

Office of the Davis County Recorder



Davis
COUNTY

12-105-0051, 0155, 0154, 0152
0153, 0083, 0048, 0135,
12-104-0192, 0198

E 3236989 B 7477 P 2563-2576
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
03/25/2020 02:59 PM
FEE \$0.00 Pgs: 14
DEP RTT REC'D FOR MONTEREY PROPERT
IES LLC

Recorder
Richard T. Maughan
Chief Deputy
Lailie H. Lomax

THE UNDERLYING DOCUMENT ATTACHED HERETO IS AN ORIGINAL DOCUMENT SUBMITTED FOR RECORDING IN THE OFFICE OF THE COUNTY RECORDER OF DAVIS COUNTY, UTAH. THE DOCUMENT HAS INSUFFICIENT MARGIN SPACE FOR THE REQUIRED RECORDING ENDORSMENT STAMP. THIS PAGE BECOMES THE FRONT PAGE OF THE DOCUMENT FOR RECORDING PURPOSES.

THE DOCUMENT HEREIN RECORDED IS A Agreement
(Document Type)

See Doc
Tax Serial Number(s)

2020-010
PERM
12

**PAYBACK AGREEMENT
STORM AND SEWER IMPROVEMENTS TO BE INSTALLED BY
MONTEREY PROPERTIES IN EDGEWATER PARK SUBDIVISION**

This Agreement made and entered into this 13 day of Feb, 2020 by and between the City of Syracuse, a municipal corporation of Utah, hereinafter referred to as the "CITY" and Monterey Properties, LLC, whose address is 6915 South 900 East, Midvale, UT 84047, hereinafter referred to as the "DEVELOPER."

WHEREAS, pursuant to Syracuse City Municipal Code Section 8.10.140, the CITY has by Resolution No. _____ adopted by the City Council of the CITY on the 13 day of Feb, 2020, approved the execution of this Payback Agreement with the DEVELOPER above and referring to facilities described herein; and

WHEREAS, in connection with the establishment of the Edgewater Park Subdivision in Syracuse City, Utah, the DEVELOPER will install sewer and storm drain improvements, including piping, casing, manholes, cleanouts, and backfill, which will thereafter be dedicated as part of the utility systems of the CITY;

WHEREAS, the above-described improvements benefit other land-owners who would or should in equity normally pay a portion of the improvements, as provided in Syracuse City code;

NOW THEREFORE, IN CONSIDERATION OF THE CONDITIONS AND COVENANTS HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. DEVELOPER

- A. The DEVELOPER is either the record owner or has a contractual right to become the record owner of real property legally described as shown on Exhibit B submitted by the DEVELOPER and attached hereto. The real property described is also known as the Edgewater Park Subdivision, Davis County, Utah.
- B. Legal descriptions of the benefitted properties are included in Exhibit B.
- C. A map showing the DEVELOPER's property and the benefitted properties is attached hereto as Exhibit C.

2. FACILITIES

The facilities which will be constructed by the DEVELOPER herein are as shown in the attached Exhibit A, Improvement Plans and itemized in Exhibit D (Cost Estimate), which are incorporated herein by these references, with the original on file at the office of the City Engineer. The facilities shall be constructed in accordance with the ordinances and requirements of the CITY governing the construction specifications for facilities of such type, and subject to approval by the City Engineer.

3. AREA OF FACILITY SERVICE BENEFIT

- A. The properties benefited by the facilities constructed by the DEVELOPER are shown on Exhibits B & C which are by this reference incorporated herein as if fully set forth herein. Any owner of real estate legally described within the benefit boundary as shown on the attached Exhibits B & C, shall pay as a condition for connecting to the facilities, an amount identified in Section 5. All property within the benefit boundary shall be subject to the connection fee as provided in this agreement as a condition of issuance of the connection permit by the CITY.
- B. The areas designated as benefitting from the improvements have been determined based upon the plans submitted by the Utah Department of Transportation's record of decision related to the construction of the West Davis Corridor. UDOT's construction plans are not yet finalized, and what is installed may vary from those plans. The parties agree that any material deviation from those plans in the actual construction shall warrant a revision of the area and pro-rata share for those benefitting properties.
- C. The DEVELOPER affirmatively indicates that property currently owned by Castle Creek Homes, LLC, and identified in Exhibit B as excluded, is not subject to the terms of this Agreement, as they will be directly sharing costs related to the construction of the improvements pursuant to a separate cost-sharing agreement. Nothing in this Agreement shall be deemed to construed to impair, affect, or modify the separate cost-sharing agreement between DEVELOPER and Castle Creek Homes, LLC.

4. TERM; BENEFITTING PROPERTY TO PAY PRO RATA SHARE

- A. For a period of ten (10) years from the date of execution of this Agreement, any owner of real estate legally described in Section 3, and which owner has not fully contributed their pro rata share to the original cost of the above-described facility, shall pay to the CITY the amounts shown in Exhibit D attached hereto. The charge herein represents the fair pro rata share of the cost of construction of said facilities payable by properties benefited. Such properties are shown in Exhibits B and C. Payment of the benefitted property owner's pro rata share is a condition of issuance of the connection permit by the CITY.
- B. The CITY shall reimburse the DEVELOPER at six (6) month intervals any such amounts collected.
- C. Upon the expiration of the 10-year term, any moneys collected by the CITY will not be reimbursed to the DEVELOPER.

5. AMOUNT OF REIMBURSEMENT

- A. The DEVELOPER, his successors, heirs and assigns, agrees that the amounts which the DEVELOPER is reimbursed from the property owners as specified in Section 3 of this Agreement, represents a fair pro rata share reimbursement for the DEVELOPER'S construction of the facilities described in Section 2 of this Agreement. The amounts per area are separately itemized as shown in Exhibit D attached hereto and totaling not more than \$ 69,931.60 in full amount of reimbursable costs.
- B. The DEVELOPER acknowledges and agrees that the costs cited in this Agreement and itemized in Exhibit D are estimates by the DEVELOPER's engineer, which have been

reviewed by the City Engineer. The amount of recovery shall be limited to the amounts actually expended by the DEVELOPER.

- C. The DEVELOPER shall provide to the City Engineer an itemized bill from the contractors who perform the work, so that the amount may be updated. The amount shall thereafter be adjusted based upon actual expenditures and filed with the Davis County Recorder's Office as a supplement to this Agreement. In the absence of an itemized bill, the CITY shall not be required to collect the pro rata share described in Section 4.
- D. Prior to recordation by the DEVELOPER as described in Section 10, the CITY shall mail to the property owners, as reflected in the records of the Davis County Assessor's Office, as specified in Section 3, notification of the allocation of costs to be levied against the properties which are payable prior to connection to the systems. The property owner shall have the right to a review of the costs with the Director of Public Works within 21 days from the date of said notice for the purpose of requesting an adjustment in the allocation of the charge to the property.
- E. If the Director of Public Works, upon requested review by a notified property owner(s), does find cause for adjustment in the allocation of the charge to the benefited property(s), such adjustment will be made and the DEVELOPER will be notified of the adjusted amount(s) prior to recordation. The resulting adjusted Exhibits C and D shall govern reimbursement amounts to be received by the DEVELOPER.

6. EFFECT OF AGREEMENT

- A. The provisions of this Agreement shall not be effective as to any owner of real estate not a party hereto unless this Agreement has been recorded in the office of the County Recorder of Davis County in which the real estate is located prior to the time such owner receives a permit to tap into or connect to said facilities.
- B. If for any reason, the CITY fails to secure a benefitted property owner's payment for Owner's fair pro rata share of the cost of the facilities, before connection to the extension, the CITY is not liable for payment to the DEVELOPER, or any damages that may result from such a failure.
- C. The entire responsibility for notices, recordation and completion of this Agreement is upon the DEVELOPER, who agrees to do all and to hold the CITY harmless. The DEVELOPER also bears the responsibility to ensure the CITY is aware of this Agreement when benefitting parcels submit development applications.

7. OWNERSHIP OF FACILITY

After the DEVELOPER has constructed the facilities described in Section 2 of this Agreement, which facilities have been accepted by the CITY as satisfactory, the facilities shall become a part of the municipal system of the CITY. All maintenance and operation costs of said facility shall be borne by the CITY, except as noted otherwise. The DEVELOPER shall have no interest in the facilities or right to prevent access to them.

8. UNAUTHORIZED CONNECTION

- A. Whenever any connection is made into the facilities described in Exhibit A under this Agreement which is not authorized by the CITY, the CITY shall have the absolute authority

to remove or cause to be removed such unauthorized connections and all connecting lines or pipes located in the facility's right-of-way.

- B. The CITY shall incur no liability for any damage to any person or property resulting from removal of the unauthorized connection.

9. CURRENT ADDRESS & TELEPHONE NUMBER

The DEVELOPER shall keep a current record of his/her address and telephone number on file with the Director of Public Works of the CITY, and shall within 30 days of any change of said address and/or telephone number, notify the Director of Public Works of the CITY in writing. If the DEVELOPER fails to do so, the parties agree that the CITY may authorize connections resulting therefrom and not incur any liability for the non-collection and/or non-reimbursement of charges to the DEVELOPER under this Agreement.

10. COVENANT RUNNING WITH THE LAND

This Agreement shall be binding on the DEVELOPER, its successors, heirs and assigns and shall so be binding on the legal owners of all properties described within the benefit boundary of the area as shown in the attached Exhibits B and C, their successors, heirs and assigns. The DEVELOPER agrees to pay all fees for recording this Agreement with the County Recorder. The DEVELOPER shall make the actual recording and provide the CITY with confirmation thereof, but such recordation shall only be made after expiration of review period specified in Section 5.

11. HOLD HARMLESS

The DEVELOPER will indemnify and save the CITY and the CITY'S officials and agents harmless from all claims and costs of defense, arising out of this agreement, as a result of DEVELOPER actions, misconduct or breach of contract, including but not limited to attorney's fees, expert witness fees, and the cost of the services of engineering and other personnel who's time is reasonably devoted to the preparation and attendance of depositions, hearings, arbitration proceedings, settlement conferences and trials growing out of the demands and/or actions of property owners incurred in the performance or completion of this Agreement.

12. CONSTITUTIONALITY OR INVALIDITY

If any section, subsection, clause or phrase of this Agreement is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Agreement, as it being hereby expressly declared that this Agreement and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, adopted and approved and ratified irrespective of the fact that any one or more section, subsection, sentence, clause or phrase be declared invalid or unconstitutional.

Exhibit A: Improvement Plans

Exhibit B: legal description of properties

Exhibit C: Map (showing benefited properties)

Exhibit D: Cost apportionment

(Signatures appear on next page)

CITY OF SYRACUSE



Mayor, Mike Gailey



ATTEST:



City Recorder

APPROVED AS TO FORM:

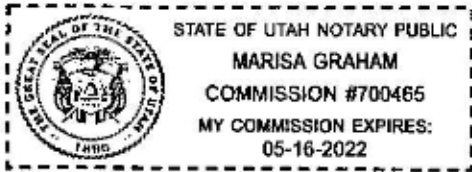


City Attorney

STATE OF UTAH)
) ss
COUNTY OF DAVIS)

On this day of, 2020, before me, the undersigned, a Notary Public in and for the State of Utah, duly commissioned and sworn, personally appeared Mike Gailey and _____, to me known as the Mayor, for the City of Syracuse, the corporation who executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said City of Syracuse, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute said instrument on behalf of said municipal corporation.

GIVEN under my hand and official seal this day 13 of February, 2020.





NAME

NOTARY PUBLIC in and for the State of Utah,
My Commission Expires:
05-16-2022

DEVELOPER:


Signature

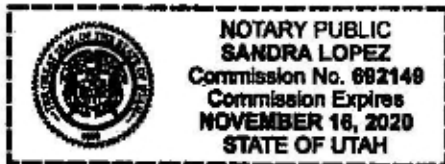
MONTEREY PROPERTIES, LLC
Print

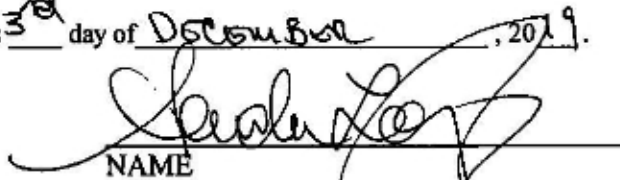
managing member
Title

STATE OF UTAH)
) ss.
COUNTY OF UTAH)

ON THIS 3rd day of December, 2019, before me, personally appeared and, to me known to be the Michelle Prines and of the DEVELOPER the party(ies) who executed - the corporation/company that executed the within and foregoing instrument, and acknowledged said instrument to be his/her/their the free and voluntary act and deed of said corporation/company, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

GIVEN under my hand and official seal this 3rd day of December, 2019.




NAME

NOTARY PUBLIC in and for the State of Utah
My Commission Expires: 11/16/2020

EXHIBIT A IMPROVEMENT PLANS

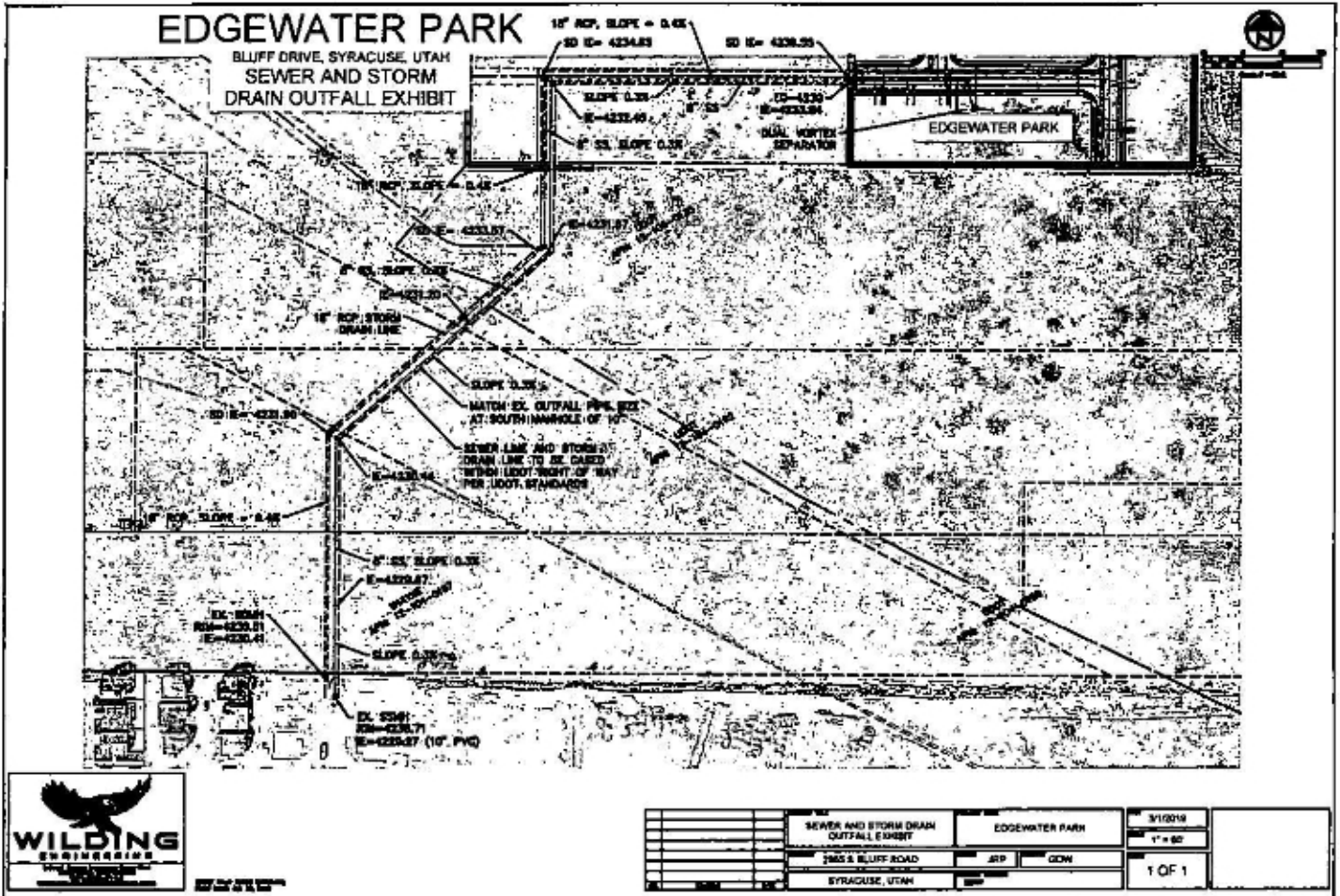


EXHIBIT B
PROPERTY DESCRIPTIONS

DEVELOPER'S PROPERTY:

Parcel ID: 12-105-0051

BEGINNING 414.9 FEET WEST FROM CENTER OF SECTION 22, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN; RUNNING THENCE NORTH 1080.53 FEET, MORE OR LESS, TO THE SOUTH LINE OF PROPERTY CONVEYED IN BOOK 697 PAGE 978; THENCE NORTH 52°21' WEST 216.8 FEET; THENCE SOUTH 1212.93 FEET; THENCE EAST 171.7 FEET TO THE POINT OF BEGINNING.

Parcel ID: 12-105-0050 *kna 0155, 0154*

BEGINNING 586.6 FEET WEST OF THE CENTER OF SECTION 22, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, THENCE NORTH 1497.12 FEET, THENCE WEST 157.05 FEET; THENCE SOUTH 1496.1 FEET; THENCE EAST 156.6 FEET TO THE POINT OF BEGINNING.

PROPERTIES INCLUDED FROM THIS AGREEMENT:

Parcel ID: 12-105-0153, *0083, 0152*

BEGINNING AT A POINT 743.2 FEET WEST OF THE CENTER OF SECTION 22, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN, AND RUNNING THENCE NORTH 1496.1 FEET; THENCE NORTH 52°21' WEST 354.2 FEET; THENCE SOUTH 1712.4 FEET; THENCE EAST 280.5 FEET TO THE POINT OF BEGINNING.

Parcel ID: 12-105-0048

BEGINNING AT A POINT 1023.7 FEET WEST FROM THE CENTER OF SECTION 22, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 1350 FEET, MORE OR LESS, TO THE SOUTHWESTERLY LINE OF LAYTON CANAL; THENCE NORTH 53°00' WEST 160 FEET, MORE OR LESS ALONG SAID LINE; THENCE SOUTH 130 FEET (DEEDS=140 FEET), MORE OR LESS; THENCE WEST 165 FEET; THENCE SOUTH 1320 FEET; THENCE EAST 296.3 FEET TO THE PLACE OF BEGINNING.

BENEFITTED PROPERTIES:

Parcel ID: 12-105-0135

A TRACT OF LAND IN FEE FOR THE PROPOSED WEST DAVIS HIGHWAY KNOWN AS PROJECT NO. SP-9999(807), BEING ALL OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE WEST 1/2 OF SECTION 22, IN T.4N., R.2W., S.L.B.&M. THE BOUNDARIES OF SAID TRACT OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID ENTIRE TRACT; SAID POINT OF BEGINNING BEING N.00°32'59"E. 2350.23 FEET ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22 FROM THE SOUTH QUARTER CORNER OF SAID SECTION 22; AND RUNNING THENCE N.00°32'59"E. 280.50 FEET ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER; THENCE N.89°45'38"W. 1326.70 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER TO THE SOUTHWEST CORNER OF THAT PARCEL OWNED BY HG WILLEY HOME FURNISHINGS, PER ENTRY NO. 1621698 ; THENCE N.00°32'36"E. 659.48 FEET ALONG THE WEST BOUNDARY LINE OF SAID PARCEL; THENCE N.89°44'38"W. 1326.78 FEET TO THE WEST LINE OF SAID SECTION 22; THENCE S.00°32'11"W. 659.87 FEET ALONG SAID WEST SECTION LINE.; THENCE S.89°45'38"E. 33.00 FEET TO THE EAST RIGHT OF WAY LINE OF 2000 WEST; THENCE S.00°32'11"W. 220.50 FEET ALONG SAID EAST RIGHT OF WAY LINE TO A POINT ON THE NORTHERLY BOUNDARY LINE OF THAT PARCEL DEEDED TO THE CHRIST COMMUNITY EVANGELICAL FREE CHURCH, AS PER ENTRY NO. 2306516;

THENCE ALONG SAID BOUNDARY LINE THE FOLLOWING FOUR (4) COURSES & DISTANCES: (1) S.89°45'38"E. 197.97 FEET; (2) N.00°29'58"E. 233.91 FEET; (3) S.89°48'20"E. 700.09 FEET; (4) S.00°29'24"W. 294.46 FEET; THENCE S.89°45'38"E. 1722.20 FEET TO THE POINT OF BEGINNING.

Parcel ID: 12-104-0192

A TRACT OF LAND IN FEE FOR THE PROPOSED WEST DAVIS HIGHWAY, BEING ALL OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE N1/2 SW1/4 OF SECTION 22, IN T.4N., R.2W., S.L.B.&M. THE BOUNDARIES OF SAID TRACT OF LAND DESCRIBED AS FOLLOWS:

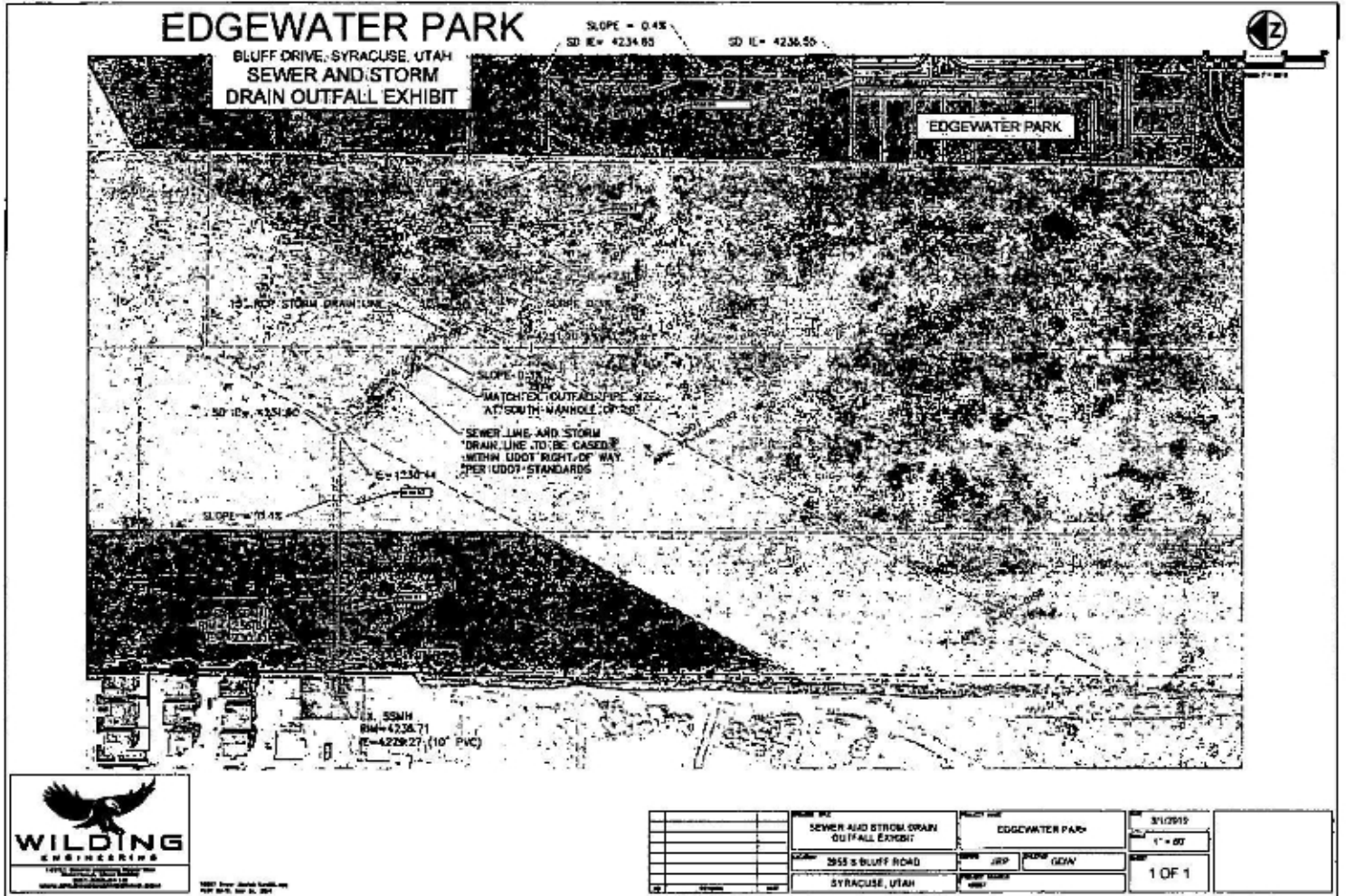
BEGINNING AT THE SOUTHEAST CORNER OF SAID GRANTOR'S ENTIRE TRACT; SAID POINT OF BEGINNING BEING N.00°12'25"E. 2068.77 FEET (126 RODS PER RECORD) ALONG THE EAST LINE OF THE SOUTHWEST CORNER OF SAID SECTION 22 FROM THE SOUTH QUARTER CORNER OF SAID SECTION 22; AND RUNNING THENCE N.00°12'25"E. 280.50 FEET (17 RODS PER RECORD) ALONG THE EAST ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER TO THE NORTHEAST CORNER OF SAID GRANTOR'S ENTIRE TRACT; THENCE S.89°53'47"W. 2620.88 FEET (158 RODS PER RECORD) ALONG THE NORTH LINE OF SAID TRACT OF THE EAST RIGHT OF WAY LINE FO 2000 WEST STREET; THENCE S.00°11'36"W. 280.50 FEET (17 RODS PER RECORD) ALONG SAID EAST RIGHT OF WAY LINE TO THE SOUTHWEST CORNER OF SAID GRANTOR'S ENTIRE TRACT; THENCE N.89°53'47"E. 2620.81 FEET (158 RODS PER RECORD) ALONG THE SOUTH BOUNDARY OF GRANTOR'S ENTIRE TRACT TO THE POINT OF BEGINNING.

Parcel ID: 12-104-0198

A PARCEL OF LAND IN FEE FOR THE PROPOSED WEST DAVIS HIGHWAY, BEING PART OF AN ENTIRE TRACT OF PROPERTY, SITUATE IN THE NE1/4 SW1/4 OF SECTION 22, IN T.4N., R.2W., S.L.B.&M. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF GRANTOR'S ENTIRE TRACT; SAID POINT OF BEGINNING BEING N.00°12'25" E. 1864.50 FEET ALONG THE EAST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 22; AND RUNNING THENCE N.00°12'25"E. 214.50 FEET ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER TO THE NORTHEAST OF SAID TRACT TO THE WESTERLY HIGHWAY RIGHT OF WAY & NO-ACCESS LINE OF THE PROPOSED WEST DAVIS CORRIDOR; THENCE SOUTHEASTERLY ALONG SAID PROPOSED RIGHT OF WAY & NO-ACCESS LINE THE FOLLOWING TWO (2) COURSES: (1) SOUTHEASTERLY 37.63 FEET ALONG THE ARC OF A 3,444.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT; (NOTE: CHORD TO SAID CURVE BEARS S.65°29'11"E. FOR A DISTANCE OF 37.63 FEET); TO A POINT OF REVERSE CURVATURE ON A 11,125.00 FOOT RADIUS CURVE TO THE LEFT; (2) SOUTHEASTERLY 419.23 FEET ALONG THE ARC OF SAID CURVE (NORTH: CHORD TO SAID CURVE BEARS S.61°47'25"E. FOR A DISTANCE OF 419.21 FEET); THENCE N.89°53'47"E. 815.58 FEET ALONG THE SOUTH BOUNDARY OF GRANTOR'S ENTIRE TRACT TO THE POINT OF BEGINNING.

EXHIBIT C
MAP SHOWING BENEFITTED PROPERTIES



PROJECT NO.	SEWER AND STORM DRAIN OUTFALL EXHIBIT	PROJECT NAME	EDGEWATER PARK	DATE	3/1/2015
CITY	2955 S BLUFF ROAD	OWNER	JRP	SCALE	1" = 50'
STATE	SYRACUSE, UTAH	DESIGNER	GDW	SHEET NO.	1 OF 1

EXHIBIT D
COST APPORTIONMENT & COST ESTIMATE

	Area #1 Cost	Area #2 Cost	Area #3 Cost	Total
Area #1 (Orange)	\$3,800.94	N/A	N/A	\$3,800.94
Area #2 (Purple)	\$9,122.25	\$4,533.26	N/A	\$13,655.51
Area #3 (Green)	\$12,923.19	\$6,422.12	\$33,129.84	\$52,475.15
Area #4 (Pink)	\$24,326.01	\$12,088.69	\$62,362.05	\$98,776.75
Total	\$50,172.40	\$23,044.06	\$95,491.89	\$168,708.35

CONTRACT CHECKLIST

Date:	2/10/2020		
Contracting Agency:	Monterey Properties, LLC		
Project:	Edgewater Park		
Dept/Division:	Community Development		
Contact:	Alan Prince	Phone:	801-556-6000
Explanation/reason for agreement:	Stormwater Easement Off-site		

Please verify and check off the following boxes before forwarding to the Recorder's Office for routing. If not applicable, indicate by lining through the item.

- Contract is for: Public improvement/construction Goods Services
- Preliminary review by Attorney's Office – Name: Paul Roberts
- Minimum of 2 (two) original copies of agreement. Does the agreement include the following:
- Original** signature of contracting agency Insurance/Worker's Comp provisions/certificates
 - Address/phone # of contracting agency Performance/payment bond
 - All exhibits (including scope of services) Indemnification/hold harmless agreement
 - Notice of Award Initials of Department Director/Division Manager
- Purchasing procedures: Competitively bid Telephone quotes Other
- Sole source – **SIGNED AUTHORIZATION MUST BE ATTACHED**
- Agreement requires expenditure of funds – budget account number: _____
- Amends previously approved agreement – agreement identifying number: _____
- Agreement will use grant funding – indicate agency: _____

To avoid delays in routing, please ensure ALL required information has been included as indicated above.

NOTES:	ROUTING:	INITIALS:	DATE:
<u>Return to Royce</u>	Recorder's Office		
<u>when complete. Thanks!</u>	<input type="checkbox"/> Finance Director (if applicable)		
	Recorder's Office		
	<input checked="" type="checkbox"/> Attorney's Office-final review	<u>PR</u>	<u>2/12/20</u>
	Recorder's Office		
	<input type="checkbox"/> City Administrator		
	Recorder's Office		
	<input type="checkbox"/> City Council (if applicable)		
	Recorder's Office		
	<input checked="" type="checkbox"/> Mayor	<u>[Signature]</u>	<u>2/13/2020</u>
	<input checked="" type="checkbox"/> Recorder's Office – attesting	<u>[Signature]</u>	<u>2-13-20</u>
	Identifying Number: _____		
	Add'l agreements/copies returned: _____		