

**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
DECEMBER 2, 2014**

TITLE:	AGREEMENT – Consideration of an Impact Fee Reimbursement Agreement for Twelve Horse Ranch, LLC		
FISCAL IMPACT:	\$101,509.10		
APPLICANT:	Eagle Mountain City		
GENERAL PLAN DESIGNATION	CURRENT ZONE	ACREAGE	COMMUNITY
N/A	N/A	N/A	

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Public Notice Webpage

REQUIRED FINDINGS:

**Public Works Board
Recommendation**

Vote: N/A

**Prepared By:
Jeremy Cook**

NOTES/COMMENTS:

RECOMMENDATION:

That the City Council approves the Impact Fee Reimbursement Agreement with Twelve Horse Ranch, LLC.

BACKGROUND:

Twelve Horse Ranch, LLC is in the process of developing a portion of the Ranches Parkway Extension Project. As part of the project, Twelve Horse Ranch has agreed to install a water line and to upgrade the capacity of Ranches Parkway. The water line is included in the City's current Capital Facilities Plan and Impact Fee Analysis. The Impact Fee Reimbursement Agreement would reimburse Twelve Horse Ranch, LLC for the cost of the water line. An update for the Transportation IFFP is anticipated within the next few months. The City Council has already approved the reimbursement for the water portion of this project, in the amount of \$71,116.25. At that time, the transportation portion had not been included. This revised agreement includes the transportation portion, in the amount of \$30,392.85.

**IMPACT FEE
REIMBURSEMENT AGREEMENT
FOR
TWELVE HORSE RANCH, LLC**

This Impact Fee Reimbursement Agreement (this “Agreement”) is entered into by and among **Eagle Mountain City**, a municipal corporation of the State of Utah (the “City”) and **Twelve Horse Ranch, LLC**, a Utah limited liability company (“Developer”). City and Developer shall collectively be referred to herein as “Parties.”

RECITALS

A. Developer is in the process of developing the Ranches Parkway Extension Project, located in the City (the “Project”).

B. In conjunction with the Project, Developer will install a water line (the “Water Line”) through portions of the Project in order to service future development of property.

C. City has designed the Water Line in its Impact Fee Analysis as a system improvement.

D. Developer has obtained a proposal from Sunroc Corporation for the estimated cost to install the Water Line.

E. In addition, Developer has installed certain upgrades to the roadway portion of Ranches Parkway (“Roadway Improvements”).

F. It is the intent of the Parties that upon completion and acceptance of the Water Line, City will reimburse Developer for certain cost associated with the Water Line and Roadway Improvements on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties contained herein, the parties agree as follows:

1. Construction and Approval of Water Line. Developer shall cause or has caused the Water Line to be completed, at its sole cost, by a qualified, licensed contractor acceptable to the City. Developer acknowledges and agrees that the installation of the Water Line is a condition of development approval and Developer will be required to either complete the Water Line prior to recording the subdivision plat for the Project or bond for the full cost of the Water Line in accordance with City bond requirements. In addition, Developer will be required to

warranty the entire Water Line in accordance with the City warranty requirements for infrastructure improvements.

2. Reimbursement to Developer from City. City has reviewed the proposal for the Water Line, which proposal is attached hereto and incorporated herein as Exhibit "A" (the "Proposal"). Pursuant to paragraph 3 and 4 below, the City shall reimburse Developer for the actual cost incurred by Developer for the infrastructure (designed on the Proposal as Culinary Water Total) associated with the Water Line in the approximate amount, but not to exceed, \$71,116.25 (the "Water Line Cost"). In addition, City has reviewed the cost estimates for the Roadway Improvements. Pursuant to paragraph 3 and 4 below, the City shall reimburse Developer for the actual cost incurred by Developer for the Roadway, but not to exceed, \$30,392.85 (the "Roadway Improvement Cost").

3. Review of Actual Expenditures. Prior to any reimbursement by the City for the Water Line Cost or Roadway Improvement Cost, Developer shall submit a detailed cost breakdown for all work completed on the Water Line and Roadway Improvements. The cost breakdown shall separately detail all material, labor and equipment costs. Developer shall include invoices or receipts from all third-parties providing material, labor or equipment for the Water Line or Roadway Improvements. Developer, either directly or through any affiliated company or subsidiary, shall not include or be entitled to any administrative fees, management fees, mark-ups, or profits on any material, labor or equipment.

4. Payment Requests. At any time after completion and inspection of the Water Line or Roadway Improvements and acceptance by the City, Developer may submit a request ("Request for Payment") to the City for actual costs incurred by Developer which are subject to reimbursement pursuant to this Agreement. City shall review and either confirm or deny the Request for Payment within thirty (30) days. If the City denies the Request for Payment, City shall provide a detailed explanation for the denial.

5. Payment to Developer. City shall reimburse Developer for the Water Line Cost or Roadway Improvement Cost through the collection of impact fees related to the Water Line or Roadway Improvements. City agrees to fully reimburse Developer for the Water Line Cost or Roadway Improvement Cost within three (3) years of the date of this Agreement.

6. Cooperation and Noninterference. Developer agrees not to challenge impact fees on the Project and shall cooperate with the City in the collection of all impact fees required by the Ordinance.

7. Prior Agreements. City and Developer acknowledge and agree that this Agreement supersedes and replaces any prior written agreement between City and Developer with respect to the subject matter of this Agreement.

8. General Provisions. The following provisions are also an integral part of this

Agreement:

(a) Governmental Immunity. The City is a governmental entities under the “Utah Governmental Immunity Act” (*Utah Code Ann. § 63-30-1, et seq.*) (the “Immunity Act”). Nothing herein shall be construed as a waiver of any defenses available under the Immunity Act nor does City waive any limits of liability provided by the Immunity Act or any other provisions of Utah law.

(b) Enforcement. In the event of default on the part of any party to this Agreement, that party shall be liable for all costs and expenses incurred by the other parties in enforcing the provisions of this Agreement, whether or not legal action is instituted.

(c) Binding Agreement. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(d) Captions. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(e) Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(f) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(g) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

(h) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(i) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(j) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(k) Attorneys' Fees. In the event any action or proceeding is brought by either party regarding this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial or on appeal.

(l) Exhibits. All exhibits annexed to this Agreement are expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement, either in this Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such exhibits and writings.

(m) Recitals. All recitals are expressly made a part of this Agreement as though completely set forth in the body of this Agreement.

(n) No Partnership. The Parties do not by this Agreement in any way or for any purpose become partners or joint venturers with each other.

DATED this _____ day of _____, 2014

EAGLE MOUNTAIN CITY

Christopher Pengra, Mayor

ATTEST:

Fionnuala B Kofoed, City Recorder

TWELVE HORSE RANCH, LLC

By: _____

Print Name: _____

Title: _____

Exhibit A



Sunroc Corporation

Construction Division

525 WEST ARROWHEAD TRAIL, SPANISH FORK, UTAH 84660 (801) 722-2100 (801) 722-2130 (FAX)
 3850 SOUTH 1825 EAST, ST GEORGE, UTAH 84770 (435) 634-2260 (435) 652-9889 (FAX)

CONTRACT PROPOSAL

CUSTOMER: 12 HORSE RANCH

DATE: DECEMBER 17, 2013

ADDRESS:

PHONE:

CITY, STATE:

FAX:

ATTN: JIM ALLRED/RALPH JOHNSON

ADDENDUM:

JOB NAME: RANCHES PARKWAY (FOCUS)

SUNROC CORPORATION MAY WITHDRAW THIS PROPOSAL IF WRITTEN ACCEPTANCE IS NOT RECEIVED FROM THE BUYER WITHIN 30 DAYS OF THE PROPOSAL DATE

UPDATED PER CONSTRUCTION DRAWINGS

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2030	CUT & FILL - LEAVE ON LOTS (NEW PROFILE)	805.00	CY	3.00	2,415.00
2050	PLACE EXCAVATED MATERIAL AS SUBBASE (NEW PROFILE)	1,050.00	TON	2.00	2,100.00
2060	7" ROADBASE UNDER ASPHALT & CURB	-1,700.00	TON	16.00	-27,200.00
2070	24" CURB & GUTTER	-9,485.00	LF	8.60	-81,571.00
2075	30" CURB & GUTTER	6,740.00	LF	11.00	74,140.00
2077	17" MEDIAN CURB	2,745.00	LF	10.25	28,136.25
2090	3" ASPHALT PAVING	-62,255.00	SF	1.03	-64,122.65
2095	4.5" ASPHALT PAVING	62,255.00	SF	1.55	96,495.25
	*** SITEWORK TOTAL ***				\$30,392.85
2405	16" DIP	730.00	LF	62.00	45,260.00
2407	12" C900	1,465.00	LF	32.50	47,612.50
2410	10" C-900	-1,465.00	LF	23.00	-33,695.00
2420	8" C-900	-840.00	LF	18.75	-15,750.00
2425	6" C-900	-45.00	LF	18.25	-821.25
2430	10" GATE VALVE	-3.00	EA	1,650.00	-4,950.00
2435	12" BUTTERFLY VALVE	3.00	EA	1,700.00	5,100.00
2440	10" X 8" TEE	-1.00	EA	1,450.00	-1,450.00
2441	12" X 8" TEE	1.00	EA	1,650.00	1,650.00
2442	10" CAP	-1.00	EA	350.00	-350.00
2443	12" CAP	1.00	EA	550.00	550.00
2445	8" GATE VALVES	-3.00	EA	1,100.00	-3,300.00
2447	16" BUTTERFLY VALVES	2.00	EA	2,875.00	5,750.00
2450	8" BEND	2.00	EA	550.00	1,100.00
2452	16" BEND	1.00	EA	2,000.00	2,000.00
2455	8" CAP	-3.00	EA	375.00	-1,125.00
2457	16" CAP	1.00	EA	950.00	950.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
2460	8" TEE	-3.00	EA	905.00	-2,715.00
2465	16" TEE	1.00	EA	4,375.00	4,375.00
2480	CONNECT TO EXISTING 8"	-1.00	EA	775.00	-775.00
2485	CONNECT TO EXISTING 16"	1.00	EA	1,800.00	1,800.00
2490	12" BEND	11.00	EA	1,500.00	16,500.00
2492	10" X 6" TEE	-3.00	EA	1,500.00	-4,500.00
2494	12" X 6" TEE	3.00	EA	2,100.00	6,300.00
2496	8" X 6" TEE	-1.00	EA	1,000.00	-1,000.00
2498	16" X 6" TEE	1.00	EA	2,600.00	2,600.00
	*** CULINARY WATER TOTAL ***				\$71,116.25
GRAND TOTAL					\$101,509.10

NOTES:

IN PHASE 1 OF OUR CONTRACT WITH RCA, THE CITY REQUIRED US TO SCREEN OR IMPORT ALL OF THE UTILITY TRENCH BACKFILL. IF THIS IS REQUIRED ON THIS PHASE, WE ESTIMATE THE COST TO BE APPROXIMATELY \$50,000. IT WILL BE DIFFICULT TO MEASURE THE YARDAGE OF MATERIAL SCREENED, AND PROPOSE THAT THIS ITEM BE PAID ON A COST-PLUS 10% BASIS AND NOT TO EXCEED \$50,000.00

ALL EXCESS CUT IS ASSUMED TO BE LEFT ONSITE.

THIS PROPOSAL IS SUBJECT TO AN ASPHALT OIL COST ADJUSTMENT AND FUEL SURCHARGE. THE BENCH MARK PRICE FOR ASPHALT OIL THE WEEK OF THIS PROPOSAL IS \$547.00 PER TON. THE BENCH MARK PRICE FOR DIESEL FUEL THE WEEK OF THIS PROPOSAL IS \$3.819 PER GALLON. ASPHALT: \$0.32 PER TON, FOR EACH 0.15 INCREMENT.

SURVEYING AND COMPACTION TESTING ARE TO BE PROVIDED BY OWNER.

EARTHWORK QUANTITIES ARE BASED ON GRADES AS SHOWN ON THE DRAWINGS. IF THE ONSITE GRADES VARY FROM THE GRADES ON THE PLANS, WE RESERVE THE RIGHT TO ADJUST OUR PRICING ACCORDINGLY.

EXCLUDES: ROCK EXCAVATION (SEE DEFINITION), VAPOR BARRIER, ENGINEERING, TESTING, LAYOUT, FEES, PERMITS, BONDS, DEWATERING, COLD WEATHER PROTECTION, FOOTING OVEREXCAVATION, SHORING, BRACING, SIGNAGE, SURVEYING, OR ANY AND ALL ITEMS NOT SPECIFICALLY STATED IN THIS PROPOSAL.

ROCK EXCAVATION IS DEFINED SUCH THAT A 25 METRIC TON EXCAVATOR CANNOT LOAD A TRUCK AND PUP IN UNDER 5 MINUTES, OR REQUIRES THE USE OF AN ATTCHMENT SUCH AS A HYDRAULIC BREAKER OR RIPPER TOOTH, OR REQUIRES BLASTING TO BREAK UP THE ROCK. THE SUBCONTRACTOR SHALL BE REIMBURSED AT A RATE OF \$8.00/CY, BASED ON A NEAT LINE MEASUREMENT AS AGREED UPON THE FIELD BETWEEN THE CONTRACTOR AND OWNER.

CONDITIONS OF AGREEMENT: 1. We hereby propose to do the outlined items of work, subject to all terms and conditions as set forth herein. 2. All agreements are contingent upon strikes, accidents, weather or other unforeseen delays beyond our control. 3. Agreement may be withdrawn if not accepted within 30 days. 4. All Bids Subject to Credit Approval. 5. PAYMENTS IS TO BE MADE AS FOLLOWS: All accounts due 15th of month following date of billing. In the event payment is not made by the due date, I or we agree to pay if collection is made by suit or otherwise a reasonable attorney's fee, plus a FINANCE CHARGE OF 1½% per month (ANNUAL PERCENTAGE RATE 18%), and hereby waive all rights to claim exemption under state laws. Signature by owner or agent constitutes acceptance of the above. 6. The owner is responsible to maintain access roads to meet environmental and air quality standards. 7. FORCE MAJEURE: Sunroc Corporations shall not be liable for a ny delay or failure in performance resulting, in whole or in part, from any cause or event of Force Majeure. 8. Asphalt pricing is only valid if liquid asphalt is available and at a current market price.

The term "Force Majeure" means any event or events or any cause or causes which are not within the control of Sunroc Corporation which make it impossible or commercially impracticable for Sunroc Corporation to perform its obligations within the time(s) contemplated by this Agreement, including without limitation events of riot, war, rebellion, blockage, insurrection, interruption of utilities, terrorism, vandalism, fire, acts of God, flood, frost, extreme temperatures, landslide, washout, atmospheric disturbances, lightening, storm, tornado, earthquake, and civil disturbances, strikes, or lockouts, and requirements of law, and acts or orders of governmental authorities.

<p>ACCEPTED: The above prices and specifications are satisfactory and hereby accepted.</p> <p>Buyer _____</p> <p>Signature _____</p> <p>Date of Acceptance _____</p>	<p>CONFIRMED: Sunroc Corporation</p> <p>Authorized Signature _____</p> <p>Estimator: Dave Christofferson</p>
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