine gender shall include the feminine and neutral gender, and when the sentence so indicates, words of the neutral gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning and as if prepared by all Parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the Parties hereto pertaining to the matters addressed in this Agreement.

P. **Complete Agreement.** There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the Parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

Q. **Property Owner as Party.** The Owner is made a Party to this Agreement solely for the purpose of subjecting the Property to the covenants contained in this Agreement. The City and the Developer expressly acknowledge and agree that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

Developer expressly acknowledges and agrees that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

R. **Greenbelt Taxes.** Pursuant to Utah Code Annotated § 10-9a-603(3), The City shall require payment of all Greenbelt Taxes, if applicable, prior to Recordation of the Final Plat.

S. **Recording.** The City and Developer/Owner are authorized to record or file any notices or instruments with the Box Elder County Recorder's Office appropriate to assuring the perpetual enforceability of the Agreement, and the Developer/Owner agrees to execute any such instruments upon reasonable request.

T. **"Arms Length" Transaction.** The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Agreement as independent Parties and that the same is in all respects an "arms-length" transaction.

U. **Severability.** Should any portion of this Agreement be deemed invalid or unenforceable by rule of law or otherwise, all other aspects of the Agreement shall remain enforceable and in full effect.

V. **Incorporation of Recitals and Exhibits.** The above recitals and all exhibits attached hereto are incorporated herein by this reference and expressly made a part of this Agreement.

W. **Preparation of Agreement.** The Parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any Party hereto with respect to the drafting hereof.

X. **Amendments.** This Agreement may be amended at any time upon unanimous agreement of the Parties hereto, which amendment(s) must be reduced to writing and signed by all Parties in order to become effective.

Y. **Further Instruments.** The Parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

Developer/Owner Acknowledgment

State of Utah)
 §
County of _____)

On this _____ day of _____, in the year 20____, before me _____
a notary public, personally appeared _____, and
proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to this
instrument, and acknowledge executing the same.

Notary Public

State of Utah)
 §
County of Box Elder)

On this 7th day of August, in the year 2019, before me Cynthia A Nelson
a notary public, personally appeared Jeff Reese, and
proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to this
instrument, and acknowledge executing the same.

Cynthia A Nelson

Notary Public

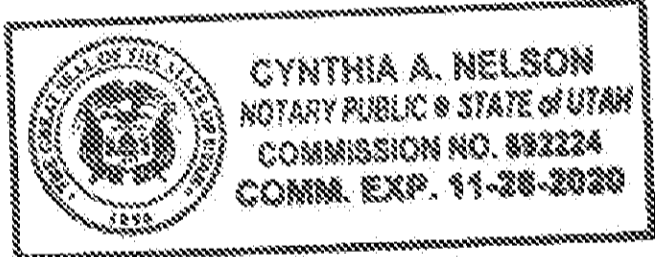


EXHIBIT "A"

CONSTRUCTION/IMPROVEMENT GUARANTEE:

The Bond guaranteeing the Developer's timely and proper installation and warranty of required improvements shall be equal in value to at least one hundred-ten (110) percent of the cost of the required improvements, as estimated by the City Engineer contained in Exhibit "B". The purpose of the bond is to enable the City to make or complete the required improvements in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the Developer to complete the improvements if it receives adequate assurances that the improvements shall be completed in a timely and proper manner. The additional ten (10) percent shall be used to make up any deficiencies in the bond amount and to reimburse the City for collection costs, including attorney's fees, inflationary costs, etc.

All required improvements shall be completed and pass City inspections within one (1) year of the date that the Final Plat is recorded. Required improvements for plats recorded between November 1st and March 31st shall be completed by the next October 1st. For example, the required improvements for a plat recorded on February 6th, shall be completed by October 1st, in the same calendar year. Failure to meet this time frame may result in forfeiture of the bond. A written agreement to extend the completion of the improvements may be granted by the Land Use Authority Board where due to circumstances as determined by the Land Use Authority Board would delay the completion of required improvements.

All subdivision improvements shall be completed by qualified contractors in accordance with Title III General Public Works Construction Standards and Specifications. No work may be commenced on improvements intended to be dedicated to the City without approved construction drawings and a pre-construction meeting with the City.

The Bond shall be an escrow bond, or cash bond in favor of the City. The requirements relating to each of these types of bonds are detailed below. The City Attorney shall approve any bond submitted pursuant to this section. The City Attorney reserves the right to reject any of the bond types if it has a rational basis for doing so. Escrow bonds shall be held by a federally insured bank, savings and loan or credit union or a title insurance underwriter authorized to do business in the State of Utah. A developer may use a cash bond by tendering the required bond amount in cash or certified funds to the City, partial releases may be made from the cash bond as allowed for other bond types, but shall retain ten (10) percent of the bond through the warranty period for any repairs necessary prior to final approval at the end of the warranty period. If no repairs are required at the end of the warranty period the remaining portion of the bond shall be released to the Developer. The City shall not pay any interest on funds held as a cash bond.

MAINTENANCE GUARANTEE:

The Developer hereby warrants and guarantees to the City, for a period of one (1) years from the date of completion and final inspection by the City of the public improvements warranted hereunder, the full and complete maintenance and repair of the public improvements constructed for this Development. This warranty and guarantee is made in accordance with the Tremonton City Land Use Code and/or the Utah Code Annotated, as applicable. This guarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, easements and other public properties, including, without limitation, all curbing, sidewalks, trails, drainage pipes, culverts, catch basins, drainage ditches and landscaping and all other improvements contained in Exhibit "B" of this Agreement. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or city department.

The Developer shall maintain said public improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements and environmental protection requirements of the City until one (1) year following the final inspection. The Developer shall also correct and repair or cause to be corrected and repaired, all damages to said public improvements resulting from development-related or building-related activities. The City may require the Developer to guarantee and warrant that any repairs remain free from defect for a period of one (1) year following the date that the repairs pass City inspection. The City may retain the Developer's guarantee until the repairs have lasted through the warranty period, and may take action on the bond if necessary to properly complete the repairs. In the event the Developer fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Developer. The City shall also have any other remedies available to it as authorized by this Agreement. Any damages which occurred prior to the end of said one (1) year period which are unrepaired at the termination of said period shall remain the responsibility of the Developer.

REPAIR GUARANTEE:

The Developer agrees to hold the City harmless for a one (1) year period, commencing upon the date of completion and final inspection by the City of the public improvements constructed for this Development, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the Property shown on the approved plans and documents for this Development; and the Developer furthermore commits to make necessary repairs to said public improvements, to include, without limitation, all improvements contained in Exhibit "B" of this Agreement, roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills or excavations.

Further, the Developer agrees that the City shall not be liable to the Developer during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other

matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Developer.

The obligations of the Developer pursuant to the "maintenance guarantee" and "repair guarantee" provisions set forth above may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.

EXHIBIT "B" CITY ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS



JONES & ASSOCIATES
Consulting Engineers

Initial Escrow Estimate

August 17, 2018

Mr. Steve Bench
Tremonton City
102 South Tremont Street
Tremonton, Utah 84337

RE: Holmgren East Phase 7

Steve,

I have completed a review of the cost estimate for the above referenced subdivision and have included my breakdown of the costs in the attached spreadsheet. The costs and amounts generally followed the Engineer's Estimate from Hansen and Associates, however there were a couple of changes. The recommended escrow amounts are as follows.

Description	Estimated Cost of Improvements	Previous Amount Released	Work Completed this Period	Current Amount Req'd in Escrow
Culinary Water System	\$73,016.00	\$0.00	\$0.00	\$73,016.00
Sanitary Sewer System	\$62,800.00	\$0.00	\$0.00	\$62,800.00
Storm Drain System	\$70,620.00	\$0.00	\$0.00	\$70,620.00
Irrigation System	\$35,440.00	\$0.00	\$0.00	\$35,440.00
Communications and Power	\$7,200.00	\$0.00	\$0.00	\$7,200.00
Landscaping	\$0.00	\$0.00	\$0.00	\$0.00
Streets	\$146,943.00	\$0.00	\$0.00	\$146,943.00
Sidewalk	\$32,865.00	\$0.00	\$0.00	\$32,865.00
Miscellaneous Items	\$6,950.00	\$0.00	\$0.00	\$6,950.00
10% Contingency	\$43,583.40	\$0.00	\$0.00	\$43,583.40
Totals	\$479,417.40	\$0.00	\$0.00	\$479,417.40

<i>Prepaid Items</i>	
Chip Seal and Fog Coat (\$2.25/sy)	\$9,630.00
Street Lights (\$1,500/ea)	\$0.00
Totals	\$9,630.00

Sincerely,

Chris Breinholt, P.E.
Jones & Associates Engineering

716 East 5600 South • South Ogden, Utah 84403 • (801) 476-9767 • Fax 476-9768

<u>Estimated Cost of Improvements</u>				
<i>Item</i>	<i>Units</i>		<i>Unit Price</i>	<i>Total</i>
<u>CULINARY WATER SYSTEM</u>				
8" DI Pipe & Fittings	1,162	If	\$18.00	\$20,916.00
8" Bends, Tees, and Crosses	4	ea	\$600.00	\$2,400.00
8" Gate Valve	4	ea	\$2,500.00	\$10,000.00
Granular trench backfill	520	cy	\$15.00	\$7,800.00
6" Fire Hydrant w/ Acc. Valve	3	ea	\$3,600.00	\$10,800.00
Thrust Blocks	10	ea	\$75.00	\$750.00
Service Laterals	15	ea	\$1,050.00	\$15,750.00
Valve Collars	6	ea	\$250.00	\$1,500.00
Testing	1	ls	\$800.00	\$800.00
Connect to existing waterline	1	ea	\$800.00	\$800.00
Relocate existing fire hydrant	1	ea	\$1,500.00	\$1,500.00
CULINARY WATER SYSTEM SUBTOTAL =				\$73,016.00
<u>SANITARY SEWER SYSTEM</u>				
12" PVC Pipe & Fittings	980	If	\$20.00	\$19,600.00
Connect to existing sewer line	2	ea	\$850.00	\$1,700.00
Granular trench backfill	1,440	cy	\$15.00	\$21,600.00
5' Diameter Manhole	1	ea	\$2,500.00	\$2,500.00
4' Diameter Manhole	3	ea	\$2,000.00	\$6,000.00
4" Service Lateral	15	ea	\$600.00	\$9,000.00
Manhole Collars	4	ea	\$400.00	\$1,600.00
Clean and Camera	1	ls	\$800.00	\$800.00
SANITARY SEWER SYSTEMS SUBTOTAL =				\$62,800.00
<u>STORM DRAIN SYSTEM - DEVELOPER'S PORTION</u>				
15" R.C.P. Pipe	171	If	\$20.00	\$3,420.00
18" R.C.P. Pipe	900	If	\$24.00	\$21,600.00
30" R.C.P. Pipe (Developer's Portion)	585	If	\$20.00	\$11,700.00
Connect to existing storm drain	1	ea	\$500.00	\$500.00
Type IV Catch Basin	9	ea	\$2,500.00	\$22,500.00
Junction boxes		ea	\$2,000.00	\$0.00
Temporary plug new storm drain	2	ea	\$550.00	\$1,100.00
Granular trench backfill	600	cy	\$15.00	\$9,000.00
Testing	1	LS	\$800.00	\$800.00
Subtotal - developer's portion				\$70,620.00

Item	Units	Unit Price	Total
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STORM DRAIN SYSTEM - CITY'S PORTION

30" R.C.P. Pipe - cost to upsize	585 lf	\$15.00	\$8,775.00
5' diameter manhole	4 ea	\$2,500.00	\$10,000.00
Relocate existing 3'x3' precast junction box	1 ea	\$1,000.00	\$1,000.00
Raise manhole ring to grade with collar	4 ea	\$500.00	\$2,000.00
<i>Subtotal - City's portion</i>			<i>\$21,775.00</i>

STORM DRAIN SYSTEM SUBTOTAL =			\$92,395.00
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SECONDARY WATER SYSTEM

6" PVC Pipe	1,166 lf	\$15.00	\$17,490.00
6" Bends, Tees, and Crosses	1 ea	\$600.00	\$600.00
6" Gate Valve	ea	\$2,500.00	\$0.00
8" cap with blow off	4 ea	\$1,500.00	\$6,000.00
Granular Trench Backfill	135 cy	\$15.00	\$2,025.00
Thrust Blocks	4 ea	\$50.00	\$200.00
Double Service Lateral	9 ea	\$925.00	\$8,325.00
Single Service Lateral	ea	\$1,050.00	\$0.00
Valve Collars	ea	\$400.00	\$0.00
Testing	1 LS	\$800.00	\$800.00

SECONDARY WATER SYSTEM SUBTOTAL =			\$35,440.00
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COMMUNICATIONS

UTOPIA Conduit	950 lf	\$6.00	\$5,700.00
Junction Boxes	3 ea	\$500.00	\$1,500.00

COMMUNICATIONS AND POWER SUBTOTAL =			\$7,200.00
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LANDSCAPING

Detention pond landscaping	LS		\$0.00
Park Strip Landscaping	LS		\$0.00

LANDSCAPING SUBTOTAL =			\$0.00
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STREET IMPROVEMENTS

Excavation to subgrade	1,500 cy	\$5.00	\$7,500.00
8" Granular Pitrun Sub-base	1,742 tons	\$12.00	\$20,904.00
8" Road Base	1,810 tons	\$15.00	\$27,150.00
Std. 30" Curb and Gutter	1,871 lf	\$15.00	\$28,065.00
3" Asphalt Surface w/ Fine Grade	38,510 sf	\$1.40	\$53,914.00

Item	Units	Unit Price	Total
Sawcutting	230 lf	\$2.00	\$460.00
Temporary turn around - 8" thick UTBC	200 tons	\$15.00	\$3,000.00
Temporary turn around - 3" A.C.	4,250 sf	\$1.40	\$5,950.00
STREET IMPROVEMENTS SUBTOTAL =			\$146,943.00

SIDEWALK

4' Sidewalk w/ Base	1,845 lf	\$17.00	\$31,365.00
Handicap Ramps	2 ea	\$750.00	\$1,500.00
SIDEWALKS SUBTOTAL =			\$32,865.00

MISCELLANEOUS

Survey Street Monuments	2 ea	\$450.00	\$900.00
Redline Construction Plans	1 LS	\$2,000.00	\$2,000.00
SWPPP Implementation	1 ls	\$4,050.00	\$4,050.00

MISC. SUBTOTAL =			\$6,950.00
Estimated Improvement Cost			\$457,609.00
Less: City Contribution for Upsize			-\$21,775.00
10% Contingency and Guarantee			\$43,583.40
TOTAL ESCROW AMOUNT			\$479,417.40

PREPAID ITEMS

Chip and Seal	4280 sy	\$2.25	\$9,630.00
Light Poles	0 ea	\$1,500.00	\$0.00

