

**EAGLE MOUNTAIN CITY
CITY COUNCIL MEETING
OCTOBER 15, 2013**

TITLE:	AGREEMENT – Consideration and Approval of an Improvement Purchase Agreement with RCA65, LC for the Ranches Parkway Extension Project.		
FISCAL IMPACT:	\$775,395.30,		
APPLICANT:	Eagle Mountain City		
GENERAL PLAN DESIGNATION N/A	CURRENT ZONE N/A	ACREAGE N/A	COMMUNITY N/A

NOTICES:

- Posted in 2 public places
- Posted on City webpage
- Notice to newspapers

REQUIRED FINDINGS:

Vote: N/A

Prepared By:
Jeremy Cook City Attorney

NOTES/COMMENTS:

RECOMMENDATION:

City staff recommends that the Council approve an Improvement Purchase Agreement with the ECA65, LC for the Ranches Parkway Extension Project.

BACKGROUND

The City has created an Assessment Area to fund certain infrastructure improvements related to the Ranches Parkway Extension Project north of SR 73. RCA65, LC has entered into an agreement with Sunroc Construction to construct the improvements on the property owned by RCA65, LC. As the improvements are constructed, the City will purchase the improvements from RCA65, LC with funds from the Assessment Area bonds. The Improvements Completion Agreement sets forth the terms and conditions of the City's purchase of the improvements from RCA65, LC.

IMPROVEMENTS PURCHASE AGREEMENT

THIS AGREEMENT is made by and between RCA65, LC, a Utah limited liability company (hereinafter “RCA”), whose address is 3550 North University Avenue #325, Provo, Utah 84604 and Eagle Mountain City, a Utah municipality, whose address is 1650 E. Stagecoach Run, Eagle Mountain, UT 84005 (hereinafter “EMC”).

RECITALS

WHEREAS, RCA is the owner of certain real property located north of the intersection (the “Intersection”) of the Ranches Parkway and SR 73, which is designated as Utah County Parcel No. 58:033:0020 (the “Property”);

WHEREAS, RCA desires to complete certain public infrastructure improvements to the Property, including a roadway and utilities improvements (collectively “Improvements”) and has contracted with Sunroc Corporation (“Sunroc”) to have the Improvements installed subject to the engineering plans and specifications prepared by Berg Engineering (“Berg Plans”);

WHEREAS, EMC is in the process of creating and funding an assessment area (“AA”) under the Assessment Area Act (hereinafter “Act”), which will assess property adjacent to the Improvements to pay for the cost of the Improvements (and other improvements on property to the North of the Property);

WHEREAS, EMC has agreed to sell AA bonds (hereinafter “Bonds”) under the Assessment Area Act;

WHEREAS, EMC intends to purchase the Improvements and the Property underlying the Improvements (“Roadway Property”) from RCA with proceeds of the AA; and

WHEREAS, the parties desire to set forth the terms and conditions of the purchase of the Improvements herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT

1. **Installation of Improvements.** RCA has entered into an agreement with Sunroc Construction, dated August 30, 2013 (“Sunroc Contract”) to build and install all of the

Improvements as shown on the Berg Plans, and in accordance with the standards and specifications established by EMC. A copy of the Sunroc Contract is attached hereto as Exhibit "A" and incorporated herein.

2. **Purchase of Improvements.** EMC agrees to purchase the Improvements and Roadway Property from RCA with the proceeds of the Bonds. RCA acknowledges and agrees that EMC's obligation to purchase the Improvements is contingent upon EMC having funds available through the AA, and in the event that the AA funds are not available for any reason, EMC shall not be obligated to purchase the Improvements until such time as AA funds become available.

3. **Purchase Price.** The purchase price for the Improvements and Roadway Property shall be amount charged by Sunroc under the Sunroc Contract, not to exceed \$775,395.30, plus the ten (10%) contingency included in the Bonds (the "Purchase Price"). RCA acknowledges and agrees that in the event that the final amount of the Sunroc Contract exceeds \$775,395.30, RCA shall be responsible for any additional costs and expenses related to the construction of the Improvements.

4. **Payment for the Improvements.** The process for payment of the Improvements shall be as follows: (1) Sunroc shall submit an application for payment to RCA under the terms and conditions of the Sunroc Contract; (2) RCA shall review the application for payment, and if acceptable, submit the application to EMC; (3) EMC shall timely inspect all the Improvements; (4) if the Improvements are acceptable, EMC shall submit a request to the bond trustee for payment from the Construction Fund established under the AA and shall pay such funds to RCA upon receipt of the funds by the City.

5. **Transfer of Roadway Property.** Prior to any payments from EMC to RCA, RCA shall deliver to the City a Special Warranty Deed (the "Warranty Deed") for the Roadway Property in substantially the form attached hereto as Exhibit B. EMC agrees to hold the Warranty Deed in escrow until the earlier of final payment for the Improvements by EMC or RCA consents in writing to EMC recording the Warranty Deed.

6. **Transfers Free and Clear.** RCA warrants and guarantees that any and all transfers of the Improvements and Improvements Property shall be free and clear of all liens and encumbrances, including, but not limited to, mechanic's liens and property taxes. RCA shall indemnify and defend EMC against any and all liens or claims against the Improvements or Improvements Property which liens or claims arose prior to the date to the transfer of the Improvements or Improvements Property to EMC or which arose out of the construction of the Improvements. EMC may, at its discretion, require RCA to provide lien releases prior to any payments set forth in paragraph 4.

7. **Warranty.** Sunroc has warranted that the Improvements installed, and every part thereof, together with the surface of the land and any improvements thereon restored by RCA, shall remain in good condition and free from all defects in materials, and/or workmanship during the Warranty Period, and that Sunroc shall promptly make all repairs, corrections, and/or replacements

for all defects in workmanship, materials, or equipment during the Warranty Period, without charge or cost to the City. The City may at any time or times during the Warranty Period inspect, photograph, or televise the Improvements and notify RCA of the condition of the Improvements. RCA shall thereupon immediately cause Sunroc to make any repairs or corrections required by this Paragraph. For purposes of this Paragraph, "Warranty Period" means the 12 month period beginning on the date on which the Improvements are certified complete by the City.

8. **Connection and Maintenance.** Upon performance by RCA of all obligations set forth in this Agreement and compliance with all applicable ordinances, resolutions, rules, and regulations of the City, whether now or hereafter in force, including payment of all connection fees (but only at such time as there are end users of the Improvements), EMC shall permit RCA to connect the Improvements to the City's storm drainage systems, and water systems where applicable, and shall thereafter utilize and maintain the Improvements to the extent and in the manner now or hereafter provided in the City's regulations.

9. **Final Release.** Upon performance of all of RCA's obligations pursuant to this Agreement, including its warranty obligations, the City shall notify RCA in writing of completion and shall relinquish all claims and rights herein except its reimbursement obligation.

10. **Impact Fee Reimbursement.** EMC acknowledges that RCA may request impact fee reimbursement for excess capacity in the Improvements, and nothing herein shall preclude RCA from seeking a reimbursement agreement from EMC. Notwithstanding the foregoing, any reimbursement agreement must be approved by the City Council, and EMC makes no representations or warranties that EMC will approve a reimbursement agreement or to the terms and conditions of a possible reimbursement agreement.

11. **Amendments.** Any amendment, modification, termination, or rescission (other than by operation of law) which affects this Agreement shall be made in writing, signed by the parties, and attached hereto.

12. **Successors.** No party shall assign or transfer any rights under this Agreement without the prior written consent of the other first obtained, which consent shall not be unreasonably withheld. When validly assigned or transferred, this Agreement shall be binding upon and inure to the benefit of the legal representatives, successors and assigns of the parties hereto.

13. **Notices.** Any notice required or desired to be given hereunder shall be deemed sufficient if sent by certified mail, postage prepaid, addressed to the respective parties at the addresses shown in the preamble.

14. **Severability.** Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

15. **Governing Law.** This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

16. **Counterparts.** The fact that the parties hereto execute multiple but identical counterparts of this Agreement shall not affect the validity or efficacy of their execution, and such counterparts, taken together, shall constitute one and the same instrument, and each such counterpart shall be deemed an original.

17. **Waiver.** No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision, regardless of any similarity that may exist between such provisions, nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

18. **Captions.** The captions preceding the paragraphs of this Agreement are for convenience only, and shall not affect the interpretation of any provision herein.

19. **Integration.** This Agreement, together with its exhibits and the approved plans and specifications referred to, contains the entire and integrated agreement of the parties as of its date, and no prior or contemporaneous promises, representations, warranties, inducements, or understandings between the parties pertaining to the subject matter hereof which are not contained herein shall be of any force or effect.

20. **Attorney's Fees.** In the event either party hereto defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, incurred by the other party in enforcing its rights hereunder whether incurred through litigation or otherwise.

21. **Time of Essence.** The parties agree that time is of the essence in the performance of all duties herein.

22. **Exhibits.** Any exhibit(s) to this Agreement are incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An unattached exhibit is available from the records of the parties.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives this _____ day of _____, 20____.

EAGLE MOUNTAIN CITY:

By: _____
Mayor

ATTEST

City Recorder

RCA65, LC:

By: _____

Its: _____

STATE OF UTAH)
 :SS.
COUNTY OF SALT LAKE)

On the _____ day of _____, 20____, personally appeared before me _____, who being by me duly sworn, did say that he is the _____ of _____, a corporation, and that said instrument was signed in behalf of said corporation by authority of its bylaws (or by a resolution of its Board of Directors) and said _____ acknowledged to me that said corporation executed the same.

NOTARY PUBLIC

Exhibit A

