Upon Recording Return to: Brigham City Recorder 20 N. Main Street Brigham City, UT 84302

#### **ESCROW AGREEMENT**

**THIS AGREEMENT** is made and entered into by and between HERITAGE LAND DEVELOPMENT, LLC, hereinafter called "Subdivider" and BRIGHAM CITY CORPORATION, a municipal corporation, hereinafter called "City" and BANK OF UTAH, hereinafter called "Escrow Holder".

## WITNESSETH:

WHEREAS, Subdivider has caused to be subdivided under the regulations and ordinances of Brigham City certain property located in said City known as NORTHVIEW SUBDIVISION PHASE 3, consisting of certain lots and improvements as specifically designated on the subdivision plat and engineering documents. A copy of the subdivision plat is attached hereto as Exhibit "A" and made part of this Agreement; and

WHEREAS, Subdivider has agreed and undertaken to complete the construction and installation of onsite and offsite improvements and facilities in accordance with the terms of the Brigham City ordinances, the costs of which are set forth in the Engineer's Estimate thereof, a copy of which is attached hereto and marked as Exhibit "B" and made a part of this Agreement; and

WHEREAS, the parties have agreed that to insure the completion of such onsite and offsite improvements and facilities by Subdivider on or before the \_\_\_\_\_ day of May, 2023, the sum of \$710,093.00, shall be deposited or held as undisbursed loan funds with the Escrow Holder in favor of the City for the purpose of guaranteeing to City that the onsite and offsite improvements and facilities are timely completed in accordance with the terms and conditions of this Agreement as hereinafter stated.

**NOW, THEREFORE**, for and in consideration of the promises and the covenants, terms and conditions as hereinafter set forth it is agreed by Subdivider, City and Escrow Holder as follows, to wit:

- 1. Subdivider shall either have on deposit or held as undisbursed loan funds with Escrow Holder by the 1 day of May, 2023, the sum of \$710,093.00, as the remaining costs for installation of onsite and offsite improvements including the required 10% warranty as specifically itemized in the Engineer's Estimate attached hereto as Exhibit "B" for the purpose of guaranteeing the completion by the Subdivider of such onsite and offsite improvements on or before the 1 day of May, 2025.
- All parties hereto agree that the escrow funds may be used in the following manner only, to wit:
  - (a) Subdivider shall notify Brigham City Public Works Department of its intent to install or commence installation of each onsite and offsite improvements not less than 24 hours prior to commencement of work so that the City may inspect, verify, and approve such installation prior to covering.
  - (b) Upon completion of such onsite and offsite improvements, Subdivider may file with City a written request for withdrawal from escrow for payment of such improvements or installations. Upon approval and acceptance by the City Engineer or designee, City will authorize Escrow Holder to disburse said

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dedicated funds up to the Engineer's Estimate to the Subdivider, contractor, or agent furnishing such services, as requested by Subdivider.

- (c) Immediately upon completion of all onsite and offsite improvements as set forth in Engineer's Estimate, Exhibit "B", Subdivider shall provide to City a mylar copy of subdivision "As-Built Drawings." Upon approval and acceptance of improvements and facilities by the City Engineer or designee, City shall grant "Conditional Acceptance" of the subdivision improvements, City shall immediately in writing to Escrow Holder, authorize the release and payment of all remaining funds to Subdivider, except the 10% warranty.
- (d) Immediately upon conclusion of the subdivision improvements one year warranty period, which commenced on the day City granted Conditional Acceptance, City shall once again inspect subdivision improvements and if found to be satisfactory, City shall grant "Final Acceptance" of all improvements, record a release of financial guarantee, and shall in writing to Escrow Holder, authorize the release and payment to Subdivider of the 10% warranty.
- (e) As each payment by the Escrow Holder to Subdivider, contractor, or agent is made, Escrow Holder and/or Subdivider shall secure from such contractor or persons performing services good and sufficient lien waivers covering such work and materials.
- (f) Nothing contained herein shall prevent Subdivider from paying any or all costs of improvement from separate financial sources or funds, should Subdivider determine to do so.
- (g) Escrow Holder shall only release escrow funds after receiving written authorization from City to release said funds, notwithstanding time periods noted berein
- 3. Subdivider agrees that they shall complete all onsite and offsite improvements on said subdivision within two years from the date hereof, to wit:
  - On or before the <u>v</u> day of May, 2025, and in the event the Subdivider fails to complete such improvements within said time frame, then and in that event, the Escrow Holder shall disburse directly to the City such funds or parts thereof as City may request as reimbursement for improvements caused to be constructed by the City for or on behalf of the City in completing the onsite and offsite improvements and facilities on said Subdivision.
- In no event shall the Escrow Holder charge or claim a lien against any of the proceeds held hereunder for the benefit of the City for any other debt or obligation owed by Subdivider.
- 5. This Agreement shall be binding upon and inure to the benefit of the respective parties hereto, their successors, heirs and assigns.
- Subdivider agrees to pay to the Escrow Holder all fees charged by the Escrow Holder for its services and the performance of its duties and obligations under this instrument.
- 7. Subdivider by entering into this Agreement agrees to escrow the amount of money as determined by the Engineer's Estimate. The Subdivider further understands that Subdivider shall be responsible for the actual costs of installation of the improvements, should the actual costs vary from the Engineer's Estimate.

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8.	If any party defaults in the terms, covenants and conditions of this agreement, the defaulting party shall pay all costs, expenses and attorney's fees for enforcement of the agreement.
by the	NESS WHEREOF, the parties have executed this Agreement this 1 day of May, 2023, City acting by authority of its governing body, Subdivider by authority of its governing body e Escrow Holder by authority of its governing body, granted to it pursuant to bylaws of ions authorizing the same.
	CITY  Mayor Dennis J. Bott  Brigham City
CORP	ORATE ACKNOWLEDGMENT
On 15 sworn and that	TY OF BOX ELDER  day of May, 2023, Personally appeared before me Dennis J. Bott. Who being duly by me did say, for himself that he is the said authorized agent of Brigham City Corporation, at within the foregoing instrument was signed in behalf of said Brigham City Corporation, at the said authorized agent did duly acknowledge to me that said corporation executed the COMMISSION NO. 709191  COMM. EXP. 11/16/2023
APPRO	OVED AS TO FORM
City At	

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SUBDIVIDER

Jay Stocking, Manager

Heritage Land Development, LLC

# LIMITED LIABILITY ACKNOWLEDGMENT

STATE OF UTAH ) : § COUNTY OF BOX ELDER

On this <a href="On-this-vertical">Vertical</a> day of May, 2023, **Jay Stocking**, manager, for and on behalf of Heritage Land Development, LLC, personally appeared before me, the undersigned notary public in and for said state and county, being duly sworn, acknowledged to me, that he is the Manager of Heritage Land Development, LLC, a Utah Limited Liability Company, and that within and foregoing instrument was signed in behalf of said corporation, and said authorized agent did duly acknowledge to me that said corporation executed the same.

Melisa Kim Yen Casselman Notary Public, State of Utah Commission # 720009 My Commission Expires August 20, 2025

Notary Public

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**ESCROW HOLDER** 

Tiffany Butler Commercial Loan Documentation Team Lead Bank of Utah

### **CORPORATE ACKNOWLEDGMENT**

STATE OF UTAH				
COUNTY OF Weber	: §			

On the \_\_\_\_\_ day of May, 2023, personally appeared before me, \_\_\_\_\_\_, who being by me duly sworn did say, for herself that she is the said authorized agent of Bank of Utah, and that within and foregoing instrument was signed in behalf of said corporation, and said agent did duly acknowledge to me that said corporation executed the same.

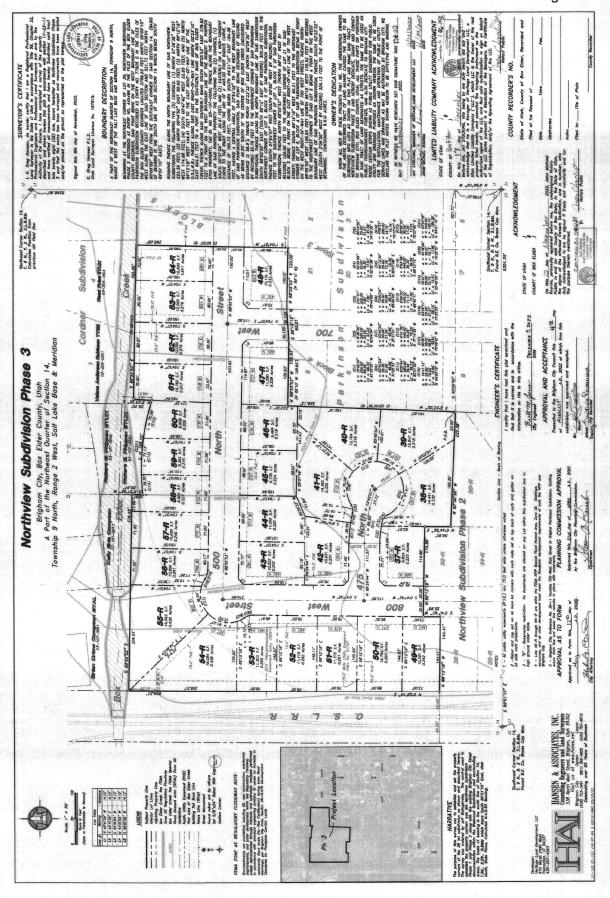
REBECCA POLL Notary Public - State of Utah Comm. No. 708841 My Commission Expires on Dec 13, 2023

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# Exhibit "A"

Northview Subdivision Phase 3

Legal Description



#### BOUNDARY DESCRIPTION

A PART OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 9 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE NORTHEAST CORNER OF LOT 30, NORTHVIEW SUBDIVISION PHASE 2 RECORDED AS ENTRY NO. 445466 IN THE FILES OF THE BOX ELDER COUNTY RECORDER, SAID POINT BEING ON THE WEST BOUNDARY LINE OF PARKINSON SUBDIVISION RECORDED AS ENTRY NO. 77605 G IN THE FILES OF THE BOX ELDER COUNTY RECORDER LOCATED 3758.23 FEET NORTH 00°06'10" WEST ALONG THE EAST LINE OF SAID SECTION AND 521.73 FEET NORTH 90°00'00" WEST FROM THE SOUTHEAST CORNER OF SAID SECTION 14. (BASIS OF BEARING IS THE SOUTH LINE OF SAID SECTION 14 WHICH BEARS SOUTH 89°51'10" EAST).

RUNNING THENCE ALONG THE NORTH BOUNDARY LINE OF SAID NORTHVIEW SUBDIVISION THE FOLLOWING FIVE (5) COURSES: (1) NORTH 87\*36'38" WEST 222.38 FEET; (2) NORTH 00°44'52" EAST 50.92 FEET; (3) NORTH 89\*12'18" WEST 174.88 FEET; (4) SOUTH 00°47'42" WEST 32.95 FEET; AND (5) NORTH 89\*12'18" WEST 174.88 FEET; (4) SOUTH 00°47'42" WEST 32.95 FEET; AND (5) NORTH 89\*12'18" WEST 144.41 FEET TO THE EAST RIGHT-OF-WAY LINE OF THE O.S.L.R.R.; THENCE ALONG SAID EAST RIGHT-OF-WAY LINE NORTH 00°23'10" EAST 604.51 FEET TO A POINT ON THE SOUTHERLY BANK OF BOX ELDER CREEK; THENCE ALONG SAID SOUTHERLY BANK SOUTH 88'55'53" EAST 378.62 FEET TO A POINT ON THE WEST BOUNDARY LINE OF THE ROBERT E. PHIPPEN ETUX PROPERTY, TAX 1D. NO. 03-107-0050; THENCE ALONG THE BOUNDARY LINE OF SAID PHIPPEN PROPERTY THE FOLLOWING TWO (2) COURSES; (1) SOUTH 00°37'09" WEST 20.97 FEET; AND (2) EASTERLY ON A NON-TANGENT CURVE TO THE RIGHT ALONG THE ARC OF A 445.00 FOOT RADIUS CURVE, A DISTANCE OF 185.73 FEET, CHORD BEARS SOUTH 84'21'10" EAST 184.38 FEET, HAVING A CENTRAL ANGLE OF 23'54'48" TO THE WEST BOUNDARY LINE OF SAID PARKINSON SUBDIVISION, SAID POINT BEING DESCRIBED OF RECORD AS BEING 49.50' SOUTH OF THE CENTER OF BOX ELDER CREEK (MEASURED DISTANCE IS 58.9'); THENCE NORTH 02'23'32" EAST (NORTH 02'03'30" WEST BY RECORD) 35.70 FEET TO THE NORTHWEST CORNER OF SAID PARKINSON SUBDIVISION SOUTH 88'55'53" EAST (SOUTH 89'10' EAST BY RECORD) 300.00 FEET TO THE NORTHWEST CORNER OF LOT 3, BLOCK 5 OF SAID PARKINSON SUBDIVISION THENCE ALONG THE NORTHWEST CORNER OF LOT 20.00 FEET TO THE NORTHWEST CORNER OF LOT 20.00 FEET TO THE NORTHWEST CORNER OF FOT 210 GAID PARKINSON SUBDIVISION; THENCE NORTH 88'55'53" WEST (NORTH 89'10' WEST BY RECORD) 295.00 FEET TO THE SOUTH 86'18'18" WEST 60.21 FEET TO THE NORTHEAST CORNER OF FOT 21 OF SAID PARKINSON SUBDIVISION; THENCE SOUTH 86'18'18" WEST 60.21 FEET TO THE NORTHEAST CORNER OF FOT 21 OF SAID PARKINSON SUBDIVISION ON THE WEST RIGHT-OF-WAY LINE OF FOUNT ON THE EAST RIGHT-OF-WAY LINE OF FOUNT ON THE WEST SOUTH 20'930" WEST BY RECORD)

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Exhibit "B"

Engineer's Estimate

ENGIN	EER'S ESTIMATE					
COLUMN AND DESCRIPTION OF	rch 16, 2022					
	LL LINEAR FOOT PIPE PRICES ARE TO INCLUDE BEDDING, BACKFILL, AND	COMPAC	TION OF TR	ENCH TO GI	RADE	
WORK				UNIT		TASK
ITEM #	ITEM	UNIT	QUANTITY	PRICE		PRICE
T	CTDEET IMPROVEMENTS					
I.	STREET IMPROVEMENTS  MOBILIZATION KH 1/27/23	T-00		62 000 00	# C	63.000
1)		LS	1	\$3,000.00		<del>\$3,000</del>
3	CLEARING & SITE PREPARATION KH 4/25/23	LS	(4.192	\$3,000.00	CONTRACTOR OF THE PERSON OF TH	<del>\$3,000</del>
4	8" SCARIFY - SUBGRADE PREP & COMPACT TO 95%	SF SF	64,182	\$0.20	/SF	\$12,830
+	8" GRANULAR BORROW (3" - 6") - IN-PLACE  5" UNTREATED BASE COURSE (3/4" - 1-1/2") - IN-PLACE	SF	54,330		/SF	\$65,196 \$46,18
6	3" ASPHALT - IN-PLACE	SF	54,330 54,330	\$1.40		\$76,062
7	SEAL COAT	SY	6.037	\$5.00		\$30,183
8	INSTALL ADA RAMP	EA	5	\$1.200.00	/EA	\$6,000
9	CITY-STD 2.5' WIDE CURB & GUTTER, COMPLETE WITH UNDERLYING ROADE		2,735	\$21.00		\$57,435
10	CITY-STD. 4-FOOT WIDE CONC. SIDEWALK	SF	11,157	\$6.50		\$72,521
11	STREET MONUMENTS	EA	11,137		/SF /EA	\$1,800
12	STREET MONUMENTS STREET SIGN/STOP SIGN	EA	3	\$250.00	_	\$750
13)		EA	3	\$3.800.00		-\$11,400
14	STRIPPINGS Paid w/Line 52 11/28/22 MB STRIPPINGS	LS	1	\$3,000.00	Sandanian .	\$3,000
15	COMPACTION TESTING	LS	1	\$3,500.00		\$3,500
16	CONSTRUCTION STAKING	LS	1	\$5,800.00		\$5,800
17)	EARTHWORK (APPROX.) - CUT KH 4/25/23	CY	2,724	\$3.50	_	\$9,53
18	EARTHWORK (APPROX.) - CUT  EARTHWORK (APPROX.) - FILL & COMPACT - WESTERLY LOTS	CY	11,257	\$5.75		\$64,728
19	EARTHWORK (APPROX.) -FILL & COMPACT - WESTERLY LOTS  EARTHWORK - IMPORT (APPROX.) MEETING GEOTECH REPORT SPEC'S	CY	8,533	\$10.00		\$85,330
19A	RELOCATE EXISTING FENCE	LF	150	\$4.00	_	\$600
19B	RELOCATE EXISTING FENCE  RELOCATE EXISTING LAND DRAIN ROUTING - 6" PVC  KH 4/25/23	LF)	230	\$20.00		<del>\$4,600</del>
19C	REMOVE & DISPOSE EXISTING CURB & GUTTER  KH 4/25/23	(LF)	120	\$5.00		\$600
170	REMOVE & DISPOSE EXISTING CURB & GUITER	LF	(120)	\$3.00	/LF	
	SUBTOTAL:					<del>-\$564,05</del>
						\$531,92
II.	DRAINAGE IMPROVEMENTS					
20	15-INCH RCP III STORM LINE	LF	338	\$65.00	/LS	\$21,970
20A	18-INCH RCP III STORM LINE KH 4/25/23	LF	998	\$80.00	/LS	<del>\$79,84</del>
20B	NOT USED			1000000		
20C	24-INCH RCP III STORM LINE KH 4/25/23	LF	288)	\$100.00	/LS	\$28,80
21)	CONNECT TO EXISITING STORM DRAIN LINE KH 1/27/23	LS	(2)	\$1,500.00	/LS	<del>\$3,000</del>
22	INSTALL CITY-STD. CURB INLET	EA	14	\$2,300.00		\$32,200
23)	INSTALL 5' DIA STORM DRAIN MANHOLE KH 1/27/23	EA	2	\$2,500.00	Carried	<del>- \$5,00</del> 0
23A	INSTALL DUAL-VORTEX SEPARATOR KH 1/27/23	EA	120	\$20,000.00		\$20,00
23B) 23C	12" WIDE DRAINAGE DITCH KH 4/25/23 STORM DRAIN-CONCRETE COLLARS	LF)	130	\$10.00 \$400.00	/EA	\$1,30 \$1,20
23D	VIDEO INSPECTION	EA LS	3	\$1,000.00	/EA	\$1,00
2017	TIDEO INSI ECTION	L.)	1	\$1,000.00	/ 1 . / 1	31,00
	SUBTOTAL:					<del>- \$194,3</del> 1
						\$56.37
III.	CULINARY WATER IMPROVEMENTS					\$00,01
24)	CONNECT TO EXISTING 8" WATERLINE KH 1/27/23	EA	3	\$500.00	/FA	\$1,500
25	INSTALL 8" C-900 DR 14 WATER MAIN WITH ALL FITTINGS, COMPLETE KH 1/2	7/23	1,464	\$50.00		\$73,20
26	WATER - 8" GATE VALVE KH 1/27/23	EA	6	\$2,000.00		S12,00
27	FIRE LINE & HYDRANT, W/VALVE - COMPLETE   KH 1/27/23	EA	4	\$5,000.00		<del>\$20,00</del>
28				\$1,000.00	-	- \$28,00
29	THRUST BLOCKING KH 1/27/23	LS	1	\$1,700.00		\$1,70
30	WATER - VALVE COLLARS	EA	10	\$350.00		\$3,50
31	TEMPORARY PLUGS AND TESTING	LS	10	\$1,200.00		\$1,20
	I STATE OF THE STA		1	+1,200.00		1,=0

\$4,700



IV.	SEWER IMPROVEMENTS					
32	CONNECT TO EXISTING SEWER MAIN & ADJUST TO GRADE KH 1/27/23	EA	2	\$1,200.00	/EA	S2,400
33	8" SEWER MAIN - PVC SDR 35 KH 1/27/23	LF)	1,114	\$48.00	/LF	-\$53,472
34	INSTALL 4-FOOT DIA. MANHOLE) KH 1/27/23	EA	2	\$4,000.00	/EA	
35	INSTALL 5-FOOT DIA. MANHOLE KH 1/27/23	LS	1	\$4.500.00	/LS	\$4,500
36	SEWER - INSTALL LATERALS FOR LOTS KH 1/27/23	EA	24	\$1,000.00	/EA	\$24,000
37	SEWER - INSTALL LATERALS FOR LOTS: CONNECT TO EX. SEWER KH 1/2	7/2EA	4	\$1,200.00	/EA	<del>\$4,800</del>
38	SEWER - MANHOLE CONCRETE COLLARS	EA	5	\$400.00	/EA	\$2,000
39	TESTING, CLEANING, VIDEO INSPECT KH 4/25/23	LS	(1)	\$1,400.00	/LS	<del>\$1,400</del>
			-	4-33-11-1	-	
	SUBTOTAL:					-\$100,572
						\$2,000
VI.	SECONDARY WATER IMPROVEMENTS					Ψ2,000
40	6" SECONDARY WATER MAIN: C-900 DR-18 KH 1/27/23	LF)	1,379	\$20.00	/IIII	<del>\$27,580</del>
41)			/27/23 15	\$925.00	/EA	\$13,875
42	SECONDARY WATER SERVICE (DOUBLE), COMPLETE - WITH BOX, NO MET SECONDARY WATER - 6" GATE VALVE KH 1/27/23		2	\$1,250.00	/EA	\$2,500
	WILLEAM	EA	-	Contract Con	- Constitution	\$700
43	CONCRETE VILLE COLETING	EA	21	\$350.00 \$1,700.00	/EA	
44	THOST BEOCKING	LS	(1)	Charles Management Control	/LS	\$1,700
45	CONNECT TO EXISTING O SECONDART WATER LINE	EA LS	1	\$1,000.00 \$550.00	/EA	\$1,000 \$550
40	TEMPORARY PLUGS AND TESTING KH 4/25/23	LS	(1)	\$330.00	/LS	9550
	SUBTOTAL:					<del>\$47,905</del>
	SCBIOTAL.					
VII.	SWPPP					\$0
	and the state of t	E	12	¢150.00	/E: A	61.050
47	INLET PROTECTION SILT FENCE OR BERMING KH 4/25/23	EA	13	\$150.00	_	\$1,950
48	SIET TENCE ON BERNING	LF)	758	\$2.00	/LF	\$1,516
49	CONCRETE WASHOUT	LS	1	\$500.00	/LS	\$500
50	STABILIZED ENTRANCE KH 4/25/23 RECORD KEEPING	LS LS	2)	\$1,050.00 \$1,200.00		\$2,100 \$1,200
31	RECORD REEPING	LS	1	\$1,200.00	/L3	
	CUDTOTAL					F7 200
	SUBTOTAL:					\$7,266
X7777	DDV UTIL ITYPO					\$3,650
VIII.	DRY UTILITIES				_	
52	ELECTRIC: CITY ESTIMATE* Paid to City 11/28/22 MB	LS	(1)	\$57,483.30	***************************************	<del>\$57,483</del>
53	GAS SLEEVES KH 4/25/23	LF	(180)	\$10.00	/LF	<del>\$1,800</del>
	av Denom . T					050.003
	SUBTOTAL:				-	<del>- \$59,283</del>
						\$0
	STREET IMPROVEMENTS			\$531,924		<del>-\$564,057</del>
	STORM DRAINAGE IMPROVEMENTS			\$56,370		-\$194,310
	CULINARY WATER IMPROVEMENTS			\$4,700	i	<del>-\$141,100</del>
	SEWER SYSTEM IMPROVEMENTS			\$2,000		<del>\$100,572</del>
	SECONDARY WATER IMPROVEMENTS			\$0		\$47,905
	SWPPP	_		\$3,650	_	\$7,266
	DRY UTILITIES			\$3,030		\$59,283
			1			
	SUBTOTAL: SITE IMPROVEMENTS:			\$598,644	+	\$1,114,493
	10% WARRANTY					\$111,449
	CD AND TOTAL				-	01 225 042
	GRAND TOTAL:					\$1,225,943

<sup>\*</sup>Estimated - Actual costs will be applied by Public Power when materials are ordered

\$710,093

CITY ENGINEER APPROVAL
Sheets 1-2 Reviewed and Approved

Brett M. Jones, P.E. City Engineer