

FOURTH/FIFTH ADDITIONS TO EMERALD VALLEY DEVELOPMENT AGREEMENT

THIS AGREEMENT, made by and between the **City of Appleton** by its City Council, a body politic and municipal corporation with a mailing address of 100 North Appleton Street, Appleton, WI 54911, (“City”) and, **Emerald Valley Estates, LLC**, a limited liability corporation with a business address of 1718 Van Zeeland Court, Little Chute, WI 54140, the owner and developer (“Developer”) of property lying within the City of Appleton:

WHEREAS, Section 17-3 of the Appleton Municipal Code provides for the installation of required improvements in new subdivisions; and

WHEREAS, the Developer has proposed to develop the Fourth and Fifth Additions to Emerald Valley, residential subdivisions on property within the corporate limits of the City (“Proposed Developments”), described in *Exhibits 1 & 2* (Legal Descriptions provided by Developer) attached hereto; and

WHEREAS, Final Plats of the Fourth and Fifth Additions to Emerald Valley Subdivision, shown in *Exhibits 3 & 4* (provided by Developer) attached hereto, have been conditionally approved by the City with conditions remaining to be satisfied; and

WHEREAS, a series of meetings and negotiations have taken place between the City and the Developer to determine various development and financial responsibilities as between the City and the Developer for on-site and off-site public improvements and fees in connection with the Proposed Developments; and

WHEREAS, the City and the Developer, for their mutual benefit, have mutually agreed as to development and financial responsibilities for public improvements and fees in connection with the Proposed Developments;

NOW THEREFORE, it is mutually agreed as follows:

1. The Developer shall be responsible for the installation of the following in each of the Proposed Developments, to the standards set forth by the City and pursuant to paragraph 4 below:
 - a. Sanitary sewer mains, manholes and laterals
 - b. Water mains, valves, hydrants, hydrant leads, fittings, and services
 - c. Storm sewer mains, manholes, catch basins, inlet leads, overland flow paths, yard drains and associated piping and laterals
 - d. Street excavation and graveling, terrace seeding, lot filling, grading and seeding and all associated construction site erosion control measures
 - e. Street Lights
 - f. All other infrastructure required for the developments not specifically set forth in this agreement

2. The Developer shall provide the City an estimate for items 1a – 1f prior to the installation of the items for each development.

3. The Developer shall provide a fully executed and signed *Waiver of Special Assessment Notices and Hearing* (shown in *Exhibit 5*) for each development, acknowledging consent to pay Special Assessments levied by the City for the following items to be furnished and/or installed by the City:

- a. Sanitary Sewer Area Assessment
- b. Televising of sanitary and storm sewer lines
- c. Street Name Signs
- d. Traffic Control Signs
- e. Concrete Pavement abutting lots owned by the Developer at the time of concrete paving
- f. Sidewalks installed on lots owned by the Developer at the time of concrete paving

Estimates of up-front City costs and associated special assessments to be paid by the Developer for items 3a – 3f for each development are attached hereto as *Exhibits 6 & 7*. The actual final costs for items 3a-3f will be used as the basis for the amount of the special assessments billed to the Developer.

4. The Developer shall provide the City with copies of all final costs, invoices, labor costs, the contract documents and specifications, design documentation, all contract administration supporting documentation, an itemized list of all expenses for the installation of sanitary sewer, storm sewer, water main, street excavation and graveling and street lights for each Proposed Development. Said information provided by Developer shall meet City's Infrastructure Adjustment Form requirements. The Developer's design engineer shall perform the construction staking and the City shall inspect the same.

5. The Developer's contractor shall perform the testing of the water main, sanitary sewer, storm sewer and compaction of fill material placed in future roadway areas in the Proposed Developments under the supervision of City of Appleton inspectors.

6. The Developer shall provide lien waivers to the City from prime contractor, subcontractors, suppliers and consultants within 60 days of the installation of the items in paragraph 1.

7. The Developer agrees to convey by deed or dedication to the City all the streets, roads, courts, avenues, drives, public ways, and storm water facilities in the Proposed Developments. Developer further agrees to convey any public access ways by dedication or easement to the City. All public improvements contemplated in the final plats shall be constructed within areas to be dedicated to the City either by deed, dedication or easement as contemplated in the Proposed Developments and this agreement.

8. The Developer shall establish a level loop on the hydrant(s) in the Proposed Developments and a copy of all benchmarks shall be provided to the City.

9. The City agrees to accept the dedication of all the Public Improvements in the Proposed Developments, whether by deed, dedication or easement subject to the City's Acceptance of the Public Improvements in accordance with and subject to the terms of the City's Subdivision Ordinance.

10. The Developer shall repair or replace, as directed by the City and to the City's satisfaction, at its own cost, any damage caused to City property by the installation of the improvements in the Proposed Developments, which shall be completed within six (6) months notification by the City to the Developer of the need to repair or replace such damage.

11. The Developer shall pay the cost of all items listed under Paragraph 1 above. Concrete Paving and sidewalks will be assessed to the abutting property owners and the Developer will be assessed for only the cost of those lots owned by the Developer. Concrete streets shall be installed only after 75% of the lots in the Proposed Developments have been issued building permits or after a 7-year period from the date of official street opening, whichever comes first.

12. The schedule for the Proposed Developments shall be as follows:

- a. Infrastructure installation may commence in each development after City approval of the Final Plat, Drainage Plan, Established Grades, Storm Water Management Plan, Construction Plans, Construction Specifications and procurement of all necessary City and Regulatory Agency permits.
- b. Building permits may be issued upon City approval and acceptance of all infrastructure. Streets must be officially opened to the public by the City Engineer prior to the issuance of building permits.

13. The City agrees to waive any parkland fees pursuant to Chapter 17 of the Appleton Municipal Code, in exchange for parkland dedications and conveyances previously completed as part of the original Emerald Valley Development along with future planned phases of the Development, in accordance with Item 20 of the original Development Agreement for Emerald Valley Estates dated July 17, 2006.

14. The City agrees to waive all Administrative Fees and all costs related to the installation of Temporary Asphalt Pavement for both developments.

15. The City agrees to reimburse Developer an amount equal to 50% of in-lieu-of fees required by the Wisconsin Department of Natural Resources as part of the Individual Wetlands Permit for the Fourth Addition to Emerald Valley Development. This reimbursement will occur once a total of six homes have been fully constructed and are ready for occupancy.

16. The City represents that this Agreement and the terms and conditions contained herein are consistent with adopted ordinances and resolutions on the subject matter.

17. The Developer shall pay the entire cost associated with installation of underground gas, electric, telephone and cable TV utilities and street lights in the Proposed Developments. The City shall review the proposed locations and have approval authority over any utilities proposed within the public right-of-way, prior to installation. The City standard for street lights is wooden poles. The street lighting plan shall be designed by We Energies and approved by the City. The City shall pay We Energies the monthly electrical charge for street lighting. If the Developer desires decorative streetlights, then the Developer shall be responsible for all costs associated with the decorative streetlights. The Developer shall be responsible for requesting said decorative lights from WE Energies. The Developer must also

sign a Waiver of Special Assessments document for the annual assessments associated with decorative lighting.

18. The City represents and warrants to Developer that it has the power, authority and legal right to enter into all of the transactions and to perform all of the covenants and obligations required to be entered into or performed by the City under this Agreement.

a. The City represents and warrants to Developer that it is empowered and authorized to execute and deliver this Agreement and other agreements and documents, if any, required hereunder to be executed and delivered by the City. This Agreement has been, and each such document at the time it is executed and delivered, will be duly executed and delivered on behalf of the City.

b. When executed and delivered to Developer, all such agreements shall constitute a legal, valid and binding obligation of the City, enforceable in accordance with its terms.

19. The Developer represents and warrants to the City that Developer is a Limited Liability Corporation, duly organized and existing under the laws of the State of Wisconsin, and that all proceedings of Developer necessary to authorize the negotiation and execution of this Agreement and the consummation of the transaction contemplated by this Agreement have been taken in accordance with applicable law.

a. The Developer represents and warrants to the City that the execution and delivery of this Agreement, the consummation of the transactions contemplated in this Agreement and the execution and delivery of the documents required to be executed, delivered or acknowledged by Developer at the closing will not violate any provision of Developer's limited liability corporation bylaws or agreements or any applicable statute, rule, regulation, judgment, order or decree of the State of Wisconsin or a court having jurisdiction over Developer or its properties.

20. The Agreement shall be effective as of the date of execution thereof and remain in effect until the earliest of: (a) the Developer notifies the City that either of the Proposed Developments has been terminated, (b) upon the mutual agreement of the Parties to terminate the Agreement, or (c) if one (1) year after the date of execution the Developer not take any further action on the Proposed Developments.

21. This Agreement, along with *Exhibits 1 through 7*, sets forth the entire understanding of the parties relative to its subject matter and supersedes and merges any and all prior communications, negotiations and agreements, oral or written.

22. It is understood and agreed that the provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions contained herein shall not affect the validity and enforceability of the other provisions contained herein.

23. This Agreement may not be modified or amended, except when placed in writing, with the written consent of both the City and the Developer.

[SIGNATURE PAGE TO FOLLOW]

EMERALD VALLEY ESTATES, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

STATE OF WISCONSIN)

: ss.

_____ COUNTY)

Personally came before me on this ____ day of _____, 2018, the above-named persons, _____ and _____, to me known to be the persons who executed the foregoing instrument and acknowledge the same.

Notary Public, State of Wisconsin
My commission is/expires: _____

14524-005

PRELIMINARY PLAN

FOURTH ADDITION TO EMERALD VALLEY

PART OF THE NORTHWEST 1/4, NORTHEAST 1/4, AND THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4, SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, COUNTY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN

DATE: MAY 2017
SCALE: 1" = 60'

COMPUTER FILE: 14524-005.dwg

DRAWN BY: [Blank]
CHECKED: [Blank]
DATE: [Blank]

NO. 1
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NO. 8
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NO. 9
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NO. 10
DATE: [Blank]

APPROVED: [Blank]
DATE: [Blank]

Martenson & Eisele, Inc.
1377 Midway Road
Kenosha, WI 53152
Environmental Planning
Engineering
www.martenson-eisele.com
info@martenson-eisele.com
920.731.0381, 1.800.236.0381
Architecture

TOPOGRAPHIC LEGEND

- Contour Interval: 5' (10' for 100' and above)
- Spot Elevation: 10' (10' for 100' and above)
- Water: Blue lines and shading
- Stream: Blue lines with arrows
- Drainage: Blue lines with arrows
- Proposed Road: Solid black line
- Proposed Utility: Dashed black line
- Proposed Easement: Dotted black line
- Proposed Boundary: Solid black line
- Proposed Structure: Solid black outline
- Proposed Foundation: Solid black outline
- Proposed Deck: Solid black outline
- Proposed Walkway: Solid black outline
- Proposed Driveway: Solid black outline
- Proposed Fence: Solid black outline
- Proposed Retention Wall: Solid black outline
- Proposed Slope: Solid black outline
- Proposed Embankment: Solid black outline
- Proposed Excavation: Solid black outline
- Proposed Pond: Solid black outline
- Proposed Well: Solid black outline
- Proposed Septic Tank: Solid black outline
- Proposed Manhole: Solid black outline
- Proposed Valve: Solid black outline
- Proposed Meter: Solid black outline
- Proposed Transformer: Solid black outline
- Proposed Pole: Solid black outline
- Proposed Sign: Solid black outline
- Proposed Light: Solid black outline
- Proposed Gate: Solid black outline
- Proposed Gate Post: Solid black outline
- Proposed Gate Latch: Solid black outline
- Proposed Gate Lock: Solid black outline
- Proposed Gate Handle: Solid black outline
- Proposed Gate Key: Solid black outline
- Proposed Gate Chain: Solid black outline
- Proposed Gate Bolt: Solid black outline
- Proposed Gate Nut: Solid black outline
- Proposed Gate Washer: Solid black outline
- Proposed Gate Spacer: Solid black outline
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GENERAL NOTES:

1. THIS PLAN IS A PRELIMINARY PLAN AND IS NOT TO BE USED FOR CONSTRUCTION.
2. THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE CITY OF APPLETON AND THE TOWN OF GRAND CHUTE.
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CONTRACTOR'S OBLIGATIONS:

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LOCATION MAP

SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, COUNTY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN

BENCHMARK DATA

NO.	DESCRIPTION	BENCHMARK DATA
1	PERMANENT BENCHMARK ON THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, COUNTY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN	131.50 (2017)
2	PERMANENT BENCHMARK ON THE WEST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, COUNTY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN	131.50 (2017)
3	PERMANENT BENCHMARK ON THE NORTH LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, COUNTY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN	131.50 (2017)
4	PERMANENT BENCHMARK ON THE SOUTH LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 21 NORTH, RANGE 18 EAST, COUNTY OF APPLETON, OUTAGAMIE COUNTY, WISCONSIN	131.50 (2017)

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CONTRACTOR'S OBLIGATIONS:

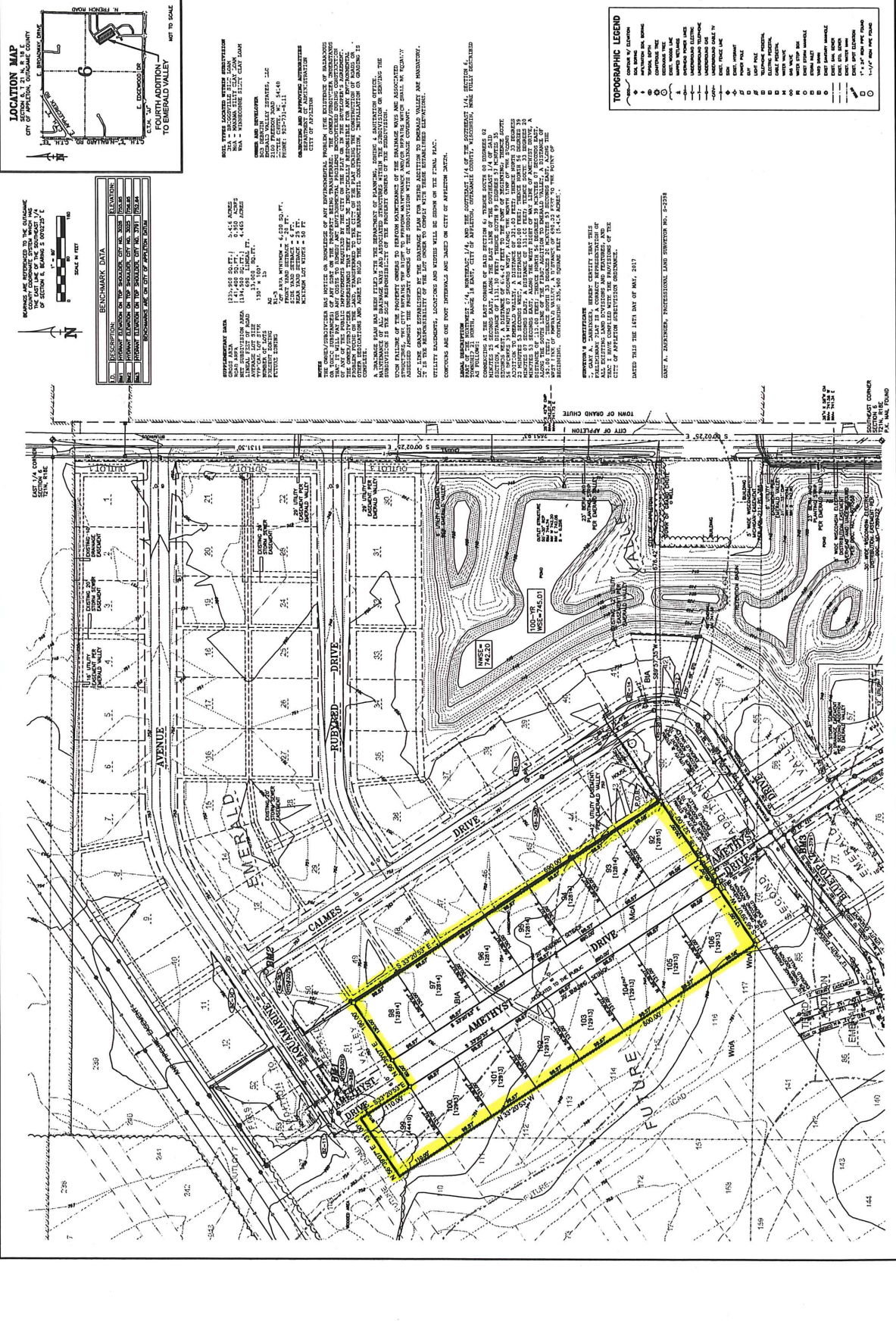
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Fourth Addition to Emerald Valley

Number of Lots: 15
 Lot Area: 194,500 Square Feet
 Amethyst Drive - 110' n/o Bluetopaz Drive to 110' s/o Aquamarine Avenue
 Total C/L Footage: 690'
 Total Pavement Area (33' wide road): 2,530 SY

Developer: Emerald Valley Estates, LLC
 Unit No.: S-18
 Project Engineer: Mark Kilheffer
Work Order:

Exhibit 6

February 21, 2018

DESCRIPTION	TOTAL PROJECT COSTS	DEVELOPER COSTS	CITY COSTS	Special Assessments (2018) (ESTIMATED)	Special Assessments (2022) (ESTIMATED)	Account to be Credited	NOTES / COMMENTS
City Administrative Fees (estimated cost)	\$5,175.00	\$0.00	\$5,175.00	\$0.00	\$0.00	4010	(690 C/L Ft.) x (\$7.50 / C/L. Ft.)
Sanitary Sewer Area Assessment	\$5,344.86	\$0.00	\$5,344.86	\$5,344.86	\$0.00	5431	(\$27.48/1000 s.f.)*(194,500 s.f.)
Sewer Televising (estimated cost)	\$966.00	\$0.00	\$966.00	\$966.00	\$0.00	5427 5222	(1,380 Feet) x (\$0.70 / Ft.)
Street Name / Traffic Control Signs (estimated cost)	\$1,380.00	\$0.00	\$1,380.00	\$1,380.00	\$0.00	4010	(690 C/L Ft.) x (\$2.00 / C/L. Ft.)
Temporary Asphalt (estimated cost)	\$37,950.00	\$0.00	\$37,950.00	\$0.00	\$0.00	4010	(2,530 s.y.) x (\$15.00/s.y.)
Concrete Pavement (estimated cost)	\$120,750.00	\$0.00	\$120,750.00	\$0.00	\$120,750.00	4010	(690 LF) x (\$175.00/LF)
Sidewalks - with Concrete Pavement (estimated cost)	\$8,000.00	\$0.00	\$8,000.00	\$0.00	\$8,000.00	4010	(2,000 s.f.) x (\$4.00/s.f.)
Wetland Fee payment to DNR (50% reimbursement)	\$36,850.00	\$0.00	\$36,850.00	\$0.00	\$0.00	4010	(\$73,700) / 2
Sanitary Sewer	\$0.00	\$0.00	\$0.00			5431	Private Contractor hired by Developer
Storm Sewer / Erosion Control	\$0.00	\$0.00	\$0.00			5230	Private Contractor hired by Developer
Wetland Permit In-Lieu -of fee payment to DNR (50%)	\$73,700.00	\$0.00	\$73,700.00			4010	Developer Payment to DNR
Water Main	\$0.00	\$0.00	\$0.00			5371	Private Contractor hired by Developer
Sanitary Laterals	\$0.00	\$0.00	\$0.00			-	Private Contractor hired by Developer
Storm Laterals	\$0.00	\$0.00	\$0.00			-	Private Contractor hired by Developer
Water Services	\$0.00	\$0.00	\$0.00			-	Private Contractor hired by Developer
Grading & Graveling	\$0.00	\$0.00	\$0.00			4010	Private Contractor hired by Developer
Street Lights	\$0.00	\$20,978.12	-\$20,978.12			4010	Private Contractor hired by Developer
TOTALS	\$290,115.86	\$20,978.12	\$269,137.74	\$7,690.86	\$128,750.00		

Fifth Addition to Emerald Valley

Amethyst Drive - 127' w/o Providence Avenue to Bluetopaz Drive
 Bluetopaz Drive - Amethyst Drive to 152' w/o Providence Avenue
 Total C/L Footage: 1095'
 Total Pavement Area (33' wide street): 4,040 SY

Number of Lots: 23

Total Lot Area: 313,822 S.F.

Developer: Emerald Valley Estates, LLC

Unit No.: AA-18

Project Engineer: Mark Kilheffer

Work Order:

Exhibit 7

February 21, 2018

DESCRIPTION	TOTAL PROJECT COSTS	Developer Financed Construction (Private Contracts)	Up-Front City Costs	Special Assessments (2018) (ESTIMATED)	Special Assessments (2022) (ESTIMATED)	Account to be Credited	NOTES / COMMENTS
City Administrative Fees (estimated cost)	\$8,212.50	\$0.00	\$8,212.50	\$0.00	\$0.00	4010	(1095 C/L Ft.) x (\$7.50 / C/L. Ft.)
Sanitary Sewer Area Assessment	\$8,623.83	\$0.00	\$8,623.83	\$8,623.83	\$0.00	5431	(\$27.48/1000 s.f.)*(313,822 s.f.)
Sewer Televising (estimated cost)	\$1,190.00	\$0.00	\$1,190.00	\$1,190.00	\$0.00	5427 5222	(1,700 Lin Ft.) x (\$0.70 / Lin. Ft.)
Street Name / Traffic Control Signs (estimated cost)	\$2,190.00	\$0.00	\$2,190.00	\$2,190.00	\$0.00	4010	(1095 C/L Ft.) x (\$2.00 / C/L. Ft.)
Temporary Asphalt (estimated cost)	\$60,600.00	\$0.00	\$60,600.00	\$0.00	\$0.00	4010	(4,040 s.y.) x (\$15.00/s.y.)
Concrete Pavement (estimated cost)	\$191,625.00	\$0.00	\$191,625.00	\$0.00	\$191,625.00	4010	(1,095 LF) x (\$175.00/LF)
Sidewalks - with Concrete Pavement (estimated cost)	\$12,000.00	\$0.00	\$12,000.00	\$0.00	\$12,000.00	4010	(3,000 s.f.) x (\$4.00/s.f.)
Sanitary Sewer	\$26,932.60	\$26,932.60	\$0.00			5431	Private Contractor hired by Developer
Storm Sewer / Erosion Control	\$79,065.30	\$79,065.30	\$0.00			5230	Private Contractor hired by Developer
Water Main	\$60,720.50	\$60,720.50	\$0.00			5371	Private Contractor hired by Developer
Sanitary Laterals	\$7,395.00	\$7,395.00	\$0.00			-	Private Contractor hired by Developer
Storm Laterals	\$8,035.00	\$8,035.00	\$0.00			-	Private Contractor hired by Developer
Water Services	\$14,091.00	\$14,091.00	\$0.00			-	Private Contractor hired by Developer
Grading & Graveling	\$97,673.00	\$97,673.00	\$0.00			4010	Private Contractor hired by Developer
Street Lights	\$20,978.12	\$20,978.12	\$0.00			4010	Private Contractor hired by Developer
TOTALS	\$599,331.85	\$314,890.52	\$284,441.33	\$12,003.83	\$203,625.00		