

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (“Amendment”) is made and entered into as of August 12, 2020, by and between EAGLE MOUNTAIN CITY, a municipal corporation of the State of Utah (the “City”) and STADION LLC, a Delaware limited liability company (together with its affiliates and their respective successors and assigns, the “Company”). The City and the Company are sometimes referred to herein collectively as the “Parties” and each individually as a “Party”.

RECITALS

A. The Parties entered into that certain Development Agreement, dated May 25, 2018 (“Development Agreement”), related to the development of certain real property located in the City of Eagle Mountain, County of Utah, State of Utah, as described on Exhibit A-1 (the “Property”), which includes certain real property acquired by the Company pursuant to the Notice of Additional Property, dated November 8, 2019. Capitalized terms used but not otherwise defined herein shall have their respective meanings set forth in the Development Agreement.

B. Pursuant to the Development Agreement, the City agreed to construct and the Company agreed to compensate the City for the Construction Costs associated with certain Water and Sewer Improvements, as described on Exhibit C to the Development Agreement. A portion of the Water and Sewer Improvements constitute System Improvements and the associated Construction Costs will ultimately be reimbursed to the Company through Direct Payment, Impact Fees Credits, tax increment financing or other forms of reimbursement.

C. Company desires to set forth in this Amendment Company’s intent to utilize the Impact Fees Credits to the extent reasonably feasible, as determined by Company, in order to receive System Reimbursement due to Company pursuant to the Development Agreement.

D. Pursuant to the Development Agreement, the City agreed to construct and the Company agreed to compensate the City for the Construction Costs associated with certain Roadway Expansion work, as described in Exhibit D to the Development Agreement.

E. The City and Company desire to enter into this Amendment to revise the scope of work associated with the Water and Sewer Improvements and Roadway Expansion as specifically set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, it is understood and agreed by the Parties hereto as follows:

1. **Recitals.** The Recitals set forth above are acknowledged by the Parties to be true and correct in all material respects and are incorporated herein by this reference.

2. **Completion of Previously Identified Infrastructure Improvements.** The City and Company acknowledge and agree that the Infrastructure Improvements identified in Exhibit E and F to the Development Agreement have been completed in their entirety, inclusive of the System Improvements portion of such Infrastructure Improvements. The Company incurred the following actual costs in connection with completion of the said Infrastructure Improvements, which when multiplied by the System Improvement Percentages set forth in Exhibit E, result in the following System Reimbursement and Impact Fees Credits, which the Parties hereby agree the Company shall receive in the amounts set forth below:

Infrastructure Improvement/System Improvement Projects	Actual Cost	System Reimbursement/Impact Fee Credit
Redundant Water Line	\$4,224,634.27	-
City Center Well	\$1,218,130.80	-
3.5M Tank	\$3,271,538.00	-
CUWCD Pump Station	\$629,765.00	-
Total for Water Projects	\$9,344,068.07 (x.36)	\$3,363,864.51
Re-Use Project	\$6,929,941.81	-
Total for Sewer Projects	\$6,929,941.81 (x.239)	\$1,656,256.09
Pony Express Parkway	\$3,065,270.10	-
Total for Roadway Projects	\$3,065,270.10 (x.00)	\$0

To the extent reasonably feasible, as determined by the Company, Company agrees that it shall utilize Impact Fees Credits in order to receive System Reimbursements due to Company pursuant to the Development Agreement. A current estimate of the Impact Fees to be assessed by the City in connection with the Company's development of the Property is set forth on Exhibit G to this Amendment; provided, however, the Parties acknowledge that the amounts set forth on Exhibit G are a single-building estimate only and subject to change based upon the improvements actually constructed by Company and the lawfully imposed and uniformly assessed Impact Fees charged by the City at the time the applicable Impact Fees are paid or the applicable Impact Fee Credit is applied to an Impact Fee then due. The Impact Fee Credits as set forth in the Development Agreement and this Amendment may be conveyed, transferred, or assigned by Company, in whole or in part, to any of its subsidiaries, affiliates, related companies, or other wholly owned entity of Company without notice or consent of City. As to any other third party meeting the requirements of the Development Agreement, Company shall provide written notice to City at least fourteen (14) days in advance of any such conveyance, transfer, or assignment. If no written objection from City is received by Company within such fourteen (14) days period, then City shall be deemed to have approved such conveyance, transfer, or assignment without further notice.

3. Additional Water Improvements. The Parties agree that the City's efforts to develop the proposed 3,000 gallon per minute well proved unsuccessful and that, subject to Section 2 of this Amendment, the scope of the Water and Sewer Improvements set forth on Exhibit C to the Development Agreement is hereby revised to eliminate the 3,000 gallon per minute well and related piping improvements. In lieu thereof, the City will install approximately 9,915 linear feet of 18-inch waterline (the "Phase 2 Water Line") within the right-of-way for the Additional Roadway Work (defined below). In addition, the City will install an 18" waterline (the "Pole Canyon Water Line") from Pole Canyon to intersect with the Phase 2 Water Line. The Phase 2 Water Line and Pole Canyon Water Line shall be included in the "Infrastructure Improvements" and a "System Improvement" for purposes of the Development Agreement. The scope of the Phase 2 Water Line and Pole Canyon Water Line are set forth in Exhibit C-1, which shall supplement Exhibit C to the Development Agreement.

4. Additional Roadway Work. The City and Company acknowledge and agree that, in addition to the Roadway Expansion, the City will construct the eastern half-width portion of the master planned section of a public road (Minor Arterial – 38 feet total width of asphalt) along and adjacent to the western edge of the Property extending north to Tiffany Way (the "Additional Roadway Work"), which Additional Roadway Work shall be included in the "Infrastructure Improvements" and a "System Improvement" for purposes of the Development Agreement. The scope of the Additional Roadway Work is set forth in the attached Exhibit D-1, which shall supplement Exhibit D to the Development Agreement. The Additional Roadway Work has been designed so that future expansion of the Additional Roadway Work can meet or exceed the criteria for designation as a "minor arterial road" under the Code to the extent possible. The City shall promptly take the following action(s): (a) to dedicate or otherwise designate for right-of-way purposes that portion of the required right-of-way for the Additional Roadway Work that is owned by the City; and (b) to accept from the Monte Vista Ranch, L.C. and promptly process for approval the roadway dedication plat or plats necessary to accomplish the dedication of the remaining portions of the right-of-way necessary for the City to complete the Additional Roadway Work. In the event the City believes it is required to exercise its powers of eminent to acquire the required rights-of-way, the City shall provide the Company not less than ten (10) days prior written notice before formally initiating an eminent domain action. Promptly following the Company's request therefor, the City shall grant to the Company an easement, license or other similar rights, in form and substance acceptable to the Company in its reasonable discretion, on, under and within any real property within the right-of-way for the Additional Roadway Work that has been dedicated to or is otherwise owned or controlled by the City in order to allow the Company and the Company Representatives temporary use of such rights-of-way to construct and maintain a temporary access until the Additional Roadway Work has been completed. The City shall grant to the Company any and all rights of access, ingress and egress over, on and through any real property owned by or dedicated to the City within the rights-of-way for the Additional Roadway Work that the Company determines from time to time are reasonably necessary or desirable in connection with the development or operation of the Project, which obligation may require the City to deliver and record in the Official Records easements or other instruments in form and substance acceptable to the Company in its sole discretion.

5. Additional System Improvements. The Parties acknowledge and agree that the Phase 2 Water Line, the Pole Canyon Water Line and the Additional Roadway Work constitute Infrastructure Improvements that are necessary to the Company's development of the Property, all or a portion of which constitute System Improvements. Consistent with Section 4.3 of the Development Agreement, the parties agree that the estimated percentage of the Phase 2 Water Line, the Pole Canyon Water Line and the Additional Roadway Work, separated by public facility type, are set forth on Exhibit E-1. The System Improvement Percentages for the Phase 2 Water Line, Pole Canyon Water Line and the Additional Roadway Work are based on the estimated Infrastructure Costs as set forth on Exhibit F-1. The System Improvement Percentages for these additional improvements shall be subject to adjustment to the extent that any of the Infrastructure Improvements are not constructed, or the actual cost of the Infrastructure Improvements is not consistent with the Estimated Infrastructure Costs.

6. Submission of Plans and Specifications. In an effort to facilitate the City's review and consideration of this Amendment and the Additional Roadway Work and Phase 2 Water Line, the Company caused to be prepared and has provided to the City engineered plans and specifications for the Additional Roadway Work and Phase 2 Water Line (the "Plans and Specifications"). The City acknowledges and agrees that the Plans and Specifications were provided to the City without cost or expense to the City and that the Company provided the Plans and Specifications to the City without any representation or warranty whatsoever. The City and Company agree that the City may use the City Engineer or such other independent engineering firm as the City may elect to finalize plans and specifications that can be used by the City in connection with the bidding and completion of the Additional Roadway Work and the Phase 2 Water Line. The Company agrees that upon the City's written request, the Company shall cause the Plans and Specifications to be updated or otherwise modified to accommodate unforeseen circumstances encountered in the field during construction of the Additional Roadway and the Phase 2 Water Line. All such updates and modifications to the Plans and Specifications shall be performed on a timely basis and at the Company's sole cost expense.

7. Complete Agreement; No Other Changes. This Amendment and the Development Agreement contain the entire agreement between the parties relating to the matters contained within such documents. Any modifications of this Amendment and the Development Agreement shall be of no force or effect unless in writing and signed by all parties. Except as set forth in this Amendment, the terms and conditions of the Development Agreement shall remain in full force and effect. In the event of a conflict between this Amendment and the Development Agreement this Amendment will control.

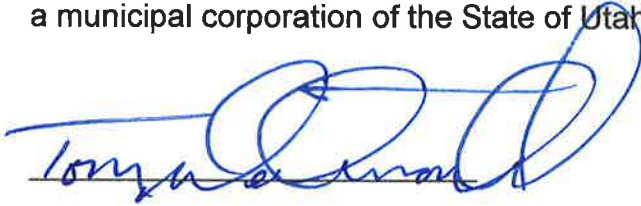
8. Counterparts. This Amendment may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and is intended to be binding when all parties have delivered their signatures to the other parties. All counterparts shall be deemed an original of this Amendment.

[signature page follows]

Dated this 12 day of August 2020.

CITY

Eagle Mountain City,
a municipal corporation of the State of Utah



ATTEST:



City Recorder




APPROVED AS TO FORM

BY: 

CITY ATTORNEY

COMPANY

Stadion LLC,
a Delaware limited liability company

By: 

Name: Bobby J. Howis II
Title: Auth. Signatory

EXHIBIT A-1

LEGAL DESCRIPTION OF THE PROPERTY

Serial number: 59:057:0003

Legal Description: NW 1/4 AND W 1/2 OF NE 1/4, SEC. 25, T6S, R2W, SLB&M. ALSO DESCRIBED AS;; COM FR W 1/4 COR SEC. 25, T6S, R2W, SLB&M.; N 0 DEG 20' 51" E 2676.06 FT; S 88 DEG 58' 33" E 2671.21 FT; S 88 DEG 58' 30" E 1335.59 FT; S 0 DEG 54' 3" W 2663.6 FT; N 89 DEG 9' 8" W 3980.95 FT TO BEG. AREA 244.782 AC.

Serial number: 59:057:0004

Legal Description: SW 1/4 AND W 1/2 OF SE 1/4, SEC. 25, T6S, R2W, SLB&M. ALSO DESCRIBED AS;; COM FR W 1/4 COR. SEC. 25, T6S, R2W, SLB&M.; S 89 DEG 9' 8" E 3980.95 FT; S 0 DEG 55' 59" W 2657.55 FT; N 89 DEG 24' 13" W 1367.89 FT; N 89 DEG 21' 28" W 2582.02 FT; N 0 DEG 15' 59" E 2672.94 FT TO BEG. AREA 242.655 AC.

Serial number: a portion of 59:069:0002

Legal Description: Beginning at the Northwest Corner of Section 36, Township 6 South, Range 2 West, Salt Lake Base and Meridian and running thence, along the northerly line of said Section 36, South 89°21'40" East 2582.48 feet to the North Quarter Corner of said Section 36; thence, along the northerly line of said Section 36, South 89°24'30" East 2405.48 feet; thence South 00°35'30" West 1100.00 feet; thence North 89°24'30" West 2406.39 feet; thence North 89°21'40" West 2542.66 feet to the west line of said section 36; thence, along said west line, North 01°26'04" West 1100.72 feet to the Point of Beginning. Contains 5,465,352 Square Feet (125.47 Acres)

EXHIBIT C-1

WATER IMPROVEMENTS

Phase 2 Water Line—Pole Canyon Water Line

Scope of Work

Water Improvements

Water Improvements--Phase 2

- 9,915 LF 18" Water Line
- PRV

Pole Canyon Water Line

- 18" Water Line from Pole Canyon

Depiction

- See attached

Construction Schedule

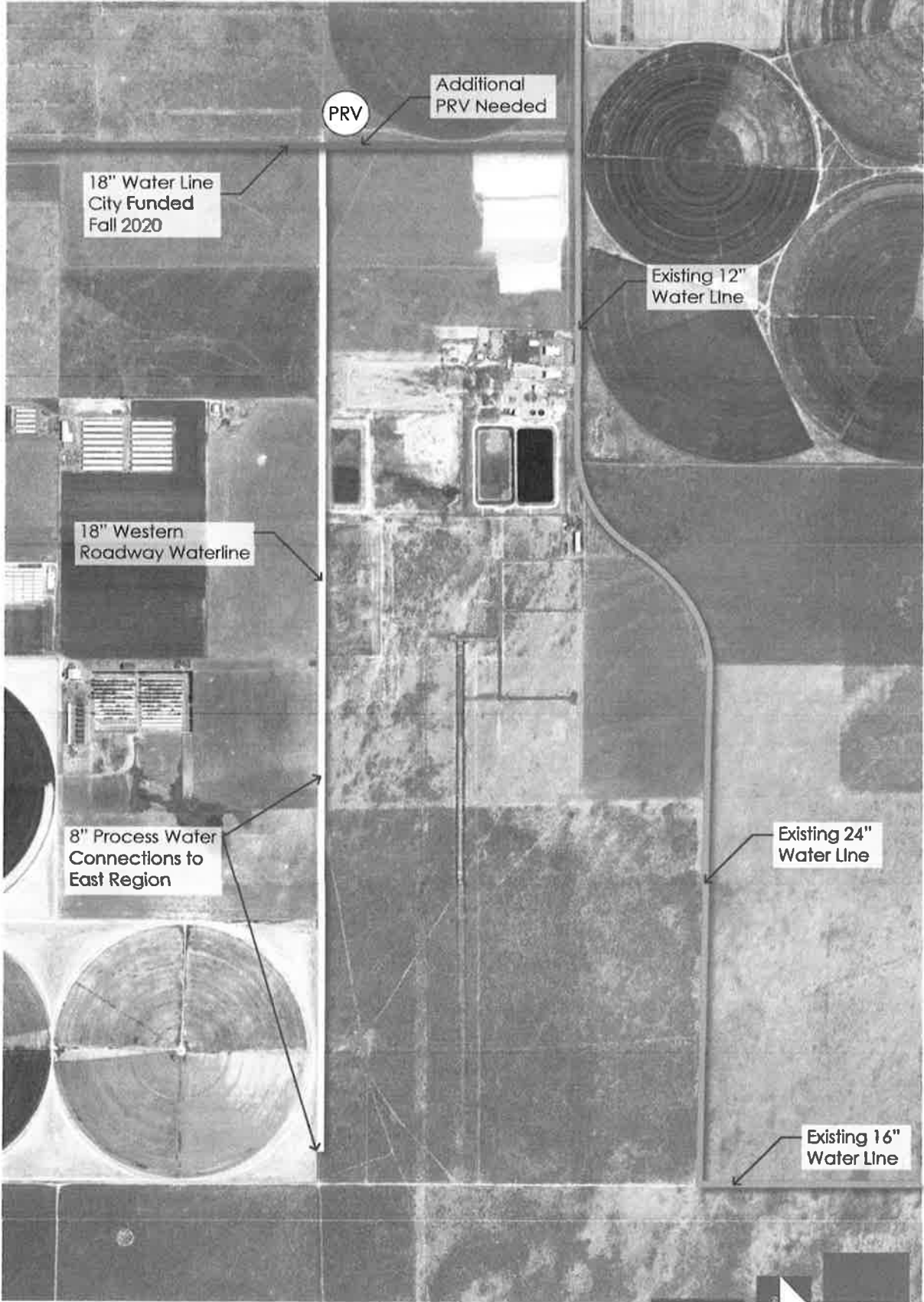
<u>Scope of Work</u>	<u>Design Bid Deadline</u>	<u>Design Completion Deadline</u>	<u>Construction Bid Deadline</u>	<u>Construction Completion Deadline</u>
<u>Water Line Improvements—Phase 2</u>	Provided by Company prior to the date of this Amendment	Provided by Company prior to the date of this Amendment	45 days following the date of this Amendment	October 15, 2020 ¹
<u>Pole Canyon Water Line</u>	Completed by the City prior to the date of this Amendment	Completed by the City prior to the date of this Amendment	Completed by the City prior to the date of this Amendment	October 15, 2020 ²

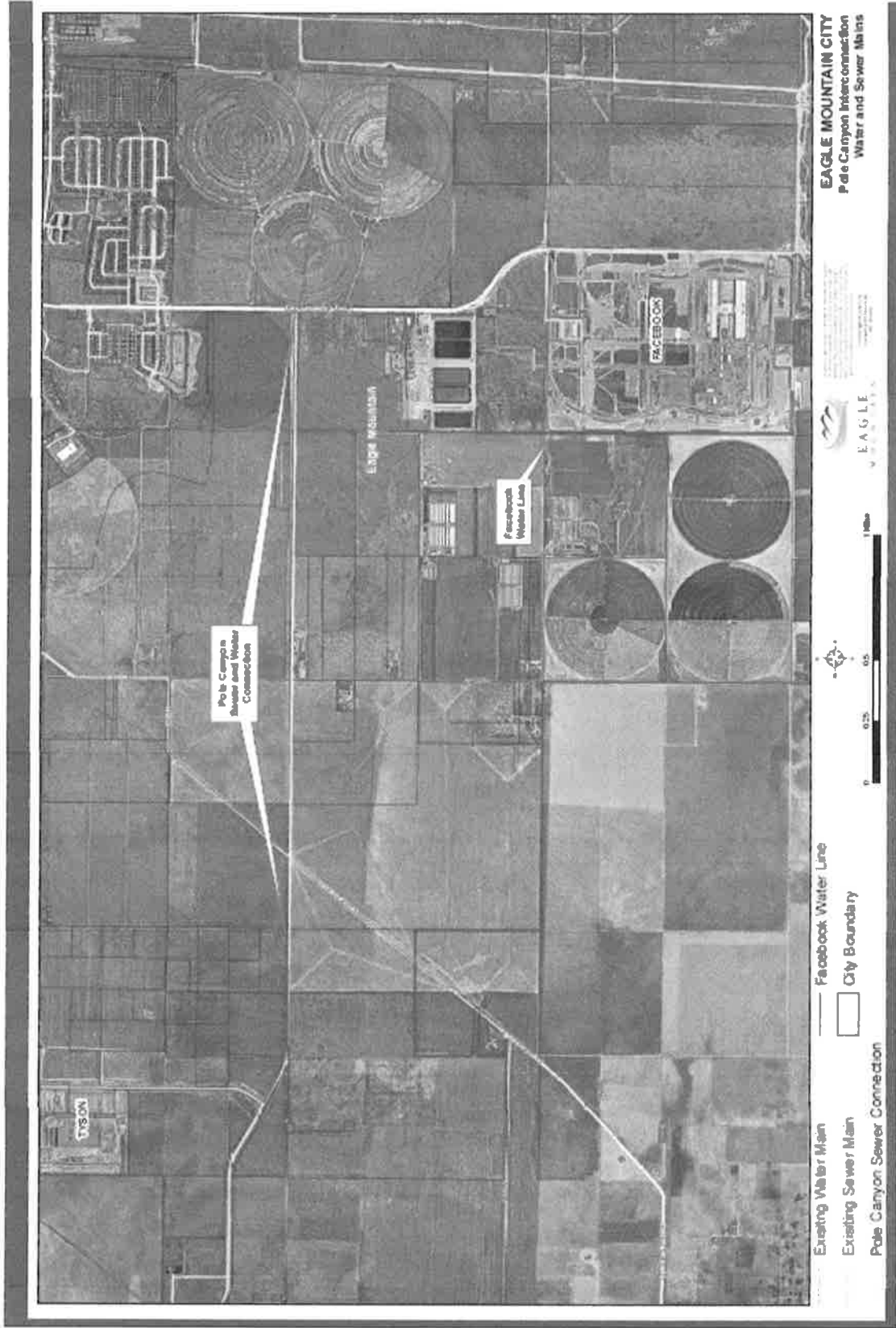
¹ Subject to extension for weather-related delays; the City may pre-order materials in order to meet this deadline.

² Subject to extension for weather-related delays; the City may pre-order materials in order to meet this deadline.

Western Roadway Exhibit

Water Network
Eagle Mountain, Utah
February 28, 2020





Eagle Mountain Off-Site Sewer Improvements

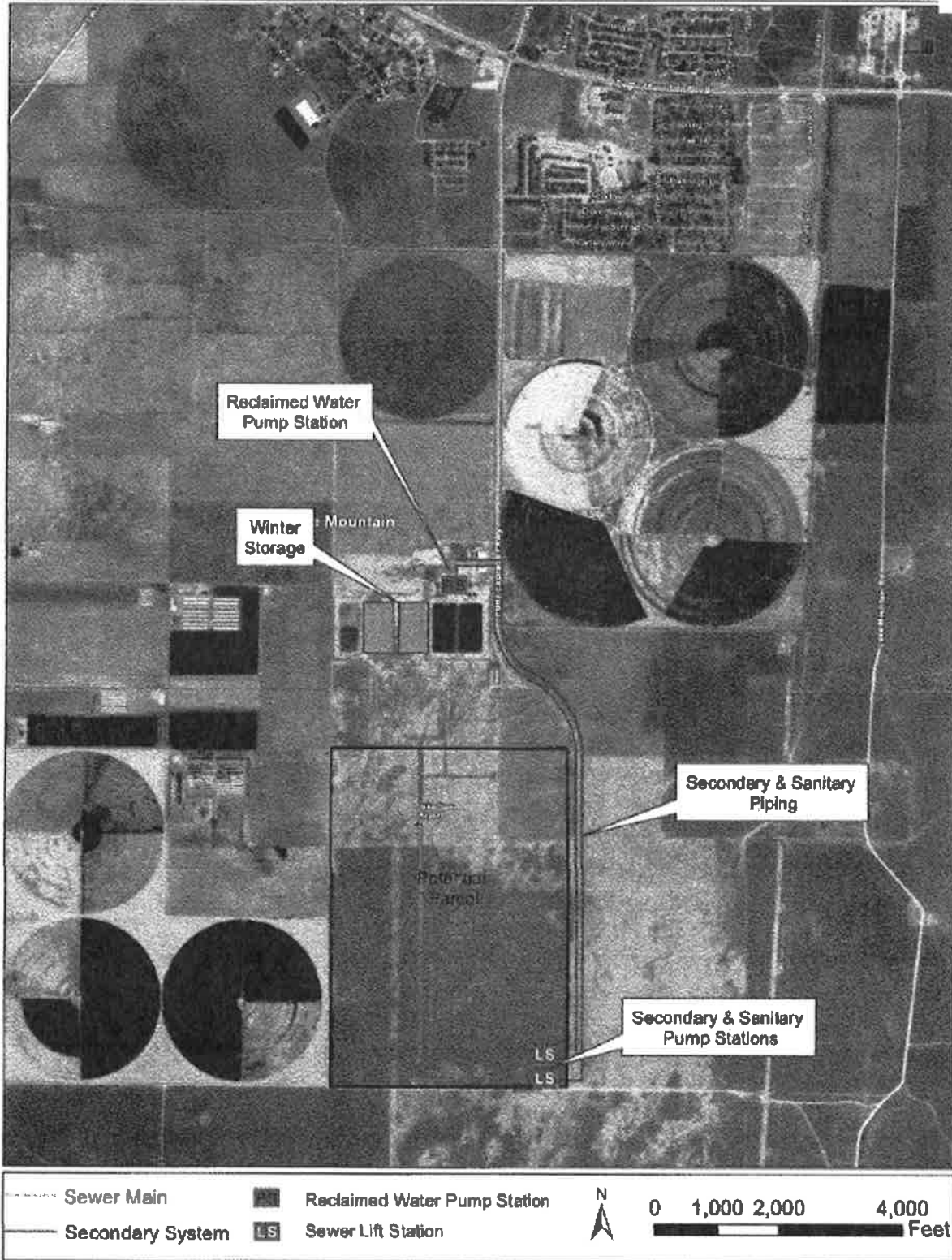


EXHIBIT D-1

ROADWAY EXPANSION

Additional Roadway Work

Scope of Work

- Construction of the eastern half-width portion of the master planned section of a public road (Minor Arterial – 38 feet total width of asphalt), commencing at the southern end of the City's ROW along and adjacent to the western edge of the Property and extending north to Tiffany Lane.

Depiction

- See attached

Construction Schedule

<u>Scope of Work</u>	<u>Design Bid Deadline</u>	<u>Design Completion Deadline</u>	<u>Construction Bid Deadline</u>	<u>Construction Completion Deadline</u>
<u>Additional Roadway Work-- Minor Arterial Roadway Expansion</u>	Provided by Company prior to the date of this Amendment	Provided by Company prior to the date of this Amendment	45 days following the date of this Amendment	October 15, 2020 ³

³ Subject to extension for weather-related delays; the City may pre-order materials in order to meet this deadline.

Western Roadway Exhibit

Road Network
Eagle Mountain, Utah
February 28, 2020

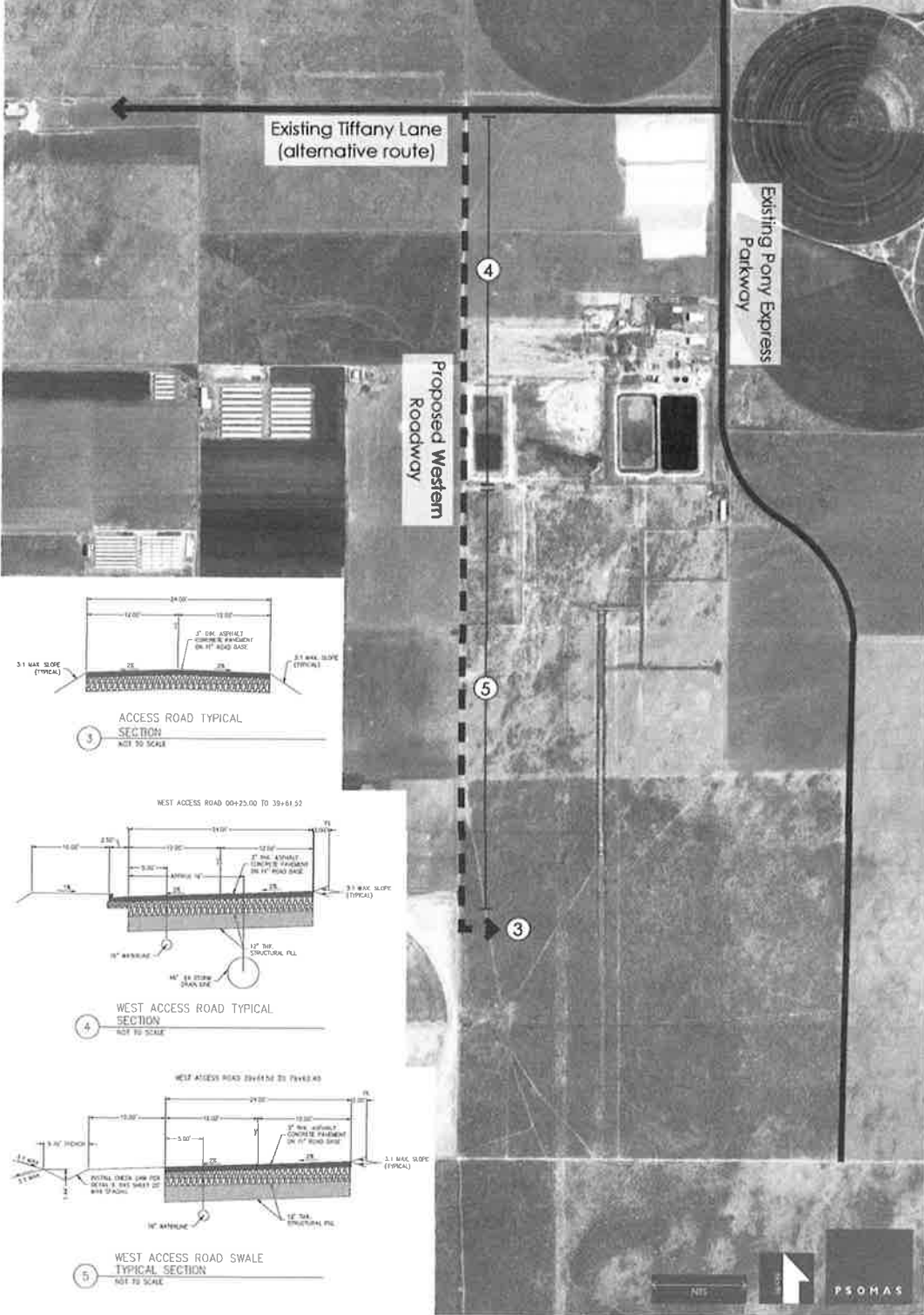


EXHIBIT E-1
SYSTEM IMPROVEMENT PERCENTAGES

The following system improvement percentages cover the Phase 2 Water Line, Pole Canyon Water Line and Additional Roadway Work projects only:

Water System Improvement –

Phase 2 Water Line

- 55.0%

Pole Canyon Water Line

- 100%

Minor Arterial Roadway Expansion—Additional Roadway Work

- Construction Costs (other than Land Acquisition Costs) - 0.00%

EXHIBIT F-1

ESTIMATED INFRASTRUCTURE COSTS

The following cost estimates cover the Phase 2 Water Line and Additional Roadway Work projects only:

	Estimated Project Improvements	Estimated Capital Improvements	Cost for non-Property adjacent improvements	System Improvement Percentage
Phase 2 Water Line (Psomas Estimate)	\$414,655	\$917,005	\$502,350	55.0%
Pole Canyon Water Line	\$0	\$1,724,109	\$0	100%

#	Project	Estimated Cost
Water Projects		
1	Phase 2 Water Line--Water Line Improvement – Phase 2	\$917,005
1	Pole Canyon Water Line	\$1,724,109
Roadway Projects		
1	Additional Roadway Work--Minor Arterial Roadway Expansion	\$1,591,985

EXHIBIT G ESTIMATED IMPACT FEES

The usage and demand for the project have been reviewed based on the impact fees assessed for the General South Service Area impact fee zone. These impact fees are based on Equivalent Residential unit calculations for each impact fee category.

The ERU calculations are based on single building estimated use:

Water: 1 ERU = 0.9 ac-ft => Indoor Use = 135,000 gpd = 168 ERU's
 Sewer: 1 ERU = 244 gpd => 45,000 gpd/ 244 gpd/ ERU = 184 ERU's
 Transportation: 1 ERU = 10 trips/ day => 40 ADT/ 10 Trips/ ERU = 20 ERU's
 Storm Drain: 1 ERU = 9,000 sq. ft. => assume no discharge from site
 Parks and Trails: 1 ERU = 4.2 persons => assume 0.0 ERU

IMPACT FEE CALCULATIONS			
WATER			
Service Area 1 Buy In	\$ 707.00	168	\$ 118,776.00
Service Area 1 Future Facilities	\$ 3,554.00	168	\$ 597,072.00
TOTAL	\$ 4,261.00		\$ 715,848.00
WASTEWATER			
EM Properties Equity Buy In	\$ 114.00	184	\$ 20,976.00
Treatment Buy-in	\$ 1,982.00	184	\$ 364,688.00
Future Facilities	\$ 1,366.00	184	\$ 251,344.00
TOTAL	\$ 3,462.00		\$ 637,008.00
TRANSPORTATION			
98-3 Equity Buy In	\$ 514.00	4	\$ 2,056.00
97-1 SID Equity Buy In	\$ 1,234.00	4	\$ 4,936.00
EM Road/ Sweetwater Fencing	\$ 351.00	4	\$ 1,404.00
Airport Road Right of Way	\$ 33.00	4	\$ 132.00
Silverlake/ Pony Express	\$ 185.00	4	\$ 740.00
EM Blvd/ Sweetwater	\$ 248.00	4	\$ 992.00
Future Facilities	\$ 1,235.00	4	\$ 4,940.00
TOTAL	\$ 3,800.00		\$ 15,200.00
STORM DRAIN			
98-1 SID Equity Buy In	\$ 113.00	0	\$ -
EM Properties Equity Buy In	\$ 29.00	0	\$ -
Future Facilities	\$ 469.00	0	\$ -
TOTAL	\$ 611.00	0	\$ -
PARKS AND RECREATION			
Regional Park Equity Buy In	\$ 110.00	0	\$ -
Future Facilities	\$ 1,158.00	0	\$ -
TOTAL	\$ 1,268.00		\$ -
TOTAL			\$ 1,368,056.00