



HURRICANE CITY UTAH

Mayor

Nanette Billings

City Manager

Kaden DeMille

City Council

*Joseph Prete
Dave Sanders
David Hirschi
Kevin Thomas
Doug Heideman*

Hurricane City Council Meeting Agenda

September 21, 2023
4:00 PM

City Council Chambers 147 N 870 W, Hurricane

Notice is hereby given that the City Council will hold a Regular Meeting in the City Council Chambers 147 N 870 W, Hurricane, UT. [Meeting Link on Webex](#) Meeting number: 2630 456 5376 Meeting password: HCcouncil Join from a video or application Dial 26304565376@cityofhurricane.webex.com. You can also dial 173.243.2.68 and enter your meeting number. Join by phone +1-415-655-0001 US Toll Access code:26304565376. A silent roll call will be taken, followed by the Pledge of Allegiance and prayer by invitation. **THOSE WISHING TO SPEAK DURING PUBLIC FORUM MUST SIGN IN WITH THE RECORDER BY 6:00 P.M.**

4:00 p.m. Work Meeting

1. Discussion regarding affordable housing, homelessness, and tourism
2. Agenda Summary

5:00 p.m. Pre-meeting

6:00 p.m. - Call to Order

Prayer

Thought

Pledge of Allegiance

Declaration of any conflicts of interest

Minutes of the Regular City Council Meeting for August 17, 2023

Public Forum – Comments from Public

Please Note: In order to be considerate of everyone attending the meeting and to more closely follow the published agenda, public comments will be limited to 2 minutes per person per item. A spokesperson representing a group to summarize their concerns will be allowed 5 minutes to speak. Repetitious commentary will not be allowed. If you need additional time, please request agenda time with Cindy Beteag in writing before 5:00 p.m. the Wednesday one week before the Council meeting.

OLD BUSINESS

1. Ordinance 2023-12: Consideration and possible approval of a **Land Use Code Amendment to adopt Title 10 Chapter 52 and amend Title 1 Chapter 4 with regards to affordable housing.** Hurricane City Planning.

2. Consideration and possible approval of **Resolution 2023-31 Proclaiming Hurricane City** as America's City

NEW BUSINESS

1. Discussion and possible decision regarding the **high school block monument and moving the old jail**-Lee Beaty
2. Consideration and possible approval of a **private hangar lease** with The Mowbray Revocable Trust, dated November 24, 2021
3. Ordinance ZC23-21: Consideration and possible approval of a **Zone Change Amendment request located at 820 S 840 W from RA-1, residential agriculture one unit per acre to RA-0.5, residential agriculture one unit per half acre.** Parcel H-3-2-3-4220-C. Interstate Rock Products, Applicant. Chase Stratton, Agent.
4. Consideration and possible approval of an amended **final plat for Dixie Springs Plat D Lots 196 & 197** located at 3259 W 2490 S; Terry Spinks, Applicant.
5. Ordinance 2023-16: Consideration and possible approval of a Land Use Code Amendment **Amending Title 10 Chapter 1 to add Subsection 13 regarding land use applicants' compliance with City Code and staff comments.** Hurricane City Attorney, Applicant.
6. Consideration and possible approval of the **revocation of the vacation rental license** for Dennis and Donna Price
7. Consideration and possible approval of an **Interlocal Agreement with Washington County regarding the construction of the Sand Hollow Road Extension**
8. Consideration and possible approval of **local consent for a single-event beer garden** at Washington County Legacy Park-Van Fest LLC applicant, Lance Wilkinson agent
9. Consideration and possible approval of **Resolution 2023-37 appointing Nanette Billings to the Washington County Water Conservancy District Board**
10. Consideration and possible approval of **multiple agreements to increase the power capacity.** -Scott Hughes
11. Consideration and possible approval of **Resolution 2023-38 authorizing the Steel Solar 1A Project** Second amended and restated transaction schedule under the master firm power supply agreement with Utah Associated Municipal Power Systems and related matters-Scott Hughes
12. Ordinance 2023-17: Consideration and possible approval on a Land Use Code Amendment to **Title 10 Chapter 37 Subsection 9 and Title 10 Chapter 7** regarding fences and walls
13. AFP23-16: Consideration and possible approval on an **amended final plat for Walmart Lots 4 and 5** located at 3400 W 90 N. Chasebrook Hurricane LLC, Applicant. Jay Larsen, Agent.
14. Consideration and possible approval of an **amended final site plan for Willowind RV park**, an RV park located at 80 S 1150 W. Steven Kramer, Applicant.

15. Consideration and possible approval of **awarding the bid for the new City gymnasium space**
16. Closed Meeting held pursuant to Utah Code section 52-4-205, upon request

Adjournment

I hereby certify that the above notice was posted to the city website, (www.cityofhurricane.com) posted to the state public notice website, and at the following locations:

1. City office – 147 North 870 West, Hurricane, UT
2. The Post Office – 1075 West 100 North, Hurricane, UT
3. The library – 36 South 300 West, Hurricane, UT

_____ for the City Recorder

Agenda Summary for Hurricane City Council September 21, 2023

4:00 p.m. Work Meeting regarding affordable housing, homelessness, and tourism

5:00 p.m. Pre-Meeting

6:00 p.m. Call to Order

Old Business

1. This item has been continued from previous meetings and a work meeting was held on September 13th to briefly discuss this item. It will be discussed more during the work meeting at 4:00.
2. This item was continued from the last meeting so Councilman Prete could rewrite the resolution. Version 1 in the packet is the original resolutions and version 2 is Councilman Prete's version.

New Business

1. Discussion regarding the high school block monument and moving the old jail.
2. The tenant has an existing hangar but the lease has expired. They are requesting a new private hangar lease agreement consistent with the council-approved template. It will be considered at the Airport Board meeting on September 19th.
3. The applicant requests a zone change from RA-1 to RA-0.5 for Phase 2 of Dratter Estates. A similar zone change was approved in July 2021 for Phase 1 of the project located to the north of the site. Both phases of the project will be developed concurrently. The Planning Commission heard this item on August, 24, 2023 and recommended approval.
4. The applicant has applied to amend the final plat for Dixie Springs Plat E to combine Lots 92 and 93 into one lot. Combining lots within a recorded subdivision requires approval of an amended final plat. The Planning Commission heard this item on August 24, 2023, and recommended approval.
5. The purpose of this proposed ordinance is to: (1) confirm that developers are required to comply with applicable City Codes after a land use application is approved and (2) that approvals shall be subject to JUC and staff comments unless otherwise indicated by the Planning Commission or Council. The City's historical practice of approving applications "subject to" certain comments could be problematic because the Council may forget to make the approval conditional on the comments. Or, developers may mistakenly assume that all code requirements except the ones mentioned by staff are waived. This proposed ordinance addresses those concerns. The Planning Commission recommended approval of this ordinance change unanimously.
6. This home has had a vacation rental license since 2016. Other than one violation in 2017 for overoccupancy, there haven't been any complaints until this year. In May of 2023, the property owner received their first violation notice for parking. Staff did not hear anything from the owners or property management after the letter was sent. In July

2023, another complaint was received, this time for noise, and a second letter was sent notifying the owners of their second strike. Again, no communication with the owners or property management. Multiple other complaints were received after the letter in July was sent about parking, noise, and more than ten people staying at the rental. A letter was sent to the owners notifying them this was their third strike within a twelve-month period. Therefore, a revocation hearing will take place.

7. This is an interlocal agreement with Washington County so they can fund a portion of the construction of the Sand Hollow Road Extension.
8. The applicant is holding an event at the Washington County Fairgrounds in October. They are requesting local consent to have a beer garden at their event. They have provided all the necessary applications and maps. A background check has been completed on the person overseeing the event. Staff has no concerns with granting local consent.
9. Former Councilman Kevin Tervort is currently still on the Washington County Water Conservancy Board. His term will be ending soon. This resolution is recommending Mayor Nanette Billings to serve on the board once Mr. Tervort's term has ended.
10. The contracts being presented to the Council for consideration are between the City and land developers that have preliminary plats approved in the south end of the City. As previously discussed with the Council, the lack of power capacity to serve these subdivisions has prevented the City from approving the construction drawings for these subdivisions. The Power Department, after discussions with the Council several months ago, commissioned a study to determine changes that could be made and additional infrastructure that could be installed to increase capacity to the south. Based on the results of that study, the Power Department has calculated its actual cost to increase capacity. That cost has been allocated to each of the subdivisions based on the amount of power requested by the land developer.

The contracts state that each developer will pay its proportionate share to increase capacity. Every developer will pre-pay the estimated cost to the City before the City has any obligations. Developers will pay the actual cost of the improvements, even if the amount is more than the initial estimated amount. The Power Department has two years to complete the improvements. When every Developer has paid its proportionate amount, then the Power Department finds that a "reasonable plan" is in place to provide power to the subdivisions as required by HCC 9-6-3, which requires adequate public facilities before development approval. Thereafter, the Power Department will sign construction drawings for these subdivisions, provided that all other requirements are met. Of course, construction drawings must also be approved by all other City utilities.

This contract and related project will address the preliminary plats that were approved before adequate public facilities for power were available. This project does not solve the capacity limitations on the south end of the City, but merely addresses the previously approved preliminary plats. This project is separate from the 1300 South

substation that is under construction. At present, there is no additional capacity available for any significant development. Additional capacity on the south end of the City will not be available until the substation is completed, the transmission line to the substation is updated, easements are acquired, and distribution lines are constructed.

11. This agenda item refers to the Steel Solar Project which is a solar (photovoltaic) energy resource being constructed in Box Elder County, Utah. We signed up for approximately 2.5 megawatts of energy for the next 25 years. The reason we have a resolution before us is to amend the Power Purchase Agreement (PPA) that we had previously signed. The amendment is requested by the project developer, DESRI, because Production Tax Credits (PTCs) recently became available to solar resources through the Inflation Reduction Act that were not previously available. This amendment proposes the following changes to the agreement:
 - a. An increase to the penalty to UAMPS for default or economic curtailment by requiring UAMPS to pay both the contract price and the grossed-up value of the PTCs.
 - b. An increase in the amount of penalty-free economic curtailment that UAMPS can use. For years 1-10, an increase from 600 MW to 2000 MW. For years 11-20, an increase from 600 MW to 1000 MW. Years 20-25, no economic curtailment allowed without penalty.
 - c. DESRI will allow UAMPS to develop a battery project adjacent to the Steel Solar site and use commercially reasonable efforts to cooperate with UAMPS in obtaining governmental approvals for the project over the next three years.
 - d. UAMPS is explicitly permitted to assign the PPA to J. Aron under a prepay arrangement structured to provide UAMPS members the benefits of the difference between the public and private cost of financing.
 - e. DESRI will split 50/50 with UAMPS any benefits it receives under the Powering Affordable Clean Energy program administered by the U.S. Rural Utilities Service.

Power Board recommended approval of this resolution with a unanimous vote.

12. The primary purpose of this proposed change is to limit the permitted fencing materials within residential zones and perform other needed adjustments to the language in the fencing ordinance. The Planning Commission gave a unanimous recommendation for approval by the City Council. This ordinance amendment has had legal review.
13. The applicant is requesting an amended final plat for the Walmart subdivision to turn two lots into three lots. The applicant has an approved preliminary site plan for three retail/restaurant buildings on this property that was approved in April of 2023. The Planning Commission gave a unanimous recommendation that the City Council approve the application subject to staff and JUC comments.
14. The applicant has filed to amend the final site plan for Willowind RV park to add three additional RV spots along Gould's Wash. The Planning Commission gave a unanimous

recommendation that the City Council approve the application subject to staff and JUC comments.

15. Award of the bid for the new Hurricane gymnasium.

16. No closed meeting as of Friday.

Minutes of the Hurricane City Council meeting held on August 17, 2023, in the Council Chambers at 147 North 870 West, Hurricane, Utah, at 4:00 p.m.

Members Present: Mayor Nanette Billings and **Council Members:** Joseph Prete, David Hirschi, Doug Heideman, and Kevin Thomas. Dave Sanders excused.

Also Present: City Manager Kaden DeMille, City Attorney Dayton Hall, Police Chief Lynn Excell, Power Superintendent Scott Hughes, Public Works Director Mike Vercimack, City Planner Gary Cupp, Planning Assistant Fred Resch III, Street Superintendent Weston Walker, Recreation Director Tiffani Wright, Water Superintendent Ken Richins, City Recorder Cindy Beteag, Building Official Larry Palmer, Finance Manager Paige Chapman, Human Resource Director Selwin Lovell

AGENDA

4:00 p.m. Work Meeting regarding the Downtown Master Plan

Gary Cupp explained that the purpose of the Downtown Master Plan is to enhance the desirability of the downtown area. Fred Resch III provided a presentation that summarized the progress of the plan. He explained that the City received a \$50,000 grant from the Utah Department of Transportation (UDOT) in support of the plan. Multiple meetings were held, and over six hundred public comments were received. The Downtown Master Plan focuses on twelve blocks between 100 North to 100 South and 100 East to 200 East. Ninety percent of survey respondents support downtown revitalization, seventy-five percent feel there is a lack of retail and service options, and seventy-one percent would like improved retail and service opportunities. Mr. Resch III reviewed the recommendations of the plan. These recommendations include implementing a specific downtown zoning overlay, promoting downtown properties for revitalization, creating a historical trail, bike lane, visible crosswalks, and parking. He reported that the City Council approved a budget for an Economic Development Master Plan. Councilman Thomas confirmed that the option for implementing housing above commercial units will be removed from the plan.

Mr. Resch III reported that thirty-two responses were received regarding the catalyst project on the corner of 100 W and State. He reviewed the three options presented to the City Council. The first option is a commercial development similar in size and scale to the recently demolished building. This option includes rooftop patios, parking in the rear, and preserving the green space. Option two includes an open plaza with picnic tables and a landscaped area. Option three includes a general recreation space.

Mayor Billings wants to review how the proposed Downtown Master Plan will affect current City codes. She feels it is essential to focus on the specifications for revitalizing the downtown area and remove unrealistic and unnecessary suggestions within the plan. Gary Cupp reported that the downtown overlay will go through the formal process for land use code amendments. Councilman Hirschi feels it is a conflict of interest for the City to be involved in commercial business. He proposed a pull-in and drop-off connecting 100 West to 200 West and diagonal parking from State Street to 400 West. Mayor Billings wants to refrain from promoting traffic on 100 South due to the hill. Mr. Resch III explained that the plan does recommend diagonal parking in some locations. Councilman Thomas asked what the advantages are of adopting this plan. Mr. Cupp feels the plan needs to be refined before it is adopted. Councilman Prete noted that there are many old buildings and vacant lots in the area, and he feels there are a lot of business opportunities that the City needs to capitalize on. He feels improvement of the downtown area is in the best interest of the City and the community.

1 **5:00 p.m. Pre-meeting** - Discussion of Agenda Items, Department Reports

2 Penny James Garcia passed out the new Championship magazine for Copper Rock Golf Course.

3 Chief Excell introduced new hire Officer Reno. He is going through policy and field training and will be
4 sworn in next month. The department took forty kids to Kohl's for the back-to-school shop with a cop
5 event on Saturday. Mr. Excell commended Officer Raditez for the program's success. Hurricane Hillary is
6 heading for the west coast and could produce heavy rains within the next week. Sandbags are available
7 to the public, and the flood trailer is prepared for use.

8 Larry Palmer provided an overview of building permits issued in 2022 compared to 2023. The data
9 shows a significant decrease in 2023.

10 Ken Richins reported that the department is receiving a lot of questions regarding the excess water
11 surcharge. He feels this will incentivize residents to hook up to secondary water.

12 Sel Lovell reviewed the open employment positions.

13 Paige Chapman reported that auditors will be here in October.

14 Scott Hughes reported that the capacity project was started last week, and agreement letters were sent
15 to developers who have approved preliminary plans. The Substation project is moving forward, and the
16 re-insulation project on 1100 West has started. The check for the Sky Ranch buyout was delivered to
17 Rocky Mountain Power. The department is working with the utility department to switch over any
18 accounts affected by the buyout. Mr. Hughes summarized highlights from the Utah Association of
19 Municipal Power Systems conference.

20 Tiffani Wright reported that the Recreation Center is back to regular scheduled programming. Newsies is
21 doing well and has made more revenue than Spit Fire Grill. She explained that the Pool Manager is
22 concerned that the pool boiler will not make it through the winter. Mayor Billings reported that the
23 School District is willing to help with a new pool but will not help repair the current pool. The
24 groundbreaking for the new gym will be held on September 19th at 5:00 p.m.

25 Mike Vercimack met with the Peach Days Rodeo Sponsors to review the parking design and ticket plan.
26 They are installing standpipes with chains to identify designated parking areas. He reported that JUC is
27 reviewing four sets of plans each week.

28 Weston Walker reported that the roundabout on 100 North was open in time for school. Two message
29 boards are available for Peach Days. The department is cleaning drainages to mitigate heavy rainfall.

30 Gary Cupp reported that very few planning applications were submitted last week. The decline in
31 applications has given the department time to focus on long-range plans.

32 Fred Resch III reported that property owners are responding to the code enforcement violation letters.

33 Dayton Hall explained Hurricane City's rebate program needs minor adjustments to meet the
34 Washington Conservancy District's Resolution standards. Hurricane City excluded the Hurricane Canal
35 area from the new standard. However, the District's resolution requires municipalities to apply for this
36 exemption. He is working on a proposal to allow the areas within the historical canal area to use .9 acre-
37 feet and limit areas outside of this area to use to .51 acre-feet.

1 Kaden DeMille reported that the City is starting to work on a Parks and Recreation Master Plan and
2 Impact Fee study. He noted that the pickleball courts need to be replaced and reviewed the pros and
3 cons of relocating the courts.

4 **6:00 p.m. - Call to Order –**

5 Mayor Billings welcomed everyone and called the meeting to order.

6 Prayer, Thought, and Pledge by Annie Spendlove

7 Declaration of any conflicts of interest

8 None declared.

9 Minutes of the Regular City Council Meeting for July 20, 2023, and August 3, 2023

10 Doug Heideman motioned to approve the Regular City Council Meeting Minutes for July 20, 2023, and
11 August 3, 2023. Seconded by Joseph Prete. Motion carried unanimously.

12 Annual update from Intermountain Health

13 Cyndi Woodbury Gilbert provided a video highlighting Intermountain Health Care's focus on improving
14 access to care. Mrs. Gilbert reported that Natalie Ashby is now the Market President and the President
15 of St. George Regional Hospital. Natalie Ashby reviewed the current footprint of Intermountain. Jared
16 Stevens announced that the new Emergency Department will be opening in November.

17 LIHTC presentation by Nate Houston and Bill Raymond

18 Bill reported that he is here to explain affordable housing in Utah and how it can benefit Hurricane City.
19 He reported that there are eleven million extremely low-income renter households in America, and only
20 four million low-income units are available. There is a demand for forty thousand new low-income
21 housing units in Utah; only six hundred come online yearly. The St. George Housing Authority has a
22 three-year, five-hundred-person waitlist. The average housing price in Hurricane City is \$600,000. Mr.
23 Knowlton reviewed the area median income, noting that Washington County is in an affordable housing
24 crisis. He explained how the LITHC program provides affordable housing.

25 Councilman Thomas reported that he visited a LITHC project in Salt Lake City, and he was shocked by the
26 fantastic quality of the project and was further amazed by the low cost of rent. Dayton Hall asked Bill if
27 other cities have incentivized affordable housing with density bonuses in conjunction with or in lieu of
28 an impact fee waiver. Bill explained that the density-to-parking ratio is the biggest challenge for these
29 projects. Mayor Billings directed the City Council to schedule time to tour the facilities in Salt Lake City
30 during the Utah League of City and Towns meeting in September.

31 **Public Forum – Comments From Public**

32 Annie Spendlove, the Market Manager for the Hurricane Utah Farmer's Market, thanked the City
33 Council and Recreation Center for their support. She invited everyone to attend the market's third
34 birthday celebration.

35 **OLD BUSINESS**

1 **1. Resolution 2023-30: Consideration and possible approval of a General Plan Amendment to**
2 **adopt a Downtown Master Plan.**

3 Kevin Thomas motioned to continue the consideration and possible approval of a General Plan
4 Amendment to adopt a Downtown Master Plan. Seconded by Doug Heideman. Joseph Prete, David
5 Hirschi, Doug Heideman, and Kevin Thomas – aye. Motion carried unanimously.

6 **2. Ordinance 2023-12: Consideration and possible approval of a Land Use Code Amendment to**
7 **adopt Title 10 Chapter 52 and amend Title 1 Chapter 4 with regards to affordable housing.**
8 Hurricane City Planning.

9 Mayor Billings explained that this was continued from the last meeting, and the amendments made
10 reflect the City Council's suggestion. Dayton Hall noted that the suggestions heard tonight differ from
11 this proposal. Mayor Billings suggested scheduling a work meeting to discuss this amendment and the
12 Downtown Master Plan. The work meeting was scheduled for September 13th at 5:00 p.m.

13 Kevin Thomas motioned to continue the consideration and possible approval of a Land Use Code
14 Amendment to adopt Title 10 Chapter 52 and amend Title 1 Chapter 4 with regards to affordable
15 housing. Seconded by Doug Heideman. Joseph Prete, David Hirschi, Kevin Thomas, and Doug Heideman
16 – aye. Motion carried unanimously.

17 **3. Consideration and possible approval of a disconnection request for parcels H-3403-C-2, H-3403-**
18 **B-2, and adjacent roads - Sky Ranch Ph 6 L.C. applicant, Doug Durbano agent**

19 Mayor Billings reported that the agent has asked for an extension. Dayton Hall recommends tabling the
20 item indefinitely until the applicant requests to bring the item back to the City Council.

21 Joseph Prete motioned to table the consideration and possible approval of a disconnection request for
22 parcels H-3403-C-2, H-3403-B-2, and adjacent roads-Sky Ranch Ph 6. Seconded by David Hirschi. Kevin
23 Thomas, Doug Heideman, Joseph Prete, and David Hirschi – aye. Motion carried unanimously.

24 **NEW BUSINESS**

25 **1. Consideration and possible approval of awarding the bid for the Sand Hollow Road Waterline**
26 **project - Ken Richins**

27 Ken Richins reported that six bids were received. They recommend awarding the bid to Royal T
28 Enterprises.

29 David Hirschi motioned to approve awarding the bid for the Sand Hollow Road Waterline project to
30 Royal T Enterprises in the amount of \$526,500. Seconded by Doug Heideman. Roll Call Vote. Joseph
31 Prete, Kevin Thomas, David Hirschi, and Doug Heideman – aye. Motion carried unanimously.

32 **2. Consideration and possible approval of Resolution 2023-31 Proclaiming Hurricane City as**
33 **America's City**

34 Mayor Billings read the resolution included in the packet. She reported that Washington County
35 Commissioners passed a resolution naming Washington County as American's County. Liberty Village
36 will be in Hurricane City, so naming Hurricane as America's City is a good fit. Dennis Leavitt reported that
37 the County Attorney wrote the resolution with input from the Committee. Councilman Prete noted that

1 typographical corrections are necessary before approval can occur. He thinks this sentiment is
2 tremendous and inspiring, but he does not want to sign off on this without appropriate revisions.

3 Doug Heideman motioned to continue Resolution 2023-31 Proclaiming Hurricane City as America's City
4 to the next meeting. Seconded by David Hirschi. Joseph Prete, Kevin Thomas, Doug Heideman, and
5 David Hirschi – aye. Motion carried unanimously.

6 **3. Consideration and possible approval of a proclamation designating September 17 through 23**
7 **as Constitution Week** - Karen Shuman, Daughters of American Revolution

8 Mayor Billings reviewed the proclamation.

9 Joseph Prete motioned to approve the proclamation designating September 17 through 23 as
10 Constitution Week. Seconded by David Hirschi. Kevin Thomas, Doug Heideman, Joseph Prete, and David
11 Hirschi – aye. Motion carried unanimously.

12 **4. Consideration and possible decision to open or continue with the closure of 100 West between**
13 **SR9 and 100 South**

14 Mayor Billings asked Tiffani Wright to provide an update. Mrs. Wright reported that the staff agrees that
15 the road's closure provides safety for the children. There have been issues with individuals who have
16 mobility restrictions and delivery drivers accessing the building. She reported that the Farmer's Market
17 loves the closure. Kaden DeMille reported that the road closure had not caused him issues when
18 dropping off his children.

19 Councilman Hirschi would like to continue the closure through the fall. Councilman Thomas has received
20 a few complaints about the closure. However, after this discussion, he is not opposed to continuing the
21 closure. Councilman Heideman has heard negative comments from people who need handicapped
22 parking. Mrs. Wright recommends continuing the closure until the first of the year. Councilman Thomas
23 prefers a high-visibility crosswalk over the closure of the road. Councilman Hirschi suggests continuing
24 the closure until a decision is made on the Downtown Master Plan.

25 Kevin Thomas motioned to continue with the closure of 100 West between SR9 and 100 South until it
26 can be discussed in a work meeting. Seconded by David Hirschi. Joseph Prete, Doug Heideman, Kevin
27 Thomas, and David Hirschi – aye. Motion carried unanimously.

28 **5. Consideration and possible approval of directing the Zoning Administrator to issue a grading**
29 **permit for Hurricane Cliffs**

30 Mayor Billings reviewed the summary in the packet, noting that the staff's recommendation is to deny
31 issuance of the grading permit. Rick Richardson, representing DAF, reported that they are working on
32 other developments in Hurricane City, and it seems appropriate to grade this project while working on
33 their other projects. Councilman Prete clarified that approval would allow grading ahead of the usual
34 time and asked for clarification on the timing of grading permits. Mike Vercimack explained that due to
35 abandoned developments during the recession, the City Council chose to oversee grading permits at a
36 City Council level. Councilman Prete asked if the staff was united in the recommendation of denial.
37 Dayton Hall reported that staff unanimously recommends the denial of the grading permit.

1 Mr. Hall explained that the normal process starts with preliminary plat approval, and then submission of
2 the construction drawing to JUC. Grading permits are approved when construction drawings are signed.
3 There is safety in following the ordinance, and staff is recommending adhering to the ordinance.

4 David Hirschi motioned to deny directing the Zoning Administrator to issue a grading permit for
5 Hurricane Cliffs based on the best interest of the City and staff recommendation. Seconded by Kevin
6 Thomas. Joseph Prete, Doug Heideman, David Hirschi, and Kevin Thomas – aye. Motion carried
7 unanimously.

8 **6. Consideration and possible approval of Ordinance 2023-15 updating Title 3 Chapter 1 and Title**
9 **10 Chapter 15 regarding mobile businesses and vendor carts.**

10 Joseph Prete motioned to approve Ordinance 2023-15, updating Title 3 Chapter 1 and Title 10 Chapter
11 15 regarding mobile businesses and vendor carts. Kevin Thomas seconded. David Hirschi, Doug
12 Heideman, Joseph Prete, and Kevin Thomas – aye. Motion carried unanimously.

13 **7. Consideration and possible approval of Resolution 2023-36 approving an Interlocal Agreement**
14 **with Washington County regarding a ballot box location.**

15 Doug Heideman motioned to approve an Interlocal Agreement regarding a ballot box location with
16 Washington County. Seconded by Kevin Thomas. Joseph Prete, David Hirschi, Doug Heideman, and Kevin
17 Thomas – aye. Motion carried unanimously.

18 **8. Closed Meeting held pursuant to Utah Code section 52-4-205, upon request.**

19 Joseph Prete motioned to go into a closed meeting to discuss imminent litigation. Seconded by Kevin
20 Thomas. Motion carried unanimously

21 **Adjournment: 9:16 p.m.**



STAFF COMMENTS

Ordinance 2023-12: Consideration and possible approval of a **Land Use Code Amendment to adopt Title 10 Chapter 52 and amend Title 1 Chapter 4 with regards to affordable housing**. Hurricane City Planning.

Discussion:

Updates for 8/17:

At the request of the City Council this item was continued at the last Council meeting. The item was amended to reflect the requested changes from the Council. Affordable ownership units has been removed from the ordinance and the name has been changed to just "affordable housing".

BRIEF SUMMARY:

The item for the Council's consideration is the creation of a new chapter within the City Code offering incentives to developers if the development qualifies as affordable housing. The Planning Commission recommended approval of the ordinance. The City Attorney has made significant changes to the draft recommended by the Planning Commission, but the changes were primarily rewording, clarifying, and reorganizing the new proposed Code sections, without changing the intent of the Planning Commission. A redlined draft can be provided upon request showing changes made by the City Attorney to the draft reviewed by the Planning Commission. The City Attorney approves as to form the version that is included in the meeting packet.

DESCRIPTION OF KEY POINTS:

1. Affordable housing is defined as housing achievable by households with income equal to or less than 80% of the Washington County Area Median Income ("AMI") as reported by the Department of Housing and Urban Development. More specifically, the total monthly cost for renters (rent + utilities) cannot be more than 30% of the income of a household making 80% of the AMI. Similarly, the total monthly cost to own the unit (mortgage + property taxes + HOA dues + parking fees) cannot be more than 30% of the income of a household making 80% of the AMI.
2. The incentives are only available for properties zoned as R1-8, R1-6, RM-1, RM-2, RM-3, and within Planned Development Overlays.
3. Affordable Housing Development Incentives. A development that has **at least 10% of the units as affordable housing** qualifies for the following incentives:
 - a. 20% density bonus;
 - b. Reduced building setbacks;
 - c. 50% discount on all City impact fees for the affordable housing units;

- d. Reduction of minimum lot sizes (which is necessary to allow the 20% density bonus).
- 4. Affordable Housing Not in Development (individual lots):
 - a. If individual lots want to qualify as affordable housing, those units would be entitled to the reduced setbacks, the smaller lot size, and the 50% discount on impact fees.
- 5. The applicant would agree to maintain the unit as affordable housing for 25 years from the date the City issued a Certificate of Occupancy for the unit. This obligation would be confirmed in a deed restriction recorded against the property prior to final approval of the site plan, plat, or building permit.
- 6. The property manager or owner would be required to submit annual reports to the Zoning Administrator to confirm compliance with the Code and the deed restrictions. There will be an additional administrative burden to track and regulate affordable housing.
- 7. The Planning Commission is identified as the body that would decide if the applicant qualifies for the incentives. The analysis will be limited to a determination of whether the applicant meets the requirements in the Code. If the applicant qualifies under the Code, approval will not be discretionary.
- 8. Failure to comply with the Code during the 25-year period would subject the property owner to a civil penalty of \$100 per day per noncompliant unit. Attempts to enforce would look similar to the City's ongoing attempts to regulate illegal vacation rental properties.
- 9. The proposal is to (1) create a new chapter in the Code (chapter 52 in title 10) and also (2) amend section 1-4-5 to allow civil enforcement if approved affordable housing does not comply with the requirements.

Findings:

Recommendation:

Attachments:

- 1. Ordinance 2023-12 Inclusionary Zoning and Affordable Housing

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH ADOPTING AN AFFORDABLE HOUSING POLICY BY CREATING TITLE 10 CHAPTER 52 AND AMENDING TITLE 1 CHAPTER 4 OF THE HURRICANE CITY CODE

WHEREAS, Utah Code 10-9a allows for municipalities to regulate land use within their boundaries; and

WHEREAS, the City is facing an affordable housing crisis with home prices and rental rates increasing substantially in the past five years; and

WHEREAS, the City wants to incentivize development of moderate income housing through private development; and

WHEREAS, the 2022 Moderate Income Housing Plan recommends the City adopt an inclusionary zoning policy; and

WHEREAS, the Planning Commission gave a positive recommendation on the attached additions and amendments to Hurricane City Code,

BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah that Title 10 Chapter 52 be added to Hurricane City Code to read as follows:

CHAPTER 52. INCLUSIONARY ZONING AND AFFORDABLE HOUSING

Sec. 10-52-1. Purpose.

The purpose of this chapter is to encourage the development and preservation of residential units affordable to those making less than the Washington County Area Median Income.

Sec. 10-52-2. Applicability.

The incentives within this chapter are available to new residential developments zoned as R1-8, R1-6, RM-1, RM-2, RM-3, and within Planned Development Overlays.

Sec. 10-52-3. Definitions.

Affordable Housing means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80 percent of the Washington County Area Median Income (“AMI”).

Affordable Housing Development means any housing project that reserves by deed restriction 10% of units as Affordable Housing.

Land Use Authority, for purposes of this chapter, means the Hurricane City Planning Commission.

Sec. 10-52-4. Development standards.

- A. Development Incentives. Affordable Housing Developments that provide Affordable Housing pursuant to the terms of this chapter shall qualify for the density bonus, standard incentives, and impact fee reduction described in this section. An applicant may submit an Affordable Housing Development application requesting the incentives.
- B. Density Bonus.
 - 1. Maximum Density. Affordable Housing Developments may receive a maximum 20% density bonus based on the base density shown in an approved yield plan.
 - 2. Calculation of Density Bonus.
 - a. Base Density. Base density for an Affordable Housing Development shall be determined by calculating the number of dwelling units that could be developed on lots in a conventional subdivision under the provisions of the underlying zones.
 - b. Yield Plan. The applicant shall provide a yield plan as part of the Affordable Housing Development application. The applicant shall prepare a yield plan that reflects the total number of units that the development would be able to build under base zoning standards. The yield plan shall take into consideration the site's natural and cultural features as shown on a natural resource inventory prepared for the property and shall demonstrate that sensitive lands identified in the natural resource inventory can be successfully included within open space areas or as part of residential lots without disturbing the health or safety of present or future City residents. At least one-half of the minimum area required for each lot shall exclude wetlands, floodplains, and slopes exceeding 30 percent.
 - c. The Zoning Administrator shall review the application and yield plan for compliance with this chapter and provide a report and recommendation to the Land Use Authority. The Land Use Authority shall approve, approve with conditions, or deny the application based on the standards within the City code.
- C. Standards. Except for the standards required for Planned Commercial developments, to the extent the standards within other chapters in the City Code conflict with the

standards of this chapter, Affordable Housing Developments are only required to comply with the following standards:

AFFORDABLE HOUSING DEVELOPMENT STANDARDS FOR RESIDENTIAL USES

Lot standards:	
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Setback standards - front:	
Any building - pedestrian entrance	15 feet
Garage or parking building	25 feet
Setbacks - rear:	
Main building	10 feet
Setback standards - interior side yard:	
Main building	10 feet
Setback standards - street side yard:	
Main building	15 feet

D. Impact Fee Reduction. Affordable Housing units shall only be charged 50% of each of the City's adopted impact fees. This reduction in impact fees is specific to qualifying units and does not apply to the entire Affordable Housing Development.

E. To the extent the standards within other chapters in the City Code conflict with the standards of this chapter, single family units within an Affordable Housing Development that qualify as Affordable Housing are only required to comply with the following standards:

1. Minimum Lot Size: Within Single Family Zones, Affordable Housing units shall be placed on a lot a minimum of 4,000 sq. ft.
2. Regardless of available minimum lot sizes, Affordable Housing Developments shall comply with all density requirements within this chapter.

F. Affordable Housing Developments shall meet all other standards within the underlying zone except those specifically listed in this Chapter.

G. Comparable units: Affordable Housing units shall be comparable to market rate units in the development, including entrance location, dispersion throughout the building or site, and access to all amenities available to the market rate units in the development. This section does not apply to units in single-family zoning districts.

Sec 10-52-5 Affordable Housing units outside of an Affordable Housing Development.

For Affordable Housing units not located in an Affordable Housing Development, the applicant shall only be entitled to the modified standards and reduced impact fees as described in sections 10-52-5(C)-(E) of this chapter. An applicant shall submit an application showing that the proposed unit(s) qualify as Affordable Housing and shall otherwise comply with and be subject to the terms of this chapter.

Sec. 10-52-6. Duration and requirements of affordability.

A. Affordable Housing shall be restricted and meet the following qualifications.

1. *Affordable Housing Unit Rentals.* An approved Affordable Housing unit used as a rental shall continuously qualify as Affordable Housing for a period of 25 years from the date a Certificate of Occupancy is issued by the City.
2. Prior to or as a condition of approval of a final site plan or plat, a deed restriction approved by the City Attorney and requiring compliance with this chapter shall be recorded with the Washington County Recorder, which deed restriction shall run with the land and bind all assigns, heirs, and successors of the applicant. For

Affordable Housing units not located in an Affordable Housing Development, the deed restriction shall be recorded prior to the issuance of a building permit.

B. Income Restriction. Approved Affordable Housing units shall only be made available and occupied by households with an annual income at or below 80% of Washington County AMI as determined by the U.S. Department of Housing and Urban Development (“HUD”) Metro FMR Area (as periodically determined by the HUD and adjusted for household size).

1. Rent/Housing Payment Restriction: The Affordable Housing units shall be both income and rent/housing payment restricted.
 - a. For an Affordable Housing rental unit, the monthly rent, including all required housing costs per unit such as utilities and other charges uniformly assessed to all apartment units other than charges for optional services, shall be set forth in a written lease and shall not exceed, for the term of the lease, thirty percent (30%) of the maximum monthly income for a household making 80% AMI, adjusted for household size, published by Housing and Urban Development for affordable units located in Washington County.

Sec. 10-52-7 Enforcement

A. Managers, Property Owners, and Landlords of Affordable Housing units shall submit an annual report to the City Zoning Administrator showing compliance with this chapter. This report is due on March 1 for the previous year's information and shall include the following information:

1. Property location, tax ID number, and legal description.
2. Property owner name, mailing address, and email address.
3. Information on the Affordable Housing units and the tenants of the property receiving the incentives that includes:
 - a. The total number of dwelling units;
 - b. The number of bedrooms of each dwelling unit;
 - c. The rental rate of each dwelling unit;
 - d. A statement regarding whether the Affordable Housing units are in compliance with the approval requirements and the requirements of this chapter;
 - e. Any change in occupancy to the units that is necessary to bring the units into compliance with this chapter, including a change in the number of people residing in each unit and any change in tenant. Personal data is not required to be submitted.

- f. Confirmation that income verification for all tenants was performed for the previous year.
 - g. Any differences in rent between the agreed upon rental rate in the approval to use the incentives and the actual rent received for the identified Affordable Housing units.
 - h. Any instance where an Affordable Housing unit was no longer rented at the agreed upon level of affordability, the length of time the dwelling unit was not in compliance with the agreed upon level of affordability, and any remedy that was taken to address the noncompliance.
4. Failure to file a report shall trigger an audit by the City and the property owner shall be subject to fines as established in Hurricane City Code 1-4-5 - Civil Enforcement.

B. Audit. Managers, Property Owners, and Landlords of Affordable Housing units shall allow the City or its representative to conduct a yearly audit on all Affordable Housing Developments and Affordable Housing units to ensure compliance.

C. Violations of this Chapter, including failure to timely submit complete reports, shall subject the recorder owner of the property, as shown on the records of the Washington County Recorder, to prosecution and fines pursuant to the City Code, including civil enforcement authorized by Hurricane City Code 1-4-5 and business license revocation pursuant to Title 3 of the Hurricane City Code.

BE IT HEREBY FURTHER ORDAINED by the City Council of Hurricane, Utah that Title 1, Chapter 4, subpart E. be amended to read as follows:

1-4-5 Civil Enforcement

...

E. *Civil penalties.* A violation of any provision of this Code shall result in a civil penalty pursuant to the following schedule:

Violation	Penalty
Unlicensed short-term rental (see section 3-10)	\$750.00 per day

Violation of short-term rental licensing standards (see section 3-10)	\$750.00 per day
Violation of zoning and licensing standards for residential hosting (see section 10-51)	\$750.00 per day
Violation of Inclusionary Zoning and Affordable Housing requirements (see section 10-52)	\$100.00 per day per unit

...

BE IT HEREBY FURTHER ORDAINED that this ordinance shall, upon adoption, take effect at the earliest date possible after posting or publication as required by law.

BE IT HEREBY FURTHER ORDAINED BY THE HURRICANE CITY COUNCIL OF HURRICANE CITY, UTAH THAT:

1. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.
2. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Hurricane City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.

PASSED AND APPROVED this 3rd day of August, 2023

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of August, 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, Recorder



STAFF COMMENTS

Consideration and possible approval of **Resolution 2023-31 Proclaiming Hurricane City** as America's City

Discussion:

Update: When the Council last considered this item, the Council agreed that Councilman Prete would make revisions to the draft and present them to the Council. In the packet there is the first version patterned after the County's resolution as well as the second version authored by Councilman Prete.

The Washington County Commissioners passed a resolution partnering with United We Pledge making Washington County "America's County". Mayor Billings asked staff to prepare a resolution proclaiming Hurricane City as "America's City" since United We Pledge will be the HOME of Liberty Village teaching American History.

Findings:

Recommendation:

Attachments:

1. Resolution 2023-31 Proclaiming Hurricane City as America's City.Version 1 (revised by DH on 9-13-2023)
2. Resolution 2023-31 Proclaiming Hurricane City as America's City.Version 2 (updated by DH on 9-13-23)

A RESOLUTION BY THE HURRICANE CITY COUNCIL
PROCLAMAING HURRICANE CITY AS AMERICA’S CITY

WHEREAS, the United States is a promised and blessed land, preserved as a haven for freedom and peace where liberty can blossom and thrive for those willing to support that cause.

WHEREAS, while the foundation of freedom was constructed in small parts throughout the world over many centuries, true freedom is a uniquely American experiment.

WHEREAS, only in this great nation has the ideal of liberty, longed for by all mankind since the dawn of time, been established in an enduring and perpetual form.

WHEREAS, never before has a nation been as successful, peaceful, and prosperous as America since 1776.

WHEREAS, never before has a nation done more for the cause of global peace, prosperity, and liberty.

WHEREAS, those successes globally are directly attributable to the liberty of citizens of America.

WHEREAS, America quickly became the beacon to the world of how nations should be governed and how the natural state of people is to be free.

WHEREAS, the founders of this great nation were men and women willing to sacrifice all that they had, including their own lives if required, to establish that cause of peace.

WHEREAS, the early pioneers to the great State of Utah came to reclaim their right to practice their religion and to live in peace.

WHEREAS, they longed to maintain the freedoms granted by a young and fragile nation.

WHEREAS, determined men and women were sent to Hurricane City in the furtherance of freedom in practical application and cooperative success of the state and region.

WHEREAS, only those brave enough and strong enough stayed and survived in Utah's Dixie.

WHEREAS, that history of courageous hard work and striving for independence in an unforgiving environment established a legacy of endurance and determination for success of liberty in this land.

WHEREAS, freedom, patriotism, and liberty have long been defended through courage and bravery in Utah's Dixie since inception.

WHEREAS, the courage of our founding fathers was carried in the hearts of the early pioneers, and still thrives in the hearts of new American patriots in Hurricane City today.

WHEREAS, those ideals are fragile and under constant threat of destruction.

WHEREAS, the nation and world need shining examples of liberty, and of responsible and limited government of the people, by the people, and for the people.

WHEREAS, with that passion we declare that Hurricane City, Utah is *America's City*, the example of freedom in the land of liberty, that all who live in Utah's Dixie will collectively strive and fight for Constitutional freedoms, that this land will be a beacon to the world of how a community thrives in liberty.

WHEREAS, Hurricane City, Utah proclaims the blessings of a constitutional republic form of government and individual freedoms protected by our U.S. Constitution.

WHEREAS, in these times of social confusion and division, let us work to build a more perfect union by celebrating what brings us together, not what divides us. Let us remember the divine truths that all mankind are created equal and endowed by their Creator with unalienable rights. Let us love our neighbors and care for one another so that a civil society and limited government will be the natural order of our city.

WHEREAS, we celebrate the Paiute nation whose family fires first made this place a home since before recorded history and who were the first in our city to believe in individual freedom, and whose descendants are our friends and neighbors.

WHEREAS, we give thanks for the divine wisdom that rested upon the founders of this modern American nation to guide them to establish the Constitution and the Bill of Rights.

WHEREAS, with gratitude, we remember the sacrifice of the pioneers whose hard work and sacrifice laid the foundation for the prosperity and opportunities of today.

WHEREAS, we salute all our veteran sons and daughters who in their youth took up arms to defend and protect peace against the never-ending waves of tyranny.

WHEREAS, we support those of our community who have chosen a career as a first responder to keep our city a safe place where criminal behavior is not tolerated.

WHEREAS, principles of democracy embodied in the Republic of the United States dictate a continued vigilance to maintain liberty, commerce, justice, and basic human rights.

WHEREAS, the words "We the People" remain viable and effective today.

WHEREAS, the flag of the United States is a symbol of all that is right and achievable in a free society, and citizens have the right to singularly display it.

WHEREAS, personal freedom is reinforced and protected by a strong military and law enforcement.

WHEREAS, family is the basic fabric of strong community and national achievement.

WHEREAS, the foundation of America as referred to by the Founders is based on a belief and homage to the overseeing eye and hand of Deity.

WHEREAS, we have respect for those who first inhabited the land.

WHEREAS, we maintain a recognition of the intrinsic goodness of Americans and their cause.

WHEREAS, all are welcome to this free and inviting land.

WHEREAS, Americans in business are hardworking, innovative, and fair.

WHEREAS, the words, "In God We Trust" are taken seriously here.

WHEREAS, patriots of America are needed in every county, city, town, and household.

WHEREAS, all institutions of education, public and private, must demonstrate a dedication to teaching the principles of Americanism.

NOW, THEREFORE, we, the City Council of Hurricane City, hereby declare and proclaim all of Hurricane City as America's City, with a perpetual commitment to stand by the principles of the Constitution of the United States, the Constitution of the State of Utah, the Bill of Rights, and the principles of American Government. We do this to preserve the God-given rights, as referenced in the Declaration of Independence, to Life, Liberty and the pursuit of Happiness.

PASSED AND APPROVED this _____ day of _____, 2023

Nanette Billings, Mayor

ATTEST:

Cindy Beteag, City Recorder

The foregoing Resolution was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 21st day of September, 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____

Dave Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag

A RESOLUTION BY THE HURRICANE CITY COUNCIL
PROCLAIMING HURRICANE CITY AS AMERICA'S CITY

WHEREAS, on June 6, 2023, the County Commission for Washington County, Utah, signed a proclamation declaring Washington County as "America's County" (the "Washington County Proclamation").

WHEREAS, the Washington County Proclamation sets forth approximately 40 patriotic statements regarding our County, our State and Federal Constitutions, our Founders, our Southern Utah heritage, challenges facing our nation, and the need to be a light on the hill and to stand up for those principles that make us free.

WHEREAS, the Hurricane City Mayor and Hurricane City Council echo the sentiments expressed in the Washington County Proclamation, and unequivocally affirm our commitment to preserving our God-given rights of Life, Liberty, and Pursuit of Happiness.

WE FURTHER DECLARE AND PROCLAIM, all of Hurricane City as "America's City", with a perpetual commitment to stand by the principles proclaimed in the Declaration of Independence, the Constitution of the United States, the Constitution of the State of Utah and the Bill of Rights.

PASSED AND APPROVED this ____ day of _____, 2023

Nanette Billings, Mayor

ATTEST:

Cindy Beteag, City Recorder

The foregoing Resolution was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 21st day of September, 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	___	___	___	___
Dave Sanders	___	___	___	___
David Hirschi	___	___	___	___

Kevin Thomas
Doug Heideman

Cindy Beteag



STAFF COMMENTS

Consideration and possible approval of a **private hangar lease** with The Mowbray Revocable Trust, dated November 24, 2021

Discussion:

The tenant has an existing hangar but the lease has expired. They are requesting a new private hangar lease agreement consistent with the council-approved template. It will be considered at the Airport Board meeting on September 19th.

Findings:

Recommendation:

Attachments:

1. 230906 PRIVATE HANGAR LEASE AGREEMENT (Carmine Mowbray - Mowbray Revocable Trust) (v. 3)
2. The Mowbray Revocable Trust Lease



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

THE MOWBRAY REVOCABLE TRUST, dated NOVEMBER 24, 2021

Effective Date: September 21, 2023

PRIVATE HANGAR LEASE AGREEMENT

THIS PRIVATE HANGAR LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the 21st day of September, 2023, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and The Mowbray Revocable Trust, dated November 24, 2021 (the "Tenant").

RECITALS

WHEREAS, City owns and operates an airport located at 800 W. 2300 S., Hurricane, Utah 84737 (the "Airport"); and

WHEREAS, City and Tenant desire to accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant desires to lease certain real property at the Airport for the purpose of constructing or purchasing a private hangar for aircraft as provided in this Agreement;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property 2,650 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as 9 S 2 E on the Airport property (the "Premises"). Tenant agrees to accept the Premises "as is" and City makes no warranty as to the condition of the Premises or its suitability for any particular purpose.

B. Disclosure of Soil Condition. City discloses to Tenant that the soil at the Airport is collapsible and otherwise unstable. Tenant is responsible to obtain appropriate soil evaluation reports, to adhere to the recommendations in the reports, and take whatever action is necessary to mitigate the soil condition on the Premises. Tenant is responsible to construct the hangar at the engineered drainage elevations so the drainage will flow properly. Tenant will maintain and keep the area around the premises clear of debris and obstructions so as not to cause disruption in the expected normal drainage flow.

C. Construction of Tenant Improvements. Tenant shall construct or purchase and maintain continuous improvements on the leased Premises, which shall include a concrete pad, an aircraft hangar, fixtures, and any utilities as may be necessary for the Tenant's aviation related activities (referred to herein as the "Tenant Improvements"). Such Tenant Improvements must meet the Airport's Building Development Standards and any applicable Federal Aviation Administration requirements in effect as of the date of this Agreement. The Tenant agrees to submit plans/drawings of the proposed Tenant Improvements to City within eight (8) months of the execution date of this Agreement. Tenant shall be responsible to obtain and pay for proper building permits for the Tenant Improvements and comply with all the applicable ordinances of the City when planning and constructing the Tenant Improvements. Tenant agrees to complete construction of the proposed Tenant Improvements within twenty-four (24) months from the date the building permit is issued.

D. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes: The parking, storage, service, repair, light maintenance, operation, and modification or construction (on a noncommercial basis only) of Aircraft, plus incidental activities related to such purposes. An (“Aircraft”) shall be any aircraft that Tenant owns or controls, or that is subject to an authorized sublease, when approved in writing in advance by City. Tenant shall provide to City the make, model, and registration number of any Aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises.

E. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant’s employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives (“Tenant’s Associates”) may ingress and egress across the Airport in the areas designated by City and as permitted by applicable Laws and Regulations, on a non-exclusive basis and to the extent reasonably necessary for Tenant’s use, occupancy, and operations at the Premises.

F. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interest of any kind. City reserves rights in the Premises including but not limited to, a right of aircraft movement on Airport property, a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, subject to the rules, regulations, and policies as may be adopted from time to time by the City, and rights in water, minerals, oil, and gas.

G. Enjoyments of Rights. Subject to Tenant’s complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. Term. The term of this Agreement shall commence on the date of execution of this Agreement and shall continue thereafter for a term of twenty (20) years until September 21, 2043, (the “Initial Term”). If the tenant desires to renew this Agreement, the tenant must notify the City in writing at least 60 days prior to the expiration of the initial term. Upon such notification, this lease shall renew for an additional five (5) year period at the lease rates stated in Section 3 of this Agreement.

3. Rent

A. Rent. For Tenant’s lease of the Premises, Tenant covenants to pay to City without off-set or deduction the annual ground rent as shown in the table below and commencing on the date of execution of this Agreement. All rent shall be due and payable to the City of Hurricane annually in advance, without notice or demand from City, on the 1st day of August. The first years rent payment will be prorated to the next August 1st payment date.

<u>Years</u>	<u>Rent amount per square foot</u>
2022 – 2027	.15
2028 – 2033	.18
2034 – 2039	.21
2040 – 2045	.24
2046 – 2051	.27
2052 – 2057	.30

C. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount as City shall implement from time to time) in addition to other sums due under this Agreement.

D. Past Due Amounts. If tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable amount to cover the additional costs for billing and collecting arising from Tenants failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent, and shall be paid without abatement, deduction, off-set, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount either full or partial (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that interferes with any operation at the Airport or decreases the Airport's effectiveness, as reasonably determined by the City at its sole discretion. Tenant shall promptly notify City of any use that creates such interference or decrease of effectiveness and remedy the same to City's satisfaction.

B. Comply with all Laws and Regulations. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include but are not limited to, the Airport Rules and Regulations, Policies and Procedures, Minimum Standards for Commercial Aeronautical Activities, Utah Code Annotated, the Code of Revised Ordinances of Hurricane City, the Protective Covenants of the Hurricane City Airport, applicable Federal Aviation Regulations, and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the Premises or any other area that City has not authorized; commercial activities, aircraft parking, or storage in areas not leased by Tenant, any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use,

occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days of notice of such lien, Tenant shall have the lien removed or deposit with the City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. Tenant, at Tenant's sole cost, shall repair or replace to City's satisfaction any damaged property that belongs to City or City's other Tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alterations or improvements to the Premises or to other areas of the Airport without City's prior written consent.

H. Security. Tenant is responsible to comply, at Tenants sole cost, with all security measures that City, Federal Aviation Administration, the United States Transportation Security Administration or any other governmental authority having jurisdiction may require in connection with the Airport. Tenant shall protect and preserve security at the Airport, including, but not limited to, protecting security information and protecting any access points to the Airport that are maintained by Tenant. Tenant will be vigilant in watching for unusual activity or persons that do not belong at the Airport, and will report such to the Airport Manager or by calling 1-866-GA-SECURE.

I. Removal of Disabled or Derelict Aircraft. Tenant shall promptly remove or cause to be removed from any portion of the Airport not leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled or derelict. Tenant may store such aircraft within the Tenant Improvements or, with the City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines to be in City's best interests.

J. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to the City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a condition that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole

discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. In addition to other restrictions and requirements contained in this Agreement, Tenant shall not store outside of the Tenant Improvements (aircraft hangar) any inoperable equipment, discarded or unsightly materials, materials likely to create a hazard, trailers (except trailers designed to carry gliders), inoperative motor vehicles, or any other similar items. Tenant is responsible to keep the area five feet out from all four sides of the aircraft hangar clear of weeds and any debris.

K. Operations. Tenant's operations shall comply with the following.

(i) Airport Operations. Tenant shall occupy the Premises and shall operate in a manner that promotes effective Airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

(ii) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency

(iii) Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so they do not annoy, disturb, or impair Airport customers, tenants, or employees. Tenant shall provide the Airport Manager with the name and contact number of a person who is responsible for and has authority to act on behalf of Tenant.

(iv) Deficiencies. Without limiting or waiving any other remedies available to City, including declaring a breach of this Agreement, City's remedies shall include the following in connection with deficiencies in Tenant's operations.

(a) Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

(b) Remove Employees and Associates. City shall have the right to require Tenant to remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation of any provision of this Agreement or otherwise detrimental to City's interests at the Airport.

5. City's Rights and Obligations

A. Airport Maintenance. Subject to subparagraph C. of this section, City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, and other representatives ("City's Associates") reserves the right to enter the Premises and Tenant Improvements at reasonable times and with reasonable notice for any purpose relating to the Airport including, but not limited to, conducting inspections, determining compliance with this Agreement, conduct Airport work, or for emergency purposes, provided that they shall not unreasonably interfere with Tenant's use of the Premises or Tenant's Improvements.

C. City's Right to Relocate Tenant's Improvements from Premises. It is understood and agreed that as conditions may require, the City has the right to require Tenant to relocate Tenant's Improvements from the Premises to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenants current leased Premises. Tenant shall bear the costs associated with relocating Tenant's Improvements and property to the new location. City agrees to provide the Tenant with a new Private Hangar Lease Agreement for the new location upon the same terms and conditions as are contained herein for the unexpired term of this Agreement.

D. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

E. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

F. Governmental Acts. City is a governmental entity, and City has all rights, powers, immunities, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

6. Indemnification, Insurance, and Letter of Credit

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court of dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A. shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are proven to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft)

against City and its officers, employees, and volunteers arising from or related to Tenant's use, occupancy, or operations at the Premises or the Airport.

C. Insurance. At Tenant's cost, Tenant shall procure the following insurance coverage prior to entering the Premises, and Tenant shall maintain its insurance coverage in force at all times this Agreement is in effect:

i. Aircraft Liability with Additional Coverage. Aircraft liability insurance that includes premises liability, and, if applicable, mobile equipment coverage with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) per occurrence (and one hundred thousand dollars (\$100,000) per passenger seat for applicable claims), including, but not limited to, contractual liability coverage for Tenant's performance of the indemnity agreement set forth in Section 6.A. If any such coverage is not available to Tenant in the form of an aircraft liability policy, Tenant shall obtain substantially similar coverage through a commercial general liability policy.

ii. Property. Tenant is solely responsible for Tenant's Improvements and Tenant's personal property, and Tenant may purchase insurance for Tenant's Improvements and Tenant's personal property as Tenant may determine.

iii. Automobile. If Tenant drives any automobile other than in the roadways and automobile parking areas at the Airport (including, but not limited to, if Tenant parks an automobile in Tenant's hangar when permitted by this Agreement), comprehensive automobile liability coverage for claims and damage due to bodily injury or death of any person or property damage arising out of Tenant's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than five hundred thousand dollars (\$500,000) single combined limit "per accident" for bodily injury and property damage.

iv. Pollution. Tenant is responsible for environmental losses. Any pollution legal liability insurance obtained by Tenant shall comply with the requirements for insurance that are stated in this Agreement. If Tenant engages in self-fueling, Tenant shall comply with City's self-fueling requirements, including, but not limited to, pollution legal liability insurance requirements.

v. Aircraft. Tenant is solely responsible for any damage to the Aircraft. Tenant shall obtain insurance coverage for the Aircraft as Tenant may determine.

vi. Business Interruption. Tenant is solely responsible for all costs of business interruption, however incurred, and Tenant may purchase business interruption insurance as Tenant may determine.

D. Insurance Requirements. The insurance described by this section have the following requirements:

i. General Requirements. At all times when this Agreement is in effect, Tenant shall maintain in force all required insurance coverage and shall have on file with the City Certificates of Insurance evidencing the same. Such certificates shall provide that coverage will not be cancelled, suspended, voided, or reduced without at least thirty (30) days prior written notice to the City. Ratings for the financial strength of the companies providing Tenant's insurance policies shall be disclosed in such certificates and shall be "A- VII" or stronger as published in the latest Best's Key Rating Guide (or a comparable rating from a comparable rating service). If a lower rating is proposed, City may examine the financial strength of the

insurance company proposed to provide coverage and may consent to a lower rating in the City's sole and absolute discretion, and City may also require additional assurances from Tenant. All certificates shall be signed by a person authorized by the insurer and licensed by the State of Utah. All policies (except any policies required for worker's compensation or error s and omissions) and the certificates evidencing coverage shall name City and its officers, employees, and volunteers as additional insureds (or in the case of property coverage, City shall be named as a loss payee). Tenant shall provide for a renewal of all insurance coverage on a timely basis to prevent any lapse in coverage. City retains the right to approve any deductibles, and Tenant shall notify City of any material erosion of the aggregate limits of any policy. Tenant's policies shall be primary. Such policies shall extend insurance to cover Tenant's contractual obligations under this Agreement.

ii. Minimum Requirements. City's insurance requirements are minimum requirements, and Tenant is responsible to obtain adequate insurance coverage as Tenant may determine. Except as otherwise expressly set forth in this Agreement, Tenant assumes all risk under this Agreement (including, but not limited to, business interruption claims) whether or not insured.

iii. Waiver of Subrogation. Notwithstanding any other provision contained in this Agreement, each of the parties hereby waives any rights of subrogation it may have against the other party for loss or damage from any risk that is covered by insurance (including, but not limited to, claims for business interruption). Each of the parties shall obtain a clause or endorsement providing for such waiver of subrogation in any policies of insurance required under this Agreement.

iv. Terms Subject to Change. City, in its sole and absolute discretion, reserves the right to review and adjust at any time Tenant's required insurance limits, types of coverage, and any other terms applicable to insurance to reasonably insure against any risk associated with this Agreement or Tenant's use, occupancy, or operations at the Airport. Among other things, City may review any or all insurance coverage on a periodic basis and in connection with any specific activity or event associated with the Airport or proposed by Tenant.

v. Stopping Operations. Among City's remedies, if at any time Tenant's insurance coverage is not in effect as required herein, City may (but is not required to) stop all or any portion of Tenant's operations without liability to City until Tenant fully restores such coverage.

E. Performance Security. City reserves the right to require a performance security in a form and amount acceptable to City upon any material default by Tenant under this Agreement.

7. **Hazardous Materials**. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on , under, or about the premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A. of this Agreement. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations.

8. **Assignment and Subleasing**

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntary or involuntary, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest related thereto) and shall not delegate any performance under this Agreement, except with prior written consent of City to any of the same. City will not unreasonably withhold written consent to an assignment of this Agreement.

B. Subleasing. With prior written consent of City, Tenant shall have the right to sublease portions of the Premises and Tenant Improvements only for the purposes specified in this Agreement or to store an aircraft. City shall have the right to approve any sublease tenant and sublease agreement. Tenant shall impose on any approved sublease tenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City. Tenant shall reserve the right to amend any sublease to conform to the requirements of this Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublease will attorn to and pay rent to City if Tenant ceases to be a party to this Agreement. Tenant shall provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligations under this Agreement.

9. Damage, Destruction, and Condemnation.

A. Damage or Destruction of Premises. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent or better than the original improvements, and Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary. Tenant shall apply all proceeds that are made available from Tenant's insurance policies (or those of any subtenant or assignee) to performing such work. If City performs such work pursuant to Section 10.B, such insurance proceeds shall be paid to City. If the Premises or Tenant Improvements are tenantable despite such damage, Tenant shall not receive any abatement of Tenant's rent obligations. To the extent that any portion is rendered untenable by such damage in light of the purposes of this Agreement (as determined by City in its sole discretion), rent shall continue if Tenant has business interruption insurance, or if Tenant does not have such insurance, City shall abate Tenant's rent proportionately until repairs have been substantially completed (as determined by City in its sole discretion).

B. Condemnation. In the event of any condemnation proceeding in which all or any part of the Premises is taken (by a condemnor other than the City), all compensation from such proceeding shall be paid to City, except that Tenant may pursue a claim against the condemnor for the value of the Tenant Improvements and Tenant's leasehold interest and any subtenants may pursue a claim against the condemnor for the value of their subtenancy interests. In the event of a partial taking, City shall reduce the ground rent payable by Tenant on a pro rata basis for portions of the premises so taken. If City determines in its sole discretion that all or a material portion of the premises will be (or has been) rendered untenable as a result of such taking, City may terminate this Agreement by giving Tenant a written notice of termination, and this Agreement shall terminate at time specified in the notice (which shall not be less than sixty (60) days after the date of such notice).

10. Default

A. Tenant's Default. Each of the following events shall constitute a default or breach of this Agreement by the Tenant. (i) Tenant fails to timely pay any installment of rent; (ii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within sixty (60) days after written notice thereof by City to Tenant; (iii) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Tenant defaults in constructing a Tenant Improvement as provided for in this Agreement.

B. Remedies. Upon default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance; (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises, and any attorney fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

D. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Tenant's First Right of Refusal. If the City elects to re-let the Premises upon the expiration of this Agreement, and if the Tenant is in compliance with the terms of this Agreement, the Tenant shall have the first right of refusal to enter into a new lease of the Premises upon the terms and conditions as the City Council at the time may require. No sooner than 180 days and no later than 30 days before the end of the term of this Agreement, Tenant shall notify City in writing that Tenant desires to exercise its right of first refusal under this paragraph, after which the Tenant's right of first refusal shall expire. Tenant's refusal to enter

into a new lease upon the terms and conditions required by the City Council at the time shall also result in the expiration of Tenant's right of first refusal.

B. Disposition of Tenant Improvements. Upon the termination of this Agreement before or on the expiration date, Tenant shall do one of the following at the option of City: (1) enter into a new lease to relet the Premises pursuant to Tenant's right of first refusal as set out in Section 11.A.; (2) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenants Improvements being deemed transferred to the City upon the City accepting the same; or (3) remove all Tenant Improvements from the Premises and Airport at Tenant's sole expense in a manner acceptable to City (and the obligations of section 6.A. shall apply to such removal). If Tenant fails to remove any Tenant Improvements under subsection (4), City may do so in any manner acceptable to City pursuant to Section 10.B.

C. Surrender of Premises. Unless the Premises is relet to Tenant prior to the expiration of this Agreement pursuant to Section 11.A., upon any expiration or termination of this Agreement, Tenant, at Tenant's sole cost, shall (i) promptly and peaceably surrender to City the Premises (and any Tenant Improvements accepted by the City pursuant to Section 11.B) "broom clean" and in good order and condition, excepting reasonable wear and tear; (ii) repair in a good and workmanlike manner any damage to the Premises or the Airport that arises from or relates to Tenant's use, occupancy, or operations under this Agreement (including, but not limited to, while removing any property upon expiration or termination); (iii) deliver to City all keys and access credentials relating to the Airport; (iv) perform Tenant's environmental obligations as provided in Section 7; and (v) remove all movable personal property and trade fixtures (including signage) that are not owned by City, (except that Tenant must obtain City's prior written consent to remove any such property if Tenant is in default under this Agreement or if such removal may impair the structure of any building). Upon any expiration or termination of this Agreement (which includes, but is not limited to, termination for abandonment of the Premises), all property that Tenant leaves on the Premises shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by City without notice to, and without any obligation to account to, Tenant or any other person (except that Tenant Improvements shall be as provided in Section 11.B). Tenant shall pay to City all expenses incurred in connection with the disposition of such property in excess of any amount received by City from such disposition. Tenant shall not be released from Tenant's obligations under this Agreement in connection with surrender of the Premises until City has inspected the Premises and delivered to Tenant a written acceptance of such surrender.

D. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with Utah Law. During such occupancy, Tenant shall comply will all provisions of this Agreement that are applicable to an at-will-tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports.

E. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

B. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

C. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport Improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport, Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments, Tenant shall immediately take such actions that may be necessary to preserve City's compliance with the same.

D. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

F. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

G. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for the recovery of possession of the Premises, the party prevailing in such action shall be entitled to recovery from the other party(s) reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those arising from any appeal), the amount of which shall be fixed

by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including but not limited to, attorney fees incurred by the City in any case or proceeding involving the Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section 12.G. shall survive any expiration or termination of this Agreement.

H. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the Laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocable consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section 12.H. shall survive any expiration or termination of this Agreement.

I. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

J. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any part. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

K. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, now agreement of the other party except for those expressly contained in this Agreement. Any proposal materials or exhibits submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement.

L. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same, Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

M. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

N. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

O. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

P. Time is of the Essence. Time is of the essence in this Agreement.

Q. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows.

If to City:

Hurricane City
City Attorney
147 N. 870 W.
Hurricane, UT 84737

If to Tenant:

Carmine Mowbray
38334 Pinewood Dr.
Polson, MT 59860

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.Q. and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

R. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

S. City Approval and Consent. Wherever in this Agreement it specifies the City must give approval or consent by the terms of this Agreement, such approval or consent shall not be unreasonably withheld. Unless otherwise specified, approval, consent, or action by the City refers to approval or consent by the Hurricane City Council.

T. Personal Guaranty. The undersigned Guarantor does herewith personally guarantee the due performance of this Agreement regarding all its provisions and obligations in the same way as if Guarantor were the original Tenant of this Agreement. This guaranty is continuing and unconditional. The undersigned Guarantor shall be liable as a principal debtor and not merely as surety, and the bankruptcy or any assignment in favor of creditors of Tenant

shall not affect the enforceability of this Personal Guaranty. This Personal Guaranty shall bind the respective heirs, executors, administrators, and assigns of the undersigned Guarantor, and shall inure to the benefit of the City, its successors, assigns, and subrogees. Guarantor now waives and releases all benefits and relief from all and any appraisement, exemption, or stay laws of any state currently in force or passed in the future.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HURRICANE CITY

THE MOWBRAY REVOCABLE TRUST,
dated November 24, 2021

Nanette Billings, Mayor

By: Carmine Mowbray
Its: Trustee

Attest:

GUARANTOR

City Recorder

Printed Name: Carmine Mowbray

Approved as to form:

Dayton Hall, City Attorney



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

THE MOWBRAY REVOCABLE TRUST, dated NOVEMBER 24, 2021

Effective Date: September 21, 2023

PRIVATE HANGAR LEASE AGREEMENT

THIS PRIVATE HANGAR LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the 21st day of September, 2023, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and The Mowbray Revocable Trust, dated November 24, 2021 (the "Tenant").

RECITALS

WHEREAS, City owns and operates an airport located at 800 W. 2300 S., Hurricane, Utah 84737 (the "Airport"); and

WHEREAS, City and Tenant desire to accommodate, promote, and enhance general aviation at the Airport; and

WHEREAS, Tenant desires to lease certain real property at the Airport for the purpose of constructing or purchasing a private hangar for aircraft as provided in this Agreement;

NOW, THEREFORE, in consideration of the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Agreement to Lease and Operate Concession

A. Agreement to Lease Premises. City hereby leases to Tenant and Tenant hereby leases from City that certain real property 2,650 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as 9 S 2 E on the Airport property (the "Premises"). Tenant agrees to accept the Premises "as is" and City makes no warranty as to the condition of the Premises or its suitability for any particular purpose.

B. Disclosure of Soil Condition. City discloses to Tenant that the soil at the Airport is collapsible and otherwise unstable. Tenant is responsible to obtain appropriate soil evaluation reports, to adhere to the recommendations in the reports, and take whatever action is necessary to mitigate the soil condition on the Premises. Tenant is responsible to construct the hangar at the engineered drainage elevations so the drainage will flow properly. Tenant will maintain and keep the area around the premises clear of debris and obstructions so as not to cause disruption in the expected normal drainage flow.

C. Construction of Tenant Improvements. Tenant shall construct or purchase and maintain continuous improvements on the leased Premises, which shall include a concrete pad, an aircraft hangar, fixtures, and any utilities as may be necessary for the Tenant's aviation related activities (referred to herein as the "Tenant Improvements"). Such Tenant Improvements must meet the Airport's Building Development Standards and any applicable Federal Aviation Administration requirements in effect as of the date of this Agreement. The Tenant agrees to submit plans/drawings of the proposed Tenant Improvements to City within eight (8) months of the execution date of this Agreement. Tenant shall be responsible to obtain and pay for proper building permits for the Tenant Improvements and comply with all the applicable ordinances of the City when planning and constructing the Tenant Improvements. Tenant agrees to complete construction of the proposed Tenant Improvements within twenty-four (24) months from the date the building permit is issued.

D. Grant of Concession and Purpose of Agreement. Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes: The parking, storage, service, repair, light maintenance, operation, and modification or construction (on a noncommercial basis only) of Aircraft, plus incidental activities related to such purposes. An ("Aircraft") shall be any aircraft that Tenant owns or controls, or that is subject to an authorized sublease, when approved in writing in advance by City. Tenant shall provide to City the make, model, and registration number of any Aircraft owned or controlled by Tenant, or that are subject to an authorized sublease, that are based at the Premises.

E. Access. City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant's employees, officers, directors, subtenants that are approved by City pursuant to this Agreement, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Tenant's Associates") may ingress and egress across the Airport in the areas designated by City and as permitted by applicable Laws and Regulations, on a non-exclusive basis and to the extent reasonably necessary for Tenant's use, occupancy, and operations at the Premises.

F. Right of Flight and Other Reserved Rights. This Agreement conveys only a leasehold interest in the Premises on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interest of any kind. City reserves rights in the Premises including but not limited to, a right of aircraft movement on Airport property, a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, subject to the rules, regulations, and policies as may be adopted from time to time by the City, and rights in water, minerals, oil, and gas.

G. Enjoyments of Rights. Subject to Tenant's complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

2. **Term.** The term of this Agreement shall commence on the date of execution of this Agreement and shall continue thereafter for a term of twenty (20) years until September 21, 2043, (the "Initial Term"). If the tenant desires to renew this Agreement, the tenant must notify the City in writing at least 60 days prior to the expiration of the initial term. Upon such notification, this lease shall renew for an additional five (5) year period at the lease rates stated in Section 3 of this Agreement.

3. **Rent**

A. Rent. For Tenant's lease of the Premises, Tenant covenants to pay to City without off-set or deduction the annual ground rent as shown in the table below and commencing on the date of execution of this Agreement. All rent shall be due and payable to the City of Hurricane annually in advance, without notice or demand from City, on the 1st day of August. The first years rent payment will be prorated to the next August 1st payment date.

<u>Years</u>	<u>Rent amount per square foot</u>
2022 – 2027	.15
2028 – 2033	.18
2034 – 2039	.21
2040 – 2045	.24
2046 – 2051	.27
2052 – 2057	.30

C. Dishonored Checks. If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars (\$50.00) per occurrence (or such other amount as City shall implement from time to time) in addition to other sums due under this Agreement.

D. Past Due Amounts. If tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable amount to cover the additional costs for billing and collecting arising from Tenants failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent, and shall be paid without abatement, deduction, off-set, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount either full or partial (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

4. Tenant's Use of Premises and Airport

A. No Interference. Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that interferes with any operation at the Airport or decreases the Airport's effectiveness, as reasonably determined by the City at its sole discretion. Tenant shall promptly notify City of any use that creates such interference or decrease of effectiveness and remedy the same to City's satisfaction.

B. Comply with all Laws and Regulations. Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include but are not limited to, the Airport Rules and Regulations, Policies and Procedures, Minimum Standards for Commercial Aeronautical Activities, Utah Code Annotated, the Code of Revised Ordinances of Hurricane City, the Protective Covenants of the Hurricane City Airport, applicable Federal Aviation Regulations, and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements.

C. No Unauthorized Use. Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; fueling activities on the Premises or any other area that City has not authorized; commercial activities, aircraft parking, or storage in areas not leased by Tenant, any use unrelated to the purposes of this Agreement; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

D. Permits and Licenses. Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use,

occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

E. Taxes and Liens. Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Tenant Improvements). Within ten (10) days of notice of such lien, Tenant shall have the lien removed or deposit with the City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

F. Damage to Property and Notice of Harm. Tenant, at Tenant's sole cost, shall repair or replace to City's satisfaction any damaged property that belongs to City or City's other Tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

G. No Alterations or Improvements. Tenant shall not make or cause to be made any alterations or improvements to the Premises or to other areas of the Airport without City's prior written consent.

H. Security. Tenant is responsible to comply, at Tenants sole cost, with all security measures that City, Federal Aviation Administration, the United States Transportation Security Administration or any other governmental authority having jurisdiction may require in connection with the Airport. Tenant shall protect and preserve security at the Airport, including, but not limited to, protecting security information and protecting any access points to the Airport that are maintained by Tenant. Tenant will be vigilant in watching for unusual activity or persons that do not belong at the Airport, and will report such to the Airport Manager or by calling 1-866-GA-SECURE.

I. Removal of Disabled or Derelict Aircraft. Tenant shall promptly remove or cause to be removed from any portion of the Airport not leased by Tenant the Aircraft (or any other aircraft that Tenant owns or controls) if it becomes disabled or derelict. Tenant may store such aircraft within the Tenant Improvements or, with the City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If Tenant fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at Tenant's expense by any means that City determines to be in City's best interests.

J. Maintenance, Repair, Utilities, and Storage. Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to the City. Tenant shall be solely responsible to design and construct the Tenant Improvements and to maintain, repair, reconstruct, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. Tenant shall at all times maintain the Premises and the Tenant Improvements in a condition that is clean, safe, sanitary, and in good repair. Tenant shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. City has sole

discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. In addition to other restrictions and requirements contained in this Agreement, Tenant shall not store outside of the Tenant Improvements (aircraft hangar) any inoperable equipment, discarded or unsightly materials, materials likely to create a hazard, trailers (except trailers designed to carry gliders), inoperative motor vehicles, or any other similar items. Tenant is responsible to keep the area five feet out from all four sides of the aircraft hangar clear of weeds and any debris.

K. Operations. Tenant's operations shall comply with the following.

(i) Airport Operations. Tenant shall occupy the Premises and shall operate in a manner that promotes effective Airport operations. Among other things, Tenant shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; Tenant shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; and Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

(ii) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency

(iii) Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so they do not annoy, disturb, or impair Airport customers, tenants, or employees. Tenant shall provide the Airport Manager with the name and contact number of a person who is responsible for and has authority to act on behalf of Tenant.

(iv) Deficiencies. Without limiting or waiving any other remedies available to City, including declaring a breach of this Agreement, City's remedies shall include the following in connection with deficiencies in Tenant's operations.

(a) Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

(b) Remove Employees and Associates. City shall have the right to require Tenant to remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation of any provision of this Agreement or otherwise detrimental to City's interests at the Airport.

5. City's Rights and Obligations

A. Airport Maintenance. Subject to subparagraph C. of this section, City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

B. Access to Premises. City for itself and its employees, officers, directors, agents, and other representatives ("City's Associates") reserves the right to enter the Premises and Tenant Improvements at reasonable times and with reasonable notice for any purpose relating to the Airport including, but not limited to, conducting inspections, determining compliance with this Agreement, conduct Airport work, or for emergency purposes, provided that they shall not unreasonably interfere with Tenant's use of the Premises or Tenant's Improvements.

C. City's Right to Relocate Tenant's Improvements from Premises. It is understood and agreed that as conditions may require, the City has the right to require Tenant to relocate Tenant's Improvements from the Premises to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenants current leased Premises. Tenant shall bear the costs associated with relocating Tenant's Improvements and property to the new location. City agrees to provide the Tenant with a new Private Hangar Lease Agreement for the new location upon the same terms and conditions as are contained herein for the unexpired term of this Agreement.

D. City Charges. City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

E. City Directives. City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

F. Governmental Acts. City is a governmental entity, and City has all rights, powers, immunities, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

6. Indemnification, Insurance, and Letter of Credit

A. Indemnity by Tenant. Tenant agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court of dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A. shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are proven to be true.

B. Waiver. Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft)

against City and its officers, employees, and volunteers arising from or related to Tenant's use, occupancy, or operations at the Premises or the Airport.

C. Insurance. At Tenant's cost, Tenant shall procure the following insurance coverage prior to entering the Premises, and Tenant shall maintain its insurance coverage in force at all times this Agreement is in effect:

i. Aircraft Liability with Additional Coverage. Aircraft liability insurance that includes premises liability, and, if applicable, mobile equipment coverage with a combined single limit for bodily injury and property damage of not less than one million dollars (\$1,000,000) per occurrence (and one hundred thousand dollars (\$100,000) per passenger seat for applicable claims), including, but not limited to, contractual liability coverage for Tenant's performance of the indemnity agreement set forth in Section 6.A. If any such coverage is not available to Tenant in the form of an aircraft liability policy, Tenant shall obtain substantially similar coverage through a commercial general liability policy.

ii. Property. Tenant is solely responsible for Tenant's Improvements and Tenant's personal property, and Tenant may purchase insurance for Tenant's Improvements and Tenant's personal property as Tenant may determine.

iii. Automobile. If Tenant drives any automobile other than in the roadways and automobile parking areas at the Airport (including, but not limited to, if Tenant parks an automobile in Tenant's hangar when permitted by this Agreement), comprehensive automobile liability coverage for claims and damage due to bodily injury or death of any person or property damage arising out of Tenant's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than five hundred thousand dollars (\$500,000) single combined limit "per accident" for bodily injury and property damage.

iv. Pollution. Tenant is responsible for environmental losses. Any pollution legal liability insurance obtained by Tenant shall comply with the requirements for insurance that are stated in this Agreement. If Tenant engages in self-fueling, Tenant shall comply with City's self-fueling requirements, including, but not limited to, pollution legal liability insurance requirements.

v. Aircraft. Tenant is solely responsible for any damage to the Aircraft. Tenant shall obtain insurance coverage for the Aircraft as Tenant may determine.

vi. Business Interruption. Tenant is solely responsible for all costs of business interruption, however incurred, and Tenant may purchase business interruption insurance as Tenant may determine.

D. Insurance Requirements. The insurance described by this section have the following requirements:

i. General Requirements. At all times when this Agreement is in effect, Tenant shall maintain in force all required insurance coverage and shall have on file with the City Certificates of Insurance evidencing the same. Such certificates shall provide that coverage will not be cancelled, suspended, voided, or reduced without at least thirty (30) days prior written notice to the City. Ratings for the financial strength of the companies providing Tenant's insurance policies shall be disclosed in such certificates and shall be "A- VII" or stronger as published in the latest Best's Key Rating Guide (or a comparable rating from a comparable rating service). If a lower rating is proposed, City may examine the financial strength of the

insurance company proposed to provide coverage and may consent to a lower rating in the City's sole and absolute discretion, and City may also require additional assurances from Tenant. All certificates shall be signed by a person authorized by the insurer and licensed by the State of Utah. All policies (except any policies required for worker's compensation or errors and omissions) and the certificates evidencing coverage shall name City and its officers, employees, and volunteers as additional insureds (or in the case of property coverage, City shall be named as a loss payee). Tenant shall provide for a renewal of all insurance coverage on a timely basis to prevent any lapse in coverage. City retains the right to approve any deductibles, and Tenant shall notify City of any material erosion of the aggregate limits of any policy. Tenant's policies shall be primary. Such policies shall extend insurance to cover Tenant's contractual obligations under this Agreement.

ii. Minimum Requirements. City's insurance requirements are minimum requirements, and Tenant is responsible to obtain adequate insurance coverage as Tenant may determine. Except as otherwise expressly set forth in this Agreement, Tenant assumes all risk under this Agreement (including, but not limited to, business interruption claims) whether or not insured.

iii. Waiver of Subrogation. Notwithstanding any other provision contained in this Agreement, each of the parties hereby waives any rights of subrogation it may have against the other party for loss or damage from any risk that is covered by insurance (including, but not limited to, claims for business interruption). Each of the parties shall obtain a clause or endorsement providing for such waiver of subrogation in any policies of insurance required under this Agreement.

iv. Terms Subject to Change. City, in its sole and absolute discretion, reserves the right to review and adjust at any time Tenant's required insurance limits, types of coverage, and any other terms applicable to insurance to reasonably insure against any risk associated with this Agreement or Tenant's use, occupancy, or operations at the Airport. Among other things, City may review any or all insurance coverage on a periodic basis and in connection with any specific activity or event associated with the Airport or proposed by Tenant.

v. Stopping Operations. Among City's remedies, if at any time Tenant's insurance coverage is not in effect as required herein, City may (but is not required to) stop all or any portion of Tenant's operations without liability to City until Tenant fully restores such coverage.

E. Performance Security. City reserves the right to require a performance security in a form and amount acceptable to City upon any material default by Tenant under this Agreement.

7. Hazardous Materials. Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A. of this Agreement. Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations.

8. Assignment and Subleasing

A. Assignment. Tenant shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Tenant Improvements, (whether such assignment is voluntary or involuntary, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest related thereto) and shall not delegate any performance under this Agreement, except with prior written consent of City to any of the same. City will not unreasonably withhold written consent to an assignment of this Agreement.

B. Subleasing. With prior written consent of City, Tenant shall have the right to sublease portions of the Premises and Tenant Improvements only for the purposes specified in this Agreement or to store an aircraft. City shall have the right to approve any sublease tenant and sublease agreement. Tenant shall impose on any approved sublease tenant the same terms set forth in this Agreement to provide for the rights and protections afforded to City. Tenant shall reserve the right to amend any sublease to conform to the requirements of this Agreement, and any sublease shall be consistent with and subordinate to this Agreement as it is amended from time to time. Any sublease shall include an agreement that the sublease will attach to and pay rent to City if Tenant ceases to be a party to this Agreement. Tenant shall provide to City a copy of any sublease executed by Tenant. No sublease shall relieve Tenant of any obligations under this Agreement.

9. Damage, Destruction, and Condemnation.

A. Damage or Destruction of Premises. If any portion of the Premises or the Tenant Improvements is damaged in any manner, Tenant shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent or better than the original improvements, and Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary. Tenant shall apply all proceeds that are made available from Tenant's insurance policies (or those of any subtenant or assignee) to performing such work. If City performs such work pursuant to Section 10.B, such insurance proceeds shall be paid to City. If the Premises or Tenant Improvements are tenable despite such damage, Tenant shall not receive any abatement of Tenant's rent obligations. To the extent that any portion is rendered untenable by such damage in light of the purposes of this Agreement (as determined by City in its sole discretion), rent shall continue if Tenant has business interruption insurance, or if Tenant does not have such insurance, City shall abate Tenant's rent proportionately until repairs have been substantially completed (as determined by City in its sole discretion).

B. Condemnation. In the event of any condemnation proceeding in which all or any part of the Premises is taken (by a condemnor other than the City), all compensation from such proceeding shall be paid to City, except that Tenant may pursue a claim against the condemnor for the value of the Tenant Improvements and Tenant's leasehold interest and any subtenants may pursue a claim against the condemnor for the value of their subtenancy interests. In the event of a partial taking, City shall reduce the ground rent payable by Tenant on a pro rata basis for portions of the premises so taken. If City determines in its sole discretion that all or a material portion of the premises will be (or has been) rendered untenable as a result of such taking, City may terminate this Agreement by giving Tenant a written notice of termination, and this Agreement shall terminate at time specified in the notice (which shall not be less than sixty (60) days after the date of such notice).

10. Default

A. Tenant's Default. Each of the following events shall constitute a default or breach of this Agreement by the Tenant. (i) Tenant fails to timely pay any installment of rent; (ii) Tenant violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within sixty (60) days after written notice thereof by City to Tenant; (iii) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) Tenant defaults in constructing a Tenant Improvement as provided for in this Agreement.

B. Remedies. Upon default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance; (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and re-letting the Premises, and any attorney fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent required under this Agreement for the remaining term of this Agreement, and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

C. Default by City. City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within thirty (30) days after written notice by Tenant to City. If the nature of City's obligation is such that more than thirty (30) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

D. Survival. The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

11. Expiration or Termination

A. Tenant's First Right of Refusal. If the City elects to re-let the Premises upon the expiration of this Agreement, and if the Tenant is in compliance with the terms of this Agreement, the Tenant shall have the first right of refusal to enter into a new lease of the Premises upon the terms and conditions as the City Council at the time may require. No sooner than 180 days and no later than 30 days before the end of the term of this Agreement, Tenant shall notify City in writing that Tenant desires to exercise its right of first refusal under this paragraph, after which the Tenant's right of first refusal shall expire. Tenant's refusal to enter

into a new lease upon the terms and conditions required by the City Council at the time shall also result in the expiration of Tenant's right of first refusal.

B. Disposition of Tenant Improvements. Upon the termination of this Agreement before or on the expiration date, Tenant shall do one of the following at the option of City: (1) enter into a new lease to relet the Premises pursuant to Tenant's right of first refusal as set out in Section 11.A.; (2) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenants Improvements being deemed transferred to the City upon the City accepting the same; or (3) remove all Tenant Improvements from the Premises and Airport at Tenant's sole expense in a manner acceptable to City (and the obligations of section 6.A. shall apply to such removal). If Tenant fails to remove any Tenant Improvements under subsection (4), City may do so in any manner acceptable to City pursuant to Section 10.B.

C. Surrender of Premises. Unless the Premises is relet to Tenant prior to the expiration of this Agreement pursuant to Section 11.A., upon any expiration or termination of this Agreement, Tenant, at Tenant's sole cost, shall (i) promptly and peaceably surrender to City the Premises (and any Tenant Improvements accepted by the City pursuant to Section 11.B) "broom clean" and in good order and condition, excepting reasonable wear and tear; (ii) repair in a good and workmanlike manner any damage to the Premises or the Airport that arises from or relates to Tenant's use, occupancy, or operations under this Agreement (including, but not limited to, while removing any property upon expiration or termination); (iii) deliver to City all keys and access credentials relating to the Airport; (iv) perform Tenant's environmental obligations as provided in Section 7; and (v) remove all movable personal property and trade fixtures (including signage) that are not owned by City, (except that Tenant must obtain City's prior written consent to remove any such property if Tenant is in default under this Agreement or if such removal may impair the structure of any building). Upon any expiration or termination of this Agreement (which includes, but is not limited to, termination for abandonment of the Premises), all property that Tenant leaves on the Premises shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by City without notice to, and without any obligation to account to, Tenant or any other person (except that Tenant Improvements shall be as provided in Section 11.B). Tenant shall pay to City all expenses incurred in connection with the disposition of such property in excess of any amount received by City from such disposition. Tenant shall not be released from Tenant's obligations under this Agreement in connection with surrender of the Premises until City has inspected the Premises and delivered to Tenant a written acceptance of such surrender.

D. Holding Over. If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with Utah Law. During such occupancy, Tenant shall comply will all provisions of this Agreement that are applicable to an at-will-tenancy, and Tenant shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Tenant Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports.

E. Survival. The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

12. General Provisions

A. No Exclusive Rights. Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

B. Agreement Preserves City's Compliance. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

C. Subordination to City's Government Commitments. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport Improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport, Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments, Tenant shall immediately take such actions that may be necessary to preserve City's compliance with the same.

D. Subordination to Financing and Matters of Record. This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

E. Force Majeure. No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

F. Rights and Remedies. Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

G. Attorneys Fees. If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for the recovery of possession of the Premises, the party prevailing in such action shall be entitled to recovery from the other party(s) reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those arising from any appeal), the amount of which shall be fixed

by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including but not limited to, attorney fees incurred by the City in any case or proceeding involving the Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section 12.G. shall survive any expiration or termination of this Agreement.

H. Governing Law, Venue, and Waiver of Jury Trial. This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the Laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocable consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section 12.H. shall survive any expiration or termination of this Agreement.

I. Amendments and Waivers. No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

J. Severability. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any part. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

K. Merger. This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, now agreement of the other party except for those expressly contained in this Agreement. Any proposal materials or exhibits submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement.

L. Confidentiality. Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same, Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

M. Relationship of Parties. This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

N. Further Assurances. Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

O. Miscellaneous. The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

P. Time is of the Essence. Time is of the essence in this Agreement.

Q. Notices. Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows.

If to City:

Hurricane City
City Attorney
147 N. 870 W.
Hurricane, UT 84737

If to Tenant:

Carmine Mowbray
38334 Pinewood Dr.
Polson, MT 59860

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.Q. and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

R. Binding Obligation. Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

S. City Approval and Consent. Wherever in this Agreement it specifies the City must give approval or consent by the terms of this Agreement, such approval or consent shall not be unreasonably withheld. Unless otherwise specified, approval, consent, or action by the City refers to approval or consent by the Hurricane City Council.

T. Personal Guaranty. The undersigned Guarantor does herewith personally guarantee the due performance of this Agreement regarding all its provisions and obligations in the same way as if Guarantor were the original Tenant of this Agreement. This guaranty is continuing and unconditional. The undersigned Guarantor shall be liable as a principal debtor and not merely as surety, and the bankruptcy or any assignment in favor of creditors of Tenant

shall not affect the enforceability of this Personal Guaranty. This Personal Guaranty shall bind the respective heirs, executors, administrators, and assigns of the undersigned Guarantor, and shall inure to the benefit of the City, its successors, assigns, and subrogees. Guarantor now waives and releases all benefits and relief from all and any appraisement, exemption, or stay laws of any state currently in force or passed in the future.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

HURRICANE CITY

Nanette Billings, Mayor

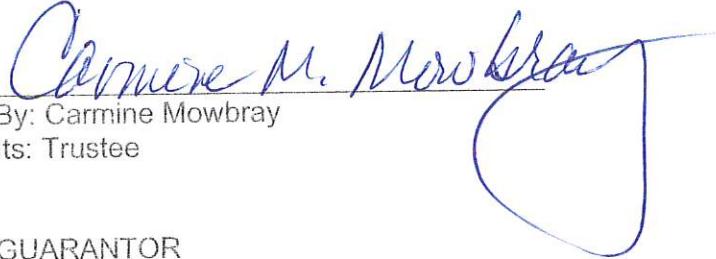
Attest:

City Recorder

Approved as to form:

Dayton Hall, City Attorney

THE MOWBRAY REVOCABLE TRUST,
dated November 24, 2021



By: Carmine Mowbray
Its: Trustee

GUARANTOR



Printed Name: Carmine Mowbray

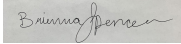
**Application**

Permit #:

ZC23-21

Issue Date:

07/18/2023

Application Accepted Date: 07/17/2023		Valuation		\$	0.00
Type of Improvement: Zone Change Application		PERMIT FEES			
Description: A zone change request for the next phase of the Dr		Planning Fee		\$	500.00
Tenant / Project Name: Dratter Estates Phase 2		Sub Total:		\$	500.00
Bldg. Address: 820 S 840 W		Permit Total:		\$	500.00
City: Hurricane State: UT Zip: 84737		Amount Paid:		\$	500.00
Subdivision: Dratter Estates Phase: 2		Remaining Due:		\$	0.00
Block: Lot #: Parcel #: H-3-2-3-4220-C		 			
Zone: RA-1					
Property Owner: Interstate Rock Products, Inc.					
Permit Contact: Chase Stratton P:(435) 773-3666					
Email: chase.stratton@interstaterock.com					
CONTACT INFORMATION					
General Contractor: Dratter Estates Phase 2 / Chase Stratton					
License #: P: (435) 773-3666					
City: State: Zip:					
Email: chase.stratton@interstaterock.com					
Electrical Contractor:					
License #: P:					
City: State: Zip:					
Plumbing Contractor:					
License #: P:					
City: State: Zip:					
Email:					
Mechanical Contractor:					
License #: P:					
City: State: Zip:					
Email:					
APPLICATION DETAILS					
# of Units: 0 custom text:					
APPLICATION NUMBER: PENDZC23-21					
This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced. I here-by certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be compiled with whether specified herein or not the granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction and that I make this statement under penalty of perjury. Maintenance Deposit is refundable after final inspection if: 1) site is kept clean 2) building is NOT occupied prior to final inspection and issuance of Certificate of Occupancy.					
Applicant Name: Chase Stratton					
Signature of Applicant/Authorized Agent or Owner: Date:					
Application Approved By:				Date:	
				07/18/2023	
Application Issued By:				Date:	
				07/18/2023	
Receipt #: 8.170776-07/18/23					

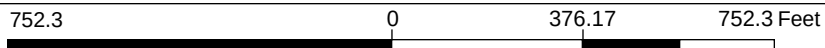


Legend

- ## Parcels
- ### Ownership
- | | |
|---|--------------------------------------|
|  | U.S. Forest Service |
|  | U.S. Forest Service Wilderness |
|  | Bureau of Land Management |
|  | Bureau of Land Management Wilderness |
|  | National Park Service |
|  | Shiwiwits Reservation |
|  | Utah Division of Wildlife Resources |
|  | Utah Division of Transportation |
|  | State Park |
|  | State of Utah |
|  | Washington County |
|  | Municipally Owned |
|  | School District |
|  | Privately Owned |
|  | Water |
|  | Water Conservancy District |
|  | State Assessed Oil and Gas |
|  | Mining Claim |

Notes

Zone Change from RA-1 to RA-0.5 for
Dratter Estates Phase 2.



WGS 1984 Web Mercator Auxiliary Sphere

DISCLAIMER: The information shown on this map was compiled from different GIS sources. The land base and facility information on this map is for display purposes only and should not be relied upon without independent verification as to its accuracy. Washington County, Utah will not be held responsible for any claims, losses or damages resulting from the use of this map.

Agenda Date:	09/21/2023
Application Number:	ZC23-21
Type of Application:	Zone Change Application
Action Type:	Legislative
Applicant:	Interstate Rock Products
Agent:	Chase Stratton
Request:	Zone Change from RA-1 to RA-0.5
Location:	820 S 840 W
Zoning:	RA-1
General Plan Map:	Single Family

Discussion:

The applicant requests a zone change from RA-1 to RA-0.5 for Phase 2 of Dratter Estates. A similar zone change was approved in July 2021 for Phase 1 of the project located to the north of the site. Both phases of the project will be developed concurrently. The Planning Commission heard this item on August, 24, 2023 and recommended approval.

	Zoning	Adjacent Land Use
North	RA-0.5	Single Family Homes (i.e. Phase 1 of Dratter Estates)
East	RA-1, PF	Single Family Homes, some agriculture, schools, parks
South	RA-1	Mostly agriculture
West	RA-0.5	Single Family Homes, some agriculture

Analysis:

1. Is the proposed amendment consistent with the City's General Plan's goals, objectives, and policies?

Response: The General Plan Map shows this area as a Single Family Residential, which intends uses characterized by single-family homes and “*should be located near supporting community uses such as, but not limited to churches, schools, and parks. Appropriate densities for this land use include R1-15, R1-10, R1-8, and R1-6*”.

Based on the densities cited above, the proposed zone change to RA-0.5 does not strictly comply with the General Plan Map; however, the density increase resulting from this action conforms more closely to the density recommended by the General Plan for the site. In other words, the character of the site if developed under an RA-0.5 density could be considered a less intensive single-family zone. The site is also located close to parks, schools, and churches, as cited in the General Plan, thus staff feels this action sufficiently meets the intent of the goals, objectives, and policies of the General Plan designation for the project site.

The Planning Commission has recommended that staff remap this area of the General Plan Map to Rural Residential because of its agricultural heritage. In the event of an amendment to the General Plan Map for the site to the Rural Residential designation, this zone change would also comply with that General Plan designation as well.

2. Is the proposed amendment harmonious with the overall character of existing development in the subject property's vicinity?

Response: The proposed zone change will allow for single-family homes to be built on larger lots. This is harmonious with the surrounding development. These lots will be similar in size to those in Phase 1 of Dratter Estates.

3. Will the proposed amendment adversely affect the adjacent property?

Response: The proposed amendment will more closely conform to the densities recommended by the General Plan, and most of the immediately adjacent property is relatively undeveloped. The project will improve fire access and water looping, since the applicant will be required to have a second access which will bring greater accessibility to the region. Thus, the proposed amendment will not adversely affect adjacent properties.

4. Are public facilities and services adequate to serve the subject property?

Response: As mentioned in the previous response, development of this property will require water looping to 700 W or 920 W (most likely 700 W), however JUC had no concerns with overall availability of public utilities. See JUC comments below.

Other Considerations

JUC Comments:

1. **Public Works:** Need connectivity to 900 S for water loop.
2. **Power:** No concerns
3. **Sewer:** No comments
4. **Streets:** Okay with zone change.
5. **Water:** This may require a water line loop.
6. **Engineering:** 900 S is a master planned 60' wide master planned road. Cannot fully provide services to the property without the assistance of neighboring properties.
7. **Fire:** No comments
8. **Cable:** No comments
9. **Phone:** No comments
10. **WCWCD:** Washington County Water Conservancy District hereby acknowledges that based on the information provided, the zone change adequately mitigates interference with district facilities and property interests. The District reserves the right to rescind this acknowledgement if additional information becomes available. The district has not determined whether water will be available for this development and does not hereby make any guarantee of water availability. In addition, the development must conform with applicable district requirements, including but not limited to payment of fees.

Staff Comments:

1. Any preliminary plat application will be required to show the proposed water looping and fire access route for phase 2.

Findings:

Staff makes the following findings:

1. The application meets the standards within the General Plan and General Plan Map.
2. Most of the surrounding development is large lot single family homes.
3. The proposed amendment will not adversely impact the area and is within the parameters of the General Plan.
4. Services are adequate to serve the area and proposed project.

Recommendation: Staff recommends that the City Council review this application based on Hurricane City and State code standards. Staff recommends approval of this item subject to staff and JUC comments.

ORDINANCE NO ZC23-21

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE
FOR PARCEL H-3-2-3-4220-C FROM RA-1 TO RA-0.5, RESIDENTIAL AGRICULTURE
ONE UNIT PER HALF ACRE

WHEREAS, Utah Code 10-9a allows Cities to regulate land use within their boundaries,

WHEREAS, the proposed amendment is generally compatible with the current General Plan; and

WHEREAS, the proposed amendment is generally in harmony with the overall character of the proposed surrounding development; and

WHEREAS, the proposal will not have a negative impact on the surrounding area; and

WHEREAS, there are adequate facilities to support the proposed zone change, and

WHEREAS, the Planning Commission gave a positive recommendation on the proposed zone change.

**BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF HURRICANE CITY
THAT:**

That parcel H-3-2-3-4220-C from RA-1 to RA-0.5, residential agriculture one unit per half acre

PASSED AND APPROVED on this 21th day of September 2023.

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 21th day of September 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, City Recorder

EXHIBIT A
ZONING MAP



STAFF COMMENTS

Consideration and possible approval of an amended **final plat for Dixie Springs Plat D Lots 196 & 197** located at 3259 W 2490 S; Terry Spinks, Applicant.

Discussion:

The applicant has applied to amend the final plat for Dixie Springs Plat E to combine Lots 92 and 93 into one lot. Combining lots within a recorded subdivision requires approval of an amended final plat. The Planning Commission heard this item on August 24, 2023, and recommended approval.

Findings:

Recommendation:

Attachments:

1. 7446application-AFP23-15
2. AFP23-15
3. AFP23-15 Dixie Springs Plat D Lots 196 _ 197 (2)

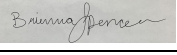


AFP23-15
08/10/2023

Type of Improvement: <u>Subdivision (Final Plat Amendment)</u> Description: _____ Bldg. Address: <u>3259 W 2490 S</u> City: <u>Hurricane</u> State: <u>UT</u> Zip: <u>84737</u> Subdivision: <u>Dixie Springs</u> Phase: <u>D</u> Block: _____ Lot #: <u>196 & 197</u> Parcel #: <u>H-DSP-D-196-A</u> Zone: <u>R1-10</u> Property Owner: <u>Robert Dickey</u> Permit Contact: <u>Terry Spinks</u> Email: <u>terry.tccustomhome@gmail.com</u>	Valuation \$ 0.00 PERMIT FEES Planning Fee \$ 150.00 Sub Total: \$ 150.00 Permit Total: \$ 150.00 Amount Paid: \$ 150.00 Remaining Due: \$ 0.00
CONTACT INFORMATION	
General Contractor: <u>Terry Spinks</u> License #: <u>11962656-5501</u> P: _____ City: <u>St. George</u> State: <u>UT</u> Zip: <u>84770</u> Email: <u>terry.tccustomhome@gmail.com</u>	
Electrical Contractor: _____ License #: _____ P: _____ City: _____ State: _____ Zip: _____	
Plumbing Contractor: _____ License #: _____ P: _____ City: _____ State: _____ Zip: _____ Email: _____	
Mechanical Contractor: _____ License #: _____ P: _____ City: _____ State: _____ Zip: _____ Email: _____	
APPLICATION DETAILS	
# of Units: <u>1</u> custom text: _____ 	

APPROVALS		DATE	INFO
Plan Review Finalized:	Yes	08/10/23	Brienna Spencer

Setbacks	Front:	Rear:	Left:	Right:
Min.				
Actual:				

APPLICATION NUMBER: PENDAFP23-16	
This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced. I hereby certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be complied with whether specified herein or not the granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction and that I make this statement under penalty of perjury. Maintenance Deposit is refundable after final inspection if: 1) site is kept clean 2) building is NOT occupied prior to final inspection and issuance of Certificate of Occupancy.	
Applicant Name: _____	
Signature of Applicant/Authorized Agent or Owner: Date: _____	
Application Approved By: 	Date: 08/10/2023
Application Issued By: _____	Date: 08/10/2023
Receipt #: 8.171535-08/10/23	

OWNER'S DEDICATION:

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNER OF ALL THE ABOVE DESCRIBED TRACT OF LAND HAVING CAUSED THE SAME TO BE COMBINED INTO A LOT AND TO BE HEREAFTER KNOWN AS:

DIXIE SPRINGS SUBDIVISION AMENDMENT AND EXTENSION
PLAT "D" - PARTIAL AMENDMENT "A" LOTS 196 & 197

FOR GOOD AND VALUABLE CONSIDERATION RECEIVED, DOES HEREBY DEDICATE AND CONVEY TO HURRICANE CITY FOR PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS PUBLIC EASEMENTS. ALL LOTS AND EASEMENTS ARE AS NOTED OR SHOWN. THE OWNER DOES HEREBY WARRANT AND ASSIGN TO HURRICANE CITY AND ITS SUCCESSORS, TITLE TO ALL PROPERTY DEDICATED AND CONVEYED TO PUBLIC USE HEREIN AGAINST THE CLAIMS OF ALL PERSONS.

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS THIS _____ DAY OF _____, 2023.

DICKY REAL ESTATE VENTURES LLC, A
UTAH LIMITED LIABILITY COMPANY

- MANAGER OF DICKEY REAL ESTATE
VENTURES LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT:

STATE OF UTAH)
COUNTY OF WASHINGTON) S.S.

ON THIS _____ DAY OF _____ IN THE YEAR _____, PERSONALLY APPEARED BEFORE ME _____, WHO BEING BY ME DULY SWORN DID SAY THAT SHE IS THE MANAGER OF DICKEY REAL ESTATE VENTURES, LLC AND THAT THEY EXECUTED THE FOREGOING DOCUMENT ON BEHALF OF SAID LIMITED LIABILITY COMPANY BEING AUTHORIZED AND EMPLOYED TO DO SO BY THE OPERATING AGREEMENT OF DICKEY REAL ESTATE VENTURES, LLC, AND THEY DID DULY ACKNOWLEDGE TO ME THAT SUCH LIMITED LIABILITY COMPANY EXECUTED THE SAME FOR THE USES AND PURPOSES STATED THEREIN.

FULL NAME SIGNATURE: _____

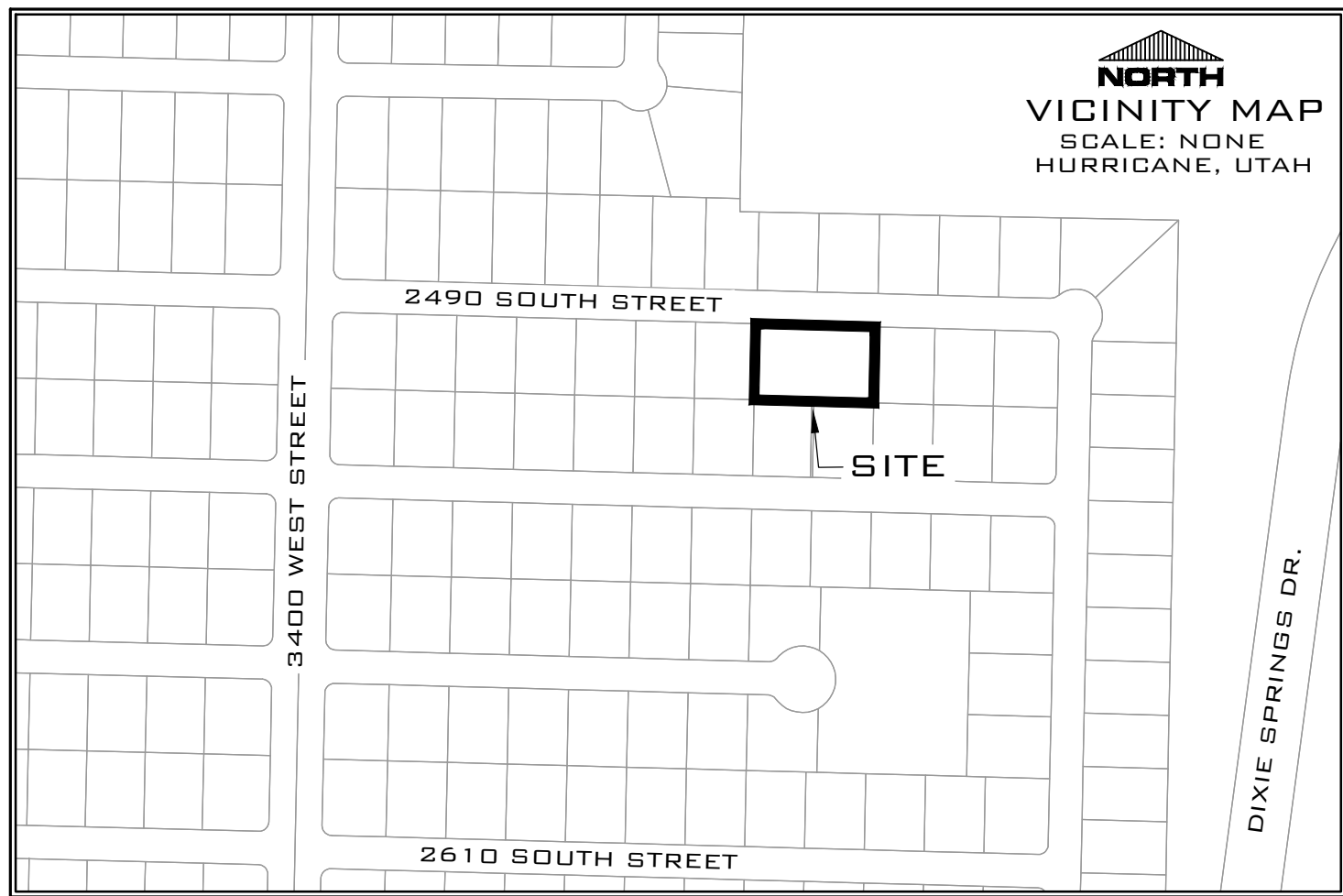
FULL NAME PRINT: _____

COMMISSION NO.: _____

EXPIRATION DATE: _____

A NOTARY PUBLIC COMMISSIONED
IN THE STATE OF _____

(STAMP NOT REQUIRED PER UTAH
CODE 46-1-16 (7) IF ABOVE
INFORMATION IS FILLED IN)



BASIS OF BEARINGS FOR PLAT "D"
N 0°05'51" E - 2645.02' FROM THE WEST 1/4 CORNER TO THE NORTHWEST CORNER SECTION 18, T.42S., R.13W., S.L.B.&M. (FND BLM BRASS CAP 1978)
1504.50' (TIE)

1140.52'

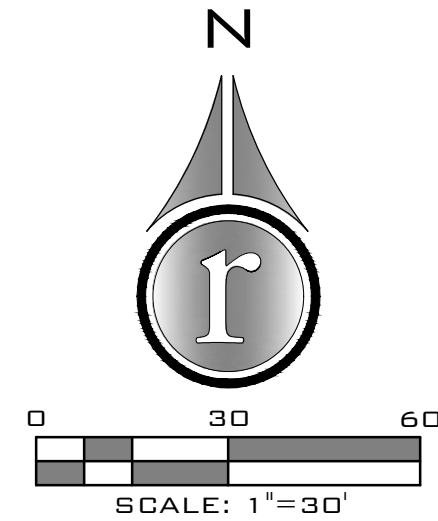
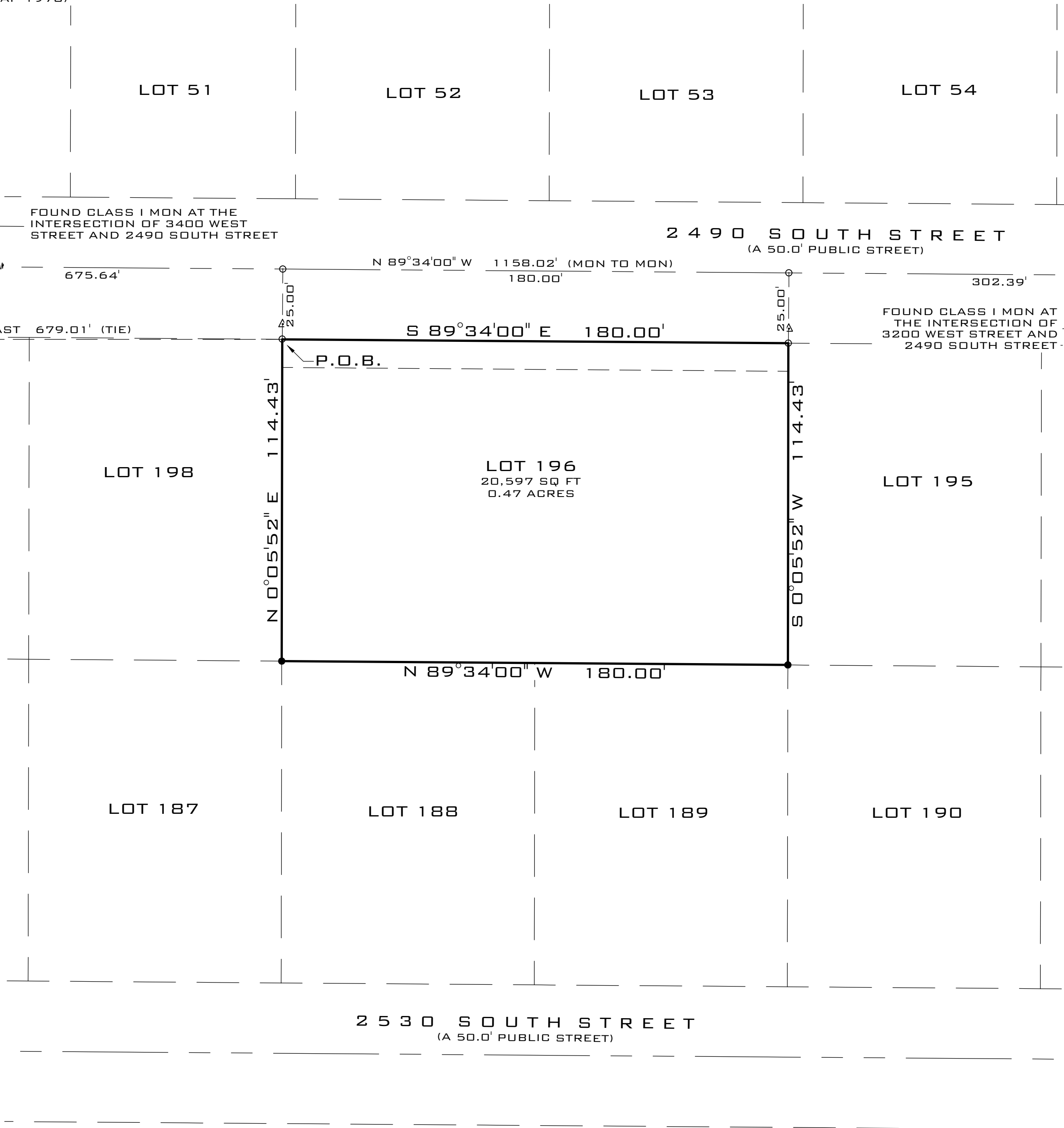
1504.50' (TIE)

WEST 1/4 SECTION 18, T.42S.,
R.13W., S.L.B.&M. (FND BLM
BRASS CAP 1978)

NORTHWEST CORNER
SECTION 18, T.42S.,
R.13W., S.L.B.&M. (FND
BLM BRASS CAP 1978)

FOUND CLASS I MON AT THE
INTERSECTION OF 3400 WEST
STREET AND 2490 SOUTH STREET

FOUND CLASS I MON AT
THE INTERSECTION OF
3200 WEST STREET AND
2490 SOUTH STREET

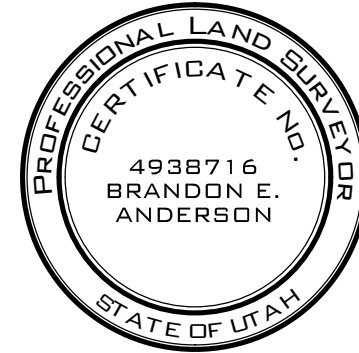


SURVEYOR'S CERTIFICATE:

I, BRANDON E. ANDERSON, PROFESSIONAL LAND SURVEYOR NUMBER 4938716, HOLD A LICENSE IN ACCORDANCE WITH TITLE 5B, CHAPTER 22, PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT AND HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED HEREON IN ACCORDANCE WITH SECTION 17-23-17 AND HEREBY CERTIFY ALL MEASUREMENTS AND DESCRIPTIONS ARE CORRECT. MONUMENTS ARE SET AS REPRESENTED ON THIS PLAT. I FURTHER CERTIFY THAT BY AUTHORITY OF THE HEREON OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND HAVE COMBINED THE SAME TRACT INTO A LOT TO BE HEREAFTER KNOWN AS:

DIXIE SPRINGS SUBDIVISION AMENDMENT AND EXTENSION
PLAT "D" - PARTIAL AMENDMENT "A" LOTS 196 & 197

THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND POINTS ESTABLISHED ON THE GROUND IN ACCORDANCE WITH THE HEREON LEGAL DESCRIPTION.



DATE: _____

BRANDON E. ANDERSON

CERTIFICATE NO. 4938716

LEGAL DESCRIPTION:

BEGINNING AT THE NORTHEASTERLY CORNER OF LOT 198, DIXIE SPRINGS AMENDMENT AND EXTENSION PLAT "D", AS FOUND ON FILE AT THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT BEING NORTH 00°05'51" EAST 1,504.50 FEET ALONG THE SECTION LINE AND EAST 679.01 FEET FROM THE WEST QUARTER CORNER SECTION 18, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF 2490 SOUTH STREET, AND RUNNING;

THENCE SOUTH 89°34'00" EAST 180.00 FEET ALONG SAID SOUTHERLY LINE OF 2490 SOUTH STREET TO THE NORTHWESTERLY CORNER OF LOT 195 SAID DIXIE SPRINGS AMENDMENT AND EXTENSION PLAT "D";

THENCE SOUTH 00°05'52" WEST 114.43 FEET ALONG THE WESTERLY LINE AND TO THE SOUTHWESTERLY CORNER OF SAID LOT 195;

THENCE NORTH 89°34'00" WEST 180.00 FEET TO THE SOUTHEASTERLY CORNER SAID LOT 198;
THENCE NORTH 00°05'52" EAST 114.43 FEET ALONG THE EASTERLY LINE SAID LOT 198 TO THE POINT OF BEGINNING.

CONTAINING 20,597 SQUARE FEET OR 0.47 ACRES.

AMENDMENT NOTE:

THE PURPOSES OF THIS AMENDMENT IS TO COMBINE LOTS 196 & 197 INTO ONE LOT, AND TO VACATE THE EASEMENTS BETWEEN SAID LOTS. NO OTHER CHANGES ARE MADE WITH THIS PLAT.

NOTES:

1. THERE EXISTS A 10 FOOT UTILITY EASEMENTS ALONG ALL FRONT LOT LINES.

LEGEND:

- SET PK/WASHER IN WALL
- NOTHING SET OR FOUND
- ⊕ FOUND SURVEY CONTROL MONUMENT - CLASS I (HURRICANE CITY)
- ▲ FOUND PK NAIL IN CURB ON EXTENSION OF LOT LINE
- ◆ FOUND SECTION MONUMENTATION AS SHOWN AND DESCRIBED

DIXIE SPRINGS SUBDIVISION
AMENDMENT AND EXTENSION
PLAT "D"

PARTIAL AMENDMENT - A
LOTS 196 & 197

LOCATED IN THE N.W. QUARTER OF SECTION 18, TOWNSHIP 42
SOUTH, RANGE 13 WEST SALT LAKE BASE AND MERIDIAN
HURRICANE CITY, WASHINGTON COUNTY, UTAH.

SHEET 1 OF 1



352 EAST RIVERSIDE DRIVE, SUITE A-2, ST. GEORGE, UTAH 84790
PH (435) 673-8586 FX (435) 673-8397 - WWW.RADIVIL.COM

FPLAT-AMD-PARTIAL
FILE NUMBER:
13845-23
JOB NUMBER:

07/07/2023
DATE:
1" = 30'
SCALE:

C.G.A.
DRAWN:
B.E.A.
CHECKED:

ENGINEER'S APPROVAL

THE HEREON SUBDIVISION FINAL PLAT HAS BEEN REVIEWED AND IS APPROVED IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE THIS _____ DAY OF _____, A.D. 20____

ENGINEER
HURRICANE CITY

APPROVAL AS TO FORM

APPROVED AS TO FORM, THIS THE _____ DAY OF _____, A.D. 20____

CITY ATTORNEY
HURRICANE CITY

ASH CREEK SPECIAL SERVICE
DISTRICT

THE HEREON SUBDIVISION FINAL PLAT HAS BEEN REVIEWED AND IS APPROVED IN ACCORDANCE WITH THE INFORMATION ON FILE IN THIS OFFICE THIS _____ DAY OF _____, A.D. 20____

ASH CREEK SPECIAL SERVICES DISTRICT

APPROVAL AND ACCEPTANCE BY THE
HURRICANE CITY, UTAH

WE, THE MAYOR AND CITY COUNCIL OF HURRICANE CITY, UT, HAVE REVIEWED THE ABOVE SUBDIVISION FINAL PLAT AND HEREBY ACCEPT SAID FINAL PLAT WITH ALL COMMITMENTS AND OBLIGATIONS PERTAINING THERETO.

ATTEST: CITY RECORDER
HURRICANE CITY

MAYOR
HURRICANE CITY

TREASURER APPROVAL

I, WASHINGTON COUNTY TREASURER, CERTIFY ON THIS _____ DAY OF _____, A.D. 20____ THAT ALL TAXES, SPECIAL ASSESSMENTS, AND FEES DUE AND OWING ON THIS SUBDIVISION FINAL PLAT HAVE BEEN PAID IN FULL.

WASHINGTON COUNTY TREASURER

RECORDED NUMBER

WASHINGTON COUNTY RECORDER



AFP23-15

JUC Comments

These comments will need to be addressed.

1. **Public Works:** There are currently two utility connections for the two existing lots; the applicant is required to disconnect one set of utilities since the project creates one lot.
2. **Power:** Dixie Power area. No comments received.
3. **Water:** Abandon one water line service at the water main.
4. **Streets:** Ok with amendment.
5. **Sewer:** One existing sewer lateral will need to be cut and capped.
6. **Engineering:** No comments.
7. **Fire:** Ok with amendment.
8. **WCWCD:** Washington County Water Conservancy District hereby acknowledges that based on the information provided, the zone change adequately mitigates interference with district facilities and property interests. The District reserves the right to rescind this acknowledgement if additional information becomes available. The district has not determined whether water will be available for this development and does not hereby make any guarantee of water availability. In addition, the development must conform with applicable district requirements, including but not limited to payment of fees.

Staff Comments

1. The plat meets the amended final plat standards contained in [Utah Code 10-9a-608](#). Subdivision Amendments, updated in 2023. The following are the key items:
 - a. Depicts only the portion of the subdivision that is proposed to be amended.
 - b. Includes a plat name distinguishing the amended plat from the original plat.
 - c. Describe the differences between from the original plat.
 - d. Includes references to the original plat.
2. The Final Plat needs a full review by the City Engineering Department for surveying details.
3. Additional utility services will need to be shut off to the property.

Recommendation: Staff recommends that the City Council review this application based on Hurricane City and State code standards. Staff recommends approval of this item subject to staff and JUC comments.



STAFF COMMENTS

Ordinance 2023-16: Consideration and possible approval of a Land Use Code Amendment **Amending Title 10 Chapter 1 to add Subsection 13 regarding land use applicants' compliance with City Code and staff comments.** Hurricane City Attorney, Applicant.

Discussion:

The purpose of this proposed ordinance is to: (1) confirm that developers are required to comply with applicable City Codes after a land use application is approved and (2) that approvals shall be subject to JUC and staff comments unless otherwise indicated by the Planning Commission or Council. The City's historical practice of approving applications "subject to" certain comments could be problematic because the Council may forget to make the approval conditional on the comments. Or, developers may mistakenly assume that all code requirements except the ones mentioned by staff are waived. This proposed ordinance addresses those concerns. The Planning Commission recommended approval of this ordinance change unanimously.

Findings:

Recommendation:

The City Attorney recommends that the Council adopt the proposed ordinance.

Attachments:

1. 230808 PROPOSED Ordinance Sec. 10-1-13
2. Ordinance 2023-16 Land use applicant's compliance with city code and staff comments

Sec. 10-1-13. – Compliance with City Code after application approval; Staff comments.

The approval of a land use application by a land use authority shall not eliminate or limit a land use applicant's obligation to comply with all applicable laws, codes, and regulations relating to the approved land use. To the extent that City staff or members of the Joint Utility Committee submit comments, requirements, restrictions, or criteria to the land use authority in conjunction with the land use application, such comments, requirements, restrictions, or criteria shall not limit the application of all other laws, codes, or regulations relating to the approved land use. In addition, unless the land use authority expressly determines otherwise, any approval of a land use application shall be subject to compliance with all comments, requirements, restrictions, and criteria submitted by City staff or the Joint Utility Committee in conjunction with the land use application.

The definitions of land use application and land use authority shall be as defined in Utah Code Annotated section 10-9a-103, as may be amended.

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 10 CHAPTER 1 TO ADD SUBSECTION 13 REGARDING LAND USE
APPLICANTS' COMPLIANCE WITH CITY CODE AND STAFF COMMENTS.**

WHEREAS, the Hurricane City Council is duly authorized to create legislation to govern Hurricane City; and

WHEREAS, it is in the best interest of the community to ensure that land use applicant's comply with all sections of the City Code and applicable standards; and

WHEREAS, the Hurricane City Planning Commission unanimously recommended approval,

BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah that following subsection be added to Hurricane City Code to read as follows:

Sec. 10-1-13. – Compliance with City Code after application approval; Staff comments.

The approval of a land use application by a land use authority shall not eliminate or limit a land use applicant's obligation to comply with all applicable laws, codes, and regulations relating to the approved land use. To the extent that City staff or members of the Joint Utility Committee submit comments, requirements, restrictions, or criteria to the land use authority in conjunction with the land use application, such comments, requirements, restrictions, or criteria shall not limit the application of all other laws, codes, or regulations relating to the approved land use. In addition, unless the land use authority expressly determines otherwise, any approval of a land use application shall be subject to compliance with all comments, requirements, restrictions, and criteria submitted by City staff or the Joint Utility Committee in conjunction with the land use application.

The definitions of land use application and land use authority shall be as defined in Utah Code Annotated section 10-9a-103, as may be amended.

NOW THEREFORE, BE IT ORDAINED BY THE HURRICANE CITY COUNCIL OF HURRICANE CITY, UTAH THAT:

1. All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.

2. Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Hurricane City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.

PASSED AND APPROVED this 21st day of September, 2023

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 21st day of September, 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, Recorder



STAFF COMMENTS

Consideration and possible approval of the **revocation of the vacation rental license** for Dennis and Donna Price

Discussion:

This home has had a vacation rental license since 2016. Other than one violation in 2017 for overoccupancy, there haven't been any complaints until this year. In May of 2023, the property owner received their first violation notice for parking. Staff did not hear anything from the owners or property management after the letter was sent. In July 2023, another complaint was received, this time for noise, and a second letter was sent notifying the owners of their second strike. Again, no communication with the owners or property management. Multiple other complaints were received after the letter in July was sent about parking, noise, and more than ten people staying at the rental. A letter was sent to the owners notifying them this was their third strike within a twelve-month period. Therefore, a revocation hearing will take place.

Findings:

Recommendation:

Attachments:

1. Timeline for 4242 W 2440 South
2. Complaint Log
3. email from neighbor with pictures
4. Letter from 2017
5. May 15, 2023 Letter
6. July 17, 2023 Letter
7. August 31, 2023 Letter
8. Renewal form

Timeline for 4242 W 2440 South

- 5/14/2016 The first license was issued.
- 3/30/2017 An enforcement letter was sent regarding advertising for an occupancy of 17 people. Advertisement was updated on 5/2/2017 limiting it to 10 people.
- 5/14/2023. Complaint about parking received with pictures of vehicles, trailers, and UTV's parked on the Street and more than 10 guests.
- 5/15/2023. A letter was sent to the owners notifying them this was their first strike for violating the ordinance.
- Renewal for 2023 license was received with payment. Pending fire inspection.
- 7/15/2023. Complaint received about loud noise after 10 p.m.
- 7/15/2023. Renewal period expired but business licensing duties was in transition and staff saw a fire inspection was scheduled.
- 7/17/2023. A letter was sent to the owners notifying them this was the second strike for violating the ordinance.
- 7/22/2023. Complaint received about loud noise after 10 p.m.
- 7/23/2023. Complaint received about parking violations. Complainant reported 15 vehicles at the rental with 12 on the street.
- 7/23/2023. Two complaints received from different neighbors regarding the noise after 10 p.m. Both reported it had been happening for the last three nights.
- 7/25/2023. Fire inspection failed.
- 8/8/2023. Fire reinspection failed.
- 8/19/2023. Complaint received about parking. Five vehicles plus a flat bed trailer parked on the street.
- 8/19/2023. Complaint received for loud noise all night and day.
- 8/20/2023. Complaint received about parking. Same vehicles as yesterday on the road and blocking the sidewalk. Reported more than ten people staying there.
- 8/22/2023. Fire inspection passed.
- 8/31/2023. A letter was sent to the owners notifying them of their third strike for violating the ordinance and notified them of the revocation hearing.

Date/Time Raised	Complaint #	Status	Complaint Type	Property Address	Complaint Description	Complainant Name	Complainant Phone	Complainant Email
2023-08-20 11:08am	13	Open	Parking, Other	4242 W 2440 S HURRICANE UT 84737	I submitted Complaint 12 yesterday. Today, the problem is worse. On street parking is not allowed for short term rentals. There are four vehicles plus a flat bed trailer parked on the street, plus one is BLOCKING THE SIDEWALK! In addition, eight vehicles are present. If there are 10+ people staying there and the rental doesn't have an overhead sprinkler system, it's a violation of the fire code.			
2023-08-19 8:39pm		Open	Noise	4242 W 2440 S HURRICANE UT 84737	Music, loud, and partying all night. Party house music going on all day.	Connie Willey		
2023-08-19 08:44am	12	Open	Parking	4242 W 2440 S HURRICANE UT 84737	Violation of short term rental parking regulations. There are eight vehicles at this rental, five vehicles plus a flat bed trailer are parked on the street. Off street parking is required. Also, with eight cars, there may be more than 10 people staying there, which is a violation of the fire code if the house doesn't have overhead sprinklers.			
2023-08-19 11:41pm		Open	Noise	4242 W 2440 S HURRICANE UT 84737	Music, screaming, yelling, partying. This is the 3rd day they've done this until 2:00am	Connie Willey		
2023-07-23 10:23pm	11	Open	Noise, Parking	4242 W 2440 S HURRICANE UT 84737	Loud noise and music and it's 10:15 pm. I complained about this last night and it's happening again! A neighbor called the police last night and apparently is calling them again. Earlier this evening, I filed a complaint about parking.... 15 cars in front of the rental, 12 parked on the street. This is ridiculous!	Thomas		
2023-07-23 06:39pm	10	Open	Parking	4242 W 2440 S HURRICANE UT 84737	This is a follow-up on Complaint 8 I filed this morning. Now, there are 12 vehicles on the street and 3 in the driveway. This is a violation which requires off-street parking. In addition, this rental has a maximum of 14 "guests", and there are 15 vehicles (one on the driveway is hidden by another car).			
2023-07-23 06:53am	9	Open	Parking	4242 W 2440 S HURRICANE UT 84737	Of the 8 vehicles staying at this rental, 6 are parked on the street. This rental can not accommodate this amount of off-street parking.	Thomas		
2023-07-22 10:07pm	8	Open	Noise	4242 West 2440 South	Loud music and noise coming from the backyard and swimming pool. This is the second weekend I've complained about this house. I live three houses and one street away, and I can hear the music and noise in my house.	Thomas		
2023-07-15 10:15pm	7	Open	Noise	4242 W 2440 S HURRICANE UT 84737	It's 1015 pm. There's LOUD talking, yelling, and screaming from the backyard and swimming pool. I live three houses away and across the street and you can hear every word they're yelling	Thomas		
2023-05-14 11:03am	2	Open	Parking, Number of Guests	4242W 2440S	Vehicles, trailers, and UTV's/ATV's parked on the street (some interfering with the mailboxes) and the number of vehicles on the street and on the property. Many people. One picture taken Saturday, the other Sunday after more vehicles/trailers and people arrived.	Thomas		

Brienna Spencer

From: [REDACTED]
Sent: Monday, August 21, 2023 9:39 PM
To: Brienna Spencer; Nanette Billings
Subject: Short term rentals

Brienna:

I have several questions regarding short term rentals, specifically the one at 4242 W 2440 S in Hurricane. There have been numerous complaints about this rental and it's having a negative impact on the neighborhood.

1) The Airbnb site says this rental can accommodate 14 people. Does this rental have an overhead sprinkler system? If not, any number over 10 is violating the fire code.

2) What are the consequences of complaints? I am asking this because it doesn't appear there are any. Contacting the management company is worthless as they tell you to "contact the owner". One of the neighbors next to this rental has contacted the owner several times and he said, "I'm not aware of any problems". Yet, the Planning Department's website and the Municipal Code states:

"Any violation of city ordinances with regards to short term rentals carries a \$750 a day fine. Call [800-630-6048](tel:800-630-6048) to report a non-compliant rental."

3) Another question regarding consequences, why aren't complaints resolved during the required time period? Whether the complaint is made via the 800 number or online, noise and parties continue through the early morning hours, and illegal parking continues until the renters leave. The Municipal Code states:

"The owner or other person designated as the property manager shall respond to complaints and concerns within one hour of any phone call or other notification. Failure of the owner or property manager to respond in a timely manner may result in a violation and possible fines to the business license holder and property owner."

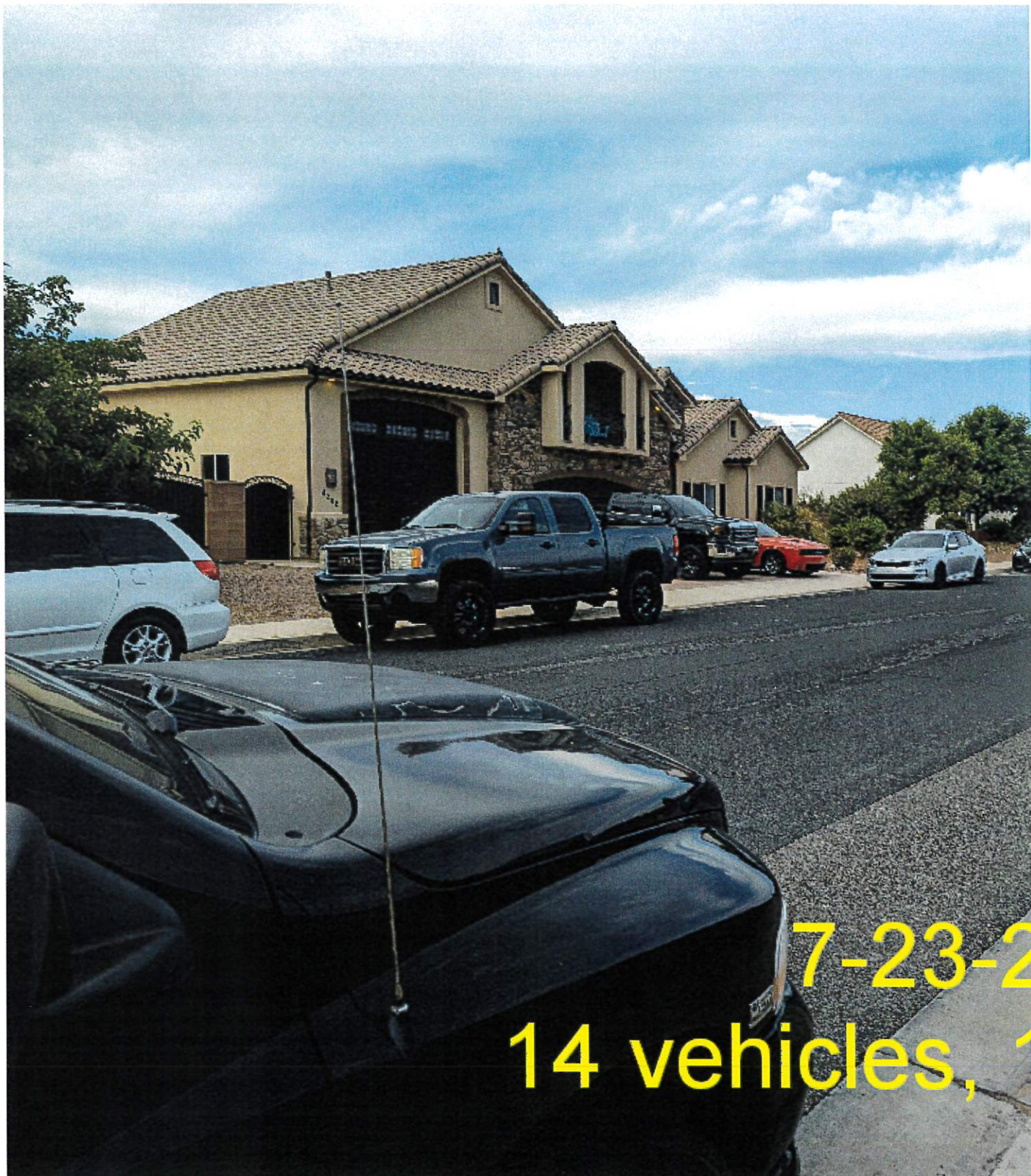
4) Given the number of complaints about this rental, why hasn't the City taken steps to suspend or revoke the rental license? The Municipal Code states:

"In the event of three or more violations of this section committed by an owner or guest, or any combination of the two, within any 12-month period, the City Council may.... proceed with revocation of the business license for any short term vacation rental property."

Thank you for addressing these issues. Neighbors have complained through the 800 number, online, and have called the police to no avail. The Municipal Codes should be enforced. By the way, I have attached two pictures of recent parking violations that I included with my online complaints.

Thomas Sawyer
[REDACTED]

Hurricane
[REDACTED]



7-23-2
14 vehicles, 1



8-20-2023

Eight vehicles

Four vehicles, one trailer on s

One vehicle parked on sidev



Mayor
John W Bramall

City Manager
Clark R. Fawcett

City of Hurricane

Planning Department
Toni Foran, Planning Director
Cindy Beteag, Planning Assistant

March 30, 2017

Dennis & Donna Price
PO Box 140109
Salcha, AK 99714-0109

*advertisement updated
5/2/17*

RE: Property located at 4242 W 2440 South, Hurricane, Utah

Dear Mr. & Mrs. Price,

You were granted a vacation rental license on May 14, 2016. It has come to Hurricane City Planning Department's attention that you are advertising for an occupancy of 17 people. Our vacation rental ordinance limits the total occupancy to no more than 10 guests unless a fire sprinkler system has been installed. This regulation is a requirement from the Hurricane Valley Fire District.

As of the date of this letter, please cease from using or advertising the property for more than 10 guests. Failure to do so can result in a violation of your license. If you have any questions, please contact me in the City office at 435-635-2811 x 112 or email cindy@cityofhurricane.com.

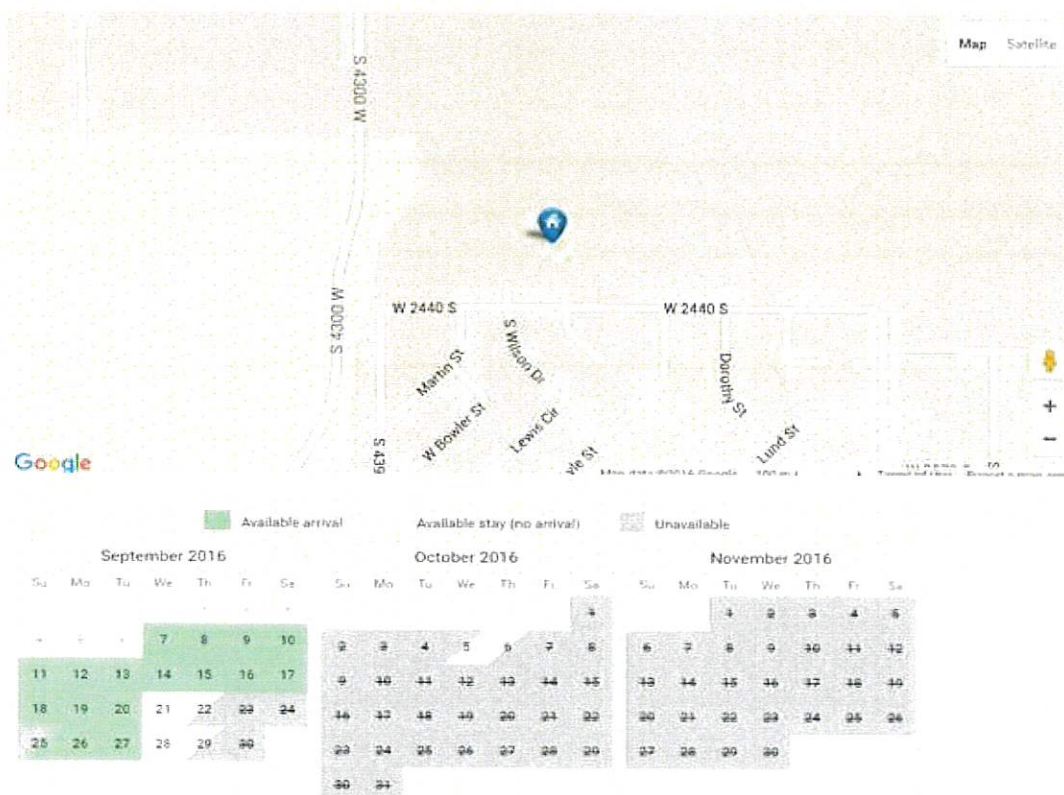
Sincerely,

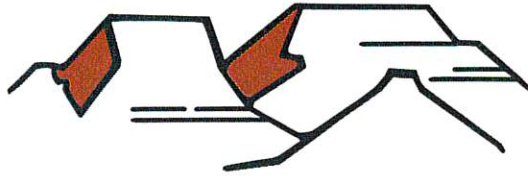
Cindy Beteag
Planning Assistant

Cc: Escape Properties
551 N 1400 East #1
St. George, UT 84770

Price

5/31/17





PLANNING & ZONING
HURRICANE CITY
UTAH

May 15, 2023

PRICE DENNIS & DONNA
PO BOX 140109
SALCHA, AK 99714-0109

Re: The Property Located at 4242 W 2440 S, Hurricane, UT

Mr. or Mrs. Price,

On the morning of May 14th, 2023 Hurricane City received reports that the licensed short-term vacation rental property listed above was in violation of following Ordinance(s):

HCC 3-10-11: Short term vacation rentals

D.Parking regulations. The owner of any property licensed as a short term vacation rental shall provide off street parking for guests in accordance with the following:

1. Off street parking shall be provided on the same lot as the dwelling which is licensed as a short term vacation rental.

2. Parking shall be provided at one vehicle per bedroom. Tandem spaces on a driveway may be used.

3. All guest parking shall be contained on the site.

4. No off street parking space may be located in front of the living area of the dwelling unless there is a circular driveway.

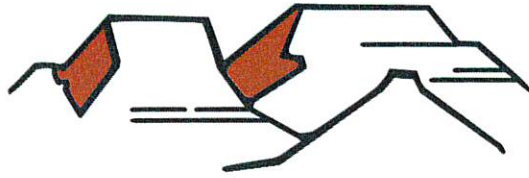
5. The number of vehicles allowed by the occupants of a vacation rental home shall be restricted to the number of off street parking spaces provided by the owner.

Under Hurricane City Code 3-10-11 (I): "5. In the event of three or more violations of this section committed by an owner or guest, or any combination of the two, within any 12-month period, the City Council may, depending on the nature or extent of the violations, proceed with revocation of the business license for any short term vacation rental property in accordance with the provisions of the general business license ordinance."

This letter confirms and documents your first violation under this section. Continued violations may result in the revocation of your business license as well as other fines and penalties as prescribed under Hurricane City Ordinances and Utah State Code.

If you have any questions, please contact me at (435) 635-2811 ext. 110.

Sincerely,
Fred Resch III
Code Enforcement Officer



PLANNING & ZONING
HURRICANE CITY
UTAH

July 17, 2023

PRICE DENNIS & DONNA
PO BOX 140109
SALCHA, AK 99714-0109

Re: The Property Located at 4242 W 2440 S, Hurricane, UT

Mr. or Mrs. Price,

On the evening of July 15th, 2023 Hurricane City received reports that the licensed short-term vacation rental property listed above was in violation of following Ordinance(s):

HCC 10-51-12: Short term vacation rentals

B. Prevention of noise, nuisance, or trespass at short-term rentals. The owner of any short-term rental shall be responsible to ensure that guests or occupants do not:

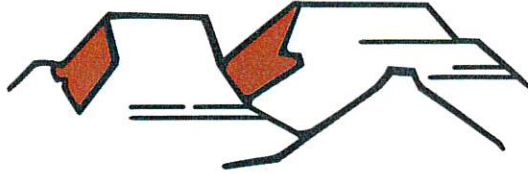
- 1. Create noises that by reason of time, nature, intensity, or duration are out of character with noises customarily heard in the surrounding residential neighborhood.*
- 2. Disturb the peace of surrounding residential property residents by engaging in shouting, fighting, playing of loud music, racing of cars or recreational vehicles on streets, engaging in outside recreational activities after 10:00 p.m., or other similar activities.*

Under Hurricane City Code 3-10-11 (I): "5. *In the event of three or more violations of this section committed by an owner or guest, or any combination of the two, within any 12-month period, the City Council may, depending on the nature or extent of the violations, proceed with revocation of the business license for any short term vacation rental property in accordance with the provisions of the general business license ordinance.*"

This letter confirms and documents your second violation under this section. Continued violations may result in the revocation of your business license as well as other fines and penalties as prescribed under Hurricane City Ordinances and Utah State Code.

If you have any questions, please contact me at (435) 635-2811 ext. 110.

Sincerely,
Fred Resch III
Code Enforcement Officer



PLANNING & ZONING
HURRICANE CITY
UTAH

August 31, 2023

DENNIS & DONNA PRICE
PO BOX 140109
SALCHA, AK 99714-0109

**RE: Property Located at 4242 W 2440 S, Hurricane, UT
Notice of Third Violation of Short-Term Rental Ordinance
Notice of Business License Revocation Hearing**

Dear Dennis & Donna Price:

You are receiving this letter because you are identified by the Washington County Recorder's Office as the owners of the above-referenced property. Your property, which is currently licensed as a short-term vacation rental, has been in violation of Hurricane City's short-term rental ordinance on at least three occasions in the last twelve months. Therefore, under the City's ordinance, your business license to operate a short-term rental is subject to revocation by the Hurricane City Council, as explained in this letter.

Below is a summary with the date and nature of recent violations:

5/14/23 – parking and number of guests

5/15/23 – noise

7/22/23 – noise

7/23/23 – parking

7/23/23 – noise and parking

7/23/23 – noise

8/19/23 – parking

8/19/23 – noise

8/20/23 – parking, other

The operation of your short-term rental has been in violation of Hurricane City Code section 10-51-12 six (6) times in the last twelve (12) months. Hurricane City Code section 10-51-12 prohibits the following at short-term rental properties:

1. The creation of noises that by reason of time, nature, intensity, or duration are out of character with noises customarily heard in the surrounding residential neighborhood.
2. Disturbing the peace of surrounding residential property residents by engaging in shouting, fighting, playing of loud music, racing of cars or recreational vehicles on streets, engaging in outside recreational activities after 10:00 p.m., or other similar activities.
3. Exceeding an occupancy of a maximum of ten (10) persons at any one time.

In addition, the operation of your short-term rental has been in violation of Hurricane City Code section 3-10-11 five (5) times in the last twelve (12) months. Hurricane City Code section 3-10-11 provides that the owner of any property licensed as a short-term vacation rental shall provide off street parking for guests in accordance with the following:

1. Off street parking shall be provided on the same lot as the dwelling which is licensed as a short-term vacation rental.
2. Parking shall be provided at one vehicle per bedroom. Tandem spaces on a driveway may be used.
3. All guest parking shall be contained on the site.
4. No off-street parking space may be located in front of the living area of the dwelling unless there is a circular driveway.
5. The number of vehicles allowed by the occupants of a vacation rental home shall be restricted to the number of off-street parking spaces provided by the owner.

Hurricane City Code 3-10-11 provides as follows:

In the event of three or more violations of this section committed by an owner or guest, or any combination of the two, within any 12-month period, the City Council may, depending on the nature or extent of the violations, proceed with revocation of the business license for any short-term vacation rental property in accordance with the provisions of the general business license ordinance.

This letter documents and confirms that the number of violations within the last twelve (12) months meets and exceeds three (3).

As outlined in Hurricane City Code section 3-1-9, the Hurricane City Council will hold a license revocation hearing at their regular meeting on September 21, 2023, commencing at 6:00 PM, or as soon thereafter as the matter can be heard, during the regular City Council meeting. The hearing will be held at the City Office located at 147 North 870 West, Hurricane. You have the right to appear at this hearing, to be represented by counsel, to hear the evidence against you, to cross examine witnesses, and to present evidence as to why the license should not be revoked.

If you have any questions, please contact me at (435) 635-2811 ext. 106.

Sincerely,

Cindy Beteag

Cindy Beteag
City Recorder

Cc: Dayton Hall, City Attorney

Fred Resch III, Code Enforcement

Hurricane City
147 N 870 W
HURRICANE UT 84737
435-635-2811

RENEWAL NOTICE
05/23/2023

PAID
5/23/23
7712740
DENNIS & DONNA PRICE
1361 E RED HILLS PKWY #D
ST. GEORGE UT 84790

Please review the information below to verify that it is correct. Update any incorrect contact information by noting changes to the right of the information you are adding to or changing. Contact the Business Licensing Clerk if you need to change the business name, address, owner, or activity. Sign and return the application with the appropriate license fee(s). If you prefer to email it back, send it to cindy@cityofhurricane.com and then call with the payment. PLEASE DO NOT PAY VIA XPRESS BILL PAY. If you are no longer doing business, you must check the appropriate box, sign and return so we can update our system with the correct information.

Account #:6603

Business Name: DENNIS & DONNA PRICE

DBA:

Address: 4242 W 2440 SOUTH

Mailing Address: 1361 E RED HILLS PKWY #D
ST. GEORGE UT 84790

Phone: 435-688-7263

Sales Tax ID #: 14021052-003-STC

Federal Tax ID#:

Professional License #:

Email Address: info@stgeorgevacations.com

Website:

Owner Name: DENNIS & DONNA PRICE

Owner Phone: 907-378-0979

Manager Name: CLINT BOUCK OR JACOB BOUCK

Manager Phone: 801-388-9299

License #: 6603

License Description: VACATION RENTAL

Fee: 300.00

Due 45 days from date of notice. Late fees will be assessed!

I have read the above, and declare under penalty of perjury that each and every statement made is true, correct and complete.

Authorized Signature

Dennis & Donna Price

Date 5/23/2023

No longer operating business in Hurricane City ☐

Authorized Signature

Date

Licenses must be renewed within 45 days of this notice. A \$20 late fee will be assessed if not paid within 30 days after the deadline. Renewal will not be permitted after 45 days of the due date.

sch 8/8

sch 7/26/23
failed

sch 8/22/23



STAFF COMMENTS

Consideration and possible approval of an **Interlocal Agreement with Washington County regarding the construction of the Sand Hollow Road Extension**

Discussion:

This is an interlocal agreement with Washington County so they can fund a portion of the construction of the Sand Hollow Road Extension.

Findings:

Recommendation:

Attachments:

1. Hurricane_Interlocal Agreement_SandHollowExtension_2023

INTERLOCAL AGREEMENT BETWEEN WASHINGTON COUNTY, UTAH, AND THE
CITY OF HURRICANE FOR FUNDING TO ASSIST IN THE CONSTRUCTION OF THE
SAND HOLLOW ROAD EXTENSION

This Interlocal Agreement (“Agreement”) is by and between the City of Hurricane (“Hurricane”) with offices at 147 North 870 West, Hurricane, Utah 84737, and Washington County, Utah, (“County”) with offices at 111 East Tabernacle Street, St. George, Utah 84770.

RECITALS

WHEREAS, Washington County receives tourism tax revenues that may only be spent to promote and establish tourism and recreation in the county;

WHEREAS, pursuant to Utah Code Annotated 11-13-1 *et seq.*, public agencies are authorized to enter into mutually advantageous agreements for joint or cooperative action and both Hurricane and the County are public agencies as defined in Utah Code Annotated 11-13-103(19);

WHEREAS, the Washington County Tourism Tax Advisory Board (“TAB”) shall make recommendations to the county legislative body on the best use of tourism tax revenues;

WHEREAS, events and projects that promote and establish tourism and recreation often request funds from the county tourism tax revenues;

WHEREAS, Washington County Code 2-6-5(C) establishes that funding to other governmental agencies for capital projects shall be done through an interlocal agreement;

WHEREAS, Hurricane is constructing and maintaining the Sand Hollow Road Extension (“Project”), which extends the pavement of Sand Hollow Road to the Sand Mountain Staging Area (Waddy’s Corral);

WHEREAS, the Project will improve access to Sand Mountain a popular destination for residents and visitors;

WHEREAS, Hurricane and partners will contribute more than \$100,000 to total Project costs. Hurricane has requested additional funds of \$50,000 from the County Transient Room Tax (“TRT”) fund to assist with the construction of the Project;

WHEREAS, TAB recommends approving the \$50,000 of County TRT funding for the Project; and

WHEREAS, County desires to provide funding to Hurricane to complete this Project.

THEREFORE, the parties agree as follows:

1. AGREEMENT

- 1.1 County Obligations. Washington County will fund \$50,000 within thirty days after the Effective Date of this Agreement, to Hurricane City to be used for the Project.
- 1.2 County Signage. Washington County will be allowed to sign the project with the Greater Zion and/or Washington County logo along with language acknowledging the use of TRT funds.
- 1.3 Project Completion Date. Project is expected to be complete by August 31, 2023.
- 1.4 Hurricane City Compliance. Hurricane City agrees to use the funds to complete the Project and that the Project is in compliance with all applicable state laws, including but not limited to Utah Code Annotated 59-12-301 *et seq.* and 59-12-601 *et seq.*

2. INTERLOCAL AGREEMENT REQUIREMENTS

- 2.1 Resolution. To the extent that this Agreement is governed by Utah Code Ann. 11-13-202.5, each party agrees to comply with the provisions set forth in 11-13-202.5.
- 2.2 Attorney Review. This Agreement has been submitted to attorneys authorized to represent the public agencies for review as to proper form and compliance with applicable law in accordance with Utah Code Ann. 11-13-202.5.
- 2.3 Effective Date. The effective date of this Agreement shall be September 18, 2023, and this Agreement shall terminate upon the completion of the Project.
- 2.4 Filing. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party.
- 2.5 No Interlocal Entity. No Utah interlocal entity, or any other legal entity, is created by the terms of this Agreement.

3. GENERAL TERMS

- 3.1 Authorization. Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth.
- 3.2 Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.
- 3.3 Severability. The articles, sections, paragraphs, sentences, clauses, and phrases of this Agreement, and the application thereof, are expressly declared to be severable. If any such article, section, paragraph, sentence, clause, or phrase, or the application thereof, shall be

declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining articles, sections, paragraphs, sentences, clauses, or phrases, or applications, of this Agreement.

- 3.4 Governing Law. This Agreement shall be governed according to the laws of the State of Utah.
- 3.5 Captions. The Captions to the various Articles and Sections of this Agreement are for convenience and ease of reference only, and neither define, limit, augment, nor describe the scope, content, and/or intent of this Agreement or any part or parts hereof.
- 3.6 Counterparts. This Agreement may be executed simultaneously in one or more counterpart(s), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 3.7 No Partnership or Joint Venture. Neither any other provisions contained in this Agreement nor any acts of any party shall be deemed or construed by another party or by any third person to create the relationship of partnership or shared venture of any association between the Parties, other than contractual relationships stated in this Agreement.
- 3.8 Entire Agreement. This Agreement contains the entire agreement between the County and Ivins concerning its subject matter and shall not be modified except by written agreement duly executed by the Parties hereto. There are no oral understandings or agreements not set forth herein.

(Signatures on next page)

HURRICANE CITY

Nanette Billings, Mayor

Date: _____

ATTEST:

City Recorder

APPROVED AS TO FORM:

City Attorney

WASHINGTON COUNTY

Adam Snow, Chair
Washington County Commission

Date: _____

ATTEST:

Ryan Sullivan
Washington County Clerk-Auditor

APPROVED AS TO FORM:

County Attorney



STAFF COMMENTS

Consideration and possible approval of **local consent for a single-event beer garden** at Washington County Legacy Park-Van Fest LLC applicant, Lance Wilkinson agent

Discussion:

The applicant is holding an event at the Washington County Fairgrounds in October. They are requesting local consent to have a beer garden at their event. They have provided all the necessary applications and maps. A background check has been completed on the person overseeing the event. Staff has no concerns with granting local consent.

Findings:

Recommendation:

Attachments:

1. Van Fest Local Consent
2. Single Event Local Consent



147 N 870 WEST, HURRICANE, UTAH 84737
PHONE: 435-635-2811 FAX: 435-635-2184
www.cityofhurricane.com

PAID
9/6/23
8-172019

Date of Application 9/6/2023

Permit Fee \$250.00
Application Fee \$50.00
Total Due \$300.00

SINGLE EVENT LIQUOR PERMIT

NOTICE: Please complete each statement below. Incomplete applications will not be accepted.

SECTION A — BUSINESS INFORMATION

Name of Business: Van Fest LLC
Business Phone: 8058263378 Email: lance@vanfestusa.com
Contact Person: Lance Wilkinson
Business Address: 7533 S CENTER VIEW CT, STE N, WEST JORDAN, UT 84084
(Street Number) (Suite) (City) (State) (Zip)
Mailing Address (if different): _____
(Street Number) (City) (State) (Zip)
State Sales Tax Number: 15167303-002-STC Does this business have a current DABC license: No
Business Type (check one):
Proprietorship ☐ Partnership ☐ Corporation ☒ Religious Organization ☐ Non-profit Corporation ☐

SECTION B — EVENT INFORMATION

Event Name: Vanfest
Event Venue: Washington County Legacy Park
5500 700 S St Hurricane 84737
(Street Number) (Suite) (City) (State) (Zip)
Date (s) of the event: 10/27/23 to 10/29/23 Alcohol Service hours: 12pm to 7pm
For the sale of (check all that apply): X Beer X Heavy Beer Wine Liquor Flavored Malt Beverages
Will food be available? yes Full Meals? no Will minors attend the event? yes

PART C — BUSINESS OWNER INFORMATION

A list of all corporate officers or partners must be included. This list must include name, home address, and phone number.

Owner's Name: Lance Wilkinson Title: Owner
Home Address: _____
(Street Number) (City) (State) (Zip)
Home Phone: _____ Cell Phone: _____

Please add any additional owners/partners on a separate piece of paper and attach.

APPLICATION MUST INCLUDE A DETAILED PLAN ON AN 8 1/2" X 11" SHEET OF PAPER
SHOWING ALL CONTROL MEASURES.

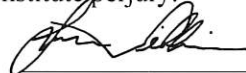
STATE OF UTAH)

: ss.

COUNTY OF WASHINGTON)

I, Lance Wilkinson, being first duly sworn, depose and say as follows:

1. The foregoing Application and Questionnaire is in all respects true and correct, to the best of my knowledge and belief and
2. I am the applicant above-named and have not leased, assigned or entered into a profit-sharing arrangement of any type with any other person for operation of the above-named business except as disclosed herein; and
3. I have received and read the beer/alcoholic beverage license ordinance of the City of Hurricane, and believe that this application in all respects conforms to the requirements thereof and
4. I consent to the entry in or upon the business premises by City employees or representatives at reasonable times for the purpose of inspecting the event premises to insure compliance with applicable laws, ordinances, rules and regulation; and
5. I understand and agree that any false information contained in this application shall be grounds for denial of this application and shall constitute perjury.



Applicant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__

(NOTARY PUBLIC OR CITY LICENSE
OFFICER)

TOTAL FEES	\$ <u>300.00</u>	Office Use Only	AMOUNT PAID \$ <u>300.00</u>
DATE	<u>9/6/23</u>	RECEIPT #	<u>8.172015</u>
CITY LICENSE NUMBER: _____			
DATE APPLICATION WENT TO CITY COUNCIL: <u>9/21/23</u>			
DATE OF APPROVAL FROM STATE: _____			

Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
Joseph Prete
David Sanders
David Hirschi
Kevin Thomas
Doug Heideman

September 7, 2023

Lance Wilkinson
82 Constitution Road
Marshfield, MA 02050

Dear Lance,

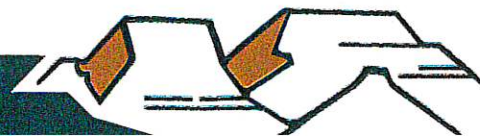
You submitted a completed Right of Access for a background check on September 6, 2023. No Criminal History found.

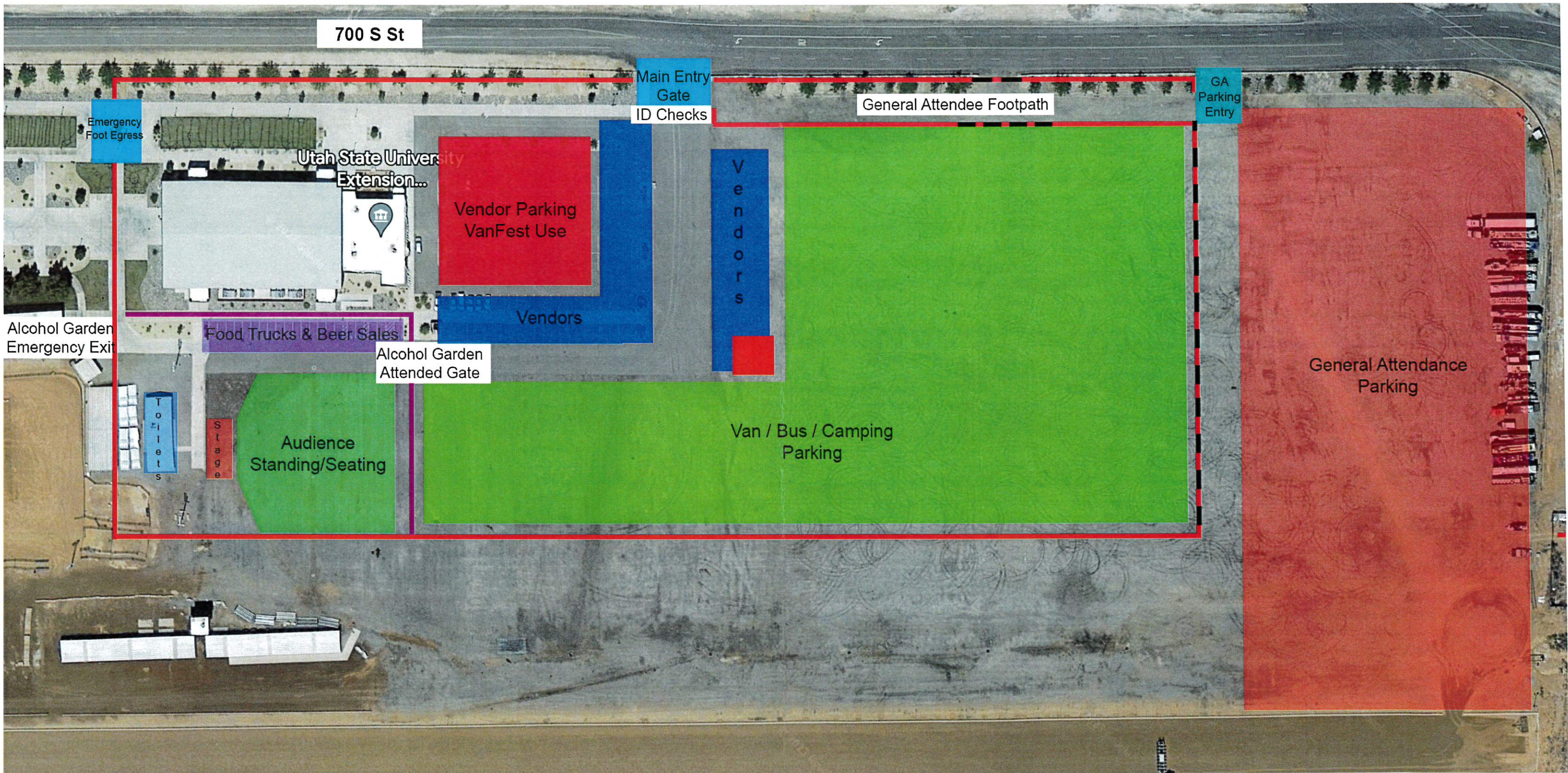
This record is provided for official use only and may be used only for individual right of access purposes. Use of this information contained is governed by State and Federal Laws and Regulations. Misuse of any part of this record in any form, including release to unauthorized agencies or individuals, may be subject to Civil or Criminal Penalties (Class B Misdemeanor for violation of UCA 53-10-108). This information may not be shared outside of the scope of the official used requested.

Sincerely,

Cindy Beteag

City Recorder





VanFest 2023

Oct 27 - 29

Legacy Park - Hurricane, UT

VanFest is a festival and expo celebrating vanlife and a nomadic way of living featuring rig tours, industry vendors, live music, food, workshops, and games.

Security

- During alcohol sale hours, security will be stationed at the "Attended Alcohol Garden Gate" to check wristbands (color coded for 21+) and ensure no minors are allowed in without an adult. They will also maintain a count of total people within the Garden, and will radio for additional patrols as needed to maintain the required 50:1 ratio.
- Security patrols will be trained volunteers, with a paid Security Lead on shift at all times during alcohol sales hours.

SINGLE EVENT PERMIT

Local Consent

PURPOSE: Local business licensing authority provides written consent to the Alcoholic Beverage Control Commission to issue an event permit to an organization for the purposes of storage, sale, offer for sale, furnish, or allow the consumption of an alcoholic product on the event premises. **Authority:** Utah Code 32B-9-201

Hurricane

Local business license authority

☒ City ☐ Town ☐ County

hereby grants its consent to the issuance of a temporary single event permit license to:

Applicant Entity/Organization: Van Fest LLC

Event Name: Vanfest

Event location address: 700 S 5500 West Hurricane UT 84737
Street city state zip

On the 27-29th day(s) of October, 2023
dates month year

during the hours of 12-7 p.m., pursuant to the provision of Utah Code 32B-9 for
define hours from and to

the sale of (Check all that apply): ☒ Beer ☒ Heavy Beer ☐ Wine ☐ Flavored Malt Beverages ☒ Liquor

We are recommending this entity as conducting a civic or community enterprise* ☐ Yes ☐ No

☒ NOT providing a recommendation

***As Part of local consent required by 32B-9-201 (1) (c), the locality may provide a recommendation as to whether the entity is conducting a civic or community enterprise.** A civic or community enterprise means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational, recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

Authorized Signature

Nanette Billings/Mayor

Name/Title

9/21/2023

Date



STAFF COMMENTS

Consideration and possible approval of **Resolution 2023-37 appointing Nanette Billings to the Washington County Water Conservancy District Board**

Discussion:

Former Councilman Kevin Tervort is currently still on the Washington County Water Conservancy Board. His term will be ending soon. This resolution is recommending Mayor Nanette Billings to serve on the board once Mr. Tervort's term has ended.

Findings:

Recommendation:

Attachments:

1. Resolution 2023-37 Appointing Nanette Billings to Water Conservancy Board (revised by DH on 9-13-2023)
2. 230919 Letter to County Commissions Requesting Appointment of Mayor Billings

A RESOLUTION OF THE HURRICANE CITY COUNCIL OF HURRICANE, UTAH,
RECOMMENDING AND APPROVING THE DESIGNATION AND APPOINTMENT OF
MAYOR NANETTE BILLINGS AS A REPRESENTATIVE TO SERVE ON THE
WASHINGTON COUNTY WATER CONSERVANCY DISTRICT BOARD.

WHEREAS, Washington County Water Conservancy District Board (the “District”) was created by the Washington County Commission for the purpose of providing water services for residents throughout Washington County, and

WHEREAS, the District is governed by an administrative control board made up members representing the cities and towns in Washington County, which are approved and appointed by the Washington County Commission; and

WHEREAS, Hurricane City desires to designate Hurricane City Mayor Nanette Billings to serve on the District’s board to replace Kevin Tervort, a prior Hurricane City Councilman whose term on the board expires at the end of 2023; and

WHEREAS, all legal requirements pertaining to the designation of Mayor Billings been met; and

WHEREAS, said Hurricane City Council deems it necessary and desirable for the preservation of the public health, safety, and welfare for this appointment to occur,

BE IT HEREBY RESOLVED by the Hurricane City Council of Hurricane, Utah that it recommends and approves the appointment of Mayor Nanette Billings to serve as a representative on the Washington County Water Conservancy District Board.

DATED this 21st day of September 2023

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Resolution was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 21st day of September, 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results.

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, City Recorder

Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
Joseph Prete
David Sanders
David Hirschi
Kevin Thomas
Doug Heideman

September 21, 2023

Washington County Commission
111 East Tabernacle St.
St. George, UT 84770

RE: Appointment of representative to Washington County Water Conservancy
District Board of Trustees

Dear Commissioners Iverson, Almquist, and Snow:

The Hurricane City Council is excited about the opportunities that future growth holds for Washington County and Hurricane City. The Council also recognizes the challenges that the future growth will bring, especially in relation to the management of the County's water supplies. Within Washington County, Hurricane City is presently the third largest city by population and the second largest city by land area. Notably, within the entire state of Utah, Hurricane City is the third largest city by land area. As such, it is crucial that Hurricane City is represented on the Board of Trustees for the Washington County Water Conservancy District.

As you know, Kevin Tervort, a current Trustee on the Board, was appointed to the Board while he was also serving on the Hurricane City Council. Mr. Tervort has not served on the Council since January of 2022. Unfortunately, without Mr. Tervort being on the City Council, communication regarding District business between Mr. Tervort and the Council has been essentially non-existent. This lack of representation has deprived Hurricane City of the opportunity to participate in the Board discussions and decisions that should be afforded to a city with a large population and substantial future development that is reliant on the District's management and development of water resources.

To remedy this lack of representation of such a critical partner in water management within the County, the Hurricane City Council respectfully requests that Mayor Nanette Billings be appointed to the District's Board of Trustees at the end of Mr. Tervort's appointed term. Even though Mayor Billings has not had the opportunity to sit on the Board, she has regularly attended the Board's meetings to try to stay abreast of District business and is best suited to assume the role of Trustee. Mayor Billings and the Hurricane City Council look forward to continuing to develop a cooperative relationship with Washington County and the District as we all strive to plan responsibility for the future of this great community.

Sincerely,

Mayor Nanette Billings

Joseph Prete

David Sanders

David Hirschi

Kevin Thomas

Doug Heideman





STAFF COMMENTS

Consideration and possible approval of **multiple agreements to increase the power capacity.** -Scott Hughes

Discussion:

The contracts being presented to the Council for consideration are between the City and land developers that have preliminary plats approved in the south end of the City. As previously discussed with the Council, the lack of power capacity to serve these subdivisions has prevented the City from approving the construction drawings for these subdivisions. The Power Department, after discussions with the Council several months ago, commissioned a study to determine changes that could be made and additional infrastructure that could be installed to increase capacity to the south. Based on the results of that study, the Power Department has calculated its actual cost to increase capacity. That cost has been allocated to each of the subdivisions based on the amount of power requested by the land developer. The contracts state that each developer will pay its proportionate share to increase capacity. Every developer will pre-pay the estimated cost to the City before the City has any obligations. Developers will pay the actual cost of the improvements, even if the amount is more than the initial estimated amount. The Power Department has two years to complete the improvements. When every Developer has paid its proportionate amount, then the Power Department finds that a "reasonable plan" is in place to provide power to the subdivisions as required by HCC 9-6-3, which requires adequate public facilities before development approval. Thereafter, the Power Department will sign construction drawings for these subdivisions, provided that all other requirements are met. Of course, construction drawings must also be approved by all other City utilities.

This contract and related project will address the preliminary plats that were approved before adequate public facilities for power were available. This project does not solve the capacity limitations on the south end of the City, but merely addresses the previously approved preliminary plats. This project is separate from the 1300 South substation that is under construction. At present, there is no additional capacity available for any significant development. Additional capacity on the south end of the City will not be available until the substation is completed, the transmission line to the substation is updated, easements are acquired, and distribution lines are constructed.

Findings:

Recommendation:

Attachments:

1. River Valley - Cordero Ph 3
2. River Valley - Cordero Ph 2

3. Falcon Crest - Hurricane Fields
4. Diamond Edge - Bench Lake TH
5. Diamond Edge - Horseman Edge
6. DAF Development - Hurricane Cliffs
7. Tytanium Development - Desert Sky
8. Kobat - Southern Dunes

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this ____ day of _____, 2023, between Hurricane City, a Utah municipal corporation (the "City") and River Valley Development, LLC (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3400-W, H-3400-U, H-3400-X, H-3400-S, H-3400-T ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 08/04/2022.
- c. The preliminary plat identifies 214 lots, 214 of which will require a 200 AMP service and 0 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 199,270.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 214, 200 AMP services at the cost of \$ 931.17 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this

Agreement. This estimated amount shall be paid to the City and held by the City during construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such

right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[River Valley Development, LLC]

By:
Its:


By: L Boyd Cook
Its: CFU

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this ____ day of _____, 2023, between Hurricane City, a Utah municipal corporation (the "City") and _____ River Valley Development, LLC _____ (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3400-V ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 04/21/2022.
- c. The preliminary plat identifies 40 lots, 40 of which will require a 200 AMP service and 0 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 37,247.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 40, 200 AMP services at the cost of \$ 931.17 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this Agreement. This estimated amount shall be paid to the City and held by the City during

- construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.
4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
 5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
 6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[River Valley Development, LLC]

By:
Its:


By: L Boyd Cook
Its: CFU

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this 18 day of Aug, 2023, between Hurricane City, a Utah municipal corporation (the "City") and Falcon Crest (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3-2-10-42112 ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 03/05/2020.
- c. The preliminary plat identifies 56 lots, 56 of which will require a 200 AMP service and 0 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 28,247.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 56, 200 AMP services at the cost of \$ 504.41 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this Agreement. This estimated amount shall be paid to the City and held by the City during

construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

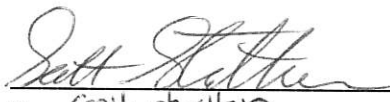
4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[Falcon Crest]

By:
Its:


By: SCOTT STRATTON
Its: Managing Member,

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this 18 day of Aug, 2023, between Hurricane City, a Utah municipal corporation (the "City") and Diamond's Edge Construction (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3394-J-1, H-3394-H ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 02/02/2023.
- c. The preliminary plat identifies 200 units, 200 of which will require a 200 AMP service and 0 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 162,867.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 200 200 AMP services at the cost of \$ 814.33 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this

Agreement. This estimated amount shall be paid to the City and held by the City during construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such

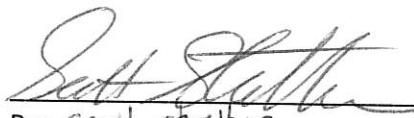
right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[Diamond's Edge Construction]

By:
Its:


By: SCOTT STATTEN
Its: Managing Member

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this 18 day of Aug, 2023, between Hurricane City, a Utah municipal corporation (the "City") and Diamond's Edge Construction (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3396-C, H-3396-D, H-3396-E ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 04/21/2022.
- c. The preliminary plat identifies 40 lots, 20 of which will require a 200 AMP service and 20 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 48,860.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 60, 200 AMP services at the cost of \$ 814.33 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this Agreement. This estimated amount shall be paid to the City and held by the City during

construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[Diamond's Edge Construction]

By:
Its:


By: SCOTT STRATTON
Its: Managing Member

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this 23 day of August, 2023, between Hurricane City, a Utah municipal corporation (the "City") and DAF Development, LLC (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3394-A-2-A ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 02/01/2021.
- c. The preliminary plat identifies 30 lots, 0 of which will require a 200 AMP service and 30 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 48,860.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 60, 200 AMP services at the cost of \$ 814.33 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this Agreement. This estimated amount shall be paid to the City and held by the City during

construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[DAF Development, LLC]

By:

Its:

By:

Its: MANAGER

8/23/2023

DESERT SKY

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this 22nd day of AUGUST, 2023, between Hurricane City, a Utah municipal corporation (the "City") and Tytanium Development (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3386-B ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 02/02/2023.
- c. The preliminary plat identifies 73 lots, 73 of which will require a 200 AMP service and 0 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 109,072.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 73, 200

AMP services at the cost of \$ 1,494.14 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this Agreement. This estimated amount shall be paid to the City and held by the City during construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.

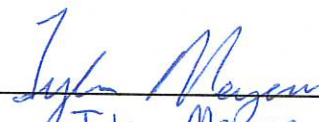
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.
7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[Tytanium Development]

By:
Its:

By:
Its:


Tyler Meyers
MANAGER

AGREEMENT TO INCREASE POWER CAPACITY

This Agreement to Extend Power Infrastructure ("Agreement") is entered into this 23rd day of August 2023, between Hurricane City, a Utah municipal corporation (the "City") and Kobat Development, LLC and RanLife Homes Cordero, LLC (the "Developer").

Recitals

- a. Developer owns property identified by the Washington County Assessor's Office as parcel numbers H-3400-N, H-3400-O ("Developer's Property").
- b. A preliminary plat for Developer's Property was approved by the Hurricane City Council on 02/02/2023.
- c. The preliminary plat identifies 345 lots, 345 of which will require a 200 AMP service and 0 of which will require a 400 AMP service (together the "Developer's Load").
- d. Without improvements and additional construction, the City's power infrastructure lacks capacity to serve the Developer's Load.
- e. The City has calculated and determined the estimated proportionate cost to improve and construct the infrastructure to serve the Developer's Load (the "Developer's Proportionate Cost").
- f. The Developer's Proportionate Cost shall be a portion of the total cost to the City to improve and construct the power infrastructure to serve a finite number of additional units (the total cost is referred to herein as the "Total Cost").
- g. The Developer has opted to pay the Developer's Proportionate Cost to serve the Developer's Load and, for purposes of power availability, allow development of Developer's Property.
- h. This Agreement sets forth the terms and conditions of the arrangement between the City and the Developer.

NOW, THEREFORE, the parties agree as follows:

1. Incorporation. The above recitals are incorporated herein by reference.
2. Condition Precedent. Regardless of the Developer's payment of Developer's Proportionate Cost, the City has no obligation to perform under the terms of this Agreement until enforceable contracts are in place and funds are received by the City for the estimated Total Cost.
3. Payment, Additional Payment, Reimbursement, Adequate Power Infrastructure, and Timeline. Developer shall pay to the City \$ 321,253.00, which constitutes the estimated Developer's Proportionate Cost, calculated at the equivalent of 345, 200 AMP services at the cost of \$ 931.17 per 200 AMPs. The Developer's Proportionate Cost shall be paid to the City within fourteen calendar days from the full execution of the Agreement. Failure to timely pay the Developer's Proportionate Cost shall be breach of this Agreement and shall result in the immediate termination of this Agreement. This estimated amount shall be paid to the City and held by the City during

construction and used to cover the costs of materials, engineering, labor, overhead, and any other costs deemed necessary by the Hurricane City Power Department for the construction of the infrastructure. If the payment of the estimated Developer's Proportionate Cost is insufficient to cover the actual Developer's Proportionate Cost, the Developer shall pay such additional amounts to cover the actual Developer's Proportionate Cost. If the payment of the estimated Developer's Proportionate Cost is in excess of the actual Developer's Proportionate Cost, the City shall reimburse the over payment to the Developer. The execution of this Agreement and the payment of the estimated Developer's Proportionate Cost shall satisfy the requirement for adequate power infrastructure pursuant to Hurricane City Code sections 9-6-3 and 10-37-4 such that the lack of power capacity shall not be a basis for the Hurricane City Power Department to withhold signatures on construction drawings for the development of Developer's Property. Within 24 months of the execution of this Agreement and the payment of the estimated Total Cost, the City shall complete the improvements and construction and provide an accounting to the Developer pursuant to this paragraph.

4. Authority to Sign. The City and Developer each warrant and represent that it is duly authorized to enter into, execute, and carry out this Agreement.
5. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the parties' reasonable control, including, without limitation, the following force majeure events that frustrates the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor shortages or slowdowns or other industrial disturbances; (i) epidemic, pandemic, or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the parties.
6. No Impact Fee Reimbursement. The Developer understands and agrees that all payments made pursuant to this Agreement are to provide power capacity to Developer's Property, and the payment by the Developer has been specifically calculated based on the amount of power being provided to Developer's Property. As such, Developer shall have no right to any credit, waiver, voucher, or reimbursement because of payments made hereunder. Developer expressly waives any claim to such right under the Constitution of the United States, Utah Constitution, Federal and State Statutes, and Hurricane City ordinances.

7. Represented by Counsel. Each party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions and obligations contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any party with a defense to the enforcement of the terms of this Agreement against such party based upon lack of legal counsel shall have no application and is expressly waived. The parties also agree that this Agreement shall be deemed as jointly drafted by the parties and no presumption against the drafting party shall exist.
8. Assignment. Developer's rights under this Agreement cannot be assigned or conveyed. The rights granted under this Agreement cannot be transferred and may only be utilized on the Developer's Property. Developer and Developer's successors in interest in Developer's Property shall be jointly bound by the terms of this Agreement and shall be jointly and severally liable for any breach of this Agreement. Developer's obligations under this Agreement shall run with the land.

HURRICANE CITY

[Kobat Development, LLC]

By:
Its:


By: STEVE BARTON
Its: MANAGER

[RanLife Homes Cordero, LLC]


By: GARIK SMITH
Its: MANAGER



STAFF COMMENTS

Consideration and possible approval of **Resolution 2023-38 authorizing the Steel Solar 1A Project** Second amended and restated transaction schedule under the master firm power supply agreement with Utah Associated Municipal Power Systems and related matters-Scott Hughes

Discussion:

This agenda item refers to the Steel Solar Project which is a solar (photovoltaic) energy resource being constructed in Box Elder County, Utah. We signed up for approximately 2.5 megawatts of energy for the next 25 years. The reason we have a resolution before us is to amend the Power Purchase Agreement (PPA) that we had previously signed. The amendment is requested by the project developer, DESRI, because Production Tax Credits (PTCs) recently became available to solar resources through the Inflation Reduction Act that were not previously available. This amendment proposes the following changes to the agreement:

- An increase to the penalty to UAMPS for default or economic curtailment by requiring UAMPS to pay both the contract price and the grossed-up value of the PTCs.
- An increase in the amount of penalty-free economic curtailment that UAMPS can use. For years 1-10, an increase from 600 MW to 2000 MW. For years 11-20, an increase from 600 MW to 1000 MW. Years 20-25, no economic curtailment allowed without penalty.
- DESRI will allow UAMPS to develop a battery project adjacent to the Steel Solar site and use commercially reasonable efforts to cooperate with UAMPS in obtaining governmental approvals for the project over the next three years.
- UAMPS is explicitly permitted to assign the PPA to J. Aron under a prepay arrangement structured to provide UAMPS members the benefits of the difference between the public and private cost of financing.
- DESRI will split 50/50 with UAMPS any benefits it receives under the Powering Affordable Clean Energy program administered by the U.S. Rural Utilities Service.

Power Board recommended approval of this resolution with a unanimous vote.

Findings:

Recommendation:

Attachments:

1. Resolution-Second Amended__FirmPowerSupplyAgrResolutionSteelSolar_Hurricane (1)
2. Exhibit A-Steel Solar Transaction Schedule_Second Amended and Restated (August 2023)__Hurricane

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING THE STEEL SOLAR 1A PROJECT SECOND AMENDED AND RESTATED TRANSACTION SCHEDULE UNDER THE MASTER FIRM POWER SUPPLY AGREEMENT WITH UTAH ASSOCIATED MUNICIPAL POWER SYSTEMS; AND RELATED MATTERS.

WHEREAS, Hurricane City (the “Member”) owns and operates a utility system for the provision of electric energy to its residents and others (the “System”) and is a member of Utah Associated Municipal Power Systems (“UAMPS”) pursuant to the provisions of the Utah Associated Municipal Power Systems Amended and Restated Agreement for Joint and Cooperative Action dated as of March 20, 2009, as amended (the “Joint Action Agreement”);

WHEREAS, the Member desires to purchase all or a portion of its requirements for electric power and energy from or through UAMPS and has entered into a Power Pooling Agreement with UAMPS to provide for the efficient and economic utilization of its power supply resources;

WHEREAS, the Member has previously entered into the Master Firm Power Supply Agreement with UAMPS in order to allow for UAMPS entering into various firm transactions for the purchase and sale of firm supplies of electric power and energy;

WHEREAS, UAMPS has investigated the Steel Solar 1A Project, a forty (40) megawatt (MW) solar photovoltaic generation facility to be located in Box Elder County, Utah, on behalf of its members and is now prepared to enter into a twenty-five (25) year second amended and restated power purchase agreement with Steel Solar LLC to secure the delivery of all the energy from the Project and associated environmental attributes; and

WHEREAS, the Member now desires to authorize and approve the Steel Solar 1A Second Amended and Restated Transaction Schedule (“Second Amended and Restated Transaction Schedule”) attached hereto as Exhibit A for the Project subject to the parameters set forth in this Resolution.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hurricane City as follows:

Section 1. Authorization of Steel Solar 1A Second Amended and Restated Transaction Schedule. The Second Amended and Restated Transaction Schedule, in substantially the form presented at the meeting at which this resolution is adopted, is hereby authorized and approved, and the Member Representative is hereby authorized, empowered and directed to execute and deliver the Second Amended and Restated Transaction Schedule on behalf of the Member. Promptly upon its execution, the Second Amended and Restated Transaction Schedule shall be filed in the official records of the Member.

Section 2. Other Actions. The Mayor, City Recorder, the Member Representative and other officers and employees of the Member shall take all actions necessary or reasonably required to carry out,

give effect to, and consummate the transactions contemplated hereby and shall take all actions necessary to carry out the execution and delivery of the Second Amended and Restated Transaction Schedule and the performance thereof.

Section 3. Miscellaneous; Effective Date. (a) All previous acts and resolutions in conflict with this resolution or any part hereof are hereby repealed to the extent of such conflict.

(b) In case any provision in this resolution shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

(c) This resolution shall take effect immediately upon its adoption and approval.

ADOPTED AND APPROVED this _____ day of _____, 2023.

HURRICANE CITY

Mayor

ATTEST AND COUNTERSIGN:

City Recorder

[SEAL].

EXHIBIT A
STEEL SOLAR 1A SECOND AMENDED AND RESTATED TRANSACTION SCHEDULE

**STEEL 1(A) SOLAR PROJECT
FIRM POWER SUPPLY AGREEMENT
SECOND AMENDED AND RESTATED TRANSACTION SCHEDULE**

This Second Amended and Restated Transaction Schedule to the Master Firm Power Supply Agreement to which all Parties to this Transaction Schedule are signatories provide for the following transactions. The Parties to this Second Amended and Restated Transaction Schedule agree to the following provisions and agree to pay all costs of this transaction through the Firm Power Supply Project.

PURCHASER: Hurricane City

ENTITLEMENT SHARE: 6.46%

SUPPLIER: Steel Solar, LLC (the “Steel Solar Project”)

EFFECTIVE DATE: The Power Purchase Agreement by and between UAMPS and Steel Solar, LLC for the Steel 1(A) Solar Resource (the “Original PPA”) was executed on November 18, 2020 and that certain amendment to the Original PPA dated as of February 16, 2022 (“Amendment”). The Original PPA, as amended by the Amendment, was amended, restated and executed by UAMPS and Steel Solar, LLC on June 23, 2022 (the “First Amended PPA”). The First Amended PPA was amended, restated and executed by UAMPS and Steel Solar, LLC on August 30, 2023 (“Second Amended PPA”) The Second Amended PPA becomes effective upon UAMPS obtaining member governing body approvals. UAMPS anticipates satisfying this condition within 60 days of executing the Second Amended PPA. The Scheduled Commercial Operation Date (“COD”) is November 30, 2023. The COD may not occur earlier than March 30, 2023 but not later than March 30, 2024.

TERM: A 25-year delivery term commencing on COD. The Second Amended PPA will become effective upon UAMPS satisfying the condition precedent identified above.

AMOUNT: 2,584 kW and associated Environmental Attributes (“Entitlement Share”)

PRICE: \$34.66 per MWH

OTHER
PROVISIONS:

Energy: UAMPS will schedule all energy pursuant to the terms and conditions of the Second Amended PPA and will delivery to the Purchaser its Entitlement Share of the Steel 1(A) Solar Resource. The Steel 1(A) Solar

Resource is to be constructed as a 40 MW solar photovoltaic generation facility located in Box Elder County, Utah.

Transmission: UAMPS will charge and the Purchaser will pay transmission charges as adopted by the UAMPS Board of Directors from time to time.

Administration: UAMPS will charge and Purchasers will pay the scheduling fee and reserve fee as adopted by the UAMPS Board of Directors from time to time.

Buyout Options: Under the Second Amended PPA, UAMPS has the ability to buy the Steel 1(A) Solar Resource from Steel Solar, LLC at specified buyout dates pursuant to a fair market value appraisal. If UAMPS is directed to pursue one of its buyout options, then UAMPS will in parallel develop new contracts or amend the Firm Power Supply Agreement with the Purchasers to provide UAMPS with the ability to finance the buyout of the Steel 1(A) Solar Resource.

Step-Up Obligation:

- (1) In the event of a default by one of the Purchasers, UAMPS shall immediately allocate all of the defaulting Purchaser's Entitlement Share among the nondefaulting Purchasers, pro rata on the basis of their then-current Entitlement Shares, which shall remain in effect only until the completion of the procedures provided herein. UAMPS shall provide written notice to the nondefaulting Purchasers of the initial allocation of the defaulting Purchaser's Entitlement Share which notice shall (A) set forth the date of the initial allocation, (B) include a revised Schedule I showing the increased Entitlement Shares as a result of such allocation, (C) direct each of the nondefaulting Purchasers to make an election pursuant to subparagraph (2) below, and (D) set forth the date by which each of the nondefaulting Purchasers must notify UAMPS of such election. The initial allocation of the defaulting Purchaser's Entitlement Share and the increased Entitlement Shares of the nondefaulting Purchasers as a result of such allocation (as shown on the revised Schedule I prepared by UAMPS) shall remain in effect until the completion of the procedures provided for herein. During such period, each of the nondefaulting Purchasers shall have all of the rights, benefits, obligations and responsibilities associated with its increased Entitlement Share as a result of such allocation.
- (2) Within sixty days after the initial allocation of the defaulting Purchaser's Entitlement Share, each nondefaulting Purchaser shall notify UAMPS in writing of its election to: (A) retain all of its initial allocation of the defaulting Purchaser's Entitlement Share; or (B) retain none or less than all of such allocation. Any Purchaser that elects to retain all of its initial allocation of the defaulting Purchaser's

Entitlement Share shall be deemed to have fully satisfied its step-up obligations and shall not thereafter be required to accept any additional allocation of the defaulting Purchaser's Entitlement Share; *provided* that any such nondefaulting Purchaser may give notice to UAMPS of its request to acquire additional amounts of the defaulting Purchaser's Entitlement Share as may be available.

- (3) Within thirty days after its receipt of the elections of all nondefaulting Purchasers pursuant to subparagraph (2), UAMPS shall determine whether the nondefaulting Purchasers have elected to retain all of the defaulting Purchaser's Entitlement Share. In the event that one or more of the nondefaulting Purchaser's elected to retain less than all of the initial allocations of the defaulting Purchaser's Entitlement Share, UAMPS shall reallocate the remaining amounts of the defaulting Purchaser's Entitlement Share proportionally among those nondefaulting Purchasers that have requested additional amounts of the defaulting Purchaser's Entitlement Share. To the extent that any part of the defaulting Purchaser's Entitlement Share is then unallocated, UAMPS shall next reallocate the remaining portion of the defaulting Purchaser's Entitlement Share proportionally among those Purchasers that did not elect to retain all of their initial allocations of such Entitlement Share. Proportional reallocations shall be based upon the Entitlement Shares of the nondefaulting Purchasers in effect immediately prior to the defaulting Purchaser's default.
- (4) In no event shall the final allocation of a defaulting Purchaser's Entitlement Share pursuant to subparagraph (3) (or the total of all such allocations in the event of multiple Purchasers' defaults) cause any nondefaulting Purchaser's Entitlement Share to increase by more than 25% over its "Adjusted Entitlement Share" without such Purchaser's consent. The "Adjusted Entitlement Share" is the Purchaser's Entitlement Share shown on Schedule I on and as of the Effective Date.
- (5) UAMPS shall deliver, promptly after making the determinations and reallocations required by subparagraphs (1-4), a notice to the nondefaulting Purchasers which notice shall (A) set forth the final allocation of the defaulting Purchaser's Entitlement Share pursuant to subparagraph (3), and the effective date of the final allocation, and (B) include a revised Schedule I showing the revised Entitlement Shares of the nondefaulting Purchasers upon the final allocation pursuant to subparagraph (3). The Entitlement Shares shown on such revised Schedule I shall thereafter be the Entitlement Shares of the nondefaulting Purchasers.
- (6) Any portion of the Entitlement Share of a defaulting Purchaser allocated or reallocated to a nondefaulting Purchaser pursuant to this paragraph (b) shall become a part of and shall be added to the Entitlement Share of the nondefaulting Purchaser, and from and after the date of such transfer the nondefaulting Purchaser shall be obligated

to pay for its increased Entitlement Share pursuant to the terms and provisions of this Transaction Schedule. The defaulting Purchaser shall remain liable to UAMPS and the nondefaulting Purchasers for costs incurred and damages suffered by them in connection with the actions taken with respect to the defaulting Purchaser's Entitlement Share provided for herein.

- (7) If, as a result of the limitation stated in subparagraph (4) above, any portion of a defaulting Purchaser's Entitlement Share remains unallocated or upon the request of any nondefaulting Purchaser, UAMPS shall use Commercially Reasonable Efforts to sell or dispose of the unallocated or designated Entitlement Share. The defaulting Purchaser shall be liable for the costs, fees and expenses incurred by UAMPS in connection with any such sale, disposition or remedial action.

Other:

Any costs incurred by UAMPS due solely to this Transaction Schedule, including but not limited to the Second Amended PPA costs, transmission costs, scheduling costs, administrative costs and legal costs will be the responsibility of Purchasers invoiced through the UAMPS Power Bills.

This Transaction Schedule may be signed in counterpart.

Dated this _____ day of _____, 2023.

HURRICANE CITY

By:_____

Title:_____

UTAH ASSOCIATED MUNICIPAL POWER
SYSTEMS

By:_____

Title:_____

Schedule I

MEMBER	KW AMOUNT 40,000	ENTITLEMENT %
Blanding	646	1.62%
Bountiful	6,459	16.15%
Fairview	129	0.32%
Fillmore	388	0.97%
Heber	6,459	16.15%
Hurricane	2,584	6.46%
Hyrum	2,584	6.46%
Lehi	10,000	25.00%
Mt. Pleasant	388	0.97%
Paragonah	50	0.13%
Payson	3,877	9.69%
Price	3,500	8.75%
Santa Clara	1,000	2.50%
SUVESD	646	1.62%
Washington	1,292	3.23%
TOTAL	40,000	100.00%



STAFF COMMENTS

Ordinance 2023-17: Consideration and possible approval on a Land Use Code Amendment to **Title 10 Chapter 37 Subsection 9 and Title 10 Chapter 7** regarding fences and walls

Discussion:

The primary purpose of this proposed change is to limit the permitted fencing materials within residential zones and perform other needed adjustments to the language in the fencing ordinance. The Planning Commission gave a unanimous recommendation for approval by the City Council. This ordinance amendment has had legal review.

Findings:

Recommendation:

Attachments:

1. Sec._10_37_9._Fences_and_walls_(final version)
2. LUCA23-07 Fences_Walls_CC Staff Rpt
3. Ordinance 2023-17 Fences & Walls Ord Update
4. Copy of Sec._10_37_9.___Fences_and_walls_ (DH RL)_GC edits

Sec. 10-37-9. Fences and walls.

- A. *Height of fences and walls.* No fence, wall, or similar structure exceeding six feet in height shall be erected in any rear or side yard except for accessory buildings and structures permitted by this chapter unless by conditional use permit.
- B. *Retaining walls.* When a retaining wall protects a cut below natural grade and is located on a line separating lots, such retaining wall may be topped by a fence, wall, or hedge of the same height that would otherwise be permitted at such location if no retaining wall existed. Retaining walls shall not be built in public utility easements.
- C. *Fences in front or side yards.* No opaque fence or wall or other similar structure exceeding 48 inches in height shall be erected within a front yard except upon written permission from the Planning Commission.
- D. *Swimming pools.* Swimming pools of permanent construction not enclosed within a building shall be completely surrounded by a fence or wall that meets building code requirements.
- E. *Visual obstructions.* To avoid creating a visual obstruction and promote public safety, a fence, wall, or other similar structure or landscaping located in a required front yard shall meet the following requirements:
 - 1. No opaque fence, wall, or other similar structure, or landscaping that exceeds two feet in height shall be placed within a triangular area formed by a driveway line, the street property line, and a line connecting them at points 12 feet along the driveway line and 12 feet along the street property line, except for a reasonable number of trees pruned high enough to permit unobstructed vision for drivers of motor vehicles.
 - 2. No fence, wall, or other similar structure, or landscaping which exceeds two feet in height shall be placed on any corner lot within a triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, except for a reasonable number of trees pruned high enough to permit unobstructed vision for drivers of motor vehicles. An exception to this requirement may be granted by the City Engineer in unique circumstances and upon a finding that proper sight distances will be maintained.
- F. *Prohibited materials:* The following fencing materials shall be prohibited on properties containing single-family or two-family dwellings:
 - 1. Security wire, such as barbed wire, concertina wire, or razor wire, except for agricultural uses; and
 - 2. Electrified fencing, except for agricultural uses.
- G. *Incompatible uses:* In addition to the requirements of Chapter 39, Section 11 of this Title, whenever a lot or parcel is developed with a use that is different than a use located on an abutting lot or parcel, the new development shall include installation of a fence or wall along the property line between the different uses. When a lot is developed adjacent to an agricultural property, unless otherwise waived by the affected agricultural property owner, fencing abutting agricultural property shall be required of the developing property owner. Fence shall be at a

minimum, six feet high with posts spaced at eight feet apart. The agricultural property owner shall have the option of paying the additional cost to create spacing of the post at six feet. Fencing and post material and design shall be approved in conjunction with the approval of a land use application, building permit, or site plan.

(Ord. 03-5-1, 5-1-2003, eff. 6-1-2003; Ord. 2016-02, 2-4-2016); Ord. 2018-09, 9-6-2018)

Sec. 10-7-9 Conditional Use Permit.

...

B. Authority.

1. The Planning Commission is authorized to issue conditional use permits for the following uses:

Agricultural industry.

Agritourism activities.

Animal specialties.

Assisted living facility.

Greater heights than permitted by this Code in all zones except residential and residential agricultural zones.

Greater size than permitted by this Code in all zones except residential and residential agricultural zones.

Metal building in commercial and residential zones.

Multi family in commercial zones.

Public stable.

Reception center.

Recreation and entertainment, outdoor.

Fences or walls of greater height.

2. The Zoning Administrator is authorized to issue conditional use permits for the following uses:

Animals and fowl for recreation and family food production.

Greater size accessory buildings than permitted by this Code in residential zones.

Greater size accessory buildings than permitted by this Code in residential and residential agricultural zones.

Greater height accessory buildings than permitted by this Code in residential and residential agricultural zones.

...

E. Approval standards. The following standards shall apply to the issuance of a conditional use permit:

1. A conditional use permit may be issued only when the proposed use is shown as conditional in the zone where the conditional use will be located, or by another provision of this title.

2. Standards for each use must be reviewed. Specific standards are set forth for each use in subsections E2a through E2g of this section:

...

m. Standards for a fence or wall of greater height.

(1) Except for fences or walls surrounding public utility facilities, the fence or wall may not be located in the front yard of the property, but must be located in the rear or side yard;

(2) The fence wall or may not exceed eight feet in height;

(3) Except for fences or walls surrounding public utility facilities, the topography of the subject property and surrounding properties must be of such a unique or unusual character that a wall of greater height is necessary for the typical quiet enjoyment of the property;

(4) The fence or wall shall comply with all other provisions of this Title.

.



STAFF COMMENTS

Agenda Date:	09/21/2023
Application Number:	LUCA 23-07
Type of Application:	Land Use Code Amendment
Action Type:	Legislative
Applicant:	Hurricane City Planning
Agent:	N/A
Request:	Amend Title 10 Chapter 37 and Title 10 Chapter 7 with regards to fences and walls

Planning Commission Recommendation 9/14/2023:

The Planning Commission gave a unanimous recommendation for approval by the City Council. This ordinance amendment has had legal review.

Discussion:

The primary purpose of this proposed change is to limit the permitted fencing materials within residential zones and perform other needed adjustments to the language in the fencing ordinance. A summary of the proposed changes are as follows:

- Barbed wire, razor wire, and electric fences are not permitted in residential areas, except for agricultural purposes.
- New standards for walls of greater height than six feet are added, such as requiring that the wall only be in a rear or side yard.
- At the request of the power department, retaining walls shall no longer be built in public utility easement.
- Aligning the city code with building code with regards to walls around swimming pools.

Recommendation:

Staff recommends the Planning Commission make a recommendation of approval to the City Council.

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 10 CHAPTER 37 AND TITLE 10 CHAPTER 7 WITH REGARDS TO FENCES
AND WALLS**

WHEREAS, Utah Code 10-9a allows for municipalities to regulate land use within their boundaries; and

WHEREAS, The City has a desire to amend regulations for fences and walls within the City; and

WHEREAS, the Planning Commission gave a positive recommendation on the attached revisions to Hurricane City Code,

BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah that Title 10 Chapter 37 Section 9 be amended within Hurricane City Code to read as follows:

Sec. 10-37-9. Fences and walls.

- A. *Height of fences and walls.* No fence, wall, or similar structure exceeding six feet in height shall be erected in any rear or side yard except for accessory buildings and structures permitted by this chapter unless by conditional use permit.
- B. *Retaining walls.* When a retaining wall protects a cut below natural grade and is located on a line separating lots, such retaining wall may be topped by a fence, wall, or hedge of the same height that would otherwise be permitted at such location if no retaining wall existed. Retaining walls shall not be built in public utility easements.
- C. *Fences in front or side yards.* No opaque fence or wall or other similar structure exceeding 48 inches in height shall be erected within a front yard except upon written permission from the Planning Commission.
- D. *Swimming pools.* Swimming pools of permanent construction not enclosed within a building shall be completely surrounded by a fence or wall that meets building code requirements.
- E. *Visual obstructions.* To avoid creating a visual obstruction and promote public safety, a fence, wall, or other similar structure or landscaping located in a required front yard shall meet the following requirements:
 - 1. No opaque fence, wall, or other similar structure, or landscaping that exceeds two feet in height shall be placed within a triangular area formed by a driveway line, the street property line, and a line connecting them at points 12 feet along the driveway line and 12 feet along the street property line, except for a reasonable number of trees pruned high enough to permit unobstructed vision for drivers of motor vehicles.

-
2. No fence, wall, or other similar structure, or landscaping which exceeds two feet in height shall be placed on any corner lot within a triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, except for a reasonable number of trees pruned high enough to permit unobstructed vision for drivers of motor vehicles. An exception to this requirement may be granted by the City Engineer in unique circumstances and upon a finding that proper sight distances will be maintained.

F. *Prohibited materials*: The following fencing materials shall be prohibited on properties containing single-family or two-family dwellings:

1. Security wire, such as barbed wire, concertina wire, or razor wire, except for agricultural uses; and
2. Electrified fencing, except for agricultural uses.

G. *Incompatible uses*: In addition to the requirements of Chapter 39, Section 11 of this Title, whenever a lot or parcel is developed with a use that is different than a use located on an abutting lot or parcel, the new development shall include installation of a fence or wall along the property line between the different uses. When a lot is developed adjacent to an agricultural property, unless otherwise waived by the affected agricultural property owner, fencing abutting agricultural property shall be required of the developing property owner. Fence shall be at a minimum, six feet high with posts spaced at eight feet apart. The agricultural property owner shall have the option of paying the additional cost to create spacing of the post at six feet. Fencing and post material and design shall be approved in conjunction with the approval of a land use application, building permit, or site plan.

(Ord. 03-5-1, 5-1-2003, eff. 6-1-2003; Ord. 2016-02, 2-4-2016); Ord. 2018-09, 9-6-2018)

BE IT HEREBY FURTHER ORDAINED by the City Council of Hurricane, Utah that Title 10, Chapter 7, Section 9 be amended to read as follows:

Sec. 10-7-9. Conditional use permit.

A. *Purpose*. This section sets forth procedures for considering and approving conditional use permits.

B. *Authority*.

1. The Planning Commission is authorized to issue conditional use permits for the following uses:

Agricultural industry.

Agritourism activities.

Animal specialties.

Assisted living facility.

Greater heights than permitted by this Code in all zones except residential and residential agricultural zones.

Greater size than permitted by this Code in all zones except residential and residential agricultural zones.

Metal building in commercial and residential zones.

Multi family in commercial zones.

Public stable.

Reception center.

Recreation and entertainment, outdoor.

Fences or walls of greater height.

2. The Zoning Administrator is authorized to issue conditional use permits for the following uses:

Animals and fowl for recreation and family food production.

Greater size accessory buildings than permitted by this Code in residential zones.

Greater size accessory buildings than permitted by this Code in residential and residential agricultural zones.

Greater height accessory buildings than permitted by this Code in residential and residential agricultural zones.

C. *Initiation.* A property owner, or the owner's agent, may request a conditional use permit as provided in subsection D1 of this section.

D. *Procedure.* An application for a conditional use permit shall be considered and processed as provided in this subsection.

1. A complete application shall be submitted to the office of the Zoning Administrator in a form established by the administrator along with any fee established by the City's schedule of fees. The application shall include at least the following information:
 - a. The name, address and telephone number of the applicant and the applicant's agent, if any;
 - b. The address and parcel identification of the subject property;
 - c. The zone, zone boundaries and present use of the subject property;
 - d. A description of the proposed conditional use;
 - e. A plot plan showing the following:
 - (1) Applicant's name;
 - (2) Site address;
 - (3) Property boundaries and dimensions;
 - (4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and
 - (5) Adjoining property lines and uses within 100 feet of the subject property.
 - f. Traffic impact analysis, if required by the City Engineer or the Planning Commission;
 - g. A statement by the applicant demonstrating how the conditional use permit request meets the approval standards for the conditional use desired; and
 - h. Such other and further information or documentation as the Zoning Administrator may deem necessary for proper consideration and disposition of a particular application.
2. After the application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Planning Commission as provided in section 10-7-4 of this chapter or shall review the application to determine if it meets the standards for an administrative conditional use permit.
3. A staff report evaluating the application shall be prepared by the Zoning Administrator for a conditional use permit that will be reviewed by the Planning Commission.
4. The Planning Commission shall hold a public meeting and shall thereafter approve, approve with conditions, or deny the application pursuant to the standards set forth in subsection E of this section. A conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with the applicable standards, the conditional use may be denied.
5. After the Planning Commission or Zoning Administrator makes a decision, the Zoning Administrator shall give the applicant written notice of the decision.

6. A record of all conditional use permits shall be maintained in the office of the Zoning Administrator.

E. *Approval standards.* The following standards shall apply to the issuance of a conditional use permit:

1. A conditional use permit may be issued only when the proposed use is shown as conditional in the zone where the conditional use will be located, or by another provision of this title.

2. Standards for each use must be reviewed. Specific standards are set forth for each use in subsections E2a through E2g of this section:

- a. *Standards for a reception center.*

- (1) Hours of operation must be compatible with adjoining uses and comply with City noise regulations.
- (2) Parking shall be contained onsite.
- (3) The center must have an approved site plan.
- (4) If beer, wine, or other alcoholic beverages are served, the center must be licensed by the state alcohol control board.
- (5) Reception Center use must be secondary to any agricultural use on the property.
- (6) Property shall be a minimum of five acres.
- (7) In RA Zoning, Reception Center shall only be used a maximum of five days a month.
- (8) Building must meet the fire code and be inspected by the fire marshal or their representative prior to the approval of the conditional use permit.
- (9) The applicant shall provide an emergency access plan that shall be approved by the fire marshal prior to the approval of the conditional use permit.

- b. *Standards for an agricultural industry.*

- (1) Adequate fencing and/or enclosures must be provided to ensure animals and fowl are confined safely and in conformance with acceptable animal husbandry standards.
- (2) Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.
- (3) Evidence must be provided on how the applicant will maintain control of flies and vermin.
- (4) Animal enclosures used for intensive animal feeding operations must be at least 25 feet from any adjacent parcel that, at the time the applicant first

seeks the conditional use, is zoned residential or residential-agricultural pursuant to chapters 13 or 14 of this title.

c. *Standards for a public stable.*

- (1) Adequate fencing and/or enclosures must be provided to ensure horses are confined safely and in conformance with acceptable animal husbandry standards.
- (2) Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.
- (3) Evidence must be provided on how the applicant will maintain control of flies and vermin.
- (4) Site must contain adequate off street parking for customers. All trailers must be contained on site.
- (5) Barns must be located at least 30 feet from any adjacent parcel that, at the time the applicant first seeks a conditional use permit, is zoned residential or residential-agricultural.

d. *Standards for an assisted living facility.*

- (1) The facility shall comply with building, safety, and health regulations applicable to similar structures.
- (2) The facility shall be licensed by the state.
- (3) A site plan shall be approved for the facility to ensure adequate parking and landscaping are installed.

e. *Standards for greater heights than permitted by this Code.*

- (1) The height may not be greater than two stories or one and one-half times the average height of the immediately adjacent buildings, whichever is greater and the building must be of compatible architecture with immediately adjacent buildings.
- (2) A greater height conditional use permit may not be issued for a flag lot if the proposed structure is higher than the average height of all residential structures within a 300-foot radius of the proposed structure.
- (3) A greater height accessory building must be set back a minimum of five feet from side and rear property lines when the adjoining property is zoned or used for single family residential use.
- (4) In no event shall a building exceed 55 feet in height.

f. *Standards for greater size than permitted by this Code.*

- (1) The greater size building desired must be of compatible architecture with immediately adjacent buildings.
- (2) At least 50 percent of the lot on which the building is located must remain free of buildings.
- (3) The building must be for a use permitted in the zone in which it is located.

g. *Standards for animals and fowl for recreation and family food production.*

- (1) Adequate fencing must be provided to ensure animals and fowl are confined safely.
- (2) Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.
- (3) Evidence must be provided on how the applicant will maintain control of flies and vermin.
- (4) The number of fowl will be limited by the point system used in section 10-37-15 of this title.
- (5) Livestock numbers may be limited at the administrator's discretion based on the size of the lot and the facilities available to contain and protect the animals.

h. *Standards for metal buildings.*

- (1) In residential (R-1) zones the height and size may not be greater than permitted in the zone.
- (2) The building must meet the following design standards:
 - (A) Exterior building materials shall be durable, require low maintenance, and be of the same or higher quality as surrounding developments.
 - (B) Details of proposed colors and materials, including color chips, samples, and colored building elevations, shall be shown on building plans when a development project application is submitted. Colors shall be compatible with surrounding structures.
 - (C) Reflective surfaces or colors which may produce excessive reflections or glare that may create a potential safety problem are prohibited.
 - (D) In a commercial zone the faces of the building visible from nearby streets must include architectural relief items of non-metal materials including wood, stone, or stucco.

i. *Standards for animal specialties.*

- (1) Adequate fencing and/or enclosures must be provided to ensure animals are confined safely and in conformance with acceptable animal husbandry standards.
- (2) Applicant must provide a plan for how manure will be handled to prevent it becoming a nuisance and must follow the plan.
- (3) Evidence must be provided on how the applicant will maintain control of flies and vermin.
- (4) Animal enclosures used for intensive animal feeding operations must be at least 25 feet from any adjacent parcel that, at the time the applicant first

seeks the conditional use, is zoned residential or residential agricultural pursuant to chapters 13 or 14 of this title.

j. *Standards for agritourism activities.*

- (1) Hours of operation must be compatible with adjoining uses and comply with City noise regulations.
- (2) On-site parking must be provided.
- (3) The use of on street parking to provide up to 40 percent of the required parking may be permitted if adjoining uses are not residential uses and the street is fully improved.
- (4) In agricultural zones, this use must be accessory to an established agricultural use.

k. *Standards for multi-family residential.* In order to promote and preserve commercial growth and to allow infill development of empty and vacant lots in the area designated as downtown on the general map, vacant parcels zoned for commercial uses as listed in this title may, as a conditional use, be allowed for multi-family residential use if the following criteria are met:

- (1) No habitable building has been on the parcel for the previous three years.
- (2) The land use on at least two sides of the property are residential use at the time of application. Property on the opposite side of a public road or right-of-way shall be considered adjacent for this criteria. Properties that do not meet this criteria may be approved for mix-use development as listed below.
- (3) Mix use is allowed. If the proposed development is a mix of commercial use and residential use, then residential units shall be placed on a floor above the commercial use, or in a way to allow commercial buildings to front onto the public roadways. If mixed use, the commercial shall comply with the commercial zoning standards and housing shall comply with RM-3 zoning standards.
- (4) Homes in the downtown area shall have the front of buildings face public roadways. The only exception for this requirement is for mix use developments and for parcels that would allow development of units behind units that front the public right-of-way. Every effort should be made to ensure the frontage of roadways are faced with the frontage of buildings. Walls, fences, and the rear of buildings fronting on to public right-of-way should be avoided.
- (5) Dwelling units and sites shall comply with RM-3 zoning standards and density. RM-3 minimum required area shall not apply.

l. *Standards for multiple accessory dwelling units in a residential, agriculture, or commercial zone.*

- (1) Multiple accessory dwelling units may be permitted based on the lot area of the property at a rate in the table below assuming all other conditions for an accessory dwelling unit are met.

Lot area	Number of accessory dwelling units
0.79 acres or smaller	1
0.8 acres and greater	2

- (2) Fifty percent of the land area on the lot must be free of buildings.
- (3) A parking plan must be provided that shows adequate off street parking on the lot at a rate of one space per bedroom.
- (4) A landscape plan must be provided that shows how buildings will be shielded from other residential lots.
- (5) Occupancy plan: no more than ten people can stay in one building.
- (6) Only one accessory dwelling unit can be used as a short-term rental. All others must be for long term occupancy or as a guesthouse for non-paying guests.
- (7) Separate conditional use permits must be received for every accessory building that does not meet the height or size requirements of 10-13-4.

m. *Standards for a fence or wall of greater height.*

- (1) Except for fences or walls surrounding public utility facilities, the fence or wall may not be located in the front yard of the property, but must be located in the rear or side yard;
- (2) The fence or wall may not exceed eight feet in height;
- (3) Except for fences or walls surrounding public utility facilities, the topography of the subject property and surrounding properties must be of such a unique or unusual character that a wall of greater height is necessary for the typical quiet enjoyment of the property;
- (4) The fence or wall shall comply with all other provisions of this Title.

- F. *Appeal of decision.* Any person adversely affected by a decision of the Planning Commission regarding the transfer, issuance, or denial of a conditional use permit may appeal such decision to the Appeals Board by filing written notice of appeal stating the grounds therefor within 14 days from the date of such decision.
- G. *Appeal of decision by Zoning Administrator.* Any decision of the Zoning Administrator regarding the issuance or denial of a conditional use permit, shall, upon request by the applicant within ten days after a determination by the Zoning Administrator, be submitted for a de novo review and decision by the Planning Commission at their next available meeting.
- H. *Effect of approval.* A conditional use permit shall not relieve an applicant from obtaining any other authorization or permit required under this title or any other title of this Code.

1. A conditional use permit may be transferred so long as the use conducted thereunder conforms to the terms of the permit.
 2. Unless otherwise specified by the Planning Commission and subject to the provisions relating to amendment, revocation or expiration of a conditional use permit, a conditional use permit shall be of indefinite duration and shall run with the land.
- I. *Amendment.* The procedure for amending any conditional use permit shall be the same as the original procedure set forth in this section.
- J. *Revocation.* A conditional use permit may be revoked as provided in section 10-9-6 of this title.
1. In addition to the grounds set forth in section 10-9-6 of this title, any of the following shall be grounds for revocation:
 - a. The use for which a permit was granted has ceased for one year or more;
 - b. The holder or user of a permit has failed to comply with the conditions of approval or any City, state, or federal law governing the conduct of the use;
 - c. The holder or user of the permit has failed to construct or maintain the site as shown on the approved site plan, map, or other approval materials; or
 - d. The operation of the use or the character of the site has been found to be a nuisance or a public nuisance by a court of competent jurisdiction in any civil or criminal proceeding.
 2. No conditional use permit shall be revoked against the wishes of the holder or user of the permit without first giving such person an opportunity to appear before the Planning Commission and show cause as to why the permit should not be revoked or the conditions amended. Revocation of a permit shall not limit the City's ability to initiate or complete other legal proceedings against the holder or user of the permit.
- K. *Expiration.* A conditional use permit shall expire and have no further force or effect if the building, activity, construction, or occupancy authorized by the permit is not commenced within one year after approval.

NOW THEREFORE, BE IT ORDAINED BY THE HURRICANE CITY COUNCIL OF HURRICANE CITY, UTAH THAT:

All ordinances, resolutions, and policies of the City, or parts thereof, inconsistent herewith, are hereby repealed, but only to the extent of such inconsistency. This repealer shall not be construed as reviving any law, order, resolution, or ordinance, or part thereof.

Should any provision, clause, or paragraph of this ordinance or the application thereof to any person or circumstance be declared by a court of competent jurisdiction to be invalid, in whole or in part, such invalidity shall not affect the other provisions or applications of this ordinance or the Hurricane City Municipal Code to which these amendments apply. The valid part of any provision, clause, or paragraph of this ordinance shall be given independence from the invalid

provisions or applications, and to this end the parts, sections, and subsections of this ordinance, together with the regulations contained therein, are hereby declared to be severable.

PASSED AND APPROVED this 21st day of September, 2023

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 21st day of September, 2023. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
Joseph Prete	_____	_____	_____	_____
David Sanders	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Doug Heideman	_____	_____	_____	_____

Cindy Beteag, Recorder

Sec. 10-37-9. Fences and walls.

- A. *Height of fences and walls.* No fence, wall, or similar structure exceeding six feet in height shall be erected in any rear or side yard except for accessory buildings and structures permitted by this chapter unless by conditional use permit.
- B. *Retaining walls.* When a retaining wall protects a cut below natural grade and is located on a line separating lots, such retaining wall may be topped by a fence, wall, or hedge of the same height that would otherwise be permitted at such location if no retaining wall existed. Retaining walls shall not be built in public utility easements.
- C. *Fences in front or side yards.* No opaque fence or wall or other similar structure exceeding 48 inches in height shall be erected within a front yard except upon written permission from the Planning Commission.
- D. *Swimming pools.* Swimming pools of permanent construction not enclosed within a building shall be completely surrounded by a fence or wall that meets building code requirements, having a lockable self-closing gate and a height of at least six feet which conforms to building code barrier requirements or provide another means of protection from accidental drowning which conforms to building code requirements.
- E. *Visual obstructions.* To avoid creating a visual obstruction and promote public safety, a fence, wall, or other similar structure or landscaping located in a required front yard shall meet the following requirements:
1. No opaque fence, wall, or other similar structure, or landscaping ~~that~~which exceeds two feet in height shall be placed within a triangular area formed by a driveway line, the street property line, and a line connecting them at points 12 feet along the driveway line and 12 feet along the street property line, except for a reasonable number of trees pruned high enough to permit unobstructed vision for drivers of motor vehicles.
 2. ~~In all zones which require a front yard, No~~ fence, wall, or other similar structure, or landscaping which exceeds two feet in height shall be placed on any corner lot within a triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines, except for a reasonable number of trees pruned high enough to permit unobstructed vision for drivers of motor vehicles. An exception to this requirement may be granted by the City Engineer in unique circumstances and upon a finding that proper sight distances will be maintained.
- F. Prohibited materials: The following fencing materials shall be prohibited on properties containing single-family or two-family dwellings:
1. Security wire, such as barbed wire, concertina wire, or razor wire, except for agricultural uses; and
 2. Electrified fencing, except for agricultural uses.
- G. Incompatible uses: Notwithstanding the provisionsIn addition to the requirements of Chapter 39, Section 11 of this Title, whenever a lot or parcel is developed with a use that is different than a use located on an abutting lot or parcel, the new development shall include installation of

Commented [DH1]: Is this a new requirement? I like it, but we should think through enforcement and application.

a fence or wall along the property line between the different uses. When a lot is developed adjacent to an agricultural property, unless otherwise waived by the affected agricultural property owner, fencing abutting agricultural property shall be required of the developing property owner. Fence shall be at a minimum, six feet high with posts spaced at eight feet apart. The agricultural property owner shall have the option of paying the additional cost to create spacing of the post at six feet. Fencing and post material and design shall be approved in conjunction with the approval of a land use application, building permit, or site plan.

A solid masonry, chain link or other non-climbable fence not less than six feet in height shall be installed on both sides of existing supply irrigation ditches or canals, or bordering open reservoirs or non-access streets, and which are located within or adjacent to the subdivision, except where the Planning Commission determines that park areas including streams or bodies of water shall remain unfenced.

Unless otherwise waived by affected agricultural property owners, fencing abutting agricultural property shall be required of the developing property owner. Fence shall be at a minimum, six feet high with posts spaced at eight feet apart. (The agricultural property owner shall have the option of paying the additional cost to create spacing of the post at six feet.) Fencing and post material and design shall be approved with the construction drawings. If there was no existing fence, or the existing fence does not protect the new fence, then the developing property owner will be required to install and maintain a fence parallel to the new fence.

(Ord. 03-5-1, 5-1-2003, eff. 6-1-2003; Ord. 2016-02, 2-4-2016); Ord. 2018-09, 9-6-2018)

Sec. 10-7-9 Conditional Use Permit.

...

B. Authority.

1. The Planning Commission is authorized to issue conditional use permits for the following uses:

Agricultural industry.

Agritourism activities.

Animal specialties.

Assisted living facility.

Greater heights than permitted by this Code in all zones except residential and residential agricultural zones.

Greater size than permitted by this Code in all zones except residential and residential agricultural zones.

Commented [DH2]: This was copied from 10-39-11. I tried to revise it, above, to make it fit better here.

Metal building in commercial and residential zones.

Multi family in commercial zones.

Public stable.

Reception center.

Recreation and entertainment, outdoor.

~~W~~Fences or walls of greater height.

2. The Zoning Administrator is authorized to issue conditional use permits for the following uses:

Animals and fowl for recreation and family food production.

Greater size accessory buildings than permitted by this Code in residential zones.

Greater size accessory buildings than permitted by this Code in residential and residential agricultural zones.

Greater height accessory buildings than permitted by this Code in residential and residential agricultural zones.

...

E. Approval standards. The following standards shall apply to the issuance of a conditional use permit:

1. A conditional use permit may be issued only when the proposed use is shown as conditional in the zone where the conditional use will be located, or by another provision of this title.

2. Standards for each use must be reviewed. Specific standards are set forth for each use in subsections E2a through E2g of this section:

...

m. Standards for a fence or wall of greater height.

(1) Except for fences or walls surrounding public utility facilities, the fence or wall may not be located in the front yard of the property, but must be located in the rear or side yard;

(2) The fence wall or may not exceed eight feet in height;

(3) Except for fences or walls surrounding public utility facilities, the topography of the subject property and surrounding properties must be of such a unique or unusual character that a wall of greater height is necessary for the typical quiet enjoyment of the property;

(4) The fence or wall shall comply with all other provisions of this Title.

M. Standards for a wall of greater height

The wall must be in a rear or side yard, except for walls surrounding utility facilities

The wall cannot be greater than eight feet in height.

The wall must be on a property at a lower overall elevation than the property the wall will be adjacent to;

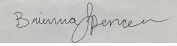
The wall must meet all other standards in Title 10 Chapter 37 of this code.



Application

Permit #:
Issue Date:

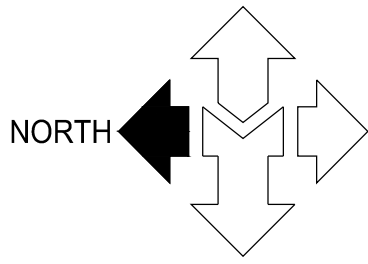
AFP23-16
09/01/2023

Application Accepted Date: 08/28/2023		Valuation		\$	0.00
Type of Improvement: Subdivision (Final Plat Amendment)		PERMIT FEES			
Description: Splitting 2 lots into 3		Planning Fee		\$	150.00
Tenant / Project Name: Walmart Lots 4 and 5		Sub Total:		\$	150.00
Bldg. Address: 3400 W 900 N		Permit Total:		\$	150.00
City: Hurricane State: UT Zip: 84737		Amount Paid:		\$	150.00
Subdivision: Hurricane Wal-Mart Phase:		Remaining Due:		\$	0.00
Block: Lot #: 4,5 Parcel #: H-Walm-4, H-Walm-5					
Property Owner: Chasebrook Hurricane LLC					
Permit Contact: Jay Larsen P:(801) 364-2602					
Email: jay@chasebrookco.com					
CONTACT INFORMATION					
Engineer of Record: McNeil Engineering David Draper					
Email: dave.d@mcneileng.com P: (801) 984-2857					
General Contractor: Walmart Lots 4 and 5 / Jay Larsen					
License #: P: (801) 364-2602					
City: State: Zip:					
Email: jay@chasebrookco.com					
Electrical Contractor:					
License #: P:					
City: State: Zip:					
Plumbing Contractor:					
License #: P:					
City: State: Zip:					
Email:					
Mechanical Contractor:					
License #: P:					
City: State: Zip:					
Email:					
APPLICATION DETAILS					
# of Units: 0 custom text:					
APPLICATION NUMBER: PENDAFP23-17					
This permit becomes null and void if work or construction authorized is not commenced within 180 days, or if construction or work is suspended or abandoned for a period of 180 days at any time after work is commenced. I here-by certify that I have read and examined this application and know the same to be true and correct. All provisions of laws and ordinances governing this type of work will be compiled with whether specified herein or not the granting of a permit does not presume to give authority to violate or cancel the provisions of any other state or local law regulating construction or the performance of construction and that I make this statement under penalty of perjury. Maintenance Deposit is refundable after final inspection if: 1) site is kept clean 2) building is NOT occupied prior to final inspection and issuance of Certificate of Occupancy.					
Applicant Name: Jay Larsen					
Signature of Applicant/Authorized Agent or Owner: Date:					
Application Approved By: Date:					
 08/30/2023					
Application Issued By: Date:					
09/01/2023					
Receipt #:					

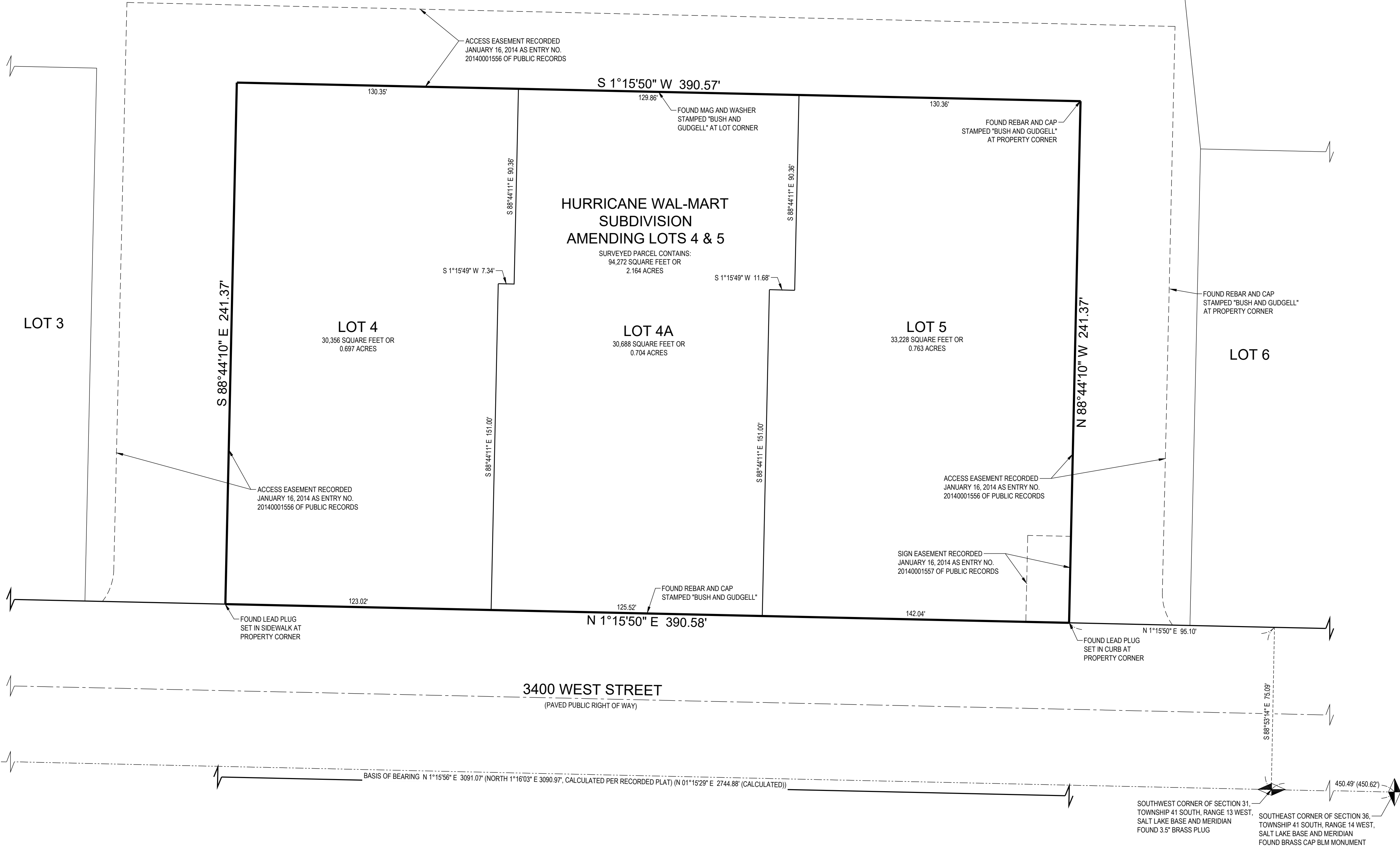
HURRICANE WAL-MART SUBDIVISION AMENDING LOTS 4 & 5

LOCATED IN THE SOUTHWEST 1/4 OF SECTION 31

TOWNSHIP 41 SOUTH, RANGE 13 WEST
SALT LAKE BASE & MERIDIAN
WASHINGTON COUNTY
HURRICANE, UTAH

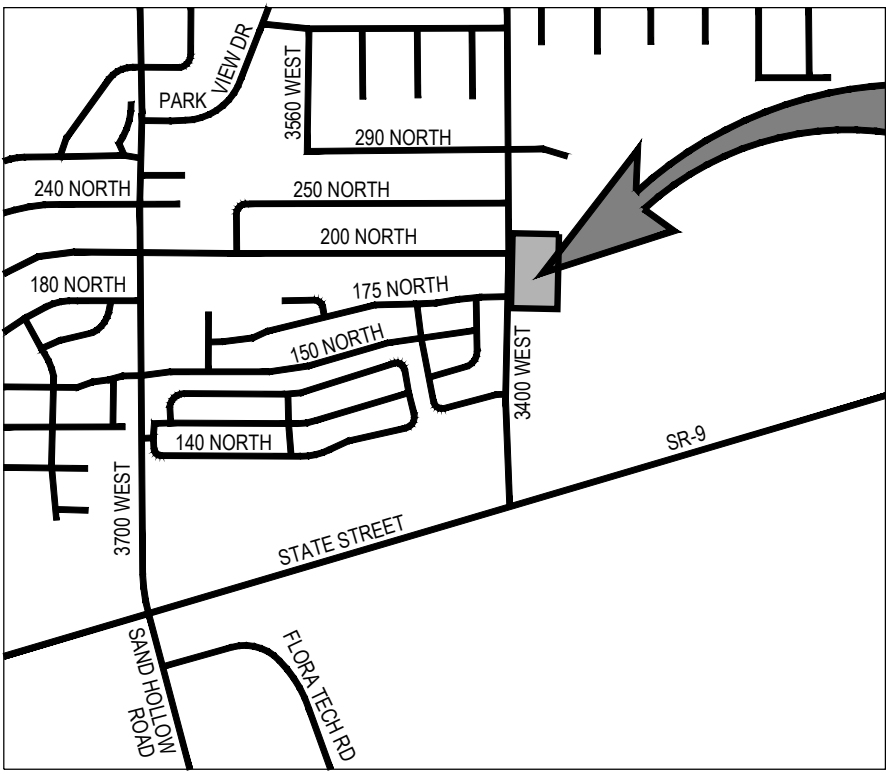


SCALE: 1" = 30'



EAST QUARTER CORNER OF SECTION 36,
TOWNSHIP 41 SOUTH, RANGE 14 WEST,
SALT LAKE BASE AND MERIDIAN, NOT
FOUND

WEST QUARTER CORNER OF SECTION 31,
TOWNSHIP 41 SOUTH, RANGE 13 WEST,
SALT LAKE BASE AND MERIDIAN
FOUND BRASS CAP MONUMENT



VICINITY MAP
SCALE: N.T.S.

LEGEND

- SUBDIVISION BOUNDARY
- SECTION LINE
- MONUMENT LINE/CENTER LINE OF ROAD
- LOT LINE
- ADJOINING PROPERTY LINE
- EASEMENT LINE
- SUBDIVISION BOUNDARY CORNER, COPPER PLUG OR REBAR & CAP OR NAIL & WASHER STAMPED 'MCNEIL ENGR'
- P&DE PUBLIC UTILITIES & DRAINAGE EASEMENT
- () DENOTES RECORD INFORMATION

NOTES

SHEET

1
OF
1

PREPARED BY:
McNEIL ENGINEERINGTM
Economic and Sustainable Designs, Professionals You Know and Trust
8610 South Sandy Parkway, Suite 200 Sandy, Utah 84070 801.255.7700 mcnellengineering.com
Civil Engineering • Consulting & Landscape Architecture
Structural Engineering • Land Surveying & HDS

SURVEYOR'S CERTIFICATE

I, DAVID B. DRAPER, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD LICENSE NO.: 6861599 IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS ACT, HAVE COMPLETED A SURVEY OF THE PROPERTY DESCRIBED ON THIS PLAT IN ACCORDANCE WITH SECTION 17-23-17 AND HAVE VERIFIED ALL MEASUREMENTS AND HAVE PLACED MONUMENT AS REPRESENTED ON THIS PLAT, AS PRESCRIBED UNDER THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY THE AUTHORITY OF THE OWNERS, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HEREON, AND HAVE SUBDIVIDED SAID TRACT INTO LOTS, AND STREETS, TOGETHER WITH EASEMENTS, HEREAFTER TO BE KNOWN AS:

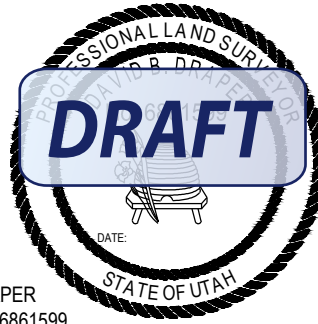
HURRICANE WAL-MART SUBDIVISION AMENDING LOTS 4 & 5

AND THAT AT THE SAME HAS BEEN CORRECTLY SURVEYED AND MARKED ON THE GROUND AS SHOWN ON THIS PLAT.

SUBDIVISION DESCRIPTION

A PARCEL OF LAND AMENDING LOTS 4 AND 5 OF HURRICANE WAL-MART SUBDIVISION, ON FILE AND OF RECORD IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AS ENTRY NO. 20070034350, BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 5 OF SAID SUBDIVISION, SAID POINT BEING NORTH 1°15'56" EAST ALONG THE SECTION LINE 450.62 FEET AND SOUTH 88°53'14" EAST 75.09 FEET AND NORTH 1°19'30" EAST 95.10 FEET FROM THE WASHINGTON COUNTY BRASS CAP MONUMENT MARKING THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 1°15'50" EAST ALONG THE WEST LINE OF SAID SUBDIVISION 390.58 FEET TO THE NORTHWEST CORNER OF LOT 4 OF SAID SUBDIVISION; THENCE SOUTH 88°44'10" EAST ALONG THE NORTHERLY LINE OF SAID SUBDIVISION 241.37 FEET TO THE NORTHEAST CORNER OF SAID LOT 4; THENCE DEPARTING FROM SAID CORNER SOUTH 1°15'50" WEST ALONG THE EAST LINE OF SAID SUBDIVISION 390.57 FEET TO THE SOUTHEAST CORNER OF SAID LOT 5; THENCE DEPARTING FROM SAID POINT NORTH 88°44'10" WEST ALONG THE SOUTH LINE OF SAID SUBDIVISION 241.37 FEET TO THE POINT OF BEGINNING. SURVEYED PARCEL CONTAINS 94,272 SQUARE FEET OR 2.164 ACRES.



DAVID B. DRAPER
LICENSE NO. 6861599

OWNER'S DEDICATION

KNOWN ALL MEN BY THESE PRESENT THAT THE UNDERSIGNED ARE THE OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND, AND HEREBY CAUSE THE SAME TO BE DIVIDED INTO LOTS, PARCELS, AND STREETS, TOGETHER WITH EASEMENTS AS SET FORTH THE BE HEREAFTER KNOWN AS:

HURRICANE WAL-MART SUBDIVISION AMENDING LOTS 4 & 5

AND DO HEREBY DEDICATE FOR PERPETUAL USE OF THE PUBLIC ALL ROADS AND OTHER AREAS SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE. THE UNDERSIGNED OWNERS ALSO HEREBY CONVEY TO ANY AND ALL PUBLIC UTILITY COMPANIES A PERPETUAL, NON-EXCLUSIVE EASEMENT OVER THE PUBLIC UTILITY EASEMENTS SHOWN ON THIS PLAT, THE SAME TO BE USED FOR THE INSTALLATION, MAINTENANCE, AND OPERATION OF UTILITY LINES AND FACILITIES. THE UNDERSIGNED OWNERS ALSO HEREBY CONVEY ANY OTHER EASEMENTS AS SHOWN ON TO THE PARTIES INDICATED AND FOR THE PURPOSES SHOWN HEREON.

IN WITNESS WHEREOF I (WE) HAVE HEREUNTO SET OUR HAND(S) THIS _____ DAY OF _____ A.D., 20____

ENTITY NAME _____ INDIVIDUAL
BY: _____ (PRINT NAME) _____ BY: _____ (PRINT NAME) _____
ITS: _____ (TITLE) _____ BY: _____ (SIGNATURE) _____
BY: _____ (SIGNATURE) _____

CORPORATE ACKNOWLEDGMENT

STATE OF _____ } S.S.
COUNTY OF _____
ON THE _____ DAY OF _____ A.D., 20____, PERSONALLY APPEARED BEFORE ME, _____, WHO AFTER BEING DULY SWORN OR AFFIRMED, ACKNOWLEDGED TO ME THAT _____ IS THE _____ OF _____ AND THAT THE HEREIN OWNER'S DEDICATION WAS SIGNED ON BEHALF OF THE SAID _____ EXECUTED THE SAME.

MY COMMISSION EXPIRES: _____ NOTARY PUBLIC
RESIDING IN HURRICANE COUNTY

CORPORATE ACKNOWLEDGMENT

STATE OF _____ } S.S.
COUNTY OF _____
ON THE _____ DAY OF _____ A.D., 20____, PERSONALLY APPEARED BEFORE ME, _____, WHO AFTER BEING DULY SWORN OR AFFIRMED, ACKNOWLEDGED TO ME THAT _____ IS THE _____ OF _____ AND THAT THE HEREIN OWNER'S DEDICATION WAS SIGNED ON BEHALF OF THE SAID _____ EXECUTED THE SAME.

MY COMMISSION EXPIRES: _____ NOTARY PUBLIC
RESIDING IN HURRICANE COUNTY

HURRICANE WAL-MART SUBDIVISION AMENDING LOTS 4 & 5

LOCATED IN THE SOUTHWEST 1/4 OF SECTION 31
TOWNSHIP 41 SOUTH, RANGE 13 WEST
SALT LAKE BASE & MERIDIAN
WASHINGTON COUNTY
HURRICANE, UTAH

WASHINGTON COUNTY RECORDER

RECORD NO. _____
STATE OF UTAH, COUNTY OF WASHINGTON, RECORDED AND FILED AT THE REQUEST OF _____
DATE: _____ TIME: _____ BOOK: _____ PAGE: _____

FEE \$ _____ WASHINGTON COUNTY RECORDER

ASH CREEK SPECIAL SERVICE DISTRICT

APPROVED THIS _____ DAY OF _____ A.D., 20____,
BY ASH CREEK SPECIAL SERVICE DISTRICT.

ASH CREEK SPECIAL SERVICE DISTRICT

ENGINEER'S CERTIFICATE

I HEREBY CERTIFY THAT THIS OFFICE HAS EXAMINED THIS PLAT AND IT IS CORRECT IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE.

HURRICANE CITY ENGINEER _____ DATE _____

PLANNING COMMISSION

APPROVED THIS _____ DAY OF _____ A.D., 20____,
BY THE HURRICANE CITY PLANNING.

CHAIRMAN, HURRICANE CITY PLANNING COMMISSION

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS _____ DAY OF _____ A.D., 20____

HURRICANE CITY ATTORNEY

HURRICANE CITY COUNCIL

PRESENTED TO THE HURRICANE CITY COUNCIL THIS _____ DAY OF _____ A.D., 20____, AT WHICH TIME THIS SUBDIVISION WAS APPROVED AND ACCEPTED.

HURRICANE CITY RECORDER _____ MAYOR, HURRICANE CITY _____



STAFF COMMENTS

Agenda Date:	09/21/2023
Application Number:	AFP23-16
Type of Application:	Amended Final Plat
Action Type:	Administrative
Applicant:	Jay Larsen
Agent:	David Draper-McNeil Engineering
Request:	Approval of an Amended Final Plat
Location:	3400 W 90 N
Zoning:	HC
General Plan Map:	General Commercial

Planning Commission Recommendation 9/14/2023:

The Planning Commission gave a unanimous recommendation that the City Council approve the application subject to staff and JUC comments.

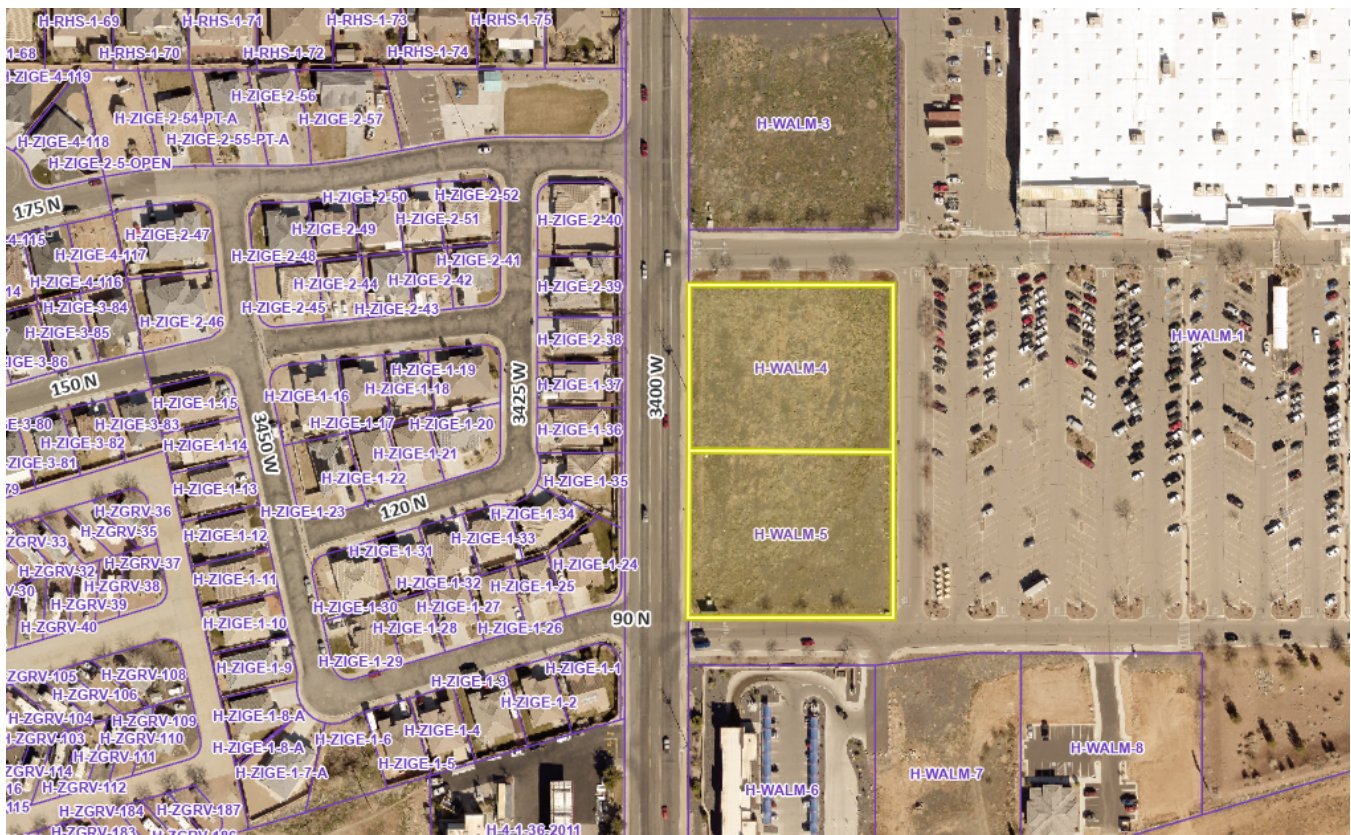
Discussion: The applicant is requesting an amended final plat for the Walmart subdivision to turn two lots into three lots. The applicant has an approved preliminary site plan for three retail/restaurant buildings on this property that was approved in April of 2023.

JUC Comments

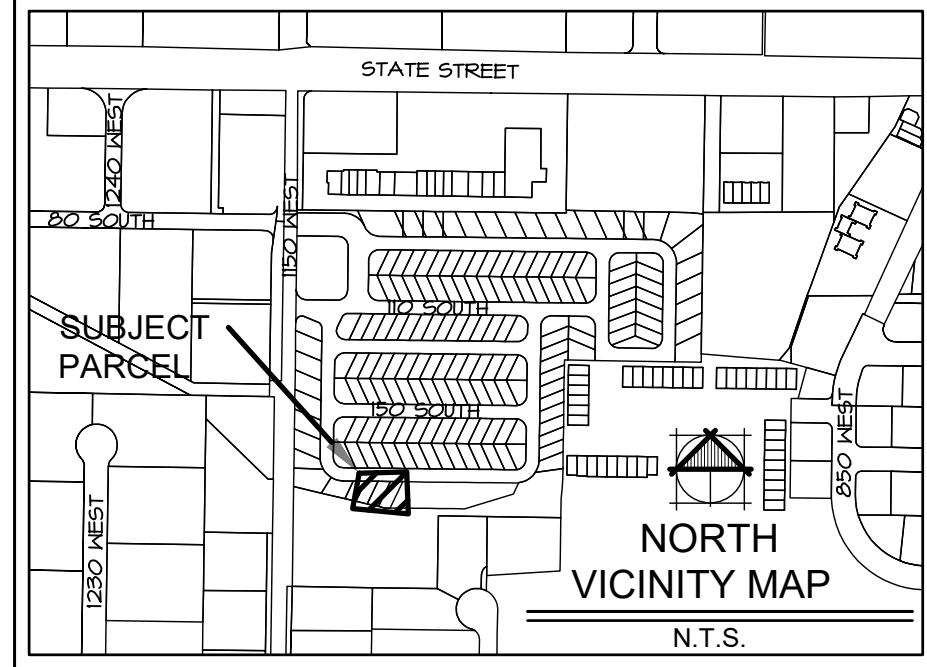
1. **Public Works:** No comments
2. **Power:** No concerns with lot split. May require additional infrastructure to accommodate three units instead of two. 15' utility easement on 3400 W?
3. **Water:** Water meters required for each lot
4. **Streets:** Okay with amendment.
5. **Sewer:** Currently only Lot 4 has a sewer stub. No comment on the lot amendment.
6. **Engineering:** Subdivision description needs updating. It appears a public utility easement should be added along the south and west property lines to protect existing power. Existing easements depicted on the original plat for the Hurricane Wal-Mart subdivision are missing. Owner's dedication needs updating. Engineering is okay with the intent of the application; however the proposed final plat amendment document is incomplete. The applicant should visit HCC 10-39-10 and Engineering would suggest coordinating dedicatory and acceptance language with the City Attorney.
7. **Fire:** Okay
8. **Cable:** No comments
9. **Phone:** No comments

Staff Comments

- These issues are minor, and staff anticipates that they can be easily addressed prior to recordation of the amended final plat.



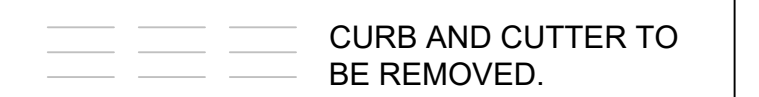
Recommendation: Staff recommends that the Planning Commission review this application based on Hurricane City and State Code standards. Staff recommends approval of this item subject to staff and JUC comments.



WILLOW RV PARK

HURRICANE, UTAH

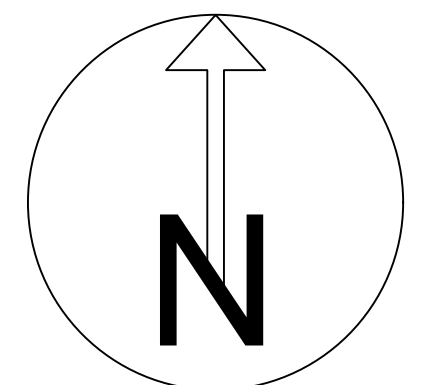
LEGEND



SHEET NAME:

LANDSCAPE PLAN

SOUTH VALLEY LANDSCAPE
2306 E 3860 S
ST. GEORGE, UT 84790
435-294-3723



SHEET NUMBER:

L1.0

LOT 169
(EXISTING)

LOT 170
(EXISTING)

LOT 171
(EXISTING)

LOT 172
(EXISTING)

LOT 173
(EXISTING)

LOT 174
(EXISTING)

LOT 175
(EXISTING)

LOT 176
(EXISTING)

EXISTING CURB AND GUTTER

EXISTING STREET

PROPOSED CURB AND GUTTER

EXISTING CURB AND GUTTER

LOT 65
(EXISTING)

LOT 64
(EXISTING)

CONCRETE RV PAD

CONCRETE RV PAD

CONCRETE RV PAD

REMOVE EXISTING ASPHALT. BACKFILL TO MAINTAIN EXISTING GRADES.

REMOVE EXISTING CURB AND GUTTER

EXISTING TRUCK/TRAILER PARKING

PROPOSED LOTS



STAFF COMMENTS

Agenda Date:	09/212023
Application Number:	AFSP23-01
Type of Application:	Amended Final Site Plan Application
Action Type:	Administrative
Applicant:	Steven Kramer
Agent:	
Request:	Approval of an Amended Final Site Plan
Location:	80 S 1150 W
Zoning:	MH/RV
General Plan Map:	Single Family

Planning Commission Recommendation 9/14/2023:

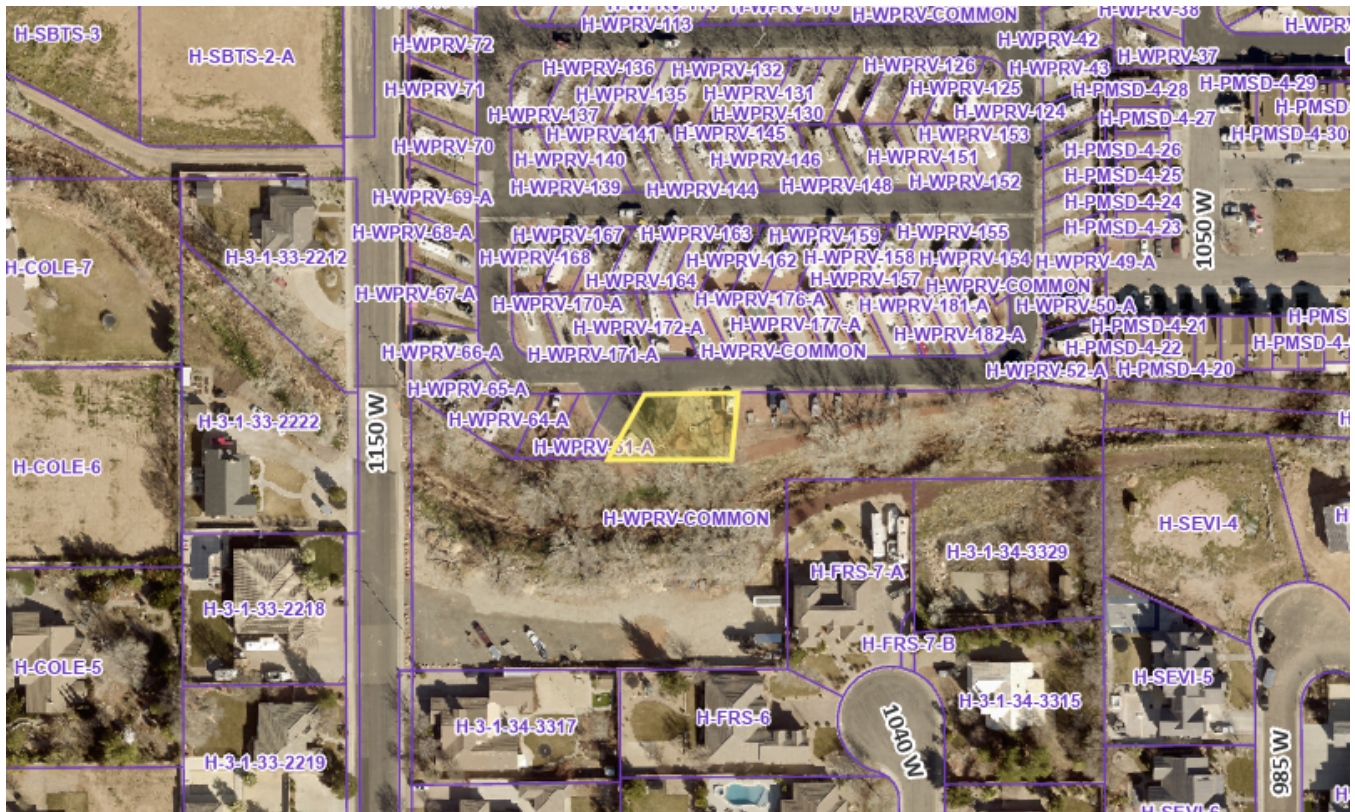
The Planning Commission gave a unanimous recommendation that the City Council approve the application subject to staff and JUC comments.

Discussion:

The applicant has filed to amend the final site plan for Willowind RV park to add three additional RV spots along Gould's Wash.

JUC Comments

Construction drawings were signed off in July of 2023

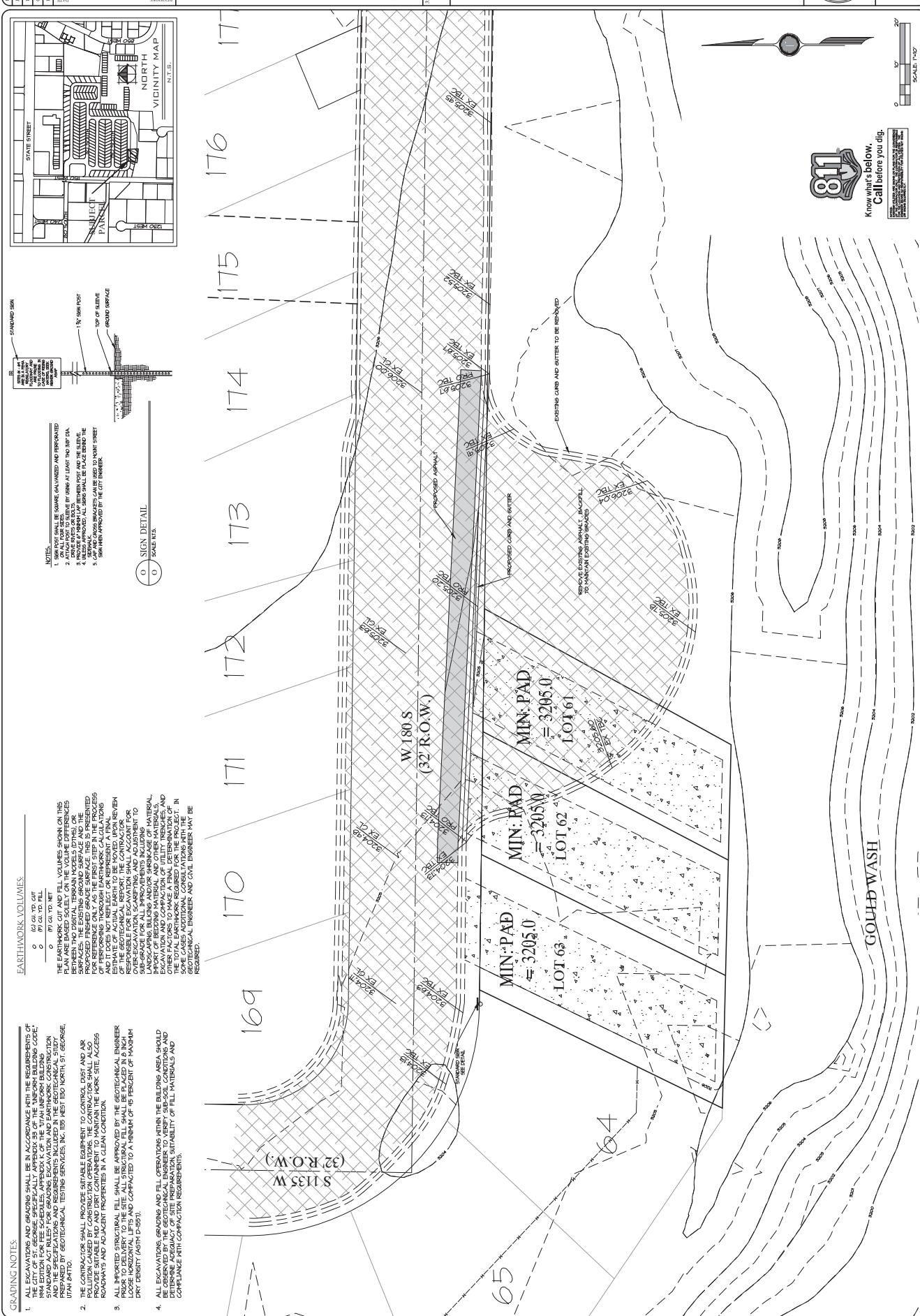


Location is approximate

Staff Comments: Amended Final Site Plan

1. The proposed use is a permitted use in the Mobile Home/RV zoning and is part of a minor expansion of the existing use.
2. Parking Requirement: HCC 10-43-6 states, *"Recreational vehicle park: one parking space per RV space."* Each stall is approximately 2000 sqft, which should accommodate an RV and one additional vehicle.
3. Landscaping: HCC 10-43-6 states that 10% of the development area shall be landscaped. A landscaping plan has been submitted, this site meets this standard.
4. This property is within the mapped floodway for Gould's Wash; this will be accounted for during building permit review.

Recommendation: Staff recommends the Planning Commission review this application based on standards with Hurricane City Code. Staff recommends approval of this final site plan subject to JUC and staff comments.



CHEN ET AL.

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PROJECT.

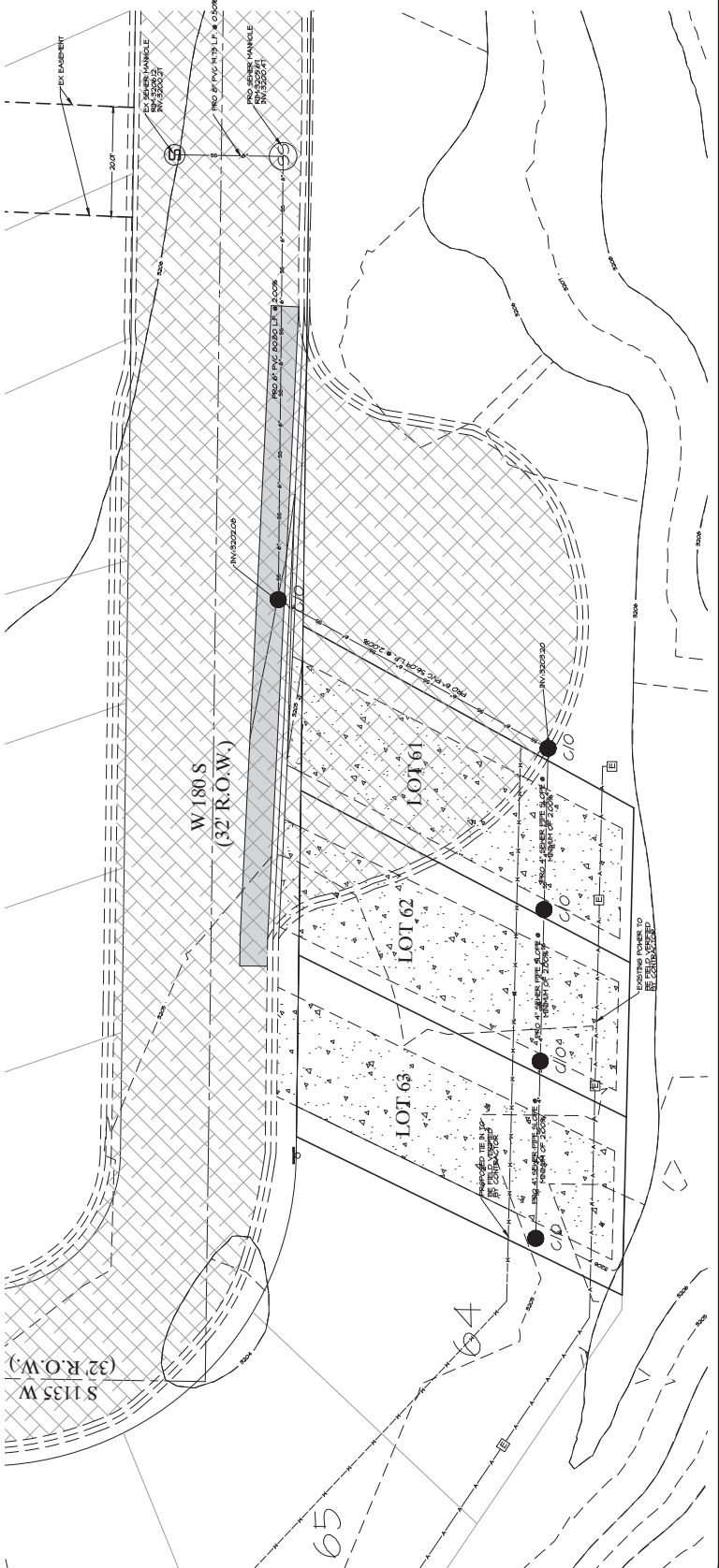
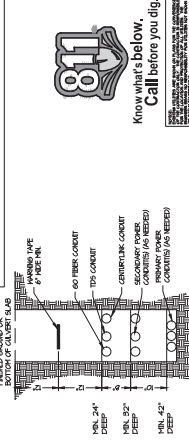
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THAN FOUR (4) HOURS PER 24 HOUR PERIOD. CONNECTION WILL BE AFFECTED BY SERVICE INTERRUPTION AT LEAST 24

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CHECKED BY	ASH CREEK
CONCRETE	4000 PSI
FINISH	CON. FIN.
REVISIONS	
DATE	
BY	
REVISION	

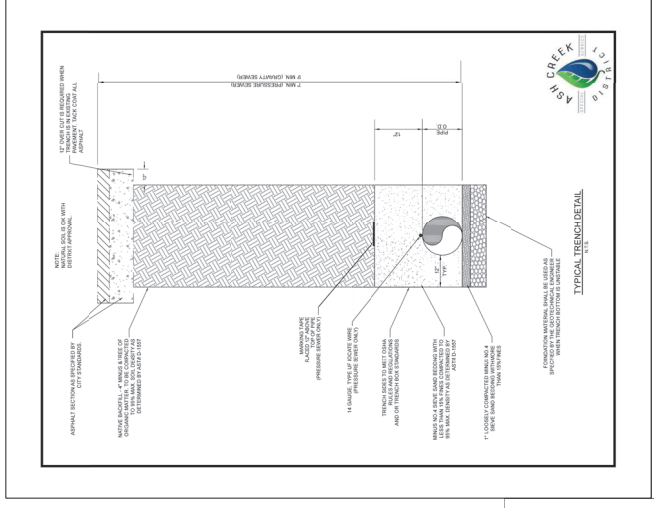
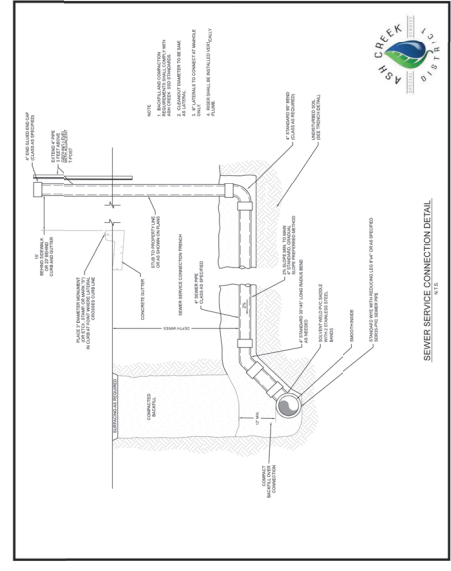
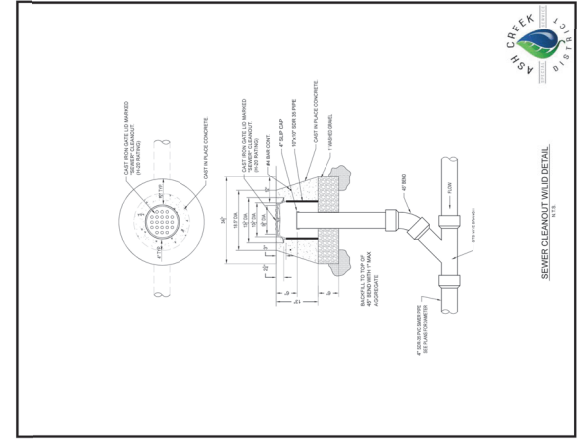
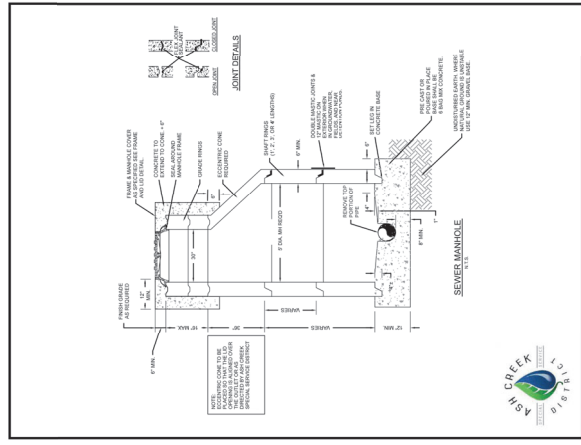
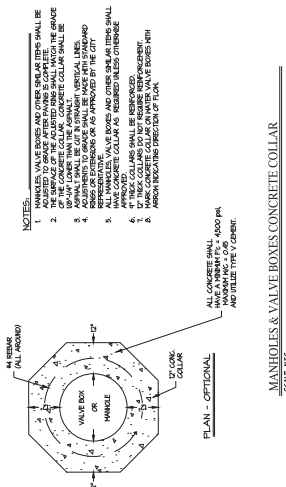
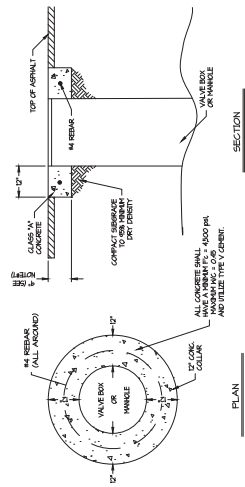


ROSENBERG
 ENGINEERING & LAND SURVEYORS
 101 East Riverside Drive, Suite 100
 Provo, Utah 84601
 801.733.1111 www.rosenberg.com

DETAIL SHEET
 FOR
 WILLOW PARK RV
 HURRICANE
 UTAH



SHEET
 4.0
 1 OF 4 SHEETS

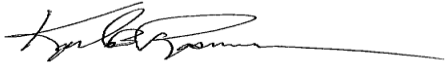


PROJECT: Hurricane City Gymnasium 2023

DATE: 9-20-23 @ 2 PM

BID TAB: Gymnasium Project

				ENGINEER'S ESTIMATE		1 GRASS CREEK CONSTRUCTION		2 BUD MAHAS	
ITEM NO.	ITEM DESCRIPTION	BID QUANTITY	UNITS	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents	UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents
1	Mobilization	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 100,000.00	\$ 100,000.00	\$ 25,000.00	\$ 25,000.00
2	Site Work	1	LS	\$ 350,000.00	\$ 350,000.00	\$ 403,087.00	\$ 403,087.00	\$ 50,000.00	\$ 50,000.00
3	Gymnasium Building	1	LS	\$ 900,000.00	\$ 900,000.00	\$ 1,042,526.40	\$ 1,042,526.40	\$ 2,195,000.00	\$ 2,195,000.00
4	Structural Parts Allowance	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
5	Utility Relocates Allowance	1	LS	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00	\$ 50,000.00
TOTAL of ITEMS (Items 1 thru 5)					\$ 1,400,000.00		\$ 1,645,613.40		\$ 2,370,000.00

I  certify that the above tabulation is correct and represents the bids accepted by Hurricane City.

BID FORM VIA ADDENDUM #1

Proposal of Grass Creek Construction (hereinafter called "Bidder"), organized and existing under the laws of the State of UT doing business as a Grass Creek Construction To Hurricane City (hereinafter called "OWNER").

In compliance with your Advertisement for Bids, Bidder hereby proposes to perform all WORK for the construction of the Hurricane City Gymnasium, in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently without consultation, communication or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract by September 27, 2023. Bonds must be received by this date. BIDDER must fully complete the PROJECT within, 155 **(PLACE YOUR TIME TO COMPLETE PROJECT HERE)** consecutive calendar days from September 27, 2023. BIDDER further agrees to pay as liquidated damages, the sum of \$500.00 for each consecutive calendar day thereafter as provided in Section 28 of the General Conditions.

BIDDER acknowledges that BIDDER has had adequate time to review all necessary documents to prepare an accurate and complete BID and that Bidder has in fact performed sufficient due diligence to assure BIDDER that there are no material errors in the BID. Accordingly, BIDDER hereby explicitly waives Bidder's right or ability to later assert that there was a misunderstanding concerning the quantities or nature of the WORK to be done.

BIDDER acknowledges receipt of the following ADDENDUM:

Addendum #1, Addendum #2

HURRICANE CITY GYMNASIUM BID SCHEDULE

Bidder agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit or lump sum prices.

NOTE – Payment to the Contractor: The Contractor is hereby advised that partial payments will be made monthly and that the final payment will be made within 30 days following the completion of all work specified.
All bids shall be checked for mathematical errors by the ARCHITECT. If errors have been made in the extensions of the figures, it will be assumed that the unit prices are correct, and the total amounts will be revised to reflect the corrections.

SCHEDULE GYMNASIUM

ITEM No.	ITEM DESCRIPTION	QUANTITY	UNITS	MAIN BID	
				UNIT PRICE Dollars & Cents	ITEM PRICE Dollars & Cents
1	Mobilization	1	LS		100,000
2	Site Work	1	LS	403,087.00	403,087.00
3	Gymnasium Building	1	LS		1,042,526.40
4	Structural Parts Allowance	1	LS	\$50,000.00	\$50,000.00
5	Utility Relocates Allowance	1	LS	\$50,000.00	\$50,000.00
TOTAL of BID SCHEDULE =					1645613.40

LS = Lump Sum;
Funding for this project is by Hurricane City

This Supplement to this proposal shall be completed and submitted with the bid schedule. Provide only the subcontractor's name whose bid was used and who will be doing the work for each area of work at the time this proposal is due. Supplement also will become a schedule of values to check each monthly progress payment. General Contractor's listing themselves to self-perform work(s) shall list the employee of their firm who will act as foreman for said work.

MAJOR SUBCONTRACTORS

Description:

GENERAL CONTRACTOR:

Contractor Name: Grass Creek Construction Inc. Contractor

City: Washington,

Self-Performed Work..... \$ _____

General Provisions: \$ 106,793.00

Total: \$ 106,793.00

CONCRETE (FOOTINGS, SLABS, AND FLATWORK):

Subcontractor Name: Grass Creek Construction Inc.

Subcontractor City: Washington

Amount: \$ 133,452.23

UNIT MASONRY (CMU):

Subcontractor Name: Sierra Vista Stucco Inc.

Subcontractor City: St. George

Amount: \$ 72,626.20

STONE VENEER ASSEMBLIES:

Subcontractor Name: Sierra Vista Stucco Inc.

Subcontractor City: St. George

Amount: \$ 37,726.80

STRUCTURAL STEEL / METAL FABRICATIONS:

Subcontractor Name: AA Master ; Desert Rat Welding

Subcontractor City: Enterprise ; Hurricane

Amount: \$ 92,049.00

ROUGH CARPENTRY:

Subcontractor Name: Apex Home Solution LLC ; B'S Drywall

Subcontractor City: St. George ; St. George

Amount: \$ 40,447.00

MILLWORK (CABINETS AND CASE WORK):Subcontractor Name: Fab QuartzSubcontractor City: FrederoniaAmount: \$ 3,140.74**FLOORING:**Subcontractor Name: HB Flooring Solution - Wall CarpetSubcontractor City: St. GeorgeAmount: \$ 27,589.31**BUILDING INSULATION:**Subcontractor Name: Falcon Buildings LLCSubcontractor City: WashingtonAmount: \$ 70,057.28**SHEET METAL FLASHING AND TRIM:**Subcontractor Name: New Horizon Siding & AwningsSubcontractor City: WashingtonAmount: \$ 9,706.00**MANUFACTURED ROOF SPECIALTIES:**Subcontractor Name: Stout RoofingSubcontractor City: St. GeorgeAmount: \$ 1,582.50**JOINT SEALANTS:**Subcontractor Name: Grass Creek ConstructionSubcontractor City: WashingtonAmount: \$ 2,638.00**HOLLOW METAL DOORS AND FRAMES:**Subcontractor Name: Gregco Commercial Door & Hardware Inc ; SunproSubcontractor City: St. GeorgeAmount: \$ 26,119.69**ALUMINUM FRAMED ENTRANCES (STOREFRONTS):**Subcontractor Name: Jones Paint and GlassSubcontractor City: St. GeorgeAmount: \$ 6,102.12

✓ **WINDOWS / GLAZING:**

Subcontractor Name: Jones Paint & Glass
Subcontractor City: St. George
Amount: \$ 10,655.50

DOOR HARDWARE:

Subcontractor Name: Gregco Commercial Door & Hardware Inc.
Subcontractor City: St. George
Amount: \$ 2,468.70

PAINTING AND TRANSPARENT FINISHES:

Subcontractor Name: Accent Painting
Subcontractor City: St. George
Amount: \$ 23,030.45

PLUMBING:

Subcontractor Name: Brighthurst Plumbing
Subcontractor City: St. George
Amount: \$ 55,841.15

FIRE SPRINKLERS:

Subcontractor Name: Advance Fire
Subcontractor City: Hurricane
Amount: \$ 60,346.00

MECHANICAL (HVAC):

Subcontractor Name: Paxman Heating & Cooling
Subcontractor City: Washington
Amount: \$ 183,992.00

ELECTRICAL:

Subcontractor Name: JBI Electric
Subcontractor City: St. George
Amount: \$ 116,162.89

EARTHWORK:

Subcontractor Name: Nelson Excavating
Subcontractor City: St. George
Amount: \$ 164,152.73

SITE WORK (BASE COURSE & ASPHALT ITEMS):

Subcontractor Name: Sunroc
Subcontractor City: St. George
Amount: \$ 113,441.03

SITE WORK (CONCRETE CURB & GUTTER):

Subcontractor Name: Grass Creek Construction Inc.
Subcontractor City: Washington
Amount: \$ 40,029.50

SITE UTILITIES:

Subcontractor Name: Nelson Excavating
Subcontractor City: St. George
Amount: \$ 71,502.63

LANDSCAPING:

Subcontractor Name: Raintree Landscaping
Subcontractor City: St. George
Amount: \$ 43,940.75

General Contractor's proposed foremen of the project:

List foremen here:

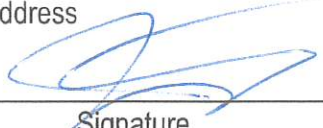
ATTEST:

(Seal – If Bid is by Corporation)

RESPECTFULLY SUBMITTED:

147N 470W
Hurricane, UT

Address


Signature

Jeremy Taggart
Name

Estimator
Title

AIA[®] Document A310[™] – 2010

Bid Bond

CONTRACTOR:

(Name, legal status and address)

Grass Creek Construction, Inc.

1263 S. Hillcrest Drive, Unit A
Washington, UT 84780

OWNER:

(Name, legal status and address)

Hurricane City
147 North 870 West
Hurricane, UT 84737

BOND AMOUNT: Five Percent of the Total Amount Bid (5%)

PROJECT:

(Name, location or address, and Project number, if any)

Hurricane City Gymnasium Project 2023, Hurricane, Utah

SURETY:

(Name, legal status and principal place of business)

Atlantic Specialty Insurance Company
605 Highway 169 North, Suite 800
Plymouth, MN 55441

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

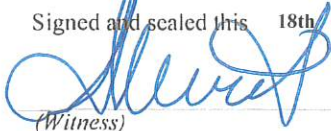
Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 18th day of September, 2023


(Witness)


(Witness) Tina Domask

Grass Creek Construction, Inc.

(Principal)

By:

(Title)

Atlantic Specialty Insurance Company

(Surety)

By:

(Title) Nicole Stillings, Attorney-in-Fact

(Seal)

(Seal)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Init.

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061110





Power of Attorney

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: **Melinda C. Blodgett, R.C. Bowman, R. W. Frank, Ted Jorgensen, Joshua R. Loftis, Brian J. Oestreich, Rachel Thomas, C. White, Emily White, Nathan Weaver, Nicole Stillings**, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: **unlimited** and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this twenty-seventh day of April, 2020.

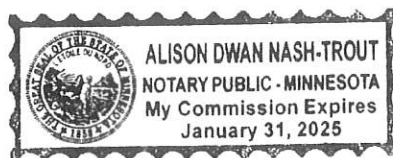
STATE OF MINNESOTA
HENNEPIN COUNTY

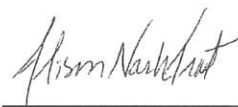


By


Paul J. Brehm, Senior Vice President

On this twenty-seventh day of April, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.





Notary Public

I, the undersigned, Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 18th day of September, 2023

This Power of Attorney expires
January 31, 2025





Kara Barrow, Secretary

ADDENDUM #1
For the
HURRICANE CITY GYMNASIUM

September 14, 2023

TO: ALL PLAN HOLDERS & BIDDERS

•THIS ADDENDUM FORMS A REVISION TO THE CURRENT CONTRACT DOCUMENTS, PLANS & SPECIFICATIONS FOR THE BID DATED SEPTEMBER 20, 2023 AND IS DUE BY 2:00 PM. BIDDERS MUST ACKNOWLEDGE THE RECEIPT OF THIS ADDENDUM IN THE BID DOCUMENTS:

- 1- INFORMATION FOR BIDDERS.
Replace the INFORMATION FOR BIDDERS with the attached INFORMATION FOR BIDDERS.
- 2- BID SCHEDULE.
REPLACE THE CURRENT BID SCHEDULE WITH THE NEW ATTACHED BID FORM & BID SCHEDULE.
The CONTRACTOR must begin the project on September 27th with the excavation crew beginning the excavation and recompaction of the foundation and substantially complete the project within the calendar days it bids on the bid form. The contractor must bid their time to complete the project on the bid form.

SPECIFICATIONS & PLANS:

From the Site Visit, the following requirements add to the requirements to the plans and specifications of this project:

- 1) A new PDF set of Civil Drawings with City Utility signatures is attached with this Addendum. Replace sheets C1 thru C6, L1, L2, and DT1 thru DT2 and replace them with the new scanned set of sheets.
- 2) Bid Item #4- Structural Parts Allowance will pay for missing and/or damaged steel parts to the stockpile of materials for the Steel Building. This allowance will pay for the cleaning of the parts, removal of the rust on steel parts and the repriming of the steel when the steel structure is erected. The contractor will be paid for his invoice of time & materials to the City and said invoice must include the invoice of materials the contractor purchased. The contractor is in charge of their own markup.
- 3) Bid Item #5- Utility Relocates Allowance will pay for the relocation of utilities that are not shown on the plans and/or for any utilities that need to change grade because of the interference of existing utilities. The contractor will be paid for his invoice of time & materials to the City and said invoice must include the invoice of materials the contractor purchased. The contractor is in charge of their own markup. Said invoice should show credit of any work that is not completed on the plans because of said relocations of utilities.
- 4) All requirements from the Geotechnical Report will be required for this project. The Geotechnical Report is attached. Overexcavation of the building area will follow the requirements of this report. The Asphalt thickness will be 3 inches and base course 8 inches thick and the subgrade will follow the requirements of this report, such as the 1 foot overexcavation.
- 5) All permits will be handled by the City except for the Storm Water Pollution Prevention Plan permit, dust control permits, and others required by the State.
- 6) The wood flooring and Basketball hoops will be handled by the City and any work required on these by the contractor will be done via a change order.'
- 7) The roll up Door shall be paid for under the lump sum bid for the building and should be included in the schedule of values for Doors.

INFORMATION FOR BIDDERS

BIDS will be received through invitation by Hurricane City (herein called the "OWNER"), at Hurricane City Office, 147 North 870 West, Hurricane, UT 84737 until 2:00 PM, Wednesday, September 20, 2023.

Each BID must be submitted in a sealed envelope, addressed to Hurricane City, 147 North 870 West, Hurricane UT 84737. Each sealed envelope containing a BID must be plainly marked on the outside as BID for Hurricane City, and the envelope should bear on the outside the name of the BIDDER, his address, and his Utah Contractor's license number. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at Attn: Mike Vercimak, Public Works, 147 N 870 W, Hurricane, UT 84737 .

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required. The OWNER may waive any informalities or minor defects. And BID deemed by the OWNER to be non-responsive may be rejected. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period; the time may be extended by mutual agreement between the OWNER and the BIDDER. The OWNER reserves the right to reject any and all bids.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The CONTRACT DOCUMENTS (see Agreement, para. 5) contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been tabulated, the OWNER will return the BONDS of all except the three highest ranking responsible BIDDERS. When the Agreement is executed, the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the NOTICE TO PROCEED is issued, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance and payment bond in the amount of 100% of the contract is required. Five (5) percent of the contract will be retained until the project is 100% complete.

The party to whom the contract is awarded will be required to execute the Agreement within 5 calendar days of receiving the NOTICE OF AWARD, after which the OWNER shall have 5 calendar days to execute the Agreement and issue the NOTICE TO PROCEED. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

In case of failure of the BIDDER to execute the Agreement, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the Agreement and to complete the WORK contemplated therein.

A conditional or non-qualified BID will not be accepted. A full schedule of values must be filled out. Any items not filled out on this bid form will classify their bid as non-responsive and unacceptable.

The BIDDER is required to guarantee they will complete the project in the time allotted.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

The CONTRACTOR must begin the project on September 27th with the excavation crew beginning the excavation and recompaction of the foundation and substantially complete the project within the calendar days it bids on the bid form. Substantially complete means all sitework, Gymnasium Building all incidental work must be completed. Punch list items and cleanup items must be completed with 15 days thereafter.

Liquidated damages in the amount of \$500 per day will be withheld for work activities required beyond these deadlines.

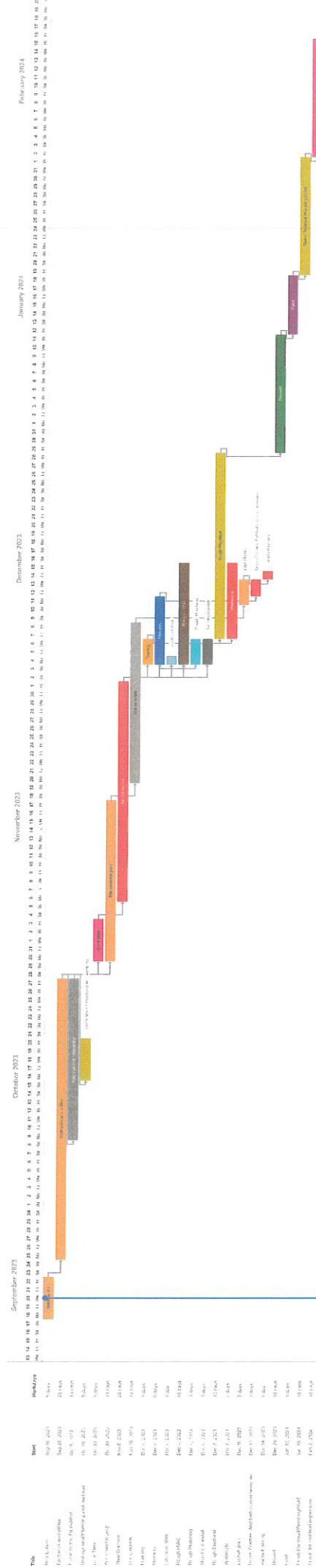
The architect for this project is Desert Edge Architecture.

The City Council will award the project to the lowest responsive responsible bidder.

Below is the proposed schedule for this project. A mandatory pre-bid meeting will be held at the Swimming Pool location at 750 North 200 West at 11:30 am on September 14th.

Hurricane City Recreation Building

EVENT	DATE	TIME	PLACE
Contract Documents made available	September 6, 2023		via email
Mandatory Site Walk for Contractors	Sept 14th, 2023		Hurricane City Pool (750 N 200 W Hurricane, Utah)
Bidding RFI's deadline	Sept 15th, 2023		RFI's directed to garrett@desertedge.co
Final Addendum sent out	Sept 18th, 2023		via email
Contractor bids due - public opening	Sept 20th, 2023 @ 2 pm		Hurricane City Office - City Manager Kaden DeMille
Notice of Award	September 21, 6 pm		At City Council Meeting
Notice to Proceed- Must break ground	September 27th		At Project Site
Completion Date	February 29, 2024		At Project Site



HURRICANE CITY GYMNASIUM
AWARD DOCUMENTS

NOTICE OF AWARD

To: Grass Creek Construction
1263 S. Hillcrest Dr., Unit A
Washington, UT 84780

Date: September 20, 2023
Project: Hurricane City Gymnasium

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated September 5, 2023, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$1,645,613.40

You are required to return an acknowledgement copy of this NOTICE OF AWARD to the OWNER.

Dated this 21st day of September, 2023.

Hurricane City
Owner

By _____

Name _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD
is hereby acknowledged
by _____

this the _____ day of _____, 2023.

By _____

Name _____

Title _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____ (Corporation, Partnership, or Individual) hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
_____ Dollars, \$(_____) in lawful money of the United States,
for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly
and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with
the OWNER, dated the _____ day of _____ a copy of which is hereto attached and made a
part hereof for the construction of:

NOW. THEREFORE, if the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS,
and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in
such contract, and any authorized extension or modification thereof, including all amounts due for materials,
lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in
connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor,
performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void;
otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the contract or to the WORK to be performed there
under or the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND,
and it does hereby waive notice of any change, extension of time, alteration or addition to the terms of the
contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IS WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of which shall be (number)

deemed an original this the _____ day of _____.

ATTEST:

(Principal) Secretary

(SEAL)

Witness as to Principal

Address

Principal

By _____

Address

ATTEST:

(Surety) Secretary

Witness as to Surety

Address

Surety

By _____

Attorney-in-fact

Address

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____ (Corporation, Partnership, or Individual) hereinafter called Principal, and

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____
Dollars, \$(_____) in lawful money of the United States, for the payment of which sum well
and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these
presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with
the OWNER, dated the _____ day of _____ a copy of which is hereto attached and made a
part hereof for the construction of:

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings,
covenants, terms, conditions, and agreement of said contract during the original term thereof, and any
extensions thereof which may be granted by the owner, with or without notice to the Surety and during the one
year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully
indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure
to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in
making good any default, then this obligation shall be void; otherwise to remain in full force and effect.
PROVIDED, FURTHER, that the said surety, for value received hereby stipulates and agrees that no change,
extension of time, alteration or addition to the terms of the contract or to WORK to be performed there under or
the SPECIFICATIONS accompanying the same shall in any wise affect its obligation on this BOND, and it does
hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or
to the WORK or the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied. IN WITNESS WHEREOF, this instrument is executed in 3 counterparts, each one of which shall be deemed an original, this the _____ day of _____.

ATTEST:

Principal

(Principal) Secretary

(SEAL)

By _____

Address

Witness as to Principal

Address

ATTEST:

Surety

Address

NOTE: Date of BOND must not be prior to date of Contract. If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the PROJECT is located.

AGREEMENT

This AGREEMENT, made this 20th day of September 21, 2023 by and between the Hurricane City, hereinafter called "OWNER" and Grass Creek Construction, Inc. doing business as a Corporation hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of the (number) Hurricane City Gymnasium.
2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described therein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 155 calendar days after the date of the NOTICE TO PROCEED and will complete the same as specified in the CONTRACT DOCUMENTS unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the Work described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$ 1,645,613.40.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - A) Public Notice
 - B) Information for Bidders
 - C) Bid
 - D) Bid Bond
 - E) Notice of Award
 - F) Payment Bond
 - G) Performance Bond
 - H) Agreement
 - I) Notice to Proceed
 - J) Change Order
 - K) General Conditions
 - L) Supplementary General Conditions
 - M) SPECIFICATIONS prepared or issued by Desert Edge Architecture & ProValue Engineering, dated September 2023.
 - N) DRAWINGS prepared by Desert Edge Architecture and ProValue Engineering, dated September 2023.
 - O) ADDENDA:
 - No. 1 dated September 15, 2023
 - No. 2 dated September 18, 2023
 - No. dated
6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.
7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (3) each of which shall be deemed an original on the date first above written.
(Number of Copies)

OWNER:

Hurricane City

By: _____

Name: _____

Title: _____

(SEAL)

ATTEST:

Name: _____

Title: _____

CONTRACTOR:

By: _____

Name: _____

(Please Type)

Address: _____

_SEAL)

ATTEST:

Name: _____

(Please Type)

Title: _____

Approved as to Form

NOTICE TO PROCEED

To: Grass Creek Construction
1263 S. Hillcrest Dr., Unit A
Washington, UT 84780

Date: September 27, 2023
Project: Hurricane City Gymnasium

You are hereby notified to commence WORK in accordance with the Agreement dated September 21, 2023, on or before September 27, 2023, and you are to complete all on-site WORK on or before February 29, 2024.

Hurricane City

Owner

By _____

Name _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD
is hereby acknowledged
by _____

this the _____ day of _____, 2023.

By _____

Name _____

Title _____

CHANGE ORDER

Order No. _____
Date: _____
Agreement Date: _____

NAME OF PROJECT: Hurricane City Gymnasium
OWNER: Hurricane City

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification: _____

CHANGE TO CONTRACT PRICE:

Original CONTRACT PRICE

\$ _____

Current CONTRACT PRICE adjusted by previous CHANGE ORDERS

\$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased/decreased) by:

\$ _____

The new CONTRACT PRICE including this CHANGE ORDER will be

\$ _____

CHANGE TO CONTRACT TIME:

The CONTRACT TIME will be (increased/decreased) by _____ calendar days.

The date for completion of all work will be _____.

APPROVALS:

ARCHITECT: _____

CONTRACTOR: _____

HURRICANE CITY: _____

GENERAL CONDITIONS

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1. Definitions
2. Additional Instructions and Detail Drawings
3. Schedules, Reports and Records
4. Drawings and Specifications
5. Shop Drawings
6. Materials, Services and Facilities
7. Inspection and Testing
8. Substitutions
9. Patents
10. Surveys, Permits, Regulations
11. Protection of Work, Property, Persons
12. Supervision by Contractor
13. Changes in the Work
14. Correction of Work
15. Subsurface Conditions
16. Suspension of Work, Termination and Delay
17. Completion and Acceptance of Work
18. Insurance
19. Contract Security
20. Indemnification
21. Separate Contracts
22. Subcontracting
23. ARCHITECT's Authority
24. Land and Right-of-Way
25. Guaranty
26. Arbitration
27. Taxes
28. Payment Terms & Schedule

1. DEFINITIONS. Wherever used in the CONTRACT DOCUMENTS or any addenda or amendments thereto, the following terms shall have the meanings indicated and which shall be applicable to both the singular and plural thereof:

1.1. BONDS - Performance and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS or any addenda or amendments thereto.

1.2. DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS - The Standard Documents: including Information for Contractors, Payment Bond, Performance Bond, General and Supplemental General Conditions, CONSTRUCTION DRAWINGS, STANDARD DRAWINGS, and Technical Specifications provided to the CONTRACTOR by the OWNER as they may be applicable.

1.3. CONTRACTOR - The person, firm or corporation with whom the OWNER has executed an Agreement to perform the construction work for the PROJECT.

1.4. OWNER – Hurricane City, a public body, has jurisdiction over the WORK to be performed.

1.5. ARCHITECT - The person, firm or corporation named as the OWNER'S ARCHITECT in the INFORMATION FOR CONTRACTORS (page 2).

1.6. CONSTRUCTION DRAWINGS - All the drawings and other data which have been prepared and approved by the OWNER or the OWNER's ARCHITECT to show the characteristics and scope of the WORK to be performed.

1.7. STANDARD DRAWINGS - All the standard drawings which have been prepared by the ARCHITECT to show details of how the WORK is to be built.

1.8. FIELD ORDER - A written order effecting a change in the WORK, issued by the ARCHITECT to the OWNER or CONTRACTOR during construction.

1.9. PROJECT - The undertaking to be performed by the OWNER and his CONTRACTOR in constructing the specific areas of the building as described in the CONTRACT DOCUMENTS.

1.10. RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.11. SPECIFICATIONS - Part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship to be used in all construction.

1.12. SUBCONTRACTOR - An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.13. SUBSTANTIAL COMPLETION - That date as certified by the OWNER or the ARCHITECT when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended. The date of substantial completion may only be extended by written approval of the OWNER or by the occurrence of a legitimate force majeure.

1.14. SUPPLEMENTAL GENERAL CONDITIONS - Modifications to General Conditions and supplemental requirements for the Project.

1.15. SUPPLIER - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.16. WORK - All labor necessary to produce the construction of the PROJECT according to the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.17. WRITTEN NOTICE - Any notice to the OWNER or CONTRACTOR relative to any part of this WORK in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party or parties at their last given address, or delivered in person to said party, parties or their authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

2.1. The OWNER, OWNER'S ARCHITECT or CONTRACTOR may be furnished additional instructions and detail drawings, by the ARCHITECT, as necessary to carry out the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

2.2. The additional drawings and instructions thus supplied will become supplemental to the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. SCHEDULES, REPORTS AND RECORDS

3.1. The CONTRACTOR shall submit to the OWNER such schedules, records and other data where applicable, as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2. The OWNER or CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK with an estimated date of completion of each part.

4. DRAWINGS AND SPECIFICATIONS

- 4.1. The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner.
- 4.2. In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.
- 4.3. Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the OWNER and the ARCHITECT. The OWNER or OWNER'S ARCHITECT, shall promptly have such inconsistencies or ambiguities corrected in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. SHOP DRAWINGS

- 5.1. The OWNER, OWNER'S ARCHITECT or CONTRACTOR shall provide accepted SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS. The ARCHITECT shall promptly review all SHOP DRAWINGS, if required. The ARCHITECT'S approval of any SHOP DRAWINGS shall not release the OWNER or CONTRACTOR from responsibility for deviations from the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS. The approval of any SHOP DRAWINGS which substantially deviates from the requirement of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS shall be evidenced by a WRITTEN NOTICE to the OWNER and CONTRACTOR.
- 5.2. When submitted for the ARCHITECT'S review, SHOP DRAWINGS shall bear the OWNER'S ARCHITECT'S or CONTRACTOR'S certification that they have reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.
- 5.3. Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the OWNER'S ARCHITECT or the ARCHITECT, where required. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the OWNER or ARCHITECT.

6. MATERIALS, SERVICES AND FACILITIES

- 6.1. It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK.
- 6.2. Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.
- 6.3. Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.
- 6.4. Proposed materials, supplies and/or equipment (other than those previously specified by the ARCHITECT or the OWNER) must be submitted by the CONTRACTOR for approval by the OWNER'S ARCHITECT.
- 6.5. Materials, supplies or equipment shall not be incorporated into the WORK unless they are entirely free and clear of any lien or other ownership interest retained by any seller or owner previous to the time when it/they was/were incorporated into the work.

7. INSPECTION AND TESTING

- 7.1. All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.
- 7.2. The OWNER shall provide all inspection and testing services not required by the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.
- 7.3. The CONTRACTOR shall provide at his expense the testing and inspection services required by the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.
- 7.4. If the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the OWNER or the ARCHITECT timely notice of readiness. The CONTRACTOR will then furnish the OWNER or ARCHITECT the required certificates of inspection, testing or approval.
- 7.5. Inspections, tests or approvals by the OWNER, ARCHITECT or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.
- 7.6. The OWNER, ARCHITECT and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.
- 7.7. If any WORK is covered, contrary to the written instructions of the OWNER or ARCHITECT, it must, if requested by the OWNER or the ARCHITECT, be uncovered for their observation and replaced at the CONTRACTOR'S expense.

7.8. If the OWNER or the ARCHITECT considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the OWNER'S or ARCHITECT'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the OWNER or ARCHITECT may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment.

8. SUBSTITUTIONS

8.1. Whenever a material, article or piece of equipment is identified in the SPECIFICATIONS by reference to brand name or catalog number, it shall be understood that this is referenced for the purpose of defining the desired performance (or other salient requirements) and that other products of equal capacities, quality and function shall not be used by the CONTRACTOR on the WORK unless a proposed substitute has been approved in writing by the OWNER or ARCHITECT.

9. PATENTS

9.1. If the CONTRACTOR uses or implements into the WORK any patented (including patent pending) product that requires the payment of a royalty or other form of reimbursement, the CONTRACTOR shall pay all applicable royalties and license fees. Further, CONTRACTOR shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a specific process, design, or the product of a particular manufacturer or manufacturers is explicitly specified by the OWNER; however, if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the OWNER and the ARCHITECT.

10. SURVEYS, PERMITS, REGULATIONS

10.1. The OWNER or OWNER'S ARCHITECT shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK, as indicated in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS. From the information provided by the OWNER, unless otherwise specified in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, and other working points, lines, elevations and cut sheets.

10.2. The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3. Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR; unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS are at variance therewith, he shall promptly notify the OWNER or ARCHITECT in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1. The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary safeguards for safety and protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2. The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by the CONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS or to the acts or omissions of the OWNER or the ARCHITECT or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3. In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the OWNER or ARCHITECT, shall act to prevent threatened damage, injury or loss. He will give the OWNER or ARCHITECT prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS caused thereby.

12. SUPERVISION BY CONTRACTOR

12.1. The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

13.1. The OWNER or ARCHITECT may at any time, as the need arises, order changes within the scope of the WORK. If such changes increase or decrease the amount due under the agreement between the OWNER and the CONTRACTOR, an adjustment shall be worked out between these two parties; no advising or other incidental costs shall be charged to the OWNER by the CONTRACTOR, its agents, or assigns.

13.2. The OWNER or ARCHITECT, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. If such changes increase or decrease the amount due under the agreement between the OWNER and the CONTRACTOR, an adjustment shall be worked out between these two parties; no advising or other incidental costs shall be charged to the OWNER by the CONTRACTOR, its agents, or assigns.

14. CORRECTION OF WORK

14.1. The CONTRACTOR shall promptly remove from the premises all WORK rejected by the OWNER or the ARCHITECT for failure to comply with the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, whether incorporated in the construction or not; and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS and without expense to the OWNER and shall bear the expense of making good all WORK of other contractors destroyed or damaged by such removal or replacement.

14.2. All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR. OWNER may credit the OWNER for any monies expended as a result of such a situation either by adjusting the next payment due to the CONTRACTOR or by taking monies from the payment bond. If either of said sources of payment is used by the OWNER, the decision to do so shall be determined in the OWNER'S sole discretion.

15. SUBSURFACE CONDITIONS

15.1. The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER, OWNER or the ARCHITECT by WRITTEN NOTICE of:

15.1.1. Subsurface or latent physical conditions at the site differing materially from those indicated on the construction drawings or in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS; or

15.1.2. Unknown physical conditions at the site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

15.2. The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the items required for, performance of the WORK, an adjustment shall be made. Any claim of the CONTRACTOR for adjustment hereunder shall be settled between the OWNER and the CONTRACTOR; any unexpected WORK costs shall be borne solely by the CONTRACTOR.

16. SUSPENSION OF WORK, TERMINATION AND DELAY

16.1. The OWNER or ARCHITECT may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR from the OWNER or ARCHITECT; which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that work on the date so fixed.

16.2. If the CONTRACTOR petitions (voluntarily or involuntarily) for bankruptcy or otherwise becomes insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or he disregards the authority of the OWNER or ARCHITECT, or if he otherwise violates any provision of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR, and finish the WORK by whatever method OWNER may deem expedient; no costs of said action shall be borne by the OWNER.

17. COMPLETION AND ACCEPTANCE OF WORK

17.1 Prior to SUBSTANTIAL COMPLETION of WORK, the OWNER, with the approval of the ARCHITECT and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK. In addition, the OWNER may terminate its contract with the CONTRACTOR and then charge the CONTRACTOR for any additional costs incurred in accordance with paragraph 16.2 regardless of the OWNER'S use of any completed or substantially completed portion of the WORK.

17.2. The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the WORK. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

17.3. Upon completion and acceptance of the WORK, the OWNER or ARCHITECT shall issue a certificate that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS.

17.4. The CONTRACTOR will indemnify and save the OWNER, ARCHITECT or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, suppliers, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.

18. INSURANCE

18.1. The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

18.1.1. Claims under Worker's Compensation Disability Benefit and other similar employee benefit acts:

18.1.2. Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees:

18.1.3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees:

18.1.4. Claims for damages insured by standard personal injury liability coverage that are sustained by any person as the result of (1) the CONTRACTOR'S, SUBCONTRACTOR'S, or any of their agents statutory, regulatory, administrative, or other offense against the law whether directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) negligent behavior, willful behavior, unlawful behavior, or other behavior that directly or indirectly results in the personal injury of a person as the result of any actions taken directly or indirectly in connection with the WORK (whether or not such behavior occurs on the OWNER'S property): and

18.1.5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

18.2.1 A copy of the acceptable Certificates of Insurance filed with the OWNER shall be delivered to the ARCHITECT before any work at the site is started. These Certificates shall contain a provision that coverage afforded under the policies will not be canceled unless WRITTEN NOTICE has been given to the OWNER at least fifteen (15) days prior to cancellation.

18.2.2. All liability insurance policies for the project shall include and endorsement naming the OWNER and ARCHITECT as additional insured.

18.3. The Contract General Liability Insurance shall be in comprehensive form and shall include the following coverage's: Premises/operations, collapse hazard, underground hazard, products/completed operations hazard, contractual insurance applicable to Contractor's obligations under GC 20 INDEMNIFICATION, broad form property damage, independent contractors, and personal injury.

If the CONTRACTOR plans to use blasting agents during prosecution of the work, coverage for explosion hazard shall be provided before blasting operations are commenced.

Auto Liability insurance shall be comprehensive form and shall cover all vehicles and/or equipment used directly or indirectly in connection with the WORK.

The limits of liability required for the respective coverage's shall not be less than the following amounts or greater where required by law:

Comprehensive General Liability:

(1) Bodily Injury:

\$1,000,000 Each Occurrence
\$2,000,000 Annual Aggregate, Products
and Completed Operations

(2) Property Damage

\$ 500,000 Each Occurrence
\$1,000,000 Annual Aggregate

(3) Personal Injury, with employment exclusion deleted: \$1,000,000 Annual Aggregate

Comprehensive Automobile Liability: (1) Bodily Injury: \$ 500,000 Each Person; \$1,000,000 Each Accident

(2) Property Damage: \$ 500,000 Each Occurrence

Workers Compensation:

(1) State: Statutory

(2) Employer's Liability: \$500,000

All insurance provided shall remain in effect until final payment and at all times thereafter when the CONTRACTOR may be correcting, removing or replacing defective work. In addition, the CONTRACTOR shall maintain such products/completed operations hazard insurance for at least two years after final payment and furnish the OWNER with evidence of continuation of such insurance at final payment and one year thereafter.

18.3.1. CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a

SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting there from, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

18.3.2. The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS to fully complete the PROJECT.

18.4. The CONTRACTOR shall procure and maintain, at his own expense, during the time of construction, in accordance with the provisions of the laws of the state in which the work is performed. Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

18.5. The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the time of construction, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the OWNER, and the ARCHITECT.

19. CONTRACT SECURITY

19.1. The CONTRACTOR shall, before any work is begun on the PROJECT, furnish the OWNER with a Performance bond and a Payment Bond in penal sums equal to the amount of the Agreement with the OWNER, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements for completion of the PROJECT, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND suffers an involuntary petition of bankruptcy or files bankruptcy or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR.

20. INDEMNIFICATION

20.1. To the fullest extent permitted by law, the CONTRACTOR shall indemnify and hold harmless the OWNER and the ARCHITECT and their agents and employees from and against all claims, damages, losses and expense including, but not limited to attorneys' fees arising out of or resulting from the performance of the WORK, provided that any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the work itself) including the loss of use resulting there from, and (b) is caused in whole or in part by any negligent act or omission of the CONTRACTOR, any SUBCONTRACTOR, or anyone directly or indirectly acting as their agent(s) for whose acts any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.

20.2. In any and all claims against the OWNER or the ARCHITECT, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, or anyone directly or indirectly acting as their agent(s) for whose acts any of them may be liable, the indemnification obligation under this paragraph 20 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under Worker's Compensation Acts, disability benefit acts or other employee benefit acts.

20.3. The obligations of the CONTRACTOR under subparagraph 20.1, above, shall not extend to the liability of the ARCHITECT, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, change orders, designs or SPECIFICATIONS.

21. SEPARATE CONTRACTS

21.1. The OWNER reserves the right to award other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the OWNER or ARCHITECT any defects in such WORK that render it unsuitable for such proper execution and results.

21.2. The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

21.3. If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the Agreement with the CONTRACTOR prior to the execution of the Agreement, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK.

22. SUBCONTRACTING

22.1. The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

22.2. The CONTRACTOR shall not award WORK to SUBCONTRACTORS(s), in excess of fifty (50%) percent of the cost of the PROJECT, without prior written approval of the ARCHITECT or the OWNER.

22.3. The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his any SUBCONTRACTORS, or anyone directly or indirectly acting as their agent(s), as he is for the acts and omissions of persons directly employed by the CONTRACTOR.

22.4. The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

22.5. Nothing contained in these DOCUMENTS shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

23. ARCHITECT'S AUTHORITY

23.1. The ARCHITECT shall act as the OWNER'S representative during the construction period. He shall decide questions that may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS in a fair and unbiased manner. The ARCHITECT will make visits to the site and determine if the WORK is proceeding in accordance with the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

23.2. The CONTRACTOR will be held strictly to the intent of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS in regard to the quality of materials, workmanship and execution of the WORK as described above. Inspections may be made at the factory or fabrication plant of the source of material supply.

23.3. The ARCHITECT will not be responsible for construction means, controls, techniques, sequences, procedures, or construction safety.

23.4. The ARCHITECT shall promptly make decisions relative to interpretation of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

24. LAND AND RIGHTS-OF-WAY

24.1. The OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, unless otherwise mutually agreed.

24.2. The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

24.3. The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

25. GUARANTY

25.1. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of FINAL ACCEPTANCE of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTORS shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER or the ARCHITECT will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. A ten (10) percent retainage of the PERFORMANCE BOND shall remain in full force and effect through this guarantee period.

25.2. The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for road surfaces and street improvements, such as asphalt, road base, curb and gutter and sidewalk, for a period of three (3) years from the date of FINAL ACCEPTANCE. The CONTRACTOR warrants and guarantees for a period of three (3) years from the date of FINAL ACCEPTANCE of the surfaces and improvements that the completed WORK is free from all defects due to faulty materials or workmanship and the CONTRACTORS shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER or the ARCHITECT will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred.

26. ARBITRATION

26.1. The CONTRACTOR will carry on the WORK and maintain the progress schedule during any dispute or claim proceedings, unless otherwise mutually agreed in writing.

27. TAXES

27.1. The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

28. PAYMENT TERMS AND SCHEDULE

28.1. The OWNER will pay the CONTRACTOR for work completed upon receipt of a partial pay request. Extra payment may be paid during the first pay request for STOCK PILED MATERIALS. The CONTRACTOR shall submit a pay request to the ARCHITECT by the last working day of each month. An amount equal to 5% of the pay estimate will be withheld as retention. If the CONTRACTOR does not complete the work to be substantially complete within the calendar days bid and as shown on the Agreement, then the CONTRACTOR will pay \$500 per calendar day in liquidated damages. Final payment of the retention will occur after all final punch list items are complete after the final inspection.



STAFF COMMENTS

Closed Meeting held pursuant to Utah Code section 52-4-205, upon request

Discussion:

Findings:

Recommendation:

Attachments:

None