3207724 BK 7399 PG 1566 RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
12/2/2019 1:42:00 PM
FEE \$40.00 Pgs: 4
DEP eCASH REC'D FOR YORK HOWELL & GUYN

E 3207724 B 7399 P 1566-1569

#### WHEN RECORDED RETURN TO:

Paxton R. Guymon, Esq. YORK HOWELL & GUYMON 10610 South Jordan Gateway #200 South Jordan, Utah 84095

Affects Davis County Parcels 12-105-0048 and 12-105-0153

Space above for Recorder's use only

## IMPROVEMENT AND COST-SHARING AGREEMENT

This Improvement and Cost-Sharing Agreement (this "<u>Agreement</u>") is made and entered into on November <u>LO</u>, 2019, by and between **Castle Creek Homes**, **LLC**, a Utah limited liability company ("<u>CCH</u>") and **Monterey Properties**, **LLC**, a Utah limited liability company ("<u>Monterey</u>"). CCH and Monterey are collectively referred to herein as the "<u>Parties</u>."

## RECITALS

WHEREAS, Monterey has obtained entitlements to develop approximately 12.5 acres into a residential subdivision known as the Edgewater Subdivision located at approximately 2950 South Bluff Road, Syracuse City, Davis County, Utah (the "Edgewater Project").

WHEREAS, CCH owns approximately 19 acres adjacent to the west side of the Edgewater Project. The land owned by CCH is identified as Davis County Tax Parcel Numbers 12-105-0048 and 12-105-0153 (the "CCH Land"). CCH intends to develop the CCH Land into a residential project at some point in the next few years.

WHEREAS, in order for both the Edgewater Project and the CCH Land to be developed, both projects require sewer and storm drain outfall lines and related improvements (the "Shared Improvements"). The Shared Improvements are itemized on the Engineer's Estimate prepared by Wilding Engineering dated September 18, 2019, a copy of which is attached hereto as Exhibit "A" (the "Estimate").

WHEREAS, the Edgewater Project will be developed first, and Monterey (or its successor in interest) will construct and install the Shared Improvements, with rights of reimbursement from CCH (or the then-owner of the CCH Land), as set forth in this Agreement.

#### AGREEMENT

NOW, THEREFORE, in consideration of the representations, warranties, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties covenant and agree as follows:

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- 1. Recitals. The above Recitals are incorporated herein and made part of this Agreement.
- Easement. CCH shall execute and deliver to Monterey that certain Easement for Storm
  Drain and Sewer Systems, which has been prepared and delivered to CCH, which easement
  will allow Monterey and the successor developer/owner of the Edgewater Project to
  construct and install the sewer and storm drain lines through the CCH Land as described and
  depicted in said easement.
- 3. <u>Installation of Improvements</u>. The owner of the Edgewater Project will construct and install the Shared Improvements identified in the Estimate attached hereto as <u>Exhibit "A"</u> in accordance with the standards and requirements of Syracuse City. The owner of the Edgewater Project shall be responsible to comply with and satisfy any and all bonding and warranty obligations relating to such Shared Improvements. The owner of the Edgewater Project shall dedicate the Shared Improvements to the City as public improvements in accordance with the City's ordinances.
- Laterals/Connections. When the owner of the Edgewater Project installs the Shared Improvements, CCH shall have the right, but not the obligation, to install its own laterals and other connections at CCH's own cost and expense.
- 5. Acceptance of Estimate. The Parties approve the Estimate attached hereto as Exhibit "A." As shown in the Estimate, the estimated costs of the Shared Improvements and related facilities and easements is \$199,307.00. CCH agrees that it is responsible for one-half (1/2) of the costs of the Shared Improvements not to exceed \$99,653.50 (the "CCH Obligation").
- 6. Payment of the CCH Obligation. The owner/developer of the CCH Land shall pay the CCH Obligation to the party who originally paid for the Shared Improvements (i.e., the developer of the Edgewater Project) (herein referred to as the "Payee") no later than thirty (30) days following the City's issuance of the first building permit to construct a residential structure on the CCH Land. When the CCH Land is developed, if it does not tie into or make use of the Shared Improvements, then there shall be no requirement to pay the CCH Obligation.
- Recording. A copy of this Agreement may be recorded with the Easement referenced in paragraph 2 above to secure payment of the CCH Obligation.
- Governing Law. In the event that any claim, action, or other legal proceeding shall be brought hereunder by either party, it shall be brought in and evaluated according to the laws of the State of Utah.
- ,9. Attorney Fees. Any breach of this Agreement requiring enforcement through or with the assistance of legal counsel, which actually results in legal fees and/or costs being incurred, shall entitle the prevailing party to recover the actual legal fees and costs of enforcing the action. Said costs shall be determined by the decision maker regarding the dispute.
- 10. Run with the Land. The provisions of this Agreement shall run with the land, meaning they shall inure to the benefit of, and be enforceable against, the parties hereto and their respective successors in ownership of the subject parcels of real property. Monterey, as the

current owner of the Edgewater Project, intends to sell the Project to a developer/home builder after receiving final plat approval for the Edgewater Project. If Monterey sells the Edgewater Project, the new owner shall be entitled to receive and enforce all of the rights, benefits, and obligations of this Agreement.

11. Authority to Sign. Each person who executes this Agreement represents and warrants that he/she has been duly authorized to execute this Agreement on behalf of the entity designated below, and to bind said entity to the terms and provisions of this Agreement.

WHEREFORE, the Parties have executed this Agreement on the date set forth above.

## THE PARTIES:

MONTEREY PROPERTIES LLC

CASTLE CREEK HOMES, LLC Michael Schultz, Manager STATE OF UTAH : SS. COUNTY OF DAVIS The foregoing instrument was acknowledged before me this 2 day of December, 2019, by Michelle Prince, as Manager of Monterey Properties LLC. SEAL Notary Public My Commission Expires November 3, 2023 STATE OF UTAH SS.

The foregoing instrument was acknowledged before me this 30 day of November 2019, by Michael Schultz as Manager of Castle Creek Homes, LLC. ru Willson

SEAL:



Notary Pub

# Exhibit A

### ENGINEER'S ESTIMATE

PROJECT:

Edgewater Park - shared cost outfalls

LOCATION: PREPARED FOR: Syracuse, Utah

DATE:

Alan Prince November 13, 2019



901.569.8118

WORK DESCRIPTION	Qty	UNIT	UNIT COST	TOTAL	-
Off Site Sewer & Storm Drain across Bastian, UDOT and Thayne					Bastian Pays
8" PVC sewer w/ bedding	740	LF	\$21.00	\$15,540.00	\$7,770.00
10" PVC sewer w/ bedding	810	LF	\$24.00	\$19,440.00	\$9,720.00
Casing for sewer under UDOT Property	420	LF	\$42.00	\$17,640.00	\$8,820.00
4' Manholes	1	EACH	\$2,650.00	\$2,650.00	\$1,325.00
5' Manholes	4	EACH	\$3,300.00	\$13,200.00	\$6,600.00
Import backflli(1547'x4'x7'=43,316 cf @ 110lb/cf / 2000)	2,382	tons	\$9.00	\$21,438.00	\$10,719.00
Connection to Existing Manhole	1	EACH	\$1,500.00	\$1,500.00	\$750.00
18" RCP w/ bedding	1,550	LF	\$33.00	\$51,150.00	\$25,575.00
Cleanouts willd	7	EACH	\$1,950.00	\$13,650.00	\$6,825.00
Import backfill (1550'x3'x2'=9300 cf @110lb/cf / 2000)	511	tons	\$9.00	\$4,599.00	\$2,299.50
Connection to Existing cleanout	1	EACH	- \$1,500.00	\$1,500.00	\$750.00
Engineering	1	LS	\$5,000.00	\$5,000.00	\$2,500,00
Staking	1 1	LS	\$2,000.00	\$2,000.00	\$1,000.00
Thayne Easement	1	LS	\$20,000.00	\$20,000.00	\$10,000.00
UDOT Easement	1	LS	\$10,000.00	\$10,000.00	\$5,000.00
ar are a recover and the common and	12 V. W. Phys. de S	J. 69. 5 199.	Total	\$199,307.00	\$99,653.50

- 1. Wilding Engineering is not a construction cost estimator or construction contractor, nor should our rendering an opinion of probable construction costs be considered equivalent to the nature and extent of service that a construction cost estimator or construction contractor would provide. This opinion is based solely upon our own experience with construction, requiring us to make a number of assumptions as to actual conditions that will be encountered on site; the specific decisions of other design professionals engaged; the means and methods of construction that contractors will employ; the cost and extent of labor, equipment and materials the contractor will employ; the contractor's techniques in determining prices and market conditions at the time; and other factors over which the design professional has no control. Given the assumptions which must be made, Wilding Engineering cannot and does not guarantee the accuracy of our opinions of cost.
- This opinion of probable cost does not include governing agency permitting or processing fees, costs for relocating or upgrading existing utilities, right of way acquisition, legal fees, associated taxes and other soft costs, design fees, construction mobilization, construction survey costs, geotechnical study costs, or financing fees.
- 3. The contractor shall verify these quantities with the approved construction drawings for the project.