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DALE E MILLER, TRUSTEE

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SANDY, UT 84092

TAX ID No. ELKHRN-2

ENTRY NO. 00922785

05/18/2011 02:02:33 PM B: 2081 P: 0281

Easements PAGE 1/9

ALAN SPRIGGS, SUMMIT COUNTY RECORDER

Fee 0.00 BY SUMMIT COUNTY ENG



**EASEMENT AGREEMENT
CONSTRUCTION OF FLOOD MITIGATION IMPROVEMENTS**

This Agreement for an easement for the construction and maintenance of an erosion control structure to be installed on the banks of the Weber River is made and entered into this _____ day of _____, 2011, by and between DALE E MILLER & LAUREL MILLER TRUSTEES OF THE DALE E MILLER FAMILY TRUST ("Grantor") and SUMMIT COUNTY, a Political Subdivision of the State of Utah ("County").

WITNESSETH:

WHEREAS, Grantor is the owner of certain real property located within unincorporated Summit County, with a property tax I.D. number of ELKHRN-2 and more generally described in **Exhibit A** attached hereto and incorporated herein by this reference (the "**Parent Parcel**"); and

WHEREAS, the Parent Parcel abuts the Weber River, which is prone to flooding and which poses a significant risk to homeowners in the area; and

WHEREAS, in order to protect the residents of Summit County from risks associated with flooding, the County desires to erect an erosion control structure along the banks of the Weber River, which abuts Grantor's Parent Parcel; and

WHEREAS, Grantor desires to grant an Easement for Site 7, which is more generally described in **Exhibit B** attached hereto and incorporated herein by this reference (the "**Easement**"), to the County for the purpose of constructing said erosion control structure; and

WHEREAS, Site 7 is also located on an adjacent parcel with property tax I.D. number ELKHRN-1, whose owner, DAVID H & BRENDA SMART, 13642 DERBY DOWNS CT, SAN DIEGO, CA 9213, has also entered into an easement agreement, recorded in the office of the County Recorder in Book 2081 and Page 272 as Entry Number 922784, allowing the County and Grantor access to the Easement for the purpose of the construction and maintenance of the erosion control structure in perpetuity.

WHEREAS, the parties desire that future maintenance, repair, replacement and/or augmentation necessary to maintain the integrity of the erosion control structure and access to the structure shall be at Grantor's sole cost and expense.

WHEREAS, the Grantor and County understand and agree that the granting of said Easement and the construction and maintenance of the erosion control structure is for the mutual benefit of both parties; and

WHEREAS, the Grantor and County agree to cooperate in the construction of said erosion control structure as described herein; and

WHEREAS, no fee shall be charged to traverse the Easement; and

NOW THEREFORE, in consideration of the mutual covenants and agreement hereof, the sufficiency and receipt of which are hereby acknowledged, Grantor and County agree to the foregoing and as follows:

- 1) **Grant of Easement:** Subject to the terms and conditions as described herein and all applicable Utah laws and regulations, Grantor does hereby grant and convey to the County, its employees, agents, and/or any subcontractors hired by the County, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, a nonexclusive, perpetual Easement described in **Exhibit B** over, on, across, through, and under the Parent Parcel described in **Exhibit A**. Said Easement is granted for the following purposes:
 - a) To construct an erosion control structure installed on the banks of the Weber River, as described in **Exhibit C**; and
 - b) To maintain, repair, replace, and/or augment the erosion control structure in the event that Grantee fails to do so as provided for in Section 3 below.
 - c) To perform any other acts necessary to protect the erosion control structure from damage.
 - d) Grantor shall receive no monetary reimbursement for the Easement.
- 2) **County's Rights and Obligations:**
 - (a) The County agrees to construct an erosion control structure, as more fully described in **Exhibit C**.
 - (b) The County shall be responsible for paying 75% of the final costs of the construction of the erosion control structure erected on the Parent Parcel. The estimated cost of construction to the County is \$31,770 of the total cost for construction of \$42,361, which costs are detailed in **Exhibit D**, attached hereto and incorporated herein by this reference.
 - (c) The County shall have and exercise the right to ingress and egress in, to, over and across the Easement and the Parent Parcel for any lawful purpose needed for the full enjoyment of the rights granted by Grantor to the County hereunder.
 - (d) The County shall have and exercise the right to deposit materials excavated to install the erosion control structure within the Parent Parcel in a location and in a manner approved by the Grantor, in Grantor's reasonable discretion.
 - (e) The County shall have and exercise the right to establish a construction staging area within the Parent Parcel in a location and in a manner approved by the Grantor, in Grantor's reasonable discretion.
 - (f) The erosion control structure shall be designed and constructed to County standards and shall be conducted in a good and workmanlike manner so as not to damage any other portion of the Parent Parcel.
 - (g) Upon completion of the erosion control structure, the County shall immediately restore any damaged areas along the Easement including, but not limited to, areas adjoining the structure and the staging area to substantially the same condition as existed prior to the commencement of the County's work.
 - (h) Should Grantor fail to maintain said erosion control structure as described below in Section 3, the County shall have the right to enter upon the property of Grantor and complete any maintenance, repair, replacement and/or augmentation necessary to maintain the integrity of the structure and limit damage to adjacent lands of Grantor. The County shall charge the actual cost of said repairs to Grantor.
 - (i) In the event the County deems it necessary to enter the Parent Parcel to perform maintenance or repair activities on the erosion control structure, the County shall use its best efforts to notify Grantor and coordinate its activities with Grantor,

with such notification to be provided not less than 10 days prior to the start of the maintenance or repair activities. However, the County reserves the right to enter the Parent Parcel without notice to Grantor in the event of an emergency, but will continue to be responsible to restore any damaged areas.

(j) The benefits of this Easement shall inure to the benefit of the County, or any successor thereof, but shall not inure to or be for the benefit of any private assignee of the County, unless expressly provided for elsewhere in this Agreement.

3) Grantor's Rights and Obligations:

a) Grantor shall be responsible for paying 25% of the final costs of the construction of the erosion control structure erected on the Parent Parcel. The estimated cost of construction to Grantor is \$10,591 of the total cost for construction of \$42,361, which costs are detailed in **Exhibit D**. At the option of the Grantor, the Grantor shall; 1) pay a deposit in the amount estimated to be the Grantor's share of the total costs to the County prior to any work being performed on the Parent Parcel. Upon completion of the construction, the County shall calculate a final cost of the work required to complete the erosion control structure and shall, within thirty (30) days of the final billing of the contractor contracted to complete the work, forward an invoice or credit against the initial estimated cost to Grantor. Grantor agrees to reimburse the County within 30 days of receipt of an invoice for additional costs above the estimated amount; or 2) Payment shall be as provided for in Ordinance ___, an Ordinance of Summit County, Utah, providing for a Weber River Voluntary Assessment Area. No work shall begin on the project until; 1) the 25% deposit has been made; or 2) the Waiver of Requirements under Title 11, Chapter 42, to Designate a Weber River Voluntary Assessment Area and Levy an Assessment for the Purposes of Flood Control Improvements has been executed by the Grantor and returned to the County. There exists some Rock Rip Rap that is suitable for incorporation into the work within the project area. This material may be incorporated into the work by the contractor, and the Grantor will receive credit towards the 25% cost match for any materials so incorporated.

b) In the event that Grantor fails to timely pay any amounts due to the County pursuant to this Agreement, such unpaid amounts shall bear interest at the rate of 1.5 percent per month, compounded annually, or at the highest lawful rate, whichever is less, from the date of invoice until the date of payment, and the County, pursuant to this Agreement, shall have the right to lien the Parent Parcel in order to collect such outstanding amounts.

c) Grantor reserves unto itself and its successor and assigns forever, the right to the undisturbed use and occupancy of the Parent Parcel insofar as such use and occupancy is consistent with and does not impair any grant herein contained and the right to cross over, through or under the Easement, to place or grant other easements along, across, or under the Easement, so long as such other uses do not unreasonably interfere with the County's use of the Easement for the purposes herein granted.

d) Upon the County's completion of the erosion control structure, maintenance, repair, replacement and/or augmentation necessary to maintain the integrity of the structure and access to the structure shall be at Grantor's sole cost and expense.

e) Should Grantor fail to maintain said erosion control structure as described above, the Grantor herein agrees that the County shall have the right to enter upon the property of Grantor to complete any maintenance, repair, replacement and/or augmentation necessary to maintain the integrity of the structure and the Grantor herein agrees to pay for any costs associated with said repairs and billed to Grantor.

- f) Grantor shall provide reasonable ingress and egress to and from the proposed site of the erosion control structure for the construction of said structure and future maintenance, repair and/or augmentation should Grantor fail to maintain the structure under this Agreement.
- g) Grantor shall not install or permit the installation of any fence, wall, structure (above or below ground) or landscaping that would hinder the operation of the erosion control structure or in any way impair the right of access to the County pursuant to this Agreement.

4) **Warranty:** Grantor warrants that it has the full right and legal authority to make this Agreement.

5) **Recording:** Except as otherwise expressly provided herein, all provisions in this Agreement and anticipated Easement, including the benefits, burdens and covenants, are intended to run with the land and shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The County shall record the Easement in a timely fashion in the official records of Summit County, and may re-record it at any time as may be required to preserve its rights in the Easement.

6) **Governing Law:** This Agreement shall be governed by the laws of the State of Utah, and any legal action concerning the provisions hereof shall be brought in the County of Summit, State of Utah.

7) **Modification:** This Agreement may only be modified upon written agreement by the parties.

8) **Integration:** The foregoing constitutes the entire agreement between the parties regarding its subject matter and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter thereof.

9) **Invalidity:** If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

10) **Indemnification:** Grantor agrees to indemnify and hold the County, its heirs and successors and assigns, harmless from any claim or damages for injuries resulting from actions of its employees or agents, including costs and reasonable attorney fees, arising out of the work to be performed in this Agreement. Likewise, the County agrees to indemnify and hold Grantor harmless from any claim or damages for injuries resulting from actions of its employees or agents, including costs and reasonable attorney fees, arising out of the work to be performed in this Agreement.

11) **No Gift or Dedication:** Nothing contained in this Agreement shall be deemed to be a gift or a dedication of any portion of the Easement to or for the general public or for any public purpose whatsoever, it being the intent of the parties that this Easement be strictly limited to and for the property, facilities, and use of the County.

12) **Entire Agreement:** This Agreement contains the entire agreement between the parties concerning its subject matter, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties with reference to it and not embodied in this Agreement shall be of any force or effect.

13) Effective: The effective date of this Agreement shall be the date of full execution hereof. The date of full execution hereof shall be deemed to be the last date on which this Agreement has been signed by a party hereto and any changes to the printed form of this Agreement shall have been initialed by the parties.

The undersigned covenant that they are the owners of the respective property described in the attached exhibits:

IN WITNESS WHEREOF, the Grantor's have executed this instrument this 21 day of
April, 2011.

Dale E. Miller
DALE E MILLER, TRUSTEE

LAUREL MILLER, TRUSTEE

STATE OF UTAH)
) ss.
COUNTY OF)

SUBSCRIBED AND SWORN to before me by DALE E MILLER & LAUREL MILLER
TRUSTEES who acknowledged to me that they are the owners of record and that they executed
the above easement.

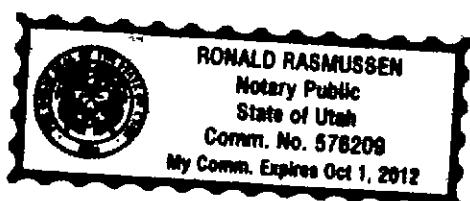
My Commission Expires:

10-1-2012

Notary Public
Residing In: _____

Residing In: _____

Residing In: Tandy, W



Approved as to form:

Helen Strachan
Helen Strachan, Deputy County Attorney

EXHIBIT A

The legal description of the parent parcel (Summit County Tax ID No. ELKHRN-2) is as follows:

LOT 2 ELKHORN RANCH SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE

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EXHIBIT B

The legal description of the Easement is as follows:



EXHIBIT C

Proposed Improvement Plans:

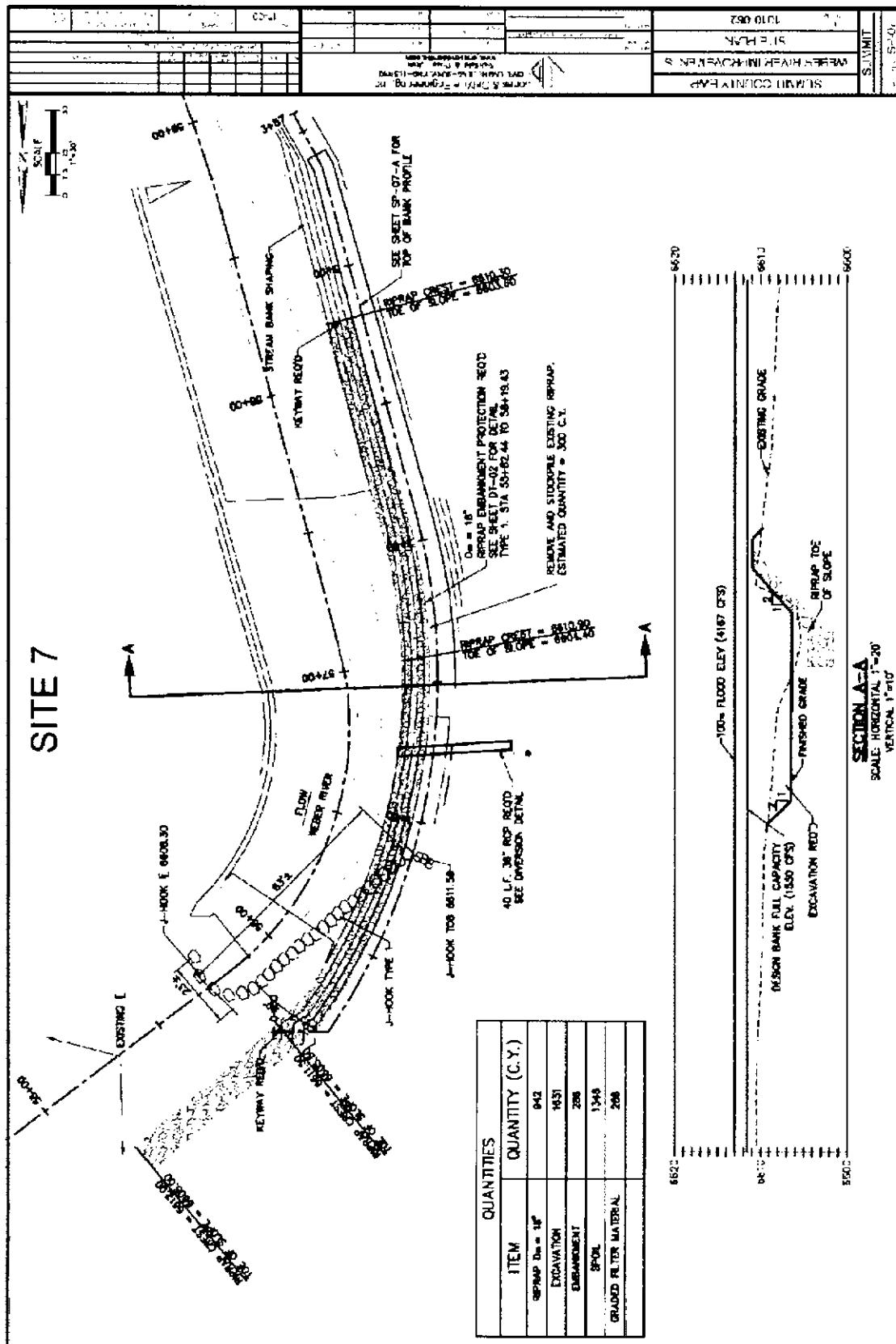


EXHIBIT D

Cost estimate of Improvements:

Summit County - Weber River EWP Site 7

ITEM #	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Mobilization	0.6	L.S.	\$6,000	\$3,818
2	Sediment Log	0.0	L.F.	\$6	\$0
3	Clearing & Grubbing	0.6	L.S.	\$2,000	\$1,273
4	Site De-watering	0.6	L.S.	\$4,000	\$2,545
5	Excavation and Embankment	1210	C.Y.	\$5	\$6,052
6	Remove and Stockpile Existing Riprap	191	C.Y.	\$6	\$1,145
7	Graded Filter Material	230	C.Y.	\$12	\$2,756
8	Angular Riprap D ₅₀ = 18"	559	C.Y.	\$40	\$22,371
9	Riprap Placement	750	C.Y.	\$5	\$3,751
10	J Hooks	67	Each	\$95	\$6,348
11	Willow Plantings	0.1	Acre	\$2,000	\$127
12	Seeding	0.2	Acre	\$2,000	\$318

CONSTRUCTION TOTAL: \$50,506
SUMMIT COUNTY/NRCS (75%) \$37,879
SMART (25%) \$12,626

ITEM #	ITEM	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1	Mobilization	0.4	L.S.	\$6,000	\$2,182
2	Sediment Log	0.0	L.F.	\$6	\$0
3	Clearing & Grubbing	0.4	L.S.	\$2,000	\$727
4	Site De-watering	0.4	L.S.	\$4,000	\$1,455
5	Excavation and Embankment	692	C.Y.	\$5	\$3,459
6	Remove and Stockpile Existing Riprap	109	C.Y.	\$6	\$655
7	Graded Filter Material	131	C.Y.	\$12	\$1,575
8	Angular Riprap D ₅₀ = 18"	320	C.Y.	\$40	\$12,784
9	Riprap Placement	429	C.Y.	\$5	\$2,143
10	J Hooks	38	Each	\$95	\$3,627
11	Willow Plantings	0.0	Acre	\$2,000	\$73
	Seeding	0.1	Acre	\$2,000	\$182
12	Diversion Structure	1.0	Lump	\$13,500	\$13,500

CONSTRUCTION TOTAL: \$42,361
SUMMIT COUNTY/NRCS (75%) \$31,770
MILLER (25%) \$10,591

Credit for existing Rip Rap excavated, stockpiled and re-used by the Contractor shall have a value of \$34/cu yd. Said value shall be credited against the 25% cost share.