



HURRICANE CITY UTAH

Mayor

Nanette Billings

City Manager

Kaden DeMille

City Council

*David Hirschi
Kevin Thomas
Clark Fawcett
Drew Ellerman
Joseph Prete*

Hurricane City Council Meeting Agenda

January 4, 2024

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 with Washington County Water Conservancy District regarding the 20-year plan and efficiency standards-Doug Bennett

5:00 p.m. Pre-meeting

6:00 p.m. - Call to Order

Prayer

Thought

Pledge of Allegiance

Declaration of any conflicts of interest

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 3 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.

Consent Agenda

1. Consideration and possible approval of **appointing David Hirschi** as the Mayor Pro Tempore
2. Consideration and possible approval of **Resolution 2024-02 appointing Nanette Billings** to the Mosquito Abatement Board

3. Consideration and possible approval of **Resolution 2024-03 appointing Clark Fawcett** to the Hurricane Valley Fire Special Service District Board
4. Consideration and possible approval of the minutes of the Regular City Council Meeting for **special meeting December 5, 2023**

OLD BUSINESS

1. Consideration and decision on an **appeal of the denial of a business license for a home-based pet care facility**. -Melanie Watanabe
2. 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.

NEW BUSINESS

1. Consideration and possible approval of the **revocation of the residential hosting license** for Mark Swedberg Bed and Breakfast-Cindy Beteag
2. Consideration and possible approval of **Resolution 2024-01 authorizing the Attainable Housing Agency Interlocal Cooperation Agreement to join the Attainable Housing Agency (AHA)** for the purpose of maintaining, protecting, and promoting affordable and attainable housing.
3. Consideration and possible approval of a **roadway dedication plat for 365 North, 1450 West, and 1580 West Streets**
4. Consideration and possible approval of a **road dedication plat for 200 North Street**
5. Consideration and possible approval of a **private hangar lease agreement with Brian Geraci** for hangar pad 13 S. 3 E. -Dave Houston/Dayton Hall
6. Consideration and possible approval of a **private hangar lease agreement with the John C. Priscu Trust** for hangar pad 10 S. 1 E. -Dave Houston/Dayton Hall
7. Consideration of a possible approval of ZC23-26 a **Zone Change Amendment request located at 560 N 1380 W** from R1-10, single family residential one unit per 10,000 sq ft to PC, planned commercial. Parcel H-3-1-33-4882. Roger and Leslie Coleman Applicant. Gerald Muray, Agent.
8. Consideration and possible approval of ZC23-28 a **Zone Change Amendment request to amend the existing Canyons RV Planned Development Overlay** to approve a density bonus and approve the preliminary site plan for Ridge Crest, a 53 lot manufactured home subdivision located at 2860 W 200 N. VE Management and Investments Co, Applicant. Brandee Walker, Agent
9. Consideration and possible approval of ZC23-25 a **Zone Change Amendment request located at 119 S 700 W** from RM-2, multifamily 10 units per acre, to GC, General Commercial. Parcel H-266-J-1. Oliver and Rebekah Radtke, Applicant
10. Consideration and possible approval of a **preliminary plat for Horseman's Edge & Hurricane Cliffs Industrial**, a six lot residential subdivision and 23 lot industrial subdivision located at 3155 S 1100 W. Scott Stratton, Applicant. Karl Rasmussen, Agent.

11. Consideration and possible approval on a **preliminary plat for Hurricane Heights Townhomes Phase 5**, a two lot townhome subdivision located at 475 N 500 W. HH5, LLC, Applicant. Bret Peterson, Agent.
12. Consideration and possible approval of an **amended final plat for Dixie Springs Plat C** located at 3700 W 2640 S Circle. Heather Hugie, Applicant. Rosenberg Associates, Agent.
13. Consideration and possible approval of **Ordinance 2024-01 approving a Land Use Code Amendment to Title 10 Chapter 39** regarding subdivisions
14. Consideration and possible approval of a **Memorandum of Understanding with the Washington County Water Conservancy District** regarding roadway improvements on Highway 318. -Mike Vercimak
15. Consideration and possible approval of **Ordinance 2024-02 approving a Land Use Code Amendment to Title 10, Chapter 32** of the City Code pertaining to water use efficiency standards. Hurricane City Applicant.
16. Consideration and possible approval of an **MOU with federal partners concerning the Northern Corridor highway project** and designating Arthur LeBaron as the point of contact under the MOU.
17. Consideration and possible approval of **awarding a contract for the Hurricane City 2024 Chip Seal Project.**
18. Consideration and possible approval of **awarding a contract for the Hurricane City 2024 Slurry Project**
19. Discussion and possible approval of **limited development of Liberty Village.** - Mayor Billings
20. Consideration and possible approval of a **Letter of Commitment to participate in the Healthy Utah Community**-Kaden DeMille
21. 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 January 4, 2024

4:00 p.m. Discussion with Washington County Water Conservancy District regarding the 20-year plan and efficiency standards.

5:00 p.m. Pre-Meeting

6:00 p.m. Call to Order

Consent Agenda

1. Hurricane City Code 1-5-3 states the Mayor shall be the chairperson and preside at the City Council meetings. In the absence of the Mayor, the City Council may elect a member of the City Council to preside over the meeting as Mayor Pro Tempore. Mayor Billings would like David Hirschi to serve as the Mayor Pro Tempore if she is not able to make it to any of the meetings.
2. Mayor Billings designates each Council member to serve on various boards and/or commissions. Since the Mosquito Abatement Board is a different entity, Hurricane City provides a Resolution to that Board with the person they recommend serving on the board as a representative for the City. Mayor Billings is recommending herself to serve on this board.
3. Same as item 2 other than Mayor Billings is recommending Clark Fawcett to serve on the Hurricane Valley Fire Special Serve District Board.
4. Minutes for December 5th, 2023.

Old Business

1. This item was continued from the last meeting at the request of the applicant because they were not able to attend the meeting. The summary is written by Cindy Beteag and Dayton Hall.

Homegrown Pet Care applied for a home-based business license on October 11, 2023, for pet care, boarding, daycare, and grooming. The zoning for the property where the business would be located is Residential (R-1-10). Staff reviewed the application in accordance with the licensing procedures and requirements for home-based businesses. It was determined that the requested license could not be issued for two different reasons: (1) pet care, boarding, daycare, and grooming is not permitted as a home-based business under Hurricane City Code section 10-42-3 and (2) the operation of a commercial kennel is not a permitted use in the zoning for the property. A commercial kennel is defined as a commercial establishment having three or more dogs over the age of four months for the purpose of boarding, breeding, buying, selling, grooming, letting for hire, or training for a fee. HCC 10-3-4. Hurricane City Code 10-13-3 and Table 10-13-1 specifies that commercial kennels are not permitted in any residential zone. Based on the information provided by the applicant, City staff determined that the proposed use was not permitted as a home-based business and that the proposed

use for pet care, boarding, daycare, and grooming clearly met the definition of a commercial kennel, which is not a permitted use for the applicant's property. Therefore, the application was denied on November 08, 2023.

Hurricane City Code 3-1-9 states that denial of a business license application may be appealed by the applicant to the City Council by filing a written notice of appeal with City Recorder within 15 days of the denial. The applicant filed the notice of appeal on November 21, 2023.

The only question for the Council's consideration is whether the applicant's proposed use is permitted under the Code as presently written. The Council cannot grant exceptions or variances to the adopted Code. If the Council disagrees with staff's findings and determines that the use is permitted, then the appeal should be granted based on the finding that the proposed use is permitted as a home-based business and does not constitute a commercial kennel. On the other hand, if the Council finds that the proposed use is not permitted as a home-based business and does meet the definition of a commercial kennel, the appeal should be denied.

2. This item was continued on 10/19/23 to allow a chance for Council to receive real-world calculations from developers, and for staff to prepare a draft ordinance reducing the proposed density bonus to 15%. The item was subsequently tabled at the 11/16/23 meeting to allow staff time to meet with state representatives to get direction for amending the annual report to the state on the city's Moderate Income Housing Plan in order to better comply with state implementation requirements. Staff has met with the state and the updated report has been submitted. --Gary Cupp

New Business

1. The applicant applied for a four-room residential hosting license on June 28, 2023. It was reviewed in accordance with licensing procedures and a license was issued on August 1, 2023. Hurricane City Code 10-3-4 requires the owner or a member of the family of the property owner to reside on the property as their primary residence. In October, staff started getting complaints from neighbors that no one lives in the home, guests were parking on the road, and noise violations after 10 p.m. A violation letter was sent on November 6, 2023, but a response was not received from the owner. Staff was still receiving complaints from neighbors about no one living there and not being present when the home was being rented. After further investigation, staff found that the County records show that the home was transferred from the license holder's name to Scott Smith on December 7, 2023. In addition, the City utility account is also under Scott Smith's name. A notice for the revocation hearing was mailed to the license holder and/or property owner on December 21, 2023.

Since Mark Swedberg no longer owns the home and does not live in the home full-time as required by HCC, staff recommends revoking the residential hosting license. –Cindy Beteag

2. On November 16, 2023, Joe Spencer with the Attainable Housing Agency (AHA) presented to the previous Council and explained they are an interlocal agency that finances, maintains, protects, and promotes affordable and obtainable housing for municipal members. AHA focuses on the finance and construction of basement apartments and ADUs. Homeowners master lease the basement apartments to the AHA through a municipal bond. The master lease is secured for ten years, and the municipal bond funds are used to transform unfinished basements into apartments.

For Hurricane City residents to be able to participate in this program, the Council would first have to approve the Interlocal Cooperating Agreement to join the Attainable Housing Agency. - Cindy Beteag

3. The Homeowners Association at Hurricane Garden Homes is proposing to dedicate the private streets in their neighborhood. The City has had this dedication plat produced in order to accomplish them turning the streets over to the City. This idea has been discussed many times over the years. It was brought to a head when the HOA attempted to place gates across the streets. After much discussion I intimated that I would have the plat prepared if and when the HOA was ready and willing to sign it. David Houston called me a few weeks ago and made that commitment to me so I had this plat prepared for consideration.

I have reviewed the plat and coordinated with the City Attorney, and it is ready for signatures. The roadways in question are important connector roads between State Street and 600 North and are shown on the City's Transportation Masterplan. The streets do not meet City standards at this point because they lack curb and gutter and sidewalk. There is no plan at this point for the City to make any changes in the roads besides applying standard pavement management strategies and making sure that the regulatory and street signs are in good order.

It is recommended that the City accept the dedication of the roads depicted on the plat in accordance with the City's master plan. This will preserve connectivity for the public access and utilities through Hurricane Garden Homes between State Street and 600 North. – Arthur LeBaron

4. The new IHC facility required the construction of master planned 200 North through the campus. The road construction is finished this plat will finalize the project.

Intermountain has constructed 200 North in accordance with the approved construction drawings and is presenting this plat for final acceptance by the City.

The plat has been reviewed and is recommended for approval and acceptance. – Arthur LeBaron.

5. Background:

Brian Geraci is requesting a new Private Hangar Lease Agreement for the hangar pad located at 13 S. 3 E. at the City Airport. Mr. Geraci is the owner of the existing hangar improvements. The proposed agreement conforms to the template previously approved by the City Council.

Applicable City Ordinances:

The Airport Board "shall function in an advisory capacity to the City Council on all issues regarding the operation" of the airport. HCC 2-1-1(A). The Airport Board "shall operate solely as an advisory board to the City Council and shall have no power or authority to take any action or make any decision which would or which may have the effect of creating a liability for the City." HCC 2-1-1(B). "It shall be the duty of the Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land." HCC 2-1-1. After a recommendation from the Airport Board, the proposal is forwarded to the Council for a decision.

Recommendation:

The Airport Board discussed this item on December 19, 2023, and unanimously recommended approval.

Attachments in the Packet:

- Proposed Private Hangar Lease Agreement.

Legal Review:

The City Attorney approves the form of the proposed lease.

This summary was drafted by Dayton Hall, City Attorney.

6. Background:

John Priscu is requesting a new Private Hangar Lease Agreement for the hangar pad located at 13 S. 3 E. at the City Airport. The John C. Priscu Trust is the owner of the existing hangar improvements. The proposed agreement conforms to the template previously approved by the City Council.

Applicable City Ordinances:

The Airport Board "shall function in an advisory capacity to the City Council on all issues regarding the operation" of the airport. HCC 2-1-1(A). The Airport Board "shall operate solely as an advisory board to the City Council and shall have no power or authority to take any action or make any decision which would or which may have the effect of

creating a liability for the City." HCC 2-1-1(B). "It shall be the duty of the Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land." HCC 2-1-1. After a recommendation from the Airport Board, the proposal is forwarded to the Council for a decision.

Recommendation:

The Airport Board discussed this item on December 19, 2023, and unanimously recommended approval.

Attachments in the Packet:

- Proposed Private Hangar Lease Agreement.

Legal Review:

The City Attorney approves the form of the proposed lease.

This summary was drafted by Dayton Hall, City Attorney.

7. This is a request for a zone change for 5.46 acres from R1-10 to Planned Commercial (PC) for a property located along 600 N east of Painted Sands and west of Valley Academy. Earlier this year, the property was denied a zone change to neighborhood commercial (NC) since no development plan was proposed at that time. Direction was given for the applicant to come back with a development proposal. The applicant is now proposing a mixed-use development with a retail/office building and drive-thru building on the north side adjacent to 600 N, along with 55 residential units on the south side. The Planning Commission heard this item on December 14, 2023 and recommended approval. – Gary Cupp
8. This is not a zone change, but the zone change application is being used to process a requested amendment to the Canyons RV PDO to allow for a density bonus to add three additional lots within the Ridge Crest development, and changes to the setback standards. Per HCC 10-23-6: "Variations from applicable development standards of an underlying zone and chapter 39 of this title may be approved as part of a preliminary site plan for a planned development pursuant to the provisions of this chapter." And HCC 10-23-7 states: "Amendments to approved plans and specifications shall be obtained by following the procedure required for preliminary plan approval." The Planning Commission heard this item on December 14, 2023 and recommended approval. – Gary Cupp
9. The applicant is seeking a zone change from RM-2 to General Commercial on .26 acres of property. The applicants are proposing that the existing duplex, currently being rented long-term, be allowed to be rezoned to commercial to allow the owners to operate a short-term rental from the site. The Planning Commission heard this item on December 14, 2023 and recommended approval. – Gary Cupp

10. The applicant has filed a preliminary plat for Horseman's Edge and Hurricane Cliff's Industrial. This is a split zoned subdivision between RA-0.5 and M-1. This was originally approved as a RA-0.5 PDO subdivision in 2021 and has since been rezoned so that three-quarters of the property is zoned industrial. The subdivision consists of six residential lots and 23 industrial lots. The Planning Commission heard this item on December 14, 2023 and recommended approval.- Gary Cupp
11. The applicant is proposing to add two additional lots to the Hurricane Heights Townhomes development. In designing the Hurricane Heights Hobby Garages development to the south, it was discovered that two stormwater basins were planned adjacent to each other. The two basins will now be combined and one of the basins will be converted into a duplex. This phase will also include shifting one unit in the approved Phase 5 and changing the cul-de-sac on 400 N to a knuckle into 530 W. The Planning Commission heard this item on December 14, 2023 and recommended approval.
12. The applicant has applied to amend the final plat for Dixie Springs Plat C to combine Lots 231 and 232 into one lot. Combining lots within a recorded subdivision requires approval of an amended final plat. The Planning Commission heard this item on December 14, 2023 and recommended approval. –Gary Cupp
13. Utah State Senate Bill 174 sets new state standards for how cities must review and approve subdivisions. The state legislature has given cities until February 1, 2024 to implement these new standards, which are intended to simplify the subdivision process for single-family dwellings, two-family dwellings, and townhomes. –Gary Cupp
14. As part of its Quail to Cottam Pipeline Project, the Water Conservancy District is planning to install a pipeline within Highway 318 (5300 West) near Quail Creek Reservoir. Hurricane City is responsible for maintaining the portion of that roadway that extends from the north access to Quail Creek State Park to the intersection at Old Hwy 91. Because of the fact that the existing asphalt is old and deteriorated and that major trenching and patching will result in an undesirable road surface, City Staff requested an alternative bid for the District's contractor to completely reconstruct the pavement for the City's portion of the roadway outside of the anticipated trenching and patching that would otherwise be done. The District did so, and the alternative bid came in at \$289,100. This amount is available in the budget. The District has prepared a Memorandum of Understanding whereby the City will pay the \$289,100 incurred for the City road improvements. If the City enters into this agreement, the project will construct a completely new roadway surface throughout the extent of the project. The MOU is included in the packet. The City Attorney has reviewed and approved the form of the MOU. City Staff recommend approval.
-Summary drafted by Dayton Hall, City Attorney

15. The proposed water conservation and landscaping amendments will only apply to new developments. The proposed amendments will bring the City's ordinances into line with the Washington County Water Conservancy District's ("District") Water Efficiency Standards, which are also the standards that need to be adopted for Hurricane City residents to qualify for the Water Efficient Landscape Rebate. The rebate is paid to property owners that remove grass and replace it with water-efficient landscaping, up to \$2.00 per square foot, but only residents in cities that have adopted the Water Efficiency Standards qualify for the rebate program.

On February 16, 2023, the City Council adopted new standards that were largely in line with the District's standards. However, there were a few provisions that were determined to be inconsistent with the required standards. The revisions proposed by this ordinance amendment will resolve those discrepancies.

A summary of the proposed changes follows:

- Exemption area. To ensure that the Hurricane Fields area would maintain its agricultural feel, the current ordinance exempts new development in the historical canal area from the standards. The intent and purpose of that exemption was to allow new development to continue to have gardens, agricultural fields, and pastures without being subject to new landscaping standards. This exemption area was the primary concern that disqualified residents from the rebate program. However, after further discussions with the District, the issue has been addressed in the proposed ordinance in a more specific manner. Namely, the definition of "lawn," which is regulated, is defined as "nonagricultural land planted in closely, mowed, managed grass." Thus, the restrictions on lawn size do not apply to gardens, agricultural fields, or pastures. This clarification will allow new houses in the Hurricane Fields to continue to farm, have gardens, and raise farm animals without being subject to these new conservation standards.
- Hot water recirculation system. New residential units in excess of 1,400 square feet will be required to install a hot water recirculation system, unless hot water can be delivered to the faucet without displacing more than .6 gallons of water.
- Car wash facilities. The City ordinance already requires that new car washes use a water recirculation system. The proposed change would limit the amount of water that could be used per car to 35 gallons.
- Misting systems. Misting systems are only permitted May through September when the temperatures exceed 90 degrees.
- Golf Courses. All golf courses that use District or City water, even existing golf courses, shall be required to submit and follow a water budget and identify water conservation measures.

- Manmade ornamental water features. The City ordinance already requires that water features utilize a recirculation pump and limits their number per subdivision. The proposed change limits water features to 25 square feet per parcel.
- Metering. Individual residential units need to be separately metered or equipped so water delivered to each unit can be separately tracked. In multi-family projects with more than 5,000 square feet of outdoor irrigation, the outdoor water use needs to be metered separately from the living units.
- Exceptions. The City can consider exceptions on a case-by-case basis for special purpose landscape areas such as stormwater management areas, cemeteries, etc.

Included in the packet is a redlined version of the proposed changes showing the revisions. Also included in the packet is a clean version with all of the proposed revisions incorporated into the draft. The Planning Commission heard this item on December 14, 2023 and recommended approval.

16. The purpose of the proposed MOU is to identify the City as a cooperating agency with the Bureau of Land Management and the United States Fish and Wildlife Service in the development of the Supplemental Environmental Impact Statement and Incidental Take Permit concerning the Northern Corridor highway right-of-way. The Northern Corridor is a proposed right-of-way through the protected area north of St. George and Washington, which would potentially connect the Red Hills Parkway to an I-15 interchange in northeastern Washington near Hurricane City limits. Under the MOU, the City would agree to participate in this process by reviewing documents, communicating, providing guidance regarding potential impacts on the City, and providing written comments. The city has no funding obligation under the MOU, except for the general overhead costs associated with participation. The City can withdraw from the MOU with 30 days' notice. To ensure the City's interests are addressed protected, and to maintain relationships with the City's counterparts, City staff believe that it is important that the City be actively involved in these types of projects. Staff recommend approval of the MOU and the designation of Arthur LeBaron as the point of contact. – Dayton Hall

17. Submitted by Arthur LeBaron, City Engineer: Public Works staff has identified roadways to be chips sealed in accordance with our pavement management plan and evaluating existing roadway surfaces. A bid package was advertised and bids were opened on December 20. There were 4 bidders, with the low bidder being Sunroc at \$432,629.32.

Staff members have evaluated the bids and recommend the contract be awarded to Sunroc in the amount of \$432,629.32. Sunroc has proposed to complete this work in June, 2024. The contract amount fits within the parameters of the current City budget.

18. Submitted by Arthur LeBaron, City Engineer: Public Works Staff members assembled a list of roadways to be slurry sealed based on the City's Pavement Management Plan and an evaluation of current pavement conditions. A project was advertised and bids were opened on December 20.

There were 4 bidders for this project. City Staff opened and evaluated the bids and American Pavement Preservation LLC was the low bidder at \$466,442.05. The City has entered into contracts in years past with this company and have had good results.

Staff recommends awarding the contract to American Pavement Preservation LLC in the amount of \$466,442.05. The project schedule is proposed to start work in late March, 2024 and finish up mid-April, 2024. The recommended contract amount fits within the parameters of the current City budget for pavement management.

19. Liberty Village is a proposed nonprofit development that will educate the public about American history, government and the public's responsibility to be involved citizens. Liberty Village would like to break ground early this year with a park and parking lot, and continue with other buildings in future years. Liberty Village is located on a portion of a 160 acre parcel that was granted a zone change in November of 2021. As a condition of the zone change, a development agreement was recorded that requires, among other things, that no development of the property would be approved until such time that utilities and services were available and had been extended to the property. This property is located within an area of the City where, due to inadequate public facilities (mostly water and power), subdivision applications have not been approved unless the developer has secured easements and constructed (or paid for the construction of) the necessary improvements to extend adequate capacity to the development. However, residential building permit applications on existing parcels, which do not require subdivisions and additional lots, have not been denied. Liberty Village is not seeking to subdivide the property.

Liberty Village is seeking approval from the City Council under the applicable development agreement to proceed with its plans to build the park and the associated buildings. The Water Department has reviewed the proposal and determined that the water infrastructure needed for this limited development is presently adequate. The Power Department has reviewed the proposal and has also determined that the existing infrastructure in the area will support the limited development. This determination is based on an assumption that some of the subdivisions already approved by the City (which would utilize all remaining capacity in the area) will not be constructed or will not be in need of service connections before that capacity becomes available. City Staff recommend that the Council carefully consider the implications of the request. Developments in this area have not been permitted to proceed until the developer brings adequate utilities to the property. To ensure that the City does not overextend

itself by granting entitlements beyond its current abilities, this practice should continue. If the Council chooses, it could find that Liberty Village is unique in that it is a nonprofit, educational development, which is not seeking to subdivide, and that its impact is comparable to residential building permits that are presently being allowed on existing parcels. If the Council chooses to do so, staff recommends the Council adopt the Record of Approval included in the packet. Granting Liberty Village's request will authorize Liberty Village to proceed with a preliminary site plan application and building permit applications.

Included in the packet are the: (1) proposed Record of Approval and (2) the governing Development Agreement.

This staff summary was prepared by Dayton Hall, City Attorney.

20. The last few years Hurricane City has added several new recreational facilities to the community including the all-abilities park, bridge across the Virgin River in the Confluence Park and the rodeo grounds. It is anticipated in the near future Hurricane City will be completing basketball gyms, a trail along 600 North, additional ballfields and renovation of our city swimming pool.

In the past, our city leaders expressed interest in the Healthy Utah Community Program and we thought that this might be a good time to seek this designation if the council would like to move forward on being a part of this program. The agenda packet houses the requirements that the council can review and determine if they are interested in the program. If the council is interested, staff will work on completing the necessary requirements to make Hurricane City a Healthy Utah Community. --Kaden DeMille

RESOLUTION 2024-02

**A RESOLUTION OF THE HURRICANE CITY COUNCIL OF HURRICANE, UTAH,
APPOINTING A REPRESENTATIVE FOR HURRICANE CITY TO SERVE ON THE
MOSQUITO ABATEMENT AND CONTROL DISTRICT BOARD OF WASHINGTON
COUNTY FOR THE PURPOSE OF ATTENDING MEETINGS AND REPORTING TO
THE CITY THE CURRENT INFORMATION AND ACTIVITIES OF SAID DISTRICT**

WHEREAS, a coordinated response between municipalities and the county is necessary to adequately and efficiently address the problem of providing mosquito abatement services; and

WHEREAS, each participating municipality is given the opportunity to appoint a Mosquito Abatement and Control District governing board member to represent each municipality; and

WHEREAS, Hurricane city desires to designate a person to serve on said Mosquito Abatement District Governing Board as the representative for Hurricane City for the calendar year 2024 and for such time thereafter until a successor has been designated and appointed:

THEREFORE, BE IT HEREBY RESOLVED by the City Council of Hurricane, Utah that Nanette Billings, shall be, and is hereby, designated to serve as Hurricane's representative on the Mosquito Abatement and Control District Governing Board for the calendar year of 2024 and for such time thereafter until a successor has been designated and appointed.

Passed and adopted this 4th day of January 2024.

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 4th day of January 2024. 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
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____
Joseph Prete	_____	_____	_____	_____

Cindy Beteag

RESOLUTION 2024-03

A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH, APPROVING THE DESIGNATION AND APPOINTMENT OF A REPRESENTATIVE TO SERVE ON THE ADMINISTRATIVE CONTROL BOARD OF THE HURRICANE VALLEY FIRE SPECIAL SERVICE DISTRICT FOR THE CALENDAR YEAR 2024 AND FOR SUCH TIME THEREAFTER UNTIL A SUCCESSOR HAS BEEN DESIGNATED AND APPOINTED

WHEREAS the Hurricane Valley Fire Special Service District was created by the Washington County Commission for the purpose of providing fire suppression and protection services for the residents of Hurricane, LaVerkin, Toquerville, Leeds, Virgin, Rockville and Springdale, Utah, as well as other unincorporated areas of Washington County, Utah; and

WHEREAS said District is governed by an Administrative Control Board made up of seven (7) members appointed by the member municipalities; and

WHEREAS Hurricane City desires to designate a person to serve on said Administrative Control Board as the representative for Hurricane City during the calendar year 2024 and for such time thereafter until a successor has been appointed; and

WHEREAS all legal requirements pertaining to the designation of said representative has been met; and

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

BE IT HEREBY RESOLVED by the Hurricane City Council of Hurricane, Utah that Clark Fawcett, a member of Hurricane City Council, shall be, and is hereby, designated to serve as the representative for Hurricane City on the Administrative Control Board of Hurricane Valley Fire Special Service District for the calendar year 2024 and for such time thereafter until a successor has been designated and appointed.

DATED this 4th day of January 2024.

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 4th day of January 2024. 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
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____
Joseph Prete	_____	_____	_____	_____

Cindy Beteag

Minutes of the Hurricane City Council special meeting held on December 5, 2023, in the Council Chambers at 147 North 870 West, Hurricane, Utah at 6 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, and City Recorder Cindy Beteag.

AGENDA

6:00 p.m. - Call to Order

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

Prayer, thought, and Pledge led by Doug Heideman

Canvassing of the 2023 General Election

Wendy Godlewski thanked the Council for their involvement in canvassing the election and taking their jobs seriously. Three errors were found at the post-election audit on Friday. She is frustrated the County isn't taking their advice and doing more of an audit. There is a very low margin of error with how close the City's race was. She doesn't think the County allowed enough time to count the number of ballots that are needed to have statistical confidence in the election. Doug Heideman stated he wished the County would have given the City more time to audit. He mentioned the ballot that was counted when an envelope was found without a signature. Ballots are secret and can't be tracked once they have been separated from the envelope. Councilman Heideman asked what other cities came to canvass. Ms. Godlewski stated she is not aware because the public was not allowed to attend.

Mayor Billings mentioned the County did another audit on Friday. This audit is required by the State but then the County Clerk did additional hand count audits. There were a couple mistakes that were found. She is not pointing fingers at anyone. The local officials are great. The machines are what is not trusted. She wants the local officials to feel supported and not attacked. Everything in government should be trusted and verified.

Cindy Beteag reported Hurricane City has 11,881 registered voters and 4,841 ballots were cast for this election which equals to 40.75 %. There were 333 ballots that were not counted for the following reasons: 28 returned past deadline, 245 undeliverable, 9 returned unsigned, and 51 signatures did not match voter record. The top three candidates are Clark Fawcett with 2276 votes, Drew Ellerman with 2108 votes, and Joseph Prete with 2076 votes. Amy Werrett received 2030 votes, Stephen Lemmon received 1876 votes and David Sanders received 1578 votes.

40 David Hirschi commented there are good people that work for the County but he is
41 disappointed they didn't allow more time to verify counts. He stated if anyone was here to
42 contest the results, then he would not canvass. Councilman Thomas believes the machines are
43 problematic. He thinks we should return to one day voting in person. He trusts people more
44 than how the machines can be run. He would have liked more time to review ballots. However,
45 he is grateful for the few things they were allowed to do and the County doing hand counts on
46 a few precincts. Councilman Heideman commented when everything was hand counted there
47 seemed to be problems too. He trusts the County. He thinks we need to be able to test the
48 machines locally.

49
50 Doug Heideman motioned to accept and certify the report from the County Election Official
51 that Clark Fawcett, Drew Ellerman, and Joseph Prete received the most votes. Seconded by
52 David Hirschi. Motion carried with Joseph Prete, David Hirschi, Doug Heideman, and Kevin
53 Thomas voted aye.

54
55 David Hirschi motioned to adjourn at 6:25 p.m. Seconded by Joseph Prete. Motion carried
56 unanimously.



STAFF COMMENTS

Consideration and decision on an **appeal of the denial of a business license for a home-based pet care facility**. -Melanie Watanabe

Discussion:

Homegrown Pet Care applied for a home-based business license on October 11, 2023, for pet care, boarding, daycare, and grooming. The zoning for the property where the business would be located is Residential (R-1-10). Staff reviewed the application in accordance with the licensing procedures and requirements for home-based businesses. It was determined that the requested license could not be issued for two different reasons: (1) pet care, boarding, daycare, and grooming is not permitted as a home-based business under Hurricane City Code section 10-42-3 and (2) the operation of a commercial kennel is not a permitted use in the zoning for the property. A commercial kennel is defined as a commercial establishment having three or more dogs over the age of four months for the purpose of boarding, breeding, buying, selling, grooming, letting for hire, or training for a fee. HCC 10-3-4. Hurricane City Code 10-13-3 and Table 10-13-1 specifies that commercial kennels are not permitted in any residential zone. Based on the information provided by the applicant, City staff determined that the proposed use was not permitted as a home-based business and that the proposed use for pet care, boarding, daycare, and grooming clearly met the definition of a commercial kennel, which is not a permitted use for the applicant's property. Therefore, the application was denied on November 08, 2023.

Hurricane City Code 3-1-9 states that denial of a business license application may be appealed by the applicant to the City Council by filing a written notice of appeal with City Recorder within 15 days of the denial. The applicant filed the notice of appeal on November 21, 2023.

The only question for the Council's consideration is whether the applicant's proposed use is permitted under the Code as presently written. The Council cannot grant exceptions or variances to the adopted Code. If the Council disagrees with staff's findings and determines that the use is permitted, then the appeal should be granted based on the finding that the proposed use is permitted as a home-based business and does not constitute a commercial kennel. On the other hand, if the Council finds that the proposed use is not permitted as a home-based business and does meet the definition of a commercial kennel, the appeal should be denied.

Findings:

Recommendation:

Attachments:

1. Homegrown Pet Care Appeal
2. Homegrown Pet Care License Denial-Letter from police

Notice of Appeal:

City Recorder,

We would like to appeal the decision to deny our request for a business license. We believe that an in-home pet care is not fundamentally different from an in-home child care, except that pet care carries much less liability.

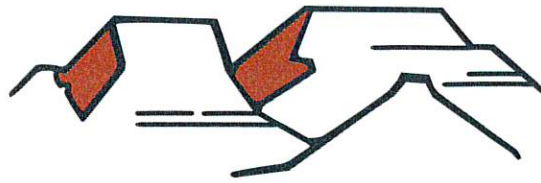
Additionally, we already contract with Rover to provide this service, and we believe the community benefits from having a trusted member of the community that is licensed to perform this work.

Thank you for reconsidering.

Sincerely,
Melanie and Emerson Watanabe
Homegrown Pet Care LLC

Mayor
Nanette Billings

City Manager
Kaden DeMille



HURRICANE CITY

UTAH

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

November 08, 2023

Homegrown Pet Care LLC
3389 W 2430 S
Hurricane, UT 84737

RE: Denial of Business License Application for a Home-based Pet Care Facility

Emerson and Melanie Watanabe:

On October 11, 2023, a business license application was submitted to my office for your business along with payment of the license application fees. This application was reviewed in accordance with the licensing procedures and requirements for home-based businesses. It has been determined that the requested license cannot be approved or issued because it is not a permitted use within Hurricane City Code 10-42-3.

The \$25.00 for the application fee is not refundable. Operating the business without a license would subject you to citation for operating without a valid business license. Enclosed is a \$50.00 refund check.

If you wish to appeal against this decision, you must submit a written notice of appeal with the City Recorder within 15 days of this denial. Upon receiving a written notice of appeal, the matter shall be heard and decided by the City Council in the next City Council meeting.

Thank you,

Karri Richardson

Karri Richardson
Licensing Clerk



Business License Processing Checklist

Business Name Homogrown Pet Care LLC Date Received 11-7-23

- ☒ Fees paid
☒ Background check completed date NA
☒ Staff meeting review 11-8 Date reviewed _____
☒ Transferred to Zoning/Building Department

Certificate of Occupancy or Tenant Improvement Inspection required ☐ yes ☒ no

Comments/Problems: _____

- ☐ Zoning/Building approval _____ Date approved _____
Fire Inspection required ☐ yes ☒ no _____ Date passed (if yes) _____
Health Department Certificate required ☐ yes ☒ no _____ Date received (if yes) _____
Sales tax number/outlet required ☐ yes ☒ no _____ Date verified (if yes) _____
Professional license(s) required ☐ yes ☒ no _____ Date verified (if yes) _____
Any additional reviews, approvals, State license(s) required: _____

☐ License cannot immediately be approved

Explanation: _____

☐ License issued _____ Date issued ☐ Mailed ☐ Picked Up



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

Date of Application _____

License Fee \$50.00
Application Fee \$25.00
Total Due \$75.00

BUSINESS LICENSE APPLICATION

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

SECTION A — BUSINESS INFORMATION

Name of Business: Homegrown Pet Care LLC

Business Phone: 808-554-7517

Business Email: homegrownpetcare@gmail.com

Business Address: 3389 W 2430 S Hurricane, UT 84737

(Street Number)

(Suite)

(City)

(State)

(Zip)

Mailing Address (if different): 3389 W 2430 S Hurricane, UT 84737

(Street Number)

(City)

(State)

(Zip)

State Sales Tax Number (if applicable): _____

Dept. of Commerce Entity #: 13592050-0160

Professional License # (if applicable): _____

Federal Identification #: 93-3827360

Website: na

Description of Business: Pet care, boarding, day care, grooming

Will there be any building or remodeling: no

Will the business be located in a newly constructed building: no

Commercial Lease-Property Owner Written Approval: n/a

Are you a Sexually Oriented Business: no

Does your business sell alcohol: no

Does your business sell tobacco products: no

PART B — HOME OCCUPATION APPLICANTS ONLY

- Will customers visit the home yes
- Will display or stock of merchandise be at home no
- Will employees be at the house no
- Any unusual traffic be created in neighborhood no
- Will parking on roadside be needed no
- Will flammable, toxic or poisonous materials be kept at the home no
- Will there be any disposal of material into the septic or sewersystem? no
- What portion of home is to be used for business (25% total structure area) 25%

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: Emerson and Melanie Watanabe

Phone Number: 808-554-7517

Home Address: 3389 W 2430 S Hurricane, UT 84737

(Street Number)

(City)

(State)

(Zip)

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

➤ This form is an application for a business license. The receipt for payment of license fees thereof does not constitute being approved to operate a business. The actual license will be issued only when all inspections are completed and signed off by the various City departments and approval is given by the Business License Office. To open and/or operate a business without final approval is a Class B Misdemeanor and punishable by law.

Phone Number: _____

I understand that compliance with applicable fire codes and regulations is required for all businesses licensed in Hurricane City. I understand that a fire inspection of my business may be required in the future and would be conducted by Hurricane City Fire Department personnel. I understand that failure to comply with applicable fire codes and regulations may be grounds for revocation of my business license.

Applicant's Signature

Applicant's Signature

10/11/23

Date _____

Office Use Only

TOTAL FEES \$ 75 AMOUNT PAID \$ 75

DATE 11-7-23 RECEIPT # 8.173987

CITY LICENSE NUMBER _____

Home Occupation: yes / no Zone: R1-10 Permitted Use: yes / no

Planning Commission Approval Required: yes / no If yes, which approval: site plan / conditional use

Planning Commission approval date: N/A Zoning approval/date: _____

New Construction: yes / no Remodel: yes / no Building Permit: yes / no

Certificate of Occupancy or Tenant Improvement inspection required: yes / no

Mayor

Nanette Billings

November 28,

City Manager

Kaden C. DeMille

Chief of Police

Lynn L. Excell

Mayor



HURRICANE CITY

Police

UTAH

City Council

Joseph Prete

David Sanders

David Hirschi

Kevin Thomas

Doug Heideman

2023

Billings,

Hurricane City Council,

Re: Business License Denial for

Homegrown Pet Care LLC.

I support Hurricane City in the denial of the business license for Homegrown Pet Care LLC due to the fact that the address for this business is in a residential neighborhood and not in a commercial zone. With this proposed business being a kennel facility, it would be distinctly different from a Day Care or Childcare business where the noise and potential for odors would be detrimental to the neighborhood and residents. If this license is granted, I would expect to receive a large volume of calls from neighbors relating to the disruption of the health, safety, and welfare of their neighborhood.

Bottom line, I would ask that the Hurricane City Council support the current Hurricane City Ordinance 10-42-3 and the Hurricane City Staff and not allow this business license to be granted in a residential neighborhood. If the applicants wish to find a location in a commercial zone that allows this type of business to operate, the license should be considered for approval. Thanks for your consideration of my opinion and request.

Lynn L. Excell, Chief of Police



- ~~D. Provisions For Detached Accessory Buildings To Encroach Into Side Or Rear Yard Setback: In order for a detached one-story private garage or accessory building, twenty feet (20') or less in height, to encroach into the side or rear yard setback, the following conditions shall be met:~~
- ~~1. The roof shall not project across a property line;~~
 - ~~2. Stormwater runoff from the building shall not run onto an adjacent property;~~
 - ~~3. Any nonportable building to be placed over a drainage and/or utility easement shall require written approval, obtained by the applicant, from the electrical power department and public works department, and all other utility companies with easement rights, prior to obtaining a building permit, and shall require the property owner to provide and sign a recordable waiver and indemnification document that waives and indemnifies the city from any liability for any damages or expenses (including reimbursement to the city for removing the building) associated with the building being placed over an easement, and granting the city permission to remove such building at any time the city determines that said building must be removed to repair drainage facilities or utilities, or for other safety, health or welfare reasons; and~~
 - ~~4. All other provisions of this title and applicable building and fire codes regarding accessory buildings shall be adhered to. (Ord. 2004-18, 6-9-2004)~~

9-8A-7: BONUS DENSITY PROGRAM:

- A. Program Outline: Specific areas in the Washington Fields area and some of the area north of I-15 have been designated as bonus density areas on the general plan land use map to provide incentives that will help preserve open space. These areas are allowed a base density of one dwelling unit per acre, which corresponds to the RA-1 zone. However, bonus density credits may be given as multiples of the base density for specific open space amenities (outlined below) that are incorporated into developments and are beneficial to the public. If higher density zoning is present at the time of subdivision or rezoning, credits are reduced proportionally. If all of the credits were to be granted, a property could theoretically achieve a density of three and five-tenths plus (3.5+) units per acre (2.5 plus units per acre in bonus density, plus the original 1 unit per acre in base

density). However, it is unlikely that all of the density bonus categories could or would be earned on a given parcel (e.g., it is not desirable to have a public park on every parcel), plus there must be a density cap to meet the intent of the general plan. Therefore, the actual density increases resulting will average close to the two and five-tenths (2.5) units per acre identified as a goal in the general plan.

- B. **Program Participation:** If the property is already zoned RA-1, then an applicant may simply propose a subdivision that meets the RA-1 zone development standards. If the applicant wants to participate in the bonus density program, a development agreement may be proposed that incorporates the open space amenities for the bonus density credits, along with a proposed subdivision. If the property has a zoning designation that is less dense than the RA-1 zone, then a zone change request to RA-1 must first be approved by the city council after a recommendation by the planning commission. If the applicant wants to participate in the bonus density program, a development agreement may be proposed along with the zone change request, or the applicant may wait until the RA-1 zone is approved and then propose a development agreement along with a proposed subdivision. If the applicant does not want to participate in the bonus density program, then a proposed subdivision must meet the RA-1 zone development standards. If the property has a zoning designation that is more dense than the RA-1 zone and an applicant wants to participate in the bonus density program, density credits will be proportionally reduced and identified in a development agreement.
- C. **Modified Area, Width And Yard Regulations:** Since the purpose of the bonus density program is to help preserve open space, lots in a subdivision may be clustered and the areas of the lots may be reduced. As lots are reduced in size, their widths and minimum yard setbacks must also be proportionally reduced in size. Lot setbacks must be noted on the final plat of each subdivision. The following table outlines the modified area, width and yard regulations for lots when an applicant participates in the bonus density program:

		Yards In Feet		
Area In Square Feet ¹ (Closest Size Range)	Width ² In Feet	Front	Side	Rear
6,000 (absolute minimum lot size)	66	20	8 and 10	10
8,000	70	20	8 and 10	10
10,000	80	20	10 and 10	20
12,000	90	20	10 and 10	20
15,000	100	20	10 and 10	20

Area In Square Feet ¹ (Closest Size Range)	Width ² In Feet	Yards In Feet		
		Front	Side	Rear
21,780 ($\frac{1}{2}$ acre)	100	20	10 and 10	20
30,000	100	20	15 and 15	20
40,000	200	30	15 and 15	30
43,560 (1 acre)	200	30	15 and 15	30

Notes:

1. The absolute minimum lot size is 6,000 square feet. The smallest lots of a subdivision are to be internal to the project, and the lot sizes along the subdivision boundaries are to be within a single density transition category of adjacent properties.
2. Unlike the minimum yard setbacks, the lot widths are more of a general guideline than a minimum standard. The intent is for the lot widths to be proportional to the corresponding lot size range. It is undesirable to have lots extremely narrow compared to their depths. Each proposed subdivision will be evaluated to see if this intent is being met. Flag lots may also be considered for properties that have irregular shapes and/or topography.

D. Open Space Amenities And Bonus Density Credits:

1. Interconnectivity Of Internal Streets: Streets connect to each other within the project to create an informal grid that provides multiple routes for emergency vehicles and distributes traffic evenly through a neighborhood. To qualify for this density bonus, no more than twenty percent (20%) of the lots shall be located on cul-de-sacs.

Credit: Twenty five percent (25%) increase in density.

2. Interconnectivity Of External Streets: Streets connect to adjoining parcels/subdivisions to create an informal grid that provides multiple routes for emergency vehicles and distributes traffic evenly through a subarea. To qualify for this density bonus, access streets in addition to what is already required (the basic minimum number of access streets for each subdivision is 2, but larger subdivisions or subdivisions that have specific access and/or circulation issues may require more than 2 access streets), shall be provided, and the additional connecting streets provided shall be stubbed internal to adjacent properties and not perpendicular to streets external to the development.

Credit: Fifteen percent (15%) increase in density for one additional street.

Twenty five percent (25%) increase in density for more than one additional street.

3. Houses Facing Onto Arterial And Major Collector Streets: It is acknowledged that major and minor arterial streets (106 foot and 80 foot rights of way) and major collector streets (66 foot rights of way) are designed to optimize for traffic capacity and speed. Residential lots may be allowed to back (double frontage lots) onto arterial and major collector streets as long as there are adequate setbacks and landscape screening. Additionally, residential streets (60 foot and 50 foot rights of way) are intended to optimize for convenient travel, safe mixing of pedestrians and vehicles, and to be attractive settings for homes. Accordingly, double frontage lots are not allowed (except in cases of topographical constraints and factors relating to safety) along residential streets. It is possible to front homes onto arterial and major collector streets through the use of rear alleys or frontage roads. To qualify for this density bonus, double frontage lots are not allowed on streets classified as arterials (106 foot and 80 foot rights of way) and major collectors (66 foot rights of way). Keep in mind that intersection spacing must meet city standards for alleys and frontage roads as well as all other streets.

(Note: Except in cases of topographical constraints and factors relating to safety, and if it makes no difference to traffic impacts, double frontage lots are prohibited along rights of way less than 66 feet.)

Credit: Twenty five percent (25%) increase in density.

4. Mix Of Lot Sizes: Consistent with the general plan, the objective of this incentive is to encourage developments that have a mix of lot sizes so as to create a varied appearance (avoiding "cookie cutter" character). To qualify for this density bonus, credit is given for distinct variations in lot sizes.

Credit: Five percent (5%) increase in density for each variation of lot size that pertains to at least ten percent (10%) of the lots (a variation is a change of at least 25 percent in lot size), up to a maximum of twenty five percent (25%). To qualify for this density bonus, no more than fifty percent (50%) of the area may be within one size range (± 12.5 percent constitutes a size range).

5. Neighborhood Park Land Dedication: Through the general plan, the city has adopted a neighborhood park level of service (LOS) standard of six (6) acres of park for every one thousand (1,000) population. In circumstances where a development does not actually generate a need for at least a four (4) acre park (minimum size for efficient city maintenance), this density bonus provides an incentive to dedicate additional park land without losing development units. To qualify for this density bonus, land in excess of the LOS standard for the proposed development shall be conveyed to the city, the park must be constructed, it must be four (4) acres or more, and its design must be accepted by the city.

Credit: Five percent (5%) increase in density for each one percent (1%) of the site dedicated to park land that is in excess of the city neighborhood park level of service standard (6 acres per 1,000 population), up to a maximum of twenty five percent (25%).

6. Provisions For Affordable Housing: "Moderate income housing" (or affordable housing) is defined as housing occupied or reserved for occupancy by households with a gross household income equal to or less than eighty percent (80%) of the median gross income for households of the same size in the county in which the city is located. Although providing for affordable housing is not a method for preserving open space, it is a public amenity listed in the bonus density program of the general plan, and may be included as a means to receive an increase in density as long as other open space amenities are incorporated into the development. Some of the techniques used to provide for affordable housing include the utilization of state or federal funds or tax incentives to promote the construction of moderate income housing, the utilization of programs offered by the Utah housing corporation, and the utilization of affordable housing programs administered by the Utah department of community and economic development. To qualify for this density bonus, a minimum of four (4) additional categories of the bonus density program must be implemented in the development and include the "public trails through and along the development" category, the design and quality of the moderate income housing shall be similar to the design and quality of all other housing in the development, and a minimum of five percent (5%) of the total housing must be dedicated to moderate income housing.

Credit: Twenty five percent (25%) increase in density for five percent (5%) of the total housing dedicated to moderate income housing.

Fifty percent (50%) increase in density for ten percent (10%) or more of the total housing dedicated to moderate income housing.

7. Landscaped Open Space: The objective of this density bonus is to encourage provisions for open areas that, pursuant to the general plan, preserve the open space character of the Washington Fields area and the area north of I-15. To qualify for this density bonus, the development shall provide for landscaped open space, with at least fifty percent (50%) of the landscaped areas visible from public streets. Landscaping shall be reflective of the area in which it is located and shall be developed as approved by the city. Xeriscape landscaping (drought tolerant vegetation) is encouraged for the type of vegetation, but the amount of vegetation must be dense enough to reflect the greenery of the area (especially if irrigation rights are still available for property in the Washington Fields area). Shade trees and shrubs shall be an integral part of the landscaping and shall meet sight distance requirements. All landscaping shall be installed by the developer and shall be maintained by the homeowners' association. The responsibility for landscape maintenance shall be cited on the plat, in the development agreement, and recorded against the properties within the development.

Credit: Three percent (3%) increase in density for each one percent (1%) of the site preserved in open space (not including areas within rights of way or areas that have received credit through other provisions of the bonus density program), up to a maximum of twenty five percent (25%).

8. Open Space At Intersection Corners At Periphery Of Development: Pursuant to the general plan, open areas created at intersection corners at the periphery of a development will generally make a greater contribution to preserving the open space character of the Washington Fields area and the area north of I-15 than open space internal to a development. To qualify for this density bonus, landscaping shall be reflective of the area in which it is located and shall be developed as approved by the city. Xeriscape landscaping (drought tolerant vegetation) is encouraged for the type of vegetation, but the amount of vegetation must be dense enough to reflect the greenery of the area (especially if irrigation rights are still available for property in the Washington Fields area). Shade trees and shrubs shall be an integral part of the landscaping and shall meet sight distance requirements. All landscaping shall be installed by the developer and shall be maintained by the homeowners' association. The responsibility for landscape maintenance shall be

cited on the plat, in the development agreement, and recorded against the properties within the development.

Credit: Five percent (5%) increase in density for each one percent (1%) of the site preserved in open space that is located at intersection corners (not including areas within rights of way or areas that have received credit through other provisions of the bonus density program), up to a maximum of twenty five percent (25%).

9. Landscaped Rights Of Way And Front Yard Setbacks Along Arterials And Major Collectors: It is the city's desire, pursuant to the general plan, to preserve the open space character of the Washington Fields area and the area north of I-15 by having generous building setbacks with broad landscaped areas defined by open fencing. Therefore, along these major corridors, the following choices are available to qualify for a selection of density bonuses:

a. An additional landscape setback between the street ROW line and fence/wall of the development, beyond the required landscape strip for double frontage lots, shall be installed by the developer and shall be maintained by the homeowners' association. The responsibility for landscape maintenance shall be cited on the plat, in the development agreement, and recorded against the properties within the development. An average width of fifty feet (50') is desirable, with the width varying between thirty feet (30') and seventy feet (70'). A landscape setback of at least thirty feet (30') is required to get a density bonus.

b. Landscaping shall be reflective of the area in which it is located and shall be developed as approved by the city. Xeriscape landscaping (drought tolerant vegetation) is encouraged for the type of vegetation, but the amount of vegetation must be dense enough to reflect the greenery of the area (especially if irrigation rights are still available for property in the Washington Fields area). Shade trees and shrubs shall be an integral part of the landscaping and shall meet sight distance requirements.

c. The desired fencing along the major roadway corridors is open three (3) rail or four (4) rail fencing. Wrought iron fencing and/or solid fence/wall panels may be as approved by the city if they match or are compatible with fences of adjoining developments. Overall transparency of at least fifty percent (50%) is required to get a density bonus. (Note: Thin wire mesh fencing, as approved by the city, may be used to confine animals and/or children.)

Credit: If a landscape setback varying between thirty feet (30') and seventy feet (70'), with an average of at least fifty feet (50') is created, with no section less than thirty feet (30') wide, the bonus density will be five percent (5%) for each one percent (1%) of the total land area of the parcel that is in the landscape setback, up to a maximum of twenty five percent (25%).

Where homes face arterials and major collectors, a five percent (5%) density credit will be granted for each ten feet (10') of building setback beyond the minimum front yard setback of the closest size range, up to a maximum of twenty five percent (25%).

If fencing is less than seventy five percent (75%) transparent but at least fifty percent (50%) transparent, a density increase may be transferred to the rest of the property. The density credit will be derived by dividing the area of the landscape setback by the average lot size of the development. (Hypothetical example: 30 foot landscape setback x 1,000 foot property length = 30,000 square feet/15,000 square foot average lot size = total of 2 additional lots.)

If fencing is seventy five percent (75%) or more transparent, a density increase may be transferred to the rest of the property. The density credit will be derived by dividing the area of the landscape setback by the average lot size of the development, plus fifty percent (50%). (Hypothetical example: 30 foot landscape setback x 1,000 foot property length = 30,000 square feet/15,000 square foot average lot size = 2 units + 50 percent = total of 3 additional lots.)

10. Public Trails Through And Along Development: Where indicated in the general plan and/or city trails plan, the proposed development shall provide public trails that generally follow trail alignments shown in said plans. Unless otherwise approved by the city, trail alignments must traverse through the property or around its periphery, according to the plans. To qualify for this density bonus, trails shall be open to the general public, and shall connect to adjacent trails, parks, open space and public streets, in a manner as approved by the city. The trails shall be a minimum of ten feet (10') wide, meet AASHTO standards, and shall be installed by the developer. Trail maintenance responsibility will be as agreed upon in the development agreement. If trails are proposed that are not indicated in the general plan and/or

city trails plan, a density bonus may be granted for these trails as well. To qualify for a density bonus for these trails, the same criteria as outlined for trails indicated in the general plan and/or city trails plan shall be met. Again, trail maintenance responsibility will be as agreed upon in the development agreement.

Credit: Twenty five percent (25%) increase in density.

11. Tree Lined Streets: Tree lined street sections for all streets (internal and periphery) are desirable to provide shade for sidewalks (encourage walking) and to reduce solar heat gain on streets and buildings. To qualify for this density bonus, all streets within the development, on both sides of the streets, shall have a landscape strip between the curb and sidewalk, planted with shade trees at forty foot (40') spacing or less. The shade trees shall be from twenty four inch (24") box containers with a minimum caliper of one and one-half inch (1½") (1 inch above grade). Smaller trees may be interplanted where overhead obstructions (power lines, etc.) may result in problems that could be caused by the taller varieties. However, the sizes of the trees at planting are to remain the same. A list of approved tree species and landscaping guidelines are available in the community development department. As approved by the city, trees may be grouped and/or staggered as long as the average spacing of forty feet (40') is maintained.

Credit: Twenty five percent (25%) increase in density.

12. Miscellaneous Public Benefits: Other types of open space benefits, such as school sites, recreation centers, libraries, fire stations, the pooling of adjoining properties for regional detention basins, regional parks or other public benefits, etc., may also be explored for inclusion into bonus density credits. These facilities will have to incorporate a degree of open space in their design, and the design will have to be approved by the city, with the density bonus credit determined during the project's evaluation. (Ord. 2005-40, 11-14-2005)

**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. 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 15% 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:	
-----------------------	--

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 recorded 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 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 4th day of January, 2024

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 4th day of January, 2024. 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	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____

Cindy Beteag, Recorder

surrounding land is already developed, and

2. The proposed dwellings are platted for individual ownership of the dwelling units, and
3. The density and building scale of the proposed units are similar in scale to an adjoining developed parcel or is considered in scale with the surrounding area and fits harmoniously into the neighborhood, as determined by the city council but in no case shall exceed a twenty-five percent (25%) dwelling units per acre increase as stated in the general plan. To be considered for density increases, the applicant will include, as part of the development design, any of the following credits:

PUD - Bonus Density
Options

- a) Landscaping Along Periphery Of Development: If a common area landscaped strip between twenty feet (20') and twenty five feet (25') is created along the periphery of the development (which is beyond the 50% requirement of parcel coverage for non-structures), and surrounds at least sixty seven percent (67%) of the development, an increase of one dwelling unit per acre shall be added to the minimum density for the development.
- b) Tree Lined Streets: Tree lined streets for all streets (internal and periphery) to provide shade for sidewalks and to reduce solar heat gain. If all streets within the development, on both sides of the streets, will have a landscape strip between the curb and sidewalk planted with shade trees at forty foot (40') spacing or less, with trees that are of twenty four inch (24") box containers with a minimum of one and one-half inch (1½") caliper, an increase of one dwelling unit per acre shall be added to the minimum density for the development.
- c) Landscaped Open Spaces: For every ten percent (10%) of landscaped open space incorporated into the development (which is beyond the 50% requirement of parcel coverage for non-structures), and not receiving density increases through other provisions of this section, may receive an increase of one dwelling unit per acre shall be added to the minimum density for the development.
- d) Increased Recreational Facilities: Additional designated recreational amenities, above the requirements as already set forth for Planned Unit Development, may receive an increase in density, as approved by the planning commission and city council on case by case basis.

- D. Setbacks: The setbacks for all Planned Unit Developments - Multiple Family will be as follows, unless an approved setback alternative plan is granted by the Planning Commission and approved by the City Council:

1. Front Yard: Front yard setbacks shall be a minimum of twenty feet (20'). The street side of corner lots, shall be the same as the front yard setback.

Welcome!

This workbook will allow you to run calculations on different density bonus options and different percentages of required affordability in order to gain those density bonuses. The different density bonus options are:

- 2 additional units per acre (as already exists in the Planned Commercial zone)
- 10% additional units
- 15% additional units
- 20% additional units

The affordable housing system we are looking at is an incentive-based system. We need to come up with a system that a developer would voluntarily choose to use, if a developer could get more market-rate units without a density bonus for deed-restricted affordable units then they will almost every time.

The hypothetical scenario we are presenting is a proposed 50 acre development at a variety of different zoning options.

The important number, from a developer's point of view is the last number "Number of additional market rate units" this is where they will intend to make up the loss in revenue they will take from the deed restricted units.

These calculations do not take into effect state and federal grants, tax credits, or other potential funding mechanisms

Percentage of units considered "affordable"* ----->

Once you've made a selection please go to the next sheet

their income. Different levels of AMI options are available

10 %

Zoning	R1-8	R1-6	RM-1	RM-2	RM-3
Density	4.4	6.15	6	10	15
Development of 50 Acres	220	307.5	300	500	750
Plus Two Units an Acre	320	407.5	400	600	850
Number of Affordable Units (%)	32	40.75	40	60	85
Other Units	288	366.75	360	540	765
Additional Market Rate Units	68	59.25	60	40	15

Zoning	R1-8	R1-6	RM-1	RM-2	RM-3
Density	4.4	6.15	6	10	15
Development of 50 Acres	220	307.5	300	500	750
10% Density Bonus	242	338.25	330	550	825
Number of Affordable Units (%)	24.2	33.825	33	55	82.5
Other Units	217.8	304.425	297	495	742.5
Additional Market Rate Units	-2.2	-3.075	-3	-5	-7.5

Zoning	R1-8	R1-6	RM-1	RM-2	RM-3
Density	4.4	6.15	6	10	15
Development of 50 Acres	220	307.5	300	500	750
15% Density Bonus	253	353.625	345	575	862.5
Number of Affordable Units (%)	25.3	35.3625	34.5	57.5	86.25
Other Units	227.7	318.2625	310.5	517.5	776.25
Additional Market Rate Units	7.7	10.7625	10.5	17.5	26.25

Zoning	R1-8	R1-6	RM-1	RM-2	RM-3
Density	4.4	6.15	6	10	15
Development of 50 Acres	220	307.5	300	500	750
20% Density Bonus	264	369	360	600	900
Number of Affordable Units (%)	26.4	36.9	36	60	90
Other Units	237.6	332.1	324	540	810
Additional Market Rate Units	17.6	24.6	24	40	60



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:

Update for 1/4/2024:

This item was continued on 10/19/23 to allow a chance for Council to receive real-world calculations from developers, and for staff to prepare a draft ordinance reducing the proposed density bonus to 15%. The item was subsequently tabled at the 11/16/23 meeting to allow staff time to meet with state representatives to get direction for amending the annual report to the state on the city's Moderate Income Housing Plan in order to better comply with state implementation requirements. Staff has met with the state and the updated report has been submitted.

Update for 10/19/23:

This item has been discussed at multiple meetings. Council touched briefly on this item during a work meeting on September 21, 2023, but they wanted to discuss it more in depth before a decision was made. The working meeting at 4:00 p.m. is to address any final concerns the Council has before a decision is made.

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 possible approval of a Land Use Code Amendment to adopt Title 10 Chapter 52 and amend Title 1 Chapter 4 with regard to affordable housing, which will create 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. 15% 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 15% 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.

Recommendation: Approve

Attachments:

1. Ordinance 2023-12 Affordable Housing



STAFF COMMENTS

Consideration and possible approval of the **revocation of the residential hosting license** for Mark Swedberg Bed and Breakfast-Cindy Beteag

Discussion:

The applicant applied for a four-room residential hosting license on June 28, 2023. It was reviewed in accordance with licensing procedures and a license was issued on August 1, 2023. Hurricane City Code 10-3-4 requires the owner or a member of the family of the property owner to reside on the property as their primary residence. In October, staff started getting complaints from neighbors that no one lives in the home, guests were parking on the road, and noise violations after 10 p.m. A violation letter was sent on November 6, 2023, but a response was not received from the owner. Staff was still receiving complaints from neighbors about no one living there and not being present when the home was being rented. After further investigation, staff found that the County records show that the home was transferred from the license holder's name to Scott Smith on December 7, 2023. In addition, the City utility account is also under Scott Smith's name. A notice for the revocation hearing was mailed to the license holder and/or property owner on December 21, 2023.

Since Mark Swedberg no longer owns the home and does not live in the home full-time as required by HCC, staff recommends revoking the residential hosting license.

Findings:

Recommendation:

Attachments:

1. Letters and application for Mark Swedberg
2. Neighbor comments on 2591 S3200 W AirBnb
3. IMG_5980
4. IMG_5810
5. IMG_6297
6. IMG_6334
7. IMG_6338
8. IMG_5919
9. IMG_6340
10. IMG_6339
11. IMG_6023
12. IMG_6337
13. IMG_5811
14. IMG_6356

15. IMG_6436
16. IMG_5840
17. IMG_6054
18. IMG_5948
19. IMG_6069
20. IMG_5862
21. IMG_6289
22. IMG_6445
23. IMG_6063
24. IMG_6357
25. IMG_5864
26. IMG_6341
27. IMG_6295

Mayor
Nanette Billings

City Manager
Kaden C. DeMille



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

December 21, 2023

Scott Smith
Mark Swedberg
Mark Swedberg Bed and Breakfast
2591 S 3200 West
Hurricane, UT 84737

**Re: Property at 2591 S 3200 W, Hurricane, Utah
Revocation of Residential Hosting License**

Mr. Smith and Mr. Swedberg:

In addition to previous notices provided to you, this letter provides further notice that the property listed above is in violation of Hurricane City's ordinances governing short-term rentals and residential hosting. The current property records indicate that Mr. Smith is the current owner of the property, but this letter is addressed to both of you because the property records show the ownership of the property has been conveyed back and forth between each of you multiple times in recent years. The current residential hosting license is in the name of Mark Swedberg Bed and Breakfast.

A Residential Hosting use is limited to an "owner-occupied single-family residential structure." See HCC 10-3-4. For the property to be leased pursuant to a residential hosting license, "the owner or a member of the family of the property owner shall reside on the property as their primary residence." See HCC 10-41-4. Based on credible evidence provided to Hurricane City, your property is not owner-occupied, which is required to maintain your residential hosting business license.

In addition, your property has been found in other violations of City ordinances governing short-term rentals, as set out in a letter previously sent to you on November 6, 2023.

Business licenses are subject to revocation when the business is being conducted contrary to law. See HCC 3-1-9. Therefore, this notice is to inform you that a hearing before the City Council has been scheduled to consider revocation and possibly revoke your business license for Thursday, January 4, 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 or concerns, please do not hesitate to contact me at 435-635-2811 x106.

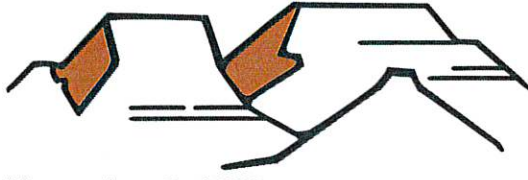
Sincerely,

Cindy Beteag

Cindy Beteag
City Recorder

Cc: Dayton Hall, City Attorney
Fred Resch III, Code Enforcement
Licensing Department





PLANNING & ZONING
HURRICANE CITY
UTAH

November 6, 2023

SWEDBERG MARK TR
2591 S 3200 W
HURRICANE, UT 84737

Re: The Property Located at 2591 S 3200 W, Hurricane, UT

Mr. Swedberg,

Hurricane City has been made aware that the residential hosting facility at the address listed above has facilitated several violations of the following city ordinances over the past month:

You have allowed guests to park on public streets in violation of: **HCC 10-51-14 (B)** *No tenant, guest, or other person visiting a residential hosting facility shall park on a public street.*

You have allowed guests to stay out past 10:00pm in violation of: **HCC 10-51-12 (B)** *The owner of any short-term rental shall be responsible to ensure that guests or occupants do not 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.*

You, or your family member, is not onsite while there are guests present in violation of: **HCC 10-41-4 (C)** *The owner or a member of the family of the property owner shall reside on the property as their primary residence as a condition for an ADU to be rented. For long-term occupancy, the property owner may live in the ADU or the primary building.*

We understand you may not have been aware of these rules so this is a courtesy letter notifying you that if you continue to violate this ordinance, we will have no choice but to start the revocation process of your business license. Violations of city ordinances with regards to transient lodging facilities carries a fine of \$750 per day.

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

Sincerely,
Fred Resch III
Code Enforcement Officer

CC Brienna Spencer, Business Licensing

CC Dayton Hall, City Attorney

Account 0584741 Viewing Doc Warranty Deed

Entry Number20230036490 Book Page Recording Date12/07/2023 08:02:10 AM

Fee\$40.00 Consideration Instrument Date12/06/2023

From To
SWEDBERG MARK TRUSTEE SMITH SCOTT R
2591 S 3200 W TRUST A COMMON LAW TRUST

Legal Information

Subdivision	Lot	Block	Unit	Building
DIXIE SPRINGS D AMD & EXT (H)	67			
WATER-S				
Section	Township		Range	

Legal Description

Parcel Number Account Number Vesting Deed

H-DSP-D-67 0584741Account

This document references more accounts than can be displayed. The number of accounts on this document is 1

Related Information

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

PAID
6/28/23
8170029

Date of Application

6/23/2023

License Fee \$50.00
Application Fee \$25.00
Total Due \$75.00

RESIDENTIAL HOSTING BUSINESS LICENSE APPLICATION

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

SECTION A — BUSINESS INFORMATION

Name of Business: Mark Swedberg Bed and Breakfast
Business Phone: 218-242 2003 Business Email: Mark@royal legal solutions.com
Business Address: 2591 S 3200 W Hurricane UT 84737
Mailing Address (if different): N/A
State Sales Tax Number: N/A Dept. of Commerce Entity #: N/A

PART B — Residential Hosting or Home Bed and Breakfast Questionnaire

Number of parking spaces for owner 1
Number of permanent residents 1

Number of guest parking spaces 3
Total number of guest rooms 4

DIAGRAM OR PHOTOGRAPH OF PARKING FACILITIES AND A FLOOR PLAN SHOWING WHAT ROOMS WILL BE RENTED MUST BE INCLUDED!

PART C — BUSINESS OWNER INFORMATION

If other than sole proprietor, a list of all corporate officers or partners must be included. This list must include name, home address, and phone number.

Owner's Name: Mark Swedberg Phone Number: 218242 2003
Home Address: 2591 S 3200 W Hurricane UT 84737
(Street Number) (City) (State) (Zip)

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

I understand that compliance with applicable fire codes and regulations is required for all businesses licensed in Hurricane City. I understand that a fire inspection is required before a license will be issued. Contact Hurricane Valley Fire District at 435-635-9562 to schedule an inspection.

I REPRESENT, COVENANT AND AGREE: (a) that this home is my primary residence and will be occupied by me whenever guests are present, and that I will not rent rooms occupied by me or other family members who occupy the home as their primary residence, (b) to comply with all regulations of Title 3 Business License Regulations, (c) that business shall not commence or be conducted at this location until a business license has been issued by the City of Hurricane, (d) that an inspection must be completed and the building approved by the appropriate Building, Zoning, Fire and Health authorities prior to issuance of a business license, (e) that any misrepresentation contained herein or any violation of any of the foregoing shall constitute grounds for denial or revocation of a business license.

Mark Swedberg
Applicant's Signature

6/23/2023
Date

➤ This form is an application for a business license. The receipt for payment of license fees thereof does not constitute being approved to operate a business. The actual license will be issued only when all inspections are completed and signed off by the various City departments and approval is given by the Business License Office. To open and/or operate a business without final approval is a Class B Misdemeanor and punishable by law.

TOTAL FEES

\$

75

Office Use Only

AMOUNT PAID \$

75

DATE

6-28-23

RECEIPT #

8.170029

CITY LICENSE NUMBER

10863

Home Occupation: yes / no

Zone: _____

Permitted Use: yes / no

Planning Commission Approval Required: yes / no If yes, which approval: site plan / conditional use

Planning Commission approval date: _____ Zoning approval/date: 8-1

New Construction: yes / no

Remodel: yes / no

Building Permit: yes / no

Certificate of Occupancy or Tenant Improvement inspection required: yes / no

Karri Richardson

From: Licensing
Sent: Thursday, June 29, 2023 10:39 AM
To: 'mark@royallegalsolutions.com'
Subject: Residential Hosting License

Hello,

For your business license we will need a floor plan showing which rooms or casita is being rented out and site plan showing where the designated off-road parking will be located. Once we have that and it is approved through planning, we will be able to issue your business license.

Thank you,



Karri Richardson

Building Clerk

Building Department

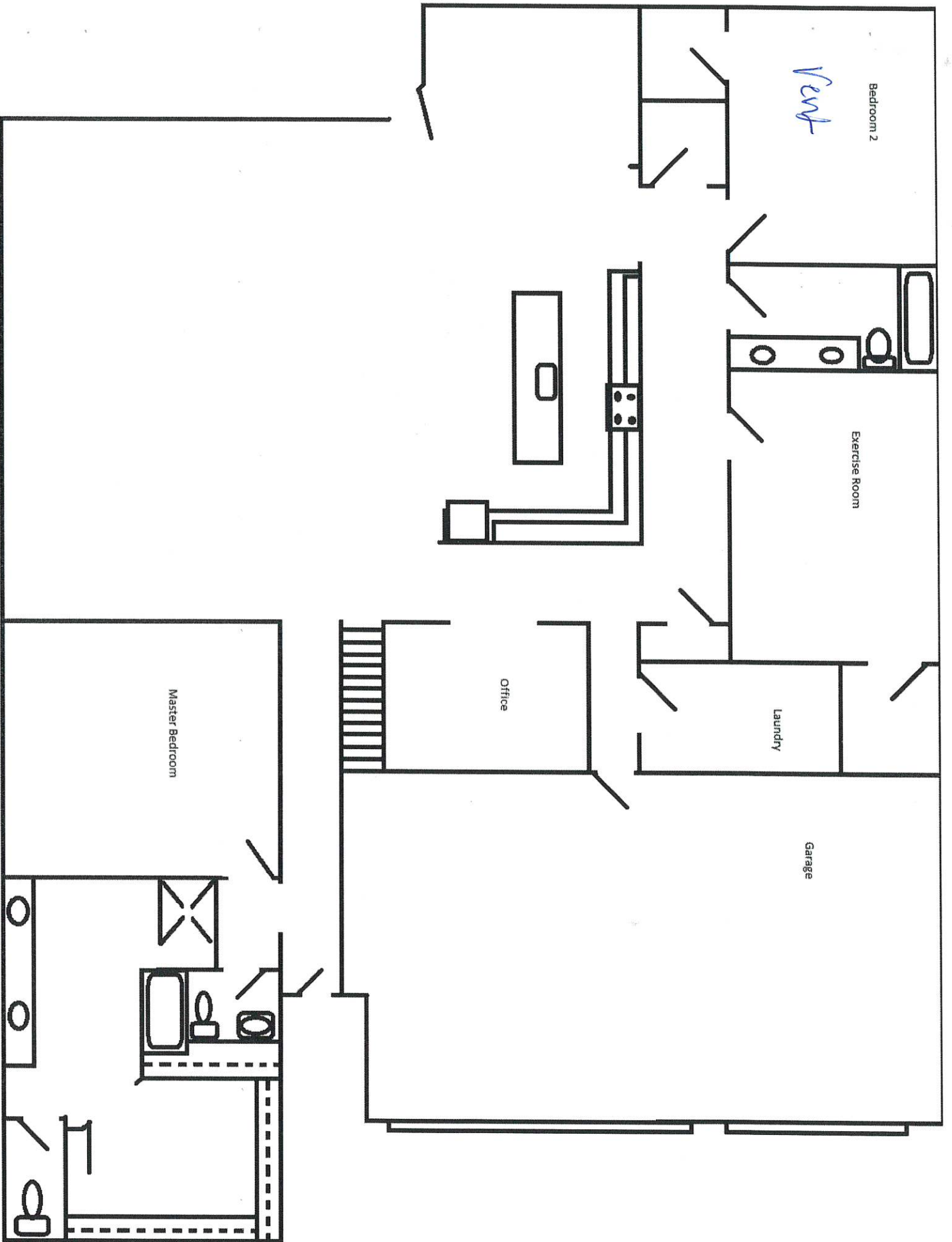
Phone : 435.635.2811 ext. 120

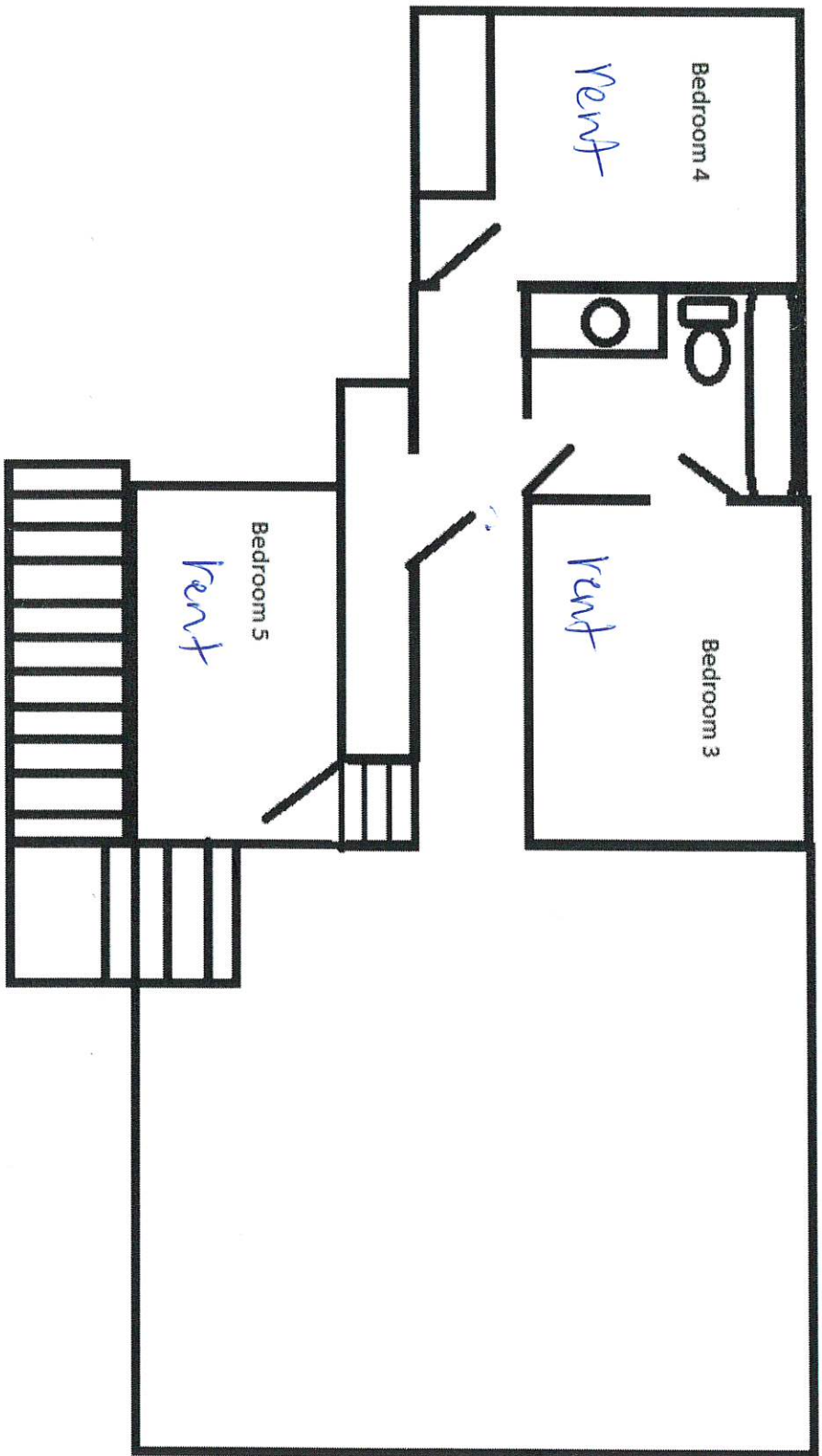
Email : karri@cityofhurricane.com

147 N. 870 W. Hurricane UT, 84737

www.cityofhurricane.com







Business License Processing Checklist

Business Name Mark Swedberg B n B Date Received 6-28-23

☒ Fees paid

☒ Background check completed date NA

☒ Staff meeting review 7/5 Date reviewed _____

☒ Transferred to Zoning/Building Department

Certificate of Occupancy or Tenant Improvement Inspection required ☐ yes ☒ no

Comments/Problems: Need site + floor plan - rec'd
8/1/23

☒ Zoning/Building approval 8/1 Date approved

Fire Inspection required ☒ yes ☐ no 7/19 Date passed (if yes)

Health Department Certificate required ☐ yes ☒ no N/A Date received (if yes)

Sales tax number/outlet required ☒ yes ☐ no AirBnb/VRBO Date verified (if yes)

Professional license(s) required ☐ yes ☒ no N/A Date verified (if yes)

Any additional reviews, approvals, State license(s) required: _____

☐ License cannot immediately be approved

Explanation: _____

☐ License issued _____ Date issued ☐ Mailed ☐ Picked Up

site plan recieved 8/1/23

Account 0584741 Viewing Doc Warranty Deed

Entry Number20230014043 Book Page Recording Date05/16/2023 10:05:25 AM

Fee\$40.00 Consideration\$10.00 Instrument Date05/09/2023

From To
SMITH SCOTT R SWEDBERG MARK TR
2591 S 3200 W TRUST

Legal Information

Subdivision	Lot	Block	Unit	Building
DIXIE SPRINGS D AMD & EXT (H) WATER-S	67			
Section	Township	Range		

Legal Description

Parcel Number	Account Number	Vesting Deed
H-DSP-D-67	0584741	Account 

This document references more accounts than can be displayed. The number of accounts on this document is 1

Related Information

Entry Number	Book	Page
--------------	------	------

From: [Fred Resch](#)
To: [Cindy Beteag](#); [Dayton Hall](#)
Subject: FW: Police Report 2591 S3200 W AirBnb
Date: Wednesday, December 20, 2023 1:55:16 PM

For 2591 S 3900 W: the applicant has requested her name be redacted although she is willing to attend the meeting

Sent: Wednesday, December 20, 2023 1:06 PM
To: Fred Resch <fred@cityofhurricane.com>
Subject: Re: Police Report 2591 S3200 W AirBnb

Good afternoon Fred..... per your request I plan on attending the meeting.....

As you know, I contacted you several months ago regarding the house next-door to me owned by Scott Smith at 2591 S. 3200 W. in Hurricane..... he had the house up for sale at least for a good year and a half if not longer and it was apparent that it was not selling..... so unbeknownst to me and the neighbor on the other side of him, he turned it into an Airbnb...which does not have a host living there... he also put it under an LLC under a friend of his name that works for him(I sent you documentation of a text message that the apparent host sent to me) I saw a friend of his right after all of this started at the house one day moving stuff out and I asked him if Scott was around that I wanted to talk to him and all I got was a text message from some person that I didn't even know saying that she was taking care of his property now..... and that if I had any grievances to contact her, which I never did.....

It has been nothing short of a nightmare, as far as cars, atv's, side by sides parked on the streets, trailers equipment with excessive noise, music and partying until after midnight sometimes...etc..... I have tried telling the people staying at the house to be quiet, as there is a 10 o'clock noise ordinance law in effect in Hurricane to no avail..... I usually have to yell over the parting wall as when I ring the doorbell they don't answer it..... one night I had to call the police, which I try not to do because I feel the police have other important issues that they could be dealing with..... you start feeling unsafe on your own property.....

As you know, I filed a complaint with Airbnb and they contacted the host which again is not living there and I have showed you documentation in regards to that..... you should also have in your possession a tape that I sent you that was recorded from inside my bedroom of the partying one night going on as the sauna and hot tub is maybe 20 feet from my bedroom window..... and I always have my window cracked open for fresh air....so it's loud!!

Also, I had major surgery on my back, which took me over two months to recuperate from, and I had to deal with all of this at the same time..... The lady on the other side of the house also had major surgery.... now they don't have a voice, but they complain to me about what is going on over there.

As I have discussed with you, I do not understand how permits can be giving out in a residential neighborhood for these Airbnb rentals..... it is unfair to the neighbors involved that live on either

side.....

The landscaping at this house has not been kept up. It looks like a jungle, the trash, which you have pictures of overflows at times and it is not put out for the trash pick up so it has to stay like that for another week with the Airbnb guest actually taking the trash barrels out and putting them in the middle of the driveway to send the owner a message to dump them

My concern is that the value of my property is going down, and if I chose to put my house up for sale and the interested individual found out that next-door is an Airbnb. Nobody in their right mind would buy a house next to an Airbnb..... the houses are too close together.....

I also have excessive light trespass that I have showed you pictures of but for right now they have not been turning those lights on....

I sincerely feel that something needs to be done about this house rental.... nobody should have to go through this....

If you have any questions, please feel free to contact me..... and let me know if the album of some of the pictures came through. If not, I'm going to have to find another way to send them...

And it goes without saying as you have previously indicated to me.... that I do want my name redacted from any correspondence that you may have with anyone else.....

Thank you for your time...

[REDACTED]

Sent from my iPhone

On Dec 11, 2023, at 10:06 AM, Fred Resch <fred@cityofhurricane.com> wrote:

The hearing will be before the City Council. We are planning for January 4th, 2023 at 6pm

[REDACTED]

Sent: Wednesday, December 6, 2023 11:30 AM

To: Fred Resch <fred@cityofhurricane.com>

Subject: Re: Police Report 2591 S3200 W AirBnb

OK I will get you the information that you gave requested.... You had mentioned to me

before when we met that I might have to attend the meeting?
Please let me know ahead of time..
Thank you....

Sent from my iPhone

On Dec 6, 2023, at 10:48 AM, Fred Resch <fred@cityofhurricane.com>
wrote:



In consultation with the City Attorney and business licensing staff we will be moving forward with the revocation process. The hearing is tentatively scheduled for January 4th, 2024.

We will need from you:

1. A written statement explaining the issues and violations from this short-term rental.
2. Any pictures you have of any violations (cars parked in the street, people being out late etc.)
3. The communication you have had with the owners/property management (your information will be redacted)
4. Anything else you would like to add

Thanks,

Fred Resch III
City Planner
Hurricane City
P: (435) 635-2811 x 110
E: fred@cityofhurricane.com
<image003.png>



Sent: Wednesday, December 6, 2023 10:06 AM
To: Fred Resch <fred@cityofhurricane.com>
Subject: Police Report 2591 S3200 W AirBnb

Per your request...

<image001.jpg>

<image002.jpg>

Sent from my iPhone

[Show all 3 reviews](#)

Hosted by Katrina

Joined in December 2022



★ 9 Reviews

✓ Identity verified

During your stay

Host is available most days from 8 am to 8pm to message or call. Please leave all contact through the Airbnb app unless there is an emergency.

Response rate: 79%

Response time: within an hour

[Contact Host](#)

To protect your payment, never transfer money or communicate outside of the Airbnb website or app.



~~\$212~~ **\$145** night
Oct 28 – Nov 2

[Reserve](#)





165

We heard your co...



Listing address

[2591 S 3200 W, Hurricane, UT](#), US

Date of issue

November 4, 2023

Message to host

Excessive noise after [10:00 PM](#) on most nights that there have been people in that home.... over this past weekend which was November 4th and 5th..... There was excessive noise until after 12:Am..... there is a noise ordinance law here that goes into effect after [10:00 PM](#) at night... Cars are being parked all over the street which is illegal here in the city..... in order to operate an Airbnb. They have to be parked in front of the driveway..... this past weekend. There were cars everywhere..... And there is no host living in the place per the license The weekend before this past weekend there was a police car over there one night.... We live in a quiet neighborhood you don't hear noise after nine or [10 o'clock](#) at night.....

Message to Airbnb



they are strictly against the rules I have posted. I am sorry if these problems have affected you in such a way that your quality of life has been affected. Again, I am doing everything I can to prevent these issues from happening.

I simply ask if anything starts happening again to please call or text me the moment the issues begin.

If you would like to talk further, I'm available anytime; Please feel free to call or text me.

Pin



Mark as Read



Hide Alerts



Delete





166

Katrina text mess...



I received an email from Airbnb concerning some of the same issues you have expressed to Scott. I am doing my best to control these issues, including posting signage of noise curfew, extensive house rules defining that there is to be no outside activity past 10 pm and no indoor/outdoor noise past the same time, rules defining allowed parking ONLY in the driveway and directly in front of the home, and absolutely nowhere else.

Now. There is nothing I can do about these issues, unless I personally monitor every stay (which is illegal) or have word from neighbors AS the issues are happening. If I am made aware of issues as they are happening I can





+1 (435) 236-0436 >

Siri Found a Contact



Katrina

+1 (435) 236-0436

Add



iMessage
Today 11:32 AM

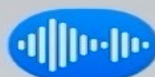
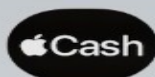
Hi ~~XXXX~~, this is Katrina. I manage Scott's house. He passed me along your number because there have been concerns of parking issues and noise past 10 pm. If any of these issues occur again PLEASE text me ASAP so I can call the guests. Thank you, and hope you have a nice day!

The sender is not in your contact list.

[Report Junk](#)



iMessage





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Katrina text mess...



I understand your position, and I am doing everything I can to find out which guests have created problems and to have this reconciled with Airbnb. I agree none of these things should be happening, as they are strictly against the rules I have posted. I am sorry if these problems have affected you in such a way that your quality of life has been affected. Again, I am doing everything I can to prevent these issues from happening.

I simply ask if anything starts happening again to please call or text me the moment the issues begin.

If you would like to talk further, I'm available anytime; Please feel free





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Katrina text mess...



Now. There is nothing I can do about these issues, unless I personally monitor every stay (which is illegal) or have word from neighbors AS the issues are happening. If I am made aware of issues as they are happening I can take action with the guests, Airbnb itself, and local government. I can control and change the situation better from my position as a host than a neighbor can. However, if I am not made aware of issues there is nothing I can do.

I understand your position, and I am doing everything I can to find out which guests have created problems and to have this reconciled with Airbnb. I agree none of these things should be happening, as they are strictly







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Hi ~~XXXXXXXXXX~~

If you haven't made complaints to Airbnb about issues regarding noise, parking, and host living situation, please disregard this text.

I received an email from Airbnb concerning some of the same issues you have expressed to Scott. I am doing my best to control these issues, including posting signage of noise curfew, extensive house rules defining that there is to be no outside activity past 10 pm and no indoor/outdoor noise past the same time, rules defining allowed parking ONLY in the driveway and directly in front of the home, and absolutely





















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Katrina text mess...



out which guests have created problems and to have this reconciled with Airbnb. I agree none of these things should be happening, as they are strictly against the rules I have posted. I am sorry if these problems have affected you in such a way that your quality of life has been affected. Again, I am doing everything I can to prevent these issues from happening.

I simply ask if anything starts happening again to please call or text me the moment the issues begin.

If you would like to talk further, I'm available anytime; Please feel free to call or text me.

Sent from my iPhone





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We heard your co...



**We're looking into it now—
here's what you can expect
next.**

Hi 

Thanks for sharing your concern about potential home sharing activity in your community. We take these issues seriously, and we'll do our best to help resolve your concern.

Our team has officially processed your submission and has created a case number for you: **1337034787983**

Here's what we'll do next:

- We'll first check our system for an Airbnb listing at the address you shared.
- If we find an Airbnb listing at the address, we'll get in touch with the host to voice your concern and, if needed, take further action.





STAFF COMMENTS

Consideration and possible approval of **Resolution 2024-01 authorizing the Attainable Housing Agency Interlocal Cooperation Agreement to join the Attainable Housing Agency (AHA)** for the purpose of maintaining, protecting, and promoting affordable and attainable housing.

Discussion:

On November 16, 2023, Joe Spencer with the Attainable Housing Agency (AHA) presented to the previous Council and explained they are an interlocal agency that finances, maintains, protects, and promotes affordable and obtainable housing for municipal members. AHA focuses on the finance and construction of basement apartments and ADUs. Homeowners master lease the basement apartments to the AHA through a municipal bond. The master lease is secured for ten years, and the municipal bond funds are used to transform unfinished basements into apartments.

For Hurricane City residents to be able to participate in this program, the Council would first have to approve the Interlocal Cooperating Agreement to join the Attainable Housing Agency.
- Cindy Beteag

Findings:

Recommendation:

Attachments:

1. AHA Interlocal Agreement (9-8-23)
2. Resolution 2024-01 Aproving Interlocal - AHA

**INTERLOCAL COOPERATION AGREEMENT
PROVIDING FOR THE ORGANIZATION AND OPERATION OF
THE ATTAINABLE HOUSING AGENCY**

THIS INTERLOCAL COOPERATION AGREEMENT (“*Agreement*”), dated as of _____, 2023 is made and entered into among the Public Agencies that are parties to this Agreement pursuant to the provisions of the Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated 1953, as amended (the “*Act*”).

WHEREAS, pursuant to the Act, any power, privilege, or authority exercised or capable of exercise by a Public Agency may be exercised and enjoyed jointly with any other Public Agency having the same power, privilege or authority;

WHEREAS, each of the Members is a public agency, as defined in the Act;

WHEREAS, the Act authorizes the Members to create an interlocal entity with the authority to exercise powers common to the Members;

WHEREAS, each of the Members desires to maintain, protect and promote affordable and attainable housing in an efficient way to reduce costs to the Members and better utilize public resources;

WHEREAS, the Members desire to create the Attainable Housing Agency (“*AHA*”) as an interlocal entity (as defined in the Act) for joint and cooperative action pursuant to the Act for the purposes set forth herein and to exercise the powers provided herein, including undertaking and financing of projects in furtherance of the purposes set forth herein;

WHEREAS, each of the Members hereby finds, determines and declares that the joint and cooperative action of the Members pursuant to this Agreement and the projects undertaken and financed by AHA will maintain, protect and promote affordable and attainable housing;

WHEREAS, AHA will be a body politic and corporate and a political subdivision of the state of Utah (the “*State*”), separate from the Members; and

WHEREAS, the obligations of AHA will be special obligations of AHA and will not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or AHA and no Member will be liable for any obligation incurred by AHA;

NOW THEREFORE, the parties hereto agree as follows:

Section 1. Definitions.

Capitalized terms used herein shall have the meanings ascribed to such terms in the recitals of this Agreement and the meanings set forth below:

1.1. Board means the Board of Directors of AHA.

1.2. Director means a member of the Board.

1.3. Member means each Public Agency that is currently or, in the future, becomes a Member of AHA in accordance with the requirements of Section 5 hereof, except those Public Agencies that have withdrawn as provided herein.

1.4. Member Representative means the person appointed by a Member to be such Member's Representative to AHA.

1.5. Project means any project for the purposes set forth herein

1.6. Public Agency means a “public agency” as defined in the Act or as defined in the Act at the time a Public Agency became a Member of AHA.

1.7. State means the State of Utah.

1.8. Utah Code means the Utah Code Annotated 1953, as amended.

Section 2. Creation

2.1. Pursuant to the Act the parties to this Agreement hereby create a separate legal entity as a political subdivision of the State to be known as “Attainable Housing Agency” (“AHA”) to accomplish the purposes of their joint and/or cooperative action set forth herein and as provided for in the Act or any other applicable law. AHA shall be a body politic and corporate, separate from the Members. Pursuant to the Act, the creation, operation, governance and fiscal procedures of AHA and its governing authority shall be governed by the Act and are not subject to the statutes applicable to the Members. The debts, liabilities and obligations of AHA do not constitute debts, liabilities or obligations of any Member.

2.2. This Agreement is made pursuant to the provisions of the Act. The purpose of this Agreement is to establish an interlocal entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to an interlocal entity under the Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 3. Effective Date and Term of Agreement.

3.1. This Agreement shall be effective on and as of the date of the execution of this Agreement by the initial Members, though dated as of the date first written above.

3.2 The term of this Agreement shall continue and AHA shall remain in existence until the latest to occur of:

- (a) 50 years after the effective date of this Agreement or the effective date of any amendment to this Agreement; or
- (b) five years after AHA has fully paid or otherwise discharged all of its indebtedness.

Section 4. Purpose, Benefits and Powers.

4.1. The primary purpose of AHA is to maintain, protect and promote affordable and attainable housing by undertaking, acquiring, constructing, operating, maintaining and financing residential housing projects, including alternative dwelling units (ADUs).

4.2. While meeting the purposes set forth above AHA will strive to provide the following benefits to its Members:

- (a) Reduce the expense, time and other resources expended by Members and other Public Agencies to achieve the purposes set forth above;
- (b) Achieve costs savings through economies of scale and joint and cooperative action;
- (c) Facilitate the efficient use of public resources by the Members and other Public Agencies in achieving the purposes set forth above; and
- (d) Provide an open and public process.

4.3. In furtherance of the purposes set forth in Section 4.1 herein, AHA shall have all powers conferred upon AHA as a separate legal entity pursuant to the Act and any other laws of the State, and all powers possessed by the Members under the laws of the State necessary or convenient to accomplish the purposes set forth in Section 4.1 herein, to be exercised as contemplated by the Act and this Agreement. The powers so conferred upon AHA include, without limitation, the power to:

- (a) Make and enter into contracts and other instruments;
- (b) Adopt, amend, and repeal rules, bylaws, policies, and procedures for the regulation of its affairs and the conduct of its business;
- (c) Sue and be sued;
- (d) Employ or contract with persons or firms for personnel to accomplish its purposes and powers, including the hiring or engagement of an executive director;
- (e) Employ agents and consultants to accomplish its purposes and powers;

(f) Acquire real or personal property, or an undivided, fractional, or other interest in real or personal property, necessary or convenient for the purposes set forth in Section 4.1;

(g) Undertake, own, purchase, lease, acquire, sell, construct, operate, maintain, repair, finance and refinance any Project;

(h) Contract for the acquisition, purchase, lease, construction, operation, maintenance and repair, management or sale or other disposition of any Project;

(i) Borrow money, incur indebtedness, and issue revenue bonds, notes, or other obligations and offer, issue, and sell warrants, options, or other rights related to such bonds, notes, or other obligations issued by AHA (collectively, "*Bonds*");

(j) Assign, pledge or otherwise convey as security for the payment of any Bond revenues, receipts, property and funds to the extent permitted by law and this Agreement;

(k) Make loans and enter into leases (as lessor or lessee);

(l) Receive gifts, contributions and donations of property, funds, services, and other forms of assistance;

(m) Take such other actions, engage in such other transactions, enter into such contracts and agreements and do all other things as may be necessary, convenient or appropriate to accomplish its purposes or carry out any of its powers.

AHA shall have the power of eminent domain with respect to any real property necessary for a Project; *provided, however*, such power shall not be exercised except with the unanimous consent of the Board; *and further provided*, that such power of eminent domain shall not be exercised by AHA against a Member without such Member's written consent.

4.4. The powers of AHA shall be exercised by the Board and, to the extent delegated by this Agreement or by action of the Board, by committees of the Board and officers, personnel, and persons and firms employed or contracted by AHA for such purpose, including an executive director.

Section 5. Qualification and Admission of Members.

5.1. In order to be considered for membership in AHA an entity must be a Public Agency as defined in the Act.

5.2. Qualifying Public Agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such Public Agency with AHA of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such Public Agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such Public Agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

5.3. Each Public Agency accepted as a Member shall appoint a Member Representative to AHA.

5.4. The membership of a Member may be terminated for cause upon the recommendation of the Board and a two-thirds vote of the Member Representatives. No such termination shall constitute termination of any contract between AHA and the Member nor shall it discharge or relieve such Member of its obligations under any contract to which such Member is then a party.

5.5. A Member may withdraw from this Agreement upon written notice to the Board; *provided, however*, that no such withdrawal shall result in the dissolution of AHA so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 6. Meetings of Members.

6.1. The Member Representatives shall meet no less frequently than annually to consider the business of AHA.

6.2. The business of the meetings of the Member Representatives shall be limited to: (i) the admission of new Members; (ii) the termination of a Member's membership; (iii) the election, qualification or removal of Directors; and (iv) other matters relating to the organization of AHA.

6.3. Notice of a meeting of the Member Representatives shall comply with applicable requirements of State law governing notices of public meetings.

6.4. Meetings of the Members may be held through electronic communication to the extent allowed by law. A Member Representative participating in a meeting through such means shall be considered present for purposes of a quorum and voting.

6.5. Voting by the Member Representatives shall be based on one vote per Member.

Section 7. Board of Directors and Organization.

7.1. AHA shall be administered by the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein.

7.2. (a) The Board shall consist of no less than three and no more than seven Directors.

(b) If there are two Members, each Member Representative shall appoint a Director to serve on the Board and the Member Representatives, collectively, shall appoint a third Director to serve on the Board.

(c) If there are more than two but less than eight Members, each Member Representative shall appoint a Director to serve on the Board. A Director appointed to the Board

by a Member Representative shall serve on the Board until a successor Director is appointed by the Member Representative. A Director appointed by a Member Representative may be removed at any time by the Member Representative that appointed such Director, with or without cause. When a new Member is admitted as a Member of AHA and there will be seven or fewer Members after such new Member is admitted, the Member Representative of such new Member shall appoint a Director to serve on the Board.

(d) If there are eight or more Members, there shall be seven Directors that shall be elected as provided herein. No later than one year after the admission of the eighth Member, the Member Representatives shall meet to elect the Directors. The Directors elected at such meeting shall replace the existing Directors; *provided, however*, an existing Director may be elected pursuant to this paragraph by the Member Representatives to continue serving as a Director. Each elected Director shall serve for a term of four years, except that the initial terms of three of the elected Directors may be shortened to two years in order to stagger the terms of the Directors. No term of a Director shall expire until a successor is elected.

(e) If the Directors are elected pursuant to Section 7.2(d) above, the Directors shall be elected by the Member Representatives at a meeting of the Member Representatives. Any Director or Member Representative may nominate individuals to serve as Directors. At least three days before a meeting of the Member Representatives to elect a Director or Directors, the Chair shall send to each Member Representative a list with the names of the individuals nominated to fill each Director vacancy. The individual nominated for a Director vacancy receiving the most votes from the Member Representatives shall be elected as Director; *provided that* at the meeting of the Member Representatives to elect the Directors after the admission of the eighth Member, each Member Representative may cast a vote for up to seven individuals nominated to serve as Director and the Directors shall be the seven individuals receiving the most votes of the Member Representatives at such meeting.

7.3. A Director may be removed by a majority vote of the Member Representatives at any time, with or without cause. A Director may resign at any time by giving at least 30 days' notice to the Board.

7.4. A vacancy on the Board shall be filled by an appointment made by the remaining Directors for a term to expire at the next annual meeting of the Member Representatives. At the next annual meeting, the Member Representatives shall fill the vacated position for its original term in accordance with the voting procedures set forth above.

7.5. A Member Representative may serve as a Director.

7.6. Directors may receive reasonable compensation for serving as such, and shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

7.7. The transaction of business of AHA shall require a quorum of the Board. A quorum shall be determined based upon the total Directors on the Board. In all cases, a majority of the

Directors shall constitute a quorum. Action by the Board shall be by resolution. A majority vote of a quorum is required to take action on behalf of AHA.

7.8. The Board may establish one or more committees in furtherance of its purposes and to provide oversight and direction to AHA on specific matters.

7.9. The Board shall meet at such times and places as the Chair of the Board shall direct, subject to the requirements of Utah law relating to notice of such meetings and the provisions of the By-Laws of AHA.

7.10. Meetings of the Board may be held through electronic communication to the extent allowed by law. A Director participating in a meeting through such means shall be considered present for purposes of a quorum and voting.

7.11. The Board is expressly authorized and empowered to exercise the powers conferred upon AHA by the Act, this Agreement or any other law.

7.12. The By-Laws of AHA shall be established and amended from time to time by the Board and shall provide, among other things, for the powers and duties of the officers and the calling and holding of meetings.

7.13. The officers of AHA shall consist of a Chair of the Board, a Vice Chair of the Board, a Secretary and a Treasurer. Each officer shall be a Director and shall be elected annually for a one-year term. A Director may serve in more than one office, except that the Chair and Vice Chair shall not be the same Director. In addition to such officers, the Board may by resolution appoint such assistant officers as the Board may from time to time determine to be necessary or desirable.

7.14. A Director shall have no liability to a Member for any act or omission in the performance of his duties as Director. The Members hereby agree not to make any claim or file any cause of action arising from any act or omission of a Director in the performance of his or her duties as Director.

7.15. The Members acknowledge and agree that the protection afforded to the Members under the Governmental Immunity Act of Utah, Title 63G, Chapter 7 of the Utah Code (the "*Immunity Act*"), shall be extended to AHA and its officers and employees pursuant to the Act. It is the express intention of the Members that all of the protection afforded to the Members and their officers and employees shall be extended to AHA and its officers and employees, the Member Representatives and the Directors, and the Members hereby delegate to AHA, to the extent permitted by law, all of the powers, privileges and immunities conferred by the Immunity Act. AHA shall indemnify and defend the Directors, the Member Representatives and the officers and employees of AHA as provided in the Immunity Act.

Section 8. Financing and Budget.

8.1. For the purposes of this Agreement, the term “Fiscal Year” shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from January 1 to and including the following December 31.

8.2. All funds of AHA shall be strictly accounted for. AHA shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of AHA shall be open to inspection at all reasonable times by each Member. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by AHA and shall be a charge against any unencumbered funds of AHA available for that purpose.

8.3. AHA shall prepare all budgets and reports and shall file such budgets and reports as required by the Act or any other law of the State applicable to AHA. Such budgets and reports of AHA shall be open to inspection at all reasonable times by each Member. The costs of preparing and filing such budgets and reports shall be borne by AHA and shall be a charge against any unencumbered funds of AHA available for that purpose.

8.4. At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 3.2, after payment of all expenses and liabilities of AHA, all property of AHA both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members.

Section 9. Bonds.

9.1. From time to time AHA shall issue Bonds as approved by the Board, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

9.2. (a) The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of any Member or AHA. No Member shall be liable for any Bond or other obligation incurred by AHA, nor liable for the indebtedness of any other Member. The Bonds shall be special obligations of AHA, payable solely from the revenues, property and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of AHA shall be pledged to the payment of the principal of, premium, if any, or interest on the Bonds nor shall the Members or AHA in any manner be obligated to make any appropriation for such payment.

(b) No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of AHA in his or her individual capacity and neither the Board nor any Director or officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

9.3. The services of bond counsel, consultants, advisors, contractors, counsel and other agents, persons and firms necessary for the Projects and/or financings or otherwise providing services to AHA may be engaged and used by AHA. Such expenses shall be paid from the proceeds of the Bonds or any other unencumbered funds of AHA available for such purpose.

Section 10. Notices.

10.1 Notices and other communications hereunder to the Members shall be sufficient if delivered to the governing body of each Member; *provided, however*, that to the extent permitted by law, AHA may provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 11. Relationship and Obligations.

11.1 The Members shall not be deemed under this Agreement to be partners, joint venturers, or associated in any manner which obligates one Member for the debts, defaults or miscarriages of any other Member, nor to render any Member liable for obligations of AHA.

Section 12. Amendments.

12.1 This Agreement may be amended from time to time in any particular which does not jeopardize or adversely affect any existing contracts, notes, bonds, or other evidence of indebtedness, *provided that* such amendment shall not subject any Member to any dues, assessments, or liability without its consent thereto. Proposed amendments may be adopted by the submission of the proposed amendment to the Board for approval by resolution passed by affirmative vote of at least two-thirds of the Directors and thereafter by submission to the governing bodies of the Members for written approval thereof by all of the Members. Such amendment shall become effective upon the execution by each of the Members, the approval by an authorized attorney as required by applicable law, and any other requirements of applicable law.

Section 13. Execution of Counterparts.

13.1. This Agreement may be executed in any number of counterparts each of which shall constitute an original.

Section 14. Governing Law.

14.1. This Agreement is made in the State of Utah, under the Constitution and laws of the State and is to be construed pursuant to such laws; *provided, however*, that with respect to any Member that is not a Public Agency of the State, the power and authority of such Member to enter into this Agreement shall be determined under the laws of the state in which such Member is organized.

Section 15. Severability.

15.1. Should any part, term, or provision of this Agreement be held by the courts to be illegal or in conflict with any law of the State, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

IN WITNESS WHEREOF, this party hereto has caused this Agreement to be executed and attested by its proper officers, thereunto duly authorized, and its official seal affixed hereto, pursuant to a resolution of its governing body, and deems itself bound hereby with all other parties executing a counterpart hereof.

[MEMBER]

By: _____
[Title]

ATTEST:

By _____
[Title]

Date of Authorization and Execution: _____

This Agreement as executed is hereby approved as being in proper form and compatible with the laws of the State of Utah

By: _____
Authorized Attorney

APPENDIX A
MEMBERS

_____, 2023

The City Council (the “*Governing Body*”) of Hurricane City (the “*Member*”), pursuant to due notice met in public session on January 4, 2024 at _____ p.m., at _____, _____. The meeting was duly called to order by the _____ with the following members of the Governing Body being present, constituting a quorum of the Governing Body:

NAME

TITLE

Absent:

Also Present:

NAME

TITLE

STATE OF _____)
)
COUNTY OF _____)

I, the undersigned, the duly qualified and acting _____ of [Name of Member] (the “Member”), do hereby certify, according to the records of the Member in my official possession, and upon my own knowledge and belief, that in accordance with the requirements of Section 52-4-202, Utah Code Annotated 1953, as amended, I gave public notice of the agenda, date, time and place of the [Resolution Date], public meeting held by the Governing Body of the Member, by:

(a) causing a Notice of Public Meeting to be posted at the principal office of the Governing Body at least 24 hours before the convening of the meeting, in the form attached hereto as *Exhibit A*; and

(b) causing a Notice of Public Meeting to be posted at the Utah Public Notice Website at least twenty-four (24) hours before the convening of the meeting.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature and impressed hereon the official seal of the Member, this [Resolution Date].

[Secretary/Clerk/Recorder]

EXHIBIT A

[Attach Notice of Public Meeting]

Thereupon, after the conduct of other business not pertinent to the following, the following resolution was introduced in written form and, after due consideration, pursuant to motion duly made by _____ and seconded by _____ was adopted and approved by the following vote:

Aye: _____

Nay: _____
Absent: _____

The resolution was thereupon signed and attested and countersigned and was ordered recorded in the official records of the Member. The resolution is as follows:

RESOLUTION AUTHORIZING THE AHA INTERLOCAL COOPERATION AGREEMENT

A RESOLUTION AUTHORIZING AND APPROVING THE AHA AGREEMENT FOR JOINT AND COOPERATIVE ACTION, THE FIRST AMENDMENT THERETO AND THE SECOND AMENDMENT THERETO/THE SECOND AMENDMENT TO THE AHA AGREEMENT FOR JOINT AND COOPERATIVE ACTION]; AND (4) RELATED MATTERS.

WHEREAS, Hurricane City (the “*Member*”) desires to become a member of Attainable Housing Agency (“*AHA*”) pursuant to the provisions of the Attainable Housing Agency Interlocal Cooperation Agreement (the “*Interlocal Agreement*”); and

WHEREAS, the Member desires to approve, authorize and execute the Interlocal Agreement to provide for the Member to become a member of AHA;

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

Section 1. Approval of the Interlocal Agreement. The Interlocal Agreement, in substantially the form attached hereto as *Exhibit A* is hereby authorized and approved, and the [Executive Officer] is hereby authorized, empowered and directed to execute and deliver the [Interlocal Agreement on behalf of the Member, and the [Clerk/Recorder/Secretary] is hereby authorized, empowered and directed to attest and countersign such execution.

Section 2. Attorney Review of the Interlocal Agreement. The Interlocal Agreement has been submitted to the attorney for the Member for review as to proper form and compliance with applicable law.

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 January 4, 2024

Hurricane City

By: _____
Nanette Billings, Mayor

ATTEST:

Cindy Beteag, Recorder

[SEAL]

EXHIBIT A

[Attach Interlocal Agreement]

After the conduct of other business not pertinent to the foregoing, it was moved and carried that the Governing Body adjourn.

[NAME OF MEMBER]

By: _____
[Title]

ATTEST:

[Secretary/Clerk/Recorder]

STATE OF _____)
)
COUNTY OF _____)

I, the duly chosen, qualified _____ of [Name of Member] (the “*Member*”), do hereby certify that the foregoing is a full, true and correct copy of the extracts of minutes of a meeting of the Governing Body (the “*Governing Body*”) of the Member held on [Resolution Date] including a resolution adopted at the meeting, as recorded in the regular official book of minutes of the proceedings of the Governing Body kept in my office, that all members were given due, legal and timely notice of said meeting, that the meeting therein shown was in all respects called, held and conducted in accordance with law and in full conformity therewith, and that the persons therein named were present at the meeting, as therein shown.

IN WITNESS WHEREOF, I have hereunto set my hand this [Resolution Date].

[Secretary/Clerk/Recorder]



STAFF COMMENTS

Consideration and possible approval of a **roadway dedication plat for 365 North, 1450 West, and 1580 West Streets**

Discussion:

The Homeowners Association at Hurricane Garden Homes is proposing to dedicate the private streets in their neighborhood. The City has had this dedication plat produced in order to accomplish them turning the streets over to the City. This idea has been discussed many times over the years. It was brought to a head when the HOA attempted to place gates across the streets. After much discussion I intimated that I would have the plat prepared if and when the HOA was ready and willing to sign it. David Houston called me a few weeks ago and made that commitment to me so I had this plat prepared for consideration.

Findings:

I have reviewed the plat and coordinated with the City Attorney and it is ready for signatures. The roadways in question are important connector roads between State Street and 600 North and are shown on the City's Transportation Masterplan. The streets do not meet City standards at this point because they lack curb and gutter and sidewalk. There is no plan at this point for the City to make any changes in the roads besides applying standard pavement management strategies and making sure that the regulatory and street signs are in good order.

Recommendation:

It is recommended that the City accept the dedication of the roads depicted on the plat in accordance with the City's master plan. This will preserve connectivity for the public access and utilities through Hurricane Garden Homes between State Street and 600 North.

Attachments:

1. 046-197 SVY-DEDICATION PLAT

ROAD DEDICATION PLAT OF
**365 NORTH & 1450 WEST &
1580 WEST STREETS**
LOCATED IN THE NORTHEAST QUARTER OF SECTION 33, TOWNSHIP 41 SOUTH, RANGE 13 WEST,
SALT LAKE BASE AND MERIDIAN, HURRICANE CITY, UTAH

NORTHEAST CORNER SECTION 33,
T. 41 S. R. 13 W. SLB&M.
FND. RING & LID MONUMENT
LS #174919

LEGEND

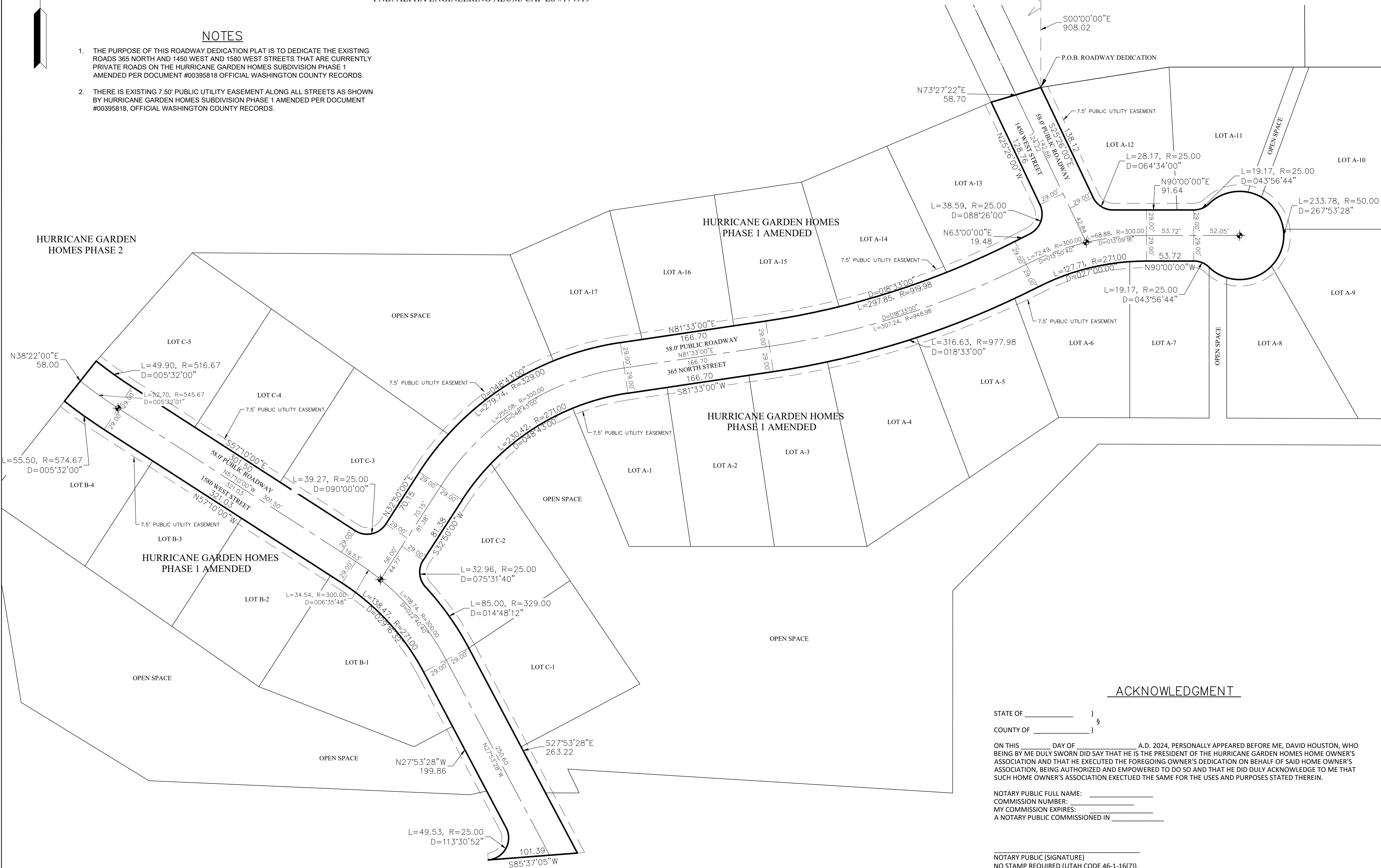
- SECTIONAL MONUMENTATION
(TYPE LOCATION ETC. AS
SHOWN ON THE PLAT)
- CLASS 1 (RING & LID) TO BE SET.

BOUNDARY LINE
CENTERLINE
EASEMENT LINE

NOTES

- THE PURPOSE OF THIS ROADWAY DEDICATION PLAT IS TO DEDICATE THE EXISTING ROADS 365 NORTH AND 1450 WEST AND 1580 WEST STREETS THAT ARE CURRENTLY PRIVATE ROADS ON THE HURRICANE GARDEN HOMES SUBDIVISION PHASE 1 AMENDED PER DOCUMENT #00395818 OFFICIAL WASHINGTON COUNTY RECORDS.
- THERE IS EXISTING 7.5' PUBLIC UTILITY EASEMENT ALONG ALL STREETS AS SHOWN BY HURRICANE GARDEN HOMES SUBDIVISION PHASE 1 AMENDED PER DOCUMENT #00395818, OFFICIAL WASHINGTON COUNTY RECORDS.

NORTH 1/4 CORNER SECTION 33,
T. 41 S. R. 13 W. SLB&M.
FND. ALPHA ENGINEERING ALUM. CAP LS #174919



SURVEYOR'S CERTIFICATE

I, SCOTT P. WOOLSEY, PROFESSIONAL UTAH SURVEYOR NUMBER 174919, HOLD A LICENSE IN ACCORDANCE WITH TITLE 19, 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 HAVE BEEN SET AS REPRESENTED ON THIS PLAT.

365 NORTH & 1450 WEST & 1580 WEST STREETS

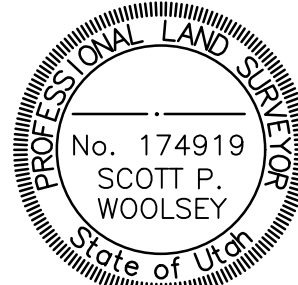
AND THAT SAID TRACT OF LAND HAS BEEN DEDICATED TO A PUBLIC ROADWAY AND SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT, SAID TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BOUNDARY DESCRIPTION

All of the Roadways depicted on the Hurricane Garden Homes Phase 1 Amended Subdivision Plat as shown by Document #00395818, Official Washington County Records, less and excepting the portion of 1450 West Street depicted on the Painted Sands Phase 1 Subdivision as shown by Document #20190051767, Official Washington County Records. For a more detailed and particular description it is as follows:

Commencing at the Northeast Corner of Section 33, Township 41 South, Range 13 West, Salt Lake Base and Meridian; Thence North 89°49'15" West, along the Section line, a distance of 1,715.26 feet; Thence South 00°00'00" East, a distance of 908.02 feet, to the Point of Beginning; said point being the Northwest corner of Lot A-12 of the Hurricane Garden Homes Subdivision Phase 1 Amended, as shown by Document #00395818, Official Washington County Records; Thence South 25°26'00" East, a distance of 138.12 feet to the beginning of a curve to the left having a radius of 25.00 feet and a central angle of 64°34'00"; thence Southeasterly along the arc of said curve a distance of 28.17 feet; Thence North 90°00'00" East, a distance of 91.64 feet to the beginning of a curve to the left having a radius of 25.00 feet and a central angle of 43°56'44"; thence Easterly along the arc of said curve a distance of 19.17 feet to the beginning of a reverse curve to the right having a radius of 50.00 feet and a central angle of 267°53'28"; thence Southerly along the arc of said curve, a distance of 233.78 feet to the beginning of a reverse curve to the left having a radius of 25.00 feet and a central angle of 43°56'44"; thence Westerly along the arc of said curve, a distance of 19.17 feet; Thence North 90°00'00" West, a distance of 53.72 feet to the beginning of a curve to the left, having a radius of 271.00 feet; thence Westerly along the arc of said curve, through a central angle of 27°00'00", a distance of 127.71 feet to the beginning of a reverse curve to the right having a radius of 977.98 feet and a central angle of 18°33'00"; thence Westerly along the arc of said curve, a distance of 316.63 feet; Thence South 81°33'00" West, a distance of 166.70 feet to the beginning of a curve to the left, having a radius of 271.00 feet; thence Southwesterly along the arc of said curve, through a central angle of 48°43'00", a distance of 230.42 feet; Thence South 32°50'00" West, a distance of 81.38 feet to the beginning of a curve to the left having a radius of 25.00 feet and a central angle of 75°31'40"; thence Southerly along the arc of said curve a distance of 32.96 feet to the beginning of a reverse curve to the right having a radius of 329.00 feet and a central angle of 14°46'12"; thence Southeasterly along the arc of said curve, a distance of 85.00 feet; Thence South 27°53'28" East, a distance of 263.22 feet; Thence South 85°37'05" West, a distance of 101.39 feet to the point of cusp of a non-tangent curve to the left, of which the radius point lies North 04°22'36" West, a radial distance of 25.00 feet; thence Northeasterly along the arc of said curve, through a central angle of 113°30'52", a distance of 49.53 feet; Thence North 27°53'28" West, a distance of 199.86 feet to the beginning of a curve to the left having a radius of 271.00 feet and a central angle of 29°16'32"; thence Northwesterly along the arc of said curve a distance of 138.47 feet; Thence North 57°10'00" West, a distance of 321.03 feet to the beginning of a curve to the right having a radius of 574.67 feet and a central angle of 08°32'00"; thence Northwesterly along the arc of said curve a distance of 55.50 feet; Thence North 38°22'00" East, a distance of 58.00 feet to the beginning of a non-tangent curve to the left, of which the radius point lies North 38°22'01" East, a radial distance of 516.67 feet; thence Southeasterly along the arc of said curve, through a central angle of 05°32'00", a distance of 49.90 feet; Thence South 57°10'00" East, a distance of 301.50 feet to the beginning of a curve to the left having a radius of 25.00 feet and a central angle of 90°00'00"; thence Easterly along the arc of said curve a distance of 39.27 feet; Thence North 32°50'00" East, a distance of 70.15 feet to the beginning of a curve to the right having a radius of 329.00 feet and a central angle of 48°43'00"; thence Northeasterly along the arc of said curve a distance of 279.74 feet; Thence North 81°33'00" East, a distance of 166.70 feet to the beginning of a curve to the left having a radius of 919.98 feet and a central angle of 18°33'00"; thence Easterly along the arc of said curve a distance of 297.85 feet; Thence North 63°00'00" East, a distance of 19.48 feet to the beginning of a curve to the left having a radius of 25.00 feet and a central angle of 88°26'00"; thence Northerly along the arc of said curve a distance of 38.59 feet; Thence North 25°26'00" West, a distance of 128.76 feet; Thence North 73°27'22" East, a distance of 58.70 feet to the Point of Beginning.

Containing: 2.81 acres, more or less.



DATE

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENT THAT THE UNDERSIGNED OWNER OF ALL THE ABOVE DESCRIBED TRACT OF LAND, HAVING CAUSED THE SAME TO BE SUBDIVIDED INTO A PUBLIC ROADWAY TO BE KNOWN AS:

365 NORTH & 1450 WEST & 1580 WEST STREETS

FOR GOOD AND VALUABLE CONSIDERATION RECEIVED, DOES HEREBY DEDICATE AND CONVEY TO HURRICANE CITY, STATE OF UTAH FOR THE PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS INTENDED FOR THE PUBLIC USE INCLUDING STREET RIGHT-OF-WAYS, ALL PUBLIC STREETS ARE AS NOTED OR SHOWN.

IN WITNESS WE HAVE HEREUNTO SET OUR HAND THIS ____ DAY OF _____, 2024.

HURRICANE GARDEN HOMES HOME OWNER'S ASSOCIATION

DAVID HOUSTON, PRESIDENT

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS NORTH 89°49'15" WEST, BETWEEN THE NORTHEAST CORNER AND THE NORTH 1/4 CORNER OF SECTION 33, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN.

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

ON THIS ____ DAY OF _____ A.D. 2024, PERSONALLY APPEARED BEFORE ME, DAVID HOUSTON, WHO BEING BY ME DULY SWORN DID SAY THAT HE IS THE PRESIDENT OF THE HURRICANE GARDEN HOMES HOME OWNER'S ASSOCIATION AND THAT HE EXECUTED THE FOREGOING OWNER'S DEDICATION ON BEHALF OF SAID HOME OWNER'S ASSOCIATION, BEING AUTHORIZED AND EMPOWERED TO DO SO AND THAT HE DID DULY ACKNOWLEDGE TO ME THAT SUCH HOME OWNER'S ASSOCIATION EXECUTED THE SAME FOR THE USES AND PURPOSES STATED THEREIN.

NOTARY PUBLIC FULL NAME: _____
COMMISSION NUMBER: _____
MY COMMISSION EXPIRES: _____
A NOTARY PUBLIC COMMISSIONED IN _____

NOTARY PUBLIC (SIGNATURE) _____
NO STAMP REQUIRED (UTAH CODE 46-1-16(7))

046-197 SVY.DWG (NOVEMBER 30, 2023)	APPROVAL OF ASH CREEK SPECIAL SERVICE DISTRICT I HEREBY VERIFY THAT THIS OFFICE EXAMINED THIS ROADWAY DEDICATION PLAT AND HEREBY RECOMMENDS APPROVAL ON THIS ____ DAY OF _____, 2024. SUPERINTENDENT ASH CREEK SPECIAL SERVICE DISTRICT	ENGINEER'S APPROVAL I HEREBY VERIFY THAT THIS OFFICE EXAMINED THIS ROADWAY DEDICATION PLAT AND HEREBY RECOMMENDS APPROVAL ON THIS ____ DAY OF _____, 2024. CITY ENGINEER HURRICANE CITY DATE	APPROVAL AS TO FORM APPROVED AS TO FORM, THIS THE ____ DAY OF _____, A.D. 2024. CITY ATTORNEY HURRICANE CITY	APPROVAL AND ACCEPTANCE BY HURRICANE CITY, UTAH WE, THE CITY COUNCIL OF HURRICANE CITY, HAVE REVIEWED THE ABOVE ROADWAY DEDICATION PLAT AND HEREBY ACCEPT SAID PLAT WITH ALL COMMITMENTS AND ALL OBLIGATIONS PERTAINING THERETO. MAYOR HURRICANE CITY ATTEST: CITY RECORDER HURRICANE CITY	TREASURER APPROVAL I, WASHINGTON COUNTY TREASURER, CERTIFY ON THIS ____ DAY OF _____, A.D. 2024 THAT ALL TAXES, SPECIAL ASSESSMENTS, AND FEES DUE AND OWING ON THIS ROADWAY DEDICATION PLAT HAVE BEEN PAID IN FULL. WASHINGTON COUNTY TREASURER WASHINGTON COUNTY RECORDER
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43 South 100 East, Suite 100 • St George, Utah 84770
T: 435.628.6500 • F: 435.628.6553 • alphaengineering.com



STAFF COMMENTS

Consideration and possible approval of a **road dedication plat for 200 North Street**

Discussion:

The new IHC facility required the construction of master planned 200 North through the campus. The road construction is finished this plat will finalize the project.

Findings:

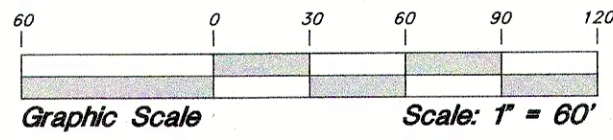
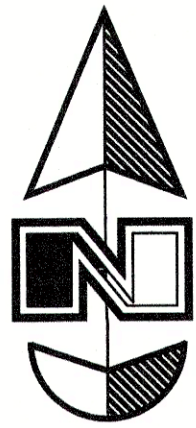
Intermountain has constructed 200 North in accordance with the approved construction drawings and is presenting this plat for final acceptance by the City.

Recommendation:

The plat has been reviewed and is recommended for approval and acceptance.

Attachments:

1. 21N213 - RDP signed 11-27-2023

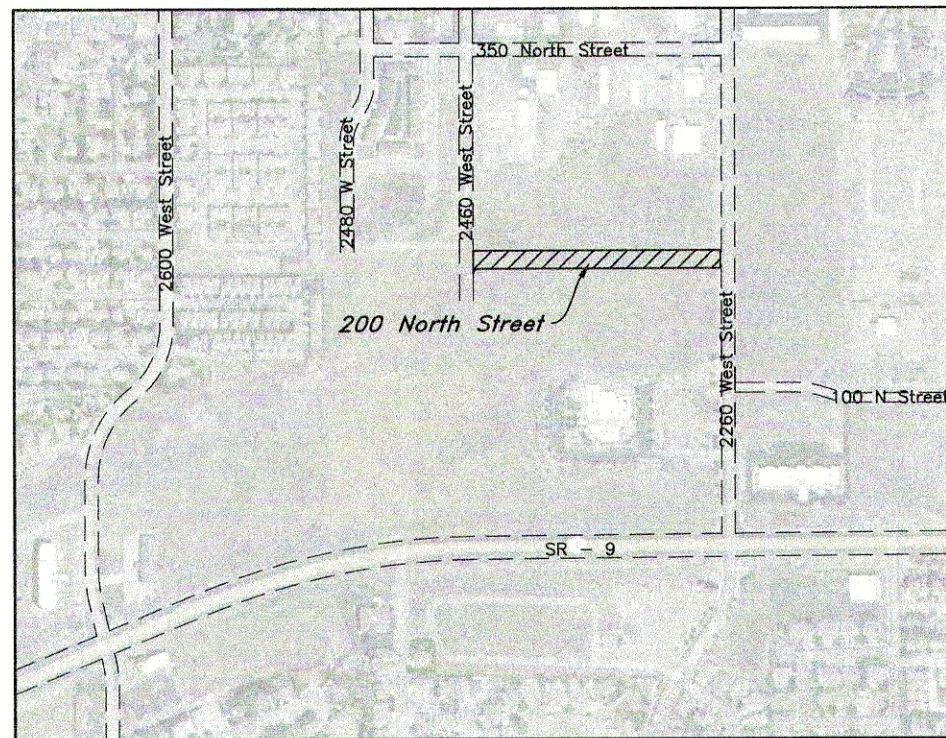
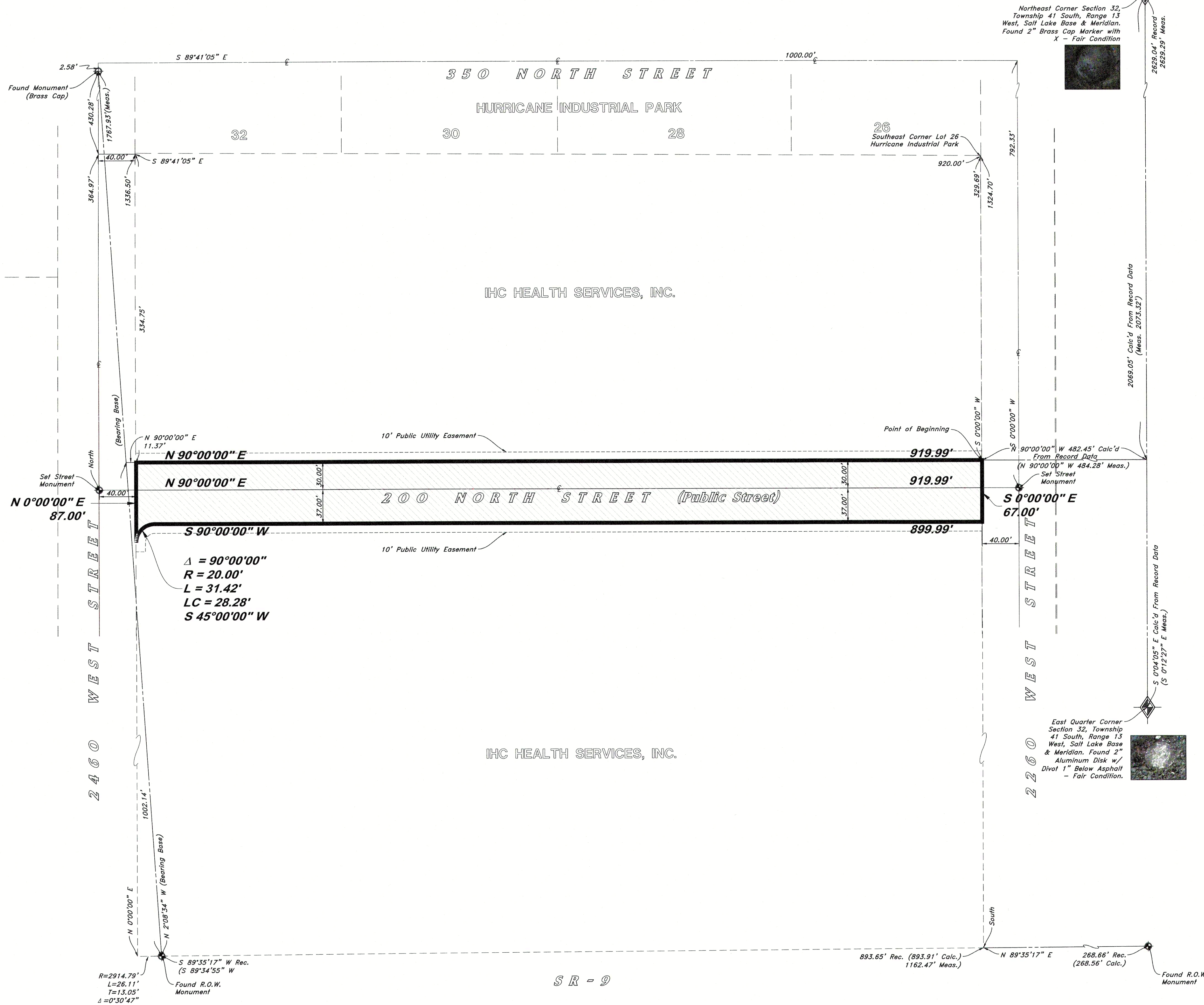


Legend

- Section Corner
- Monument to be set
- Found Centerline Monument
- (N/R) Non-Radial Line
- PUE Public Utility Easement
- Right of way Dedication
- Easement
- Existing Boundary

200 NORTH STREET - ROAD DEDICATION PLAT

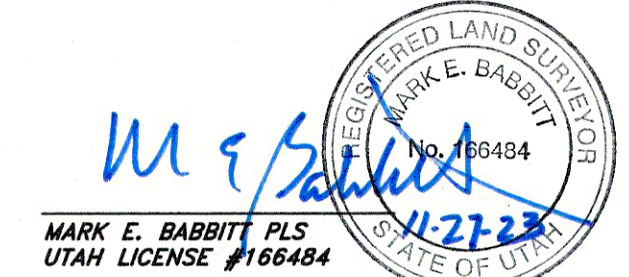
HURRICANE CITY, WASHINGTON COUNTY, UTAH
A PART OF THE NORTHEAST QUARTER OF SECTION 32, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY.



Vicinity Map

SURVEYOR'S CERTIFICATE

I, MARK E. BABBITT, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, HOLDING CERTIFICATE NUMBER 166484 AS PRESCRIBED BY THE LAWS OF THE STATE OF UTAH. I FURTHER CERTIFY THAT BY THE AUTHORITY OF THE OWNER(S), I HAVE DIRECTLY SUPERVISED A SURVEY OF THE PARCEL(S) OF LAND REPRESENTED HEREON AND HAVE SUBDIVIDED SAID PARCEL OF LAND INTO A PUBLIC STREET, TOGETHER WITH PUBLIC UTILITY EASEMENTS, THEREAFTER TO BE KNOWN AS "200 NORTH STREET", AND THAT THE SAME HAS BEEN CORRECTLY MONUMENTED ON THE GROUND AS SHOWN ON THIS PLAT.



RIGHT-OF-WAY BOUNDARY DESCRIPTION

BEGINNING AT A POINT 329.69 FEET SOUTH 0°00'00" EAST FROM THE SOUTHEAST CORNER OF LOT 26, OF THE HURRICANE INDUSTRIAL PARK AS RECORDED IN THE WASHINGTON COUNTY RECORDER'S OFFICE, SAID POINT BEING SOUTH 0°04'05" EAST 2069.05 FEET ALONG THE SECTION LINE AND NORTH 90°00'00" WEST 482.45 FEET FROM THE NORTHEAST CORNER OF SECTION 32, TOWNSHIP 41 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY; AND RUNNING THENCE SOUTH 0°00'00" EAST 67.00 FEET ALONG THE WEST RIGHT-OF-WAY LINE OF 2260 WEST STREET; THENCE SOUTH 90°00'00" WEST 899.99 FEET TO THE TANGENT POINT OF 20.00 FOOT RADIUS CURVE TO THE LEFT; THENCE SOUTHWESTERLY THROUGH A CENTRAL ANGLE OF 90°00'00" AND ALONG THE ARC OF SAID CURVE FOR 31.42 FEET (LONG CHORD BEARS SOUTH 45°00'00" WEST 28.28 FEET) TO THE EAST RIGHT-OF-WAY LINE OF 2460 WEST STREET; THENCE NORTH 0°00'00" EAST 87.00 FEET; THENCE NORTH 90°00'00" EAST 919.99 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.417 ACRES

OWNER'S DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED IS THE OWNER OF THE ABOVE DESCRIBED TRACT OF LAND, AND HEREBY CAUSE THE SAME TO BE DIVIDED INTO A STREET TOGETHER WITH PUBLIC UTILITY EASEMENTS AS SET FORTH TO BE HEREAFTER KNOWN AS

200 NORTH STREET

AND DOES HEREBY DEDICATE FOR THE PERPETUAL USE OF THE PUBLIC ALL ROADS AND OTHER AREAS SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE. THE UNDERSIGNED OWNER ALSO HEREBY CONVEYS TO HURRICANE CITY AND 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.

DATED THIS ____ DAY OF ____ A.D. 2023

IHC HEALTH SERVICES, INC.
(A 501 C 3 EXEMPT ORGANIZATION)

CLAY L. ASHDOWN - CHIEF FINANCIAL OFFICER

CORPORATE ACKNOWLEDGEMENT

STATE OF _____ } S.S.
COUNTY OF _____

ON THIS ____ DAY OF ____, A.D. 2023, PERSONALLY APPEARED BEFORE ME, CLAY L. ASHDOWN, SIGNER OF THE HEREON OWNER'S DEDICATION, WHO BEING BY ME DULY SWORN, DID SAY THAT HE IS THE CHIEF FINANCIAL OFFICER OF IHC HEALTH SERVICES, INC. AND THAT HE SIGNED THIS PLAT ENTITLED "200 NORTH STREET - ROAD DEDICATION PLAT" ON BEHALF OF IHC HEALTH SERVICES, INC. - A UTAH NONPROFIT CORPORATION, BY AUTHORITY OF A RESOLUTION OF THE IHC HEALTH SERVICES, INC. BOARD OF DIRECTORS, AND SAID CLAY L. ASHDOWN ACKNOWLEDGED TO ME THAT SAID IHC HEALTH SERVICES, INC. EXECUTED THE SAME.

MY COMMISSION EXPIRES

NOTARY PUBLIC

NARRATIVE

IT IS THE INTENT OF THIS PLAT AND THE SURVEY ON WHICH IT IS BASED ON TO DEDICATE 200 NORTH STREET, AS REQUESTED BY HURRICANE CITY. THE BASIS OF BEARING IS N 2°08'34" W ALONG A LINE FROM A R.O.W. MONUMENT ON THE NORTH LINE OF SR-9 AND A BRASS CAP FOUND NEAR THE INTERSECTION OF 2460 WEST STREET AND 350 NORTH STREET (FORMERLY KNOWN AS 210 NORTH STREET).



GREAT BASIN ENGINEERING

5746 SOUTH 1475 EAST OGDEN, UTAH 84403
MAIN (801)394-4515 S.L.C (801)521-0222 FAX (801)392-7544
WWW.GREATBASINENGINEERING.COM

ASH CREEK SPECIAL SERVICE DISTRICT APPROVAL

I HEREBY CERTIFY THAT THIS OFFICE HAS EXAMINED THIS ROADWAY DEDICATION PLAT AND IT IS CORRECT IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE THIS ____ DAY OF ____, A.D. 2023.

PLANNING COMMISSION CHAIRMAN

CITY ENGINEER'S APPROVAL

THE ABOVE ROAD DEDICATION HAS BEEN REVIEWED AND IS APPROVED IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE THIS ____ DAY OF ____, A.D. 2023.

DATE

HURRICANE CITY ENGINEER

APPROVAL AND ACCEPTANCE BY HURRICANE, UTAH

WE, THE MAYOR AND CITY COUNCIL OF HURRICANE CITY, UTAH, HAVE REVIEWED THE ABOVE ROAD DEDICATION PLAT AND HEREBY ACCEPT SAID PLAT WITH ALL COMMITMENTS AND OBLIGATIONS PERTAINING THERETO.

ATTEST: CITY RECORDER
HURRICANE, UTAH

NANETTE BILLINGS, MAYOR
HURRICANE, UTAH

APPROVAL AS TO FORM

APPROVED AS TO FORM THIS ____ DAY OF ____, A.D. 2023.

HURRICANE CITY ATTORNEY

ACCEPTANCE OF COUNTY RECORDER

WASHINGTON COUNTY RECORDER

JUNE 2023

SHEET NO.

1 of 1

21N213



STAFF COMMENTS

Consideration and possible approval of a **private hangar lease agreement with Brian Geraci** for hangar pad 13 S. 3 E. -Dave Houston/Dayton Hall

Discussion:

Background:

Brian Geraci is requesting a new Private Hangar Lease Agreement for the hangar pad located at 13 S. 3 E. at the City Airport. Mr. Geraci is the owner of the existing hangar improvements. The proposed agreement conforms to the template previously approved by the City Council.

Applicable City Ordinances:

The Airport Board "shall function in an advisory capacity to the City Council on all issues regarding the operation" of the airport. HCC 2-1-1(A). The Airport Board "shall operate solely as an advisory board to the City Council and shall have no power or authority to take any action or make any decision which would or which may have the effect of creating a liability for the City." HCC 2-1-1(B). "It shall be the duty of the Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land." HCC 2-1-1. After a recommendation from the Airport Board, the proposal is forwarded to the Council for a decision.

Recommendation:

The Airport Board discussed this item on December 19, 2023, and unanimously recommended approval.

Attachments in the Packet:

1. Proposed Private Hangar Lease Agreement.

Legal Review:

The City Attorney approves the form of the proposed lease.

-This summary was drafted by Dayton Hall, City Attorney.

Findings:

Recommendation:

Attachments:

1. 231205 HURRICANE AIRPORT - PRIVATE HANGAR LEASE AGREEMENT (Brian Geraci)



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

BRIAN GERACI

Effective Date: January 4, 2024

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 4th day of January, 2024, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and Brian Geraci, an individual, (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 3,800 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as Hangar 13 S. 3 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 January 4, 2044, (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:

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

TENANT

Nanette Billings, Mayor

By: Brian Geraci

Attest:

GUARANTOR

City Recorder

Printed Name: Brian Geraci

Approved as to form:

Dayton Hall, City Attorney



STAFF COMMENTS

Consideration and possible approval of a **private hangar lease agreement with the John C. Priscu Trust** for hangar pad 10 S. 1 E. -Dave Houston/Dayton Hall

Discussion:

Background:

John Priscu is requesting a new Private Hangar Lease Agreement for the hangar pad located at 13 S. 3 E. at the City Airport. The John C. Priscu Trust is the owner of the existing hangar improvements. The proposed agreement conforms to the template previously approved by the City Council.

Applicable City Ordinances:

The Airport Board "shall function in an advisory capacity to the City Council on all issues regarding the operation" of the airport. HCC 2-1-1(A). The Airport Board "shall operate solely as an advisory board to the City Council and shall have no power or authority to take any action or make any decision which would or which may have the effect of creating a liability for the City." HCC 2-1-1(B). "It shall be the duty of the Board to review and recommend approval or disapproval of any agreement for the lease of property at the airport and the proposed use of each parcel of leased land." HCC 2-1-1. After a recommendation from the Airport Board, the proposal is forwarded to the Council for a decision.

Recommendation:

The Airport Board discussed this item on December 19, 2023, and unanimously recommended approval.

Attachments in the Packet:

1. Proposed Private Hangar Lease Agreement.

Legal Review:

The City Attorney approves the form of the proposed lease.

-This summary was drafted by Dayton Hall, City Attorney.

Findings:

Recommendation:

Attachments:

1. 231206 HURRICANE AIRPORT - PRIVATE HANGAR LEASE AGREEMENT (John C. Priscu Trust) (signed by John only)



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

THE JOHN C. PRISCU TRUST, dated MARCH 20, 2006

Effective Date: January 4, 2024

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 4th day of January, 2024, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and the John C. Priscu Trust, dated March 20, 2006, a trust, (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 3,250 square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as Hangar 10 S. 1 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 January 4, 2044, (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:

John C. Priscu, Trustee
1433 Sandhill Circle
Ivins, UT 84738

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 appraisal, 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

TENANT



By: John C. Priscu
Its: Trustee

GUARANTOR



Printed Name: John C. Priscu



STAFF COMMENTS

Consideration of a possible approval of ZC23-26 a **Zone Change Amendment request located at 560 N 1380 W** from R1-10, single family residential one unit per 10,000 sq ft to PC, planned commercial. Parcel H-3-1-33-4882. Roger and Leslie Coleman Applicant. Gerald Muray, Agent.

Discussion:

This is a request for a zone change for 5.46 acres from R1-10 to Planned Commercial (PC) for a property located along 600 N east of Painted Sands and west of Valley Academy. Earlier this year, the property was denied a zone change to neighborhood commercial (NC) since no development plan was proposed at that time. Direction was given for the applicant to come back with a development proposal. The applicant is now proposing a mixed-use development with a retail/office building and drive-thru building on the north side adjacent to 600 N, along with 55 residential units on the south side. The Planning Commission heard this item on December 14, 2023 and recommended approval.

Findings:

Recommendation:

Attachments:

1. PSP23-39 Application
2. PSP23-39 Prelim Site Plan
3. Utility_Plan
4. ZC23-26 Application
5. ZC23-26 Coleman CC staff report
6. Additional_Document
7. Ordinance ZC23-26 (Coleman_560 N 1380 W)



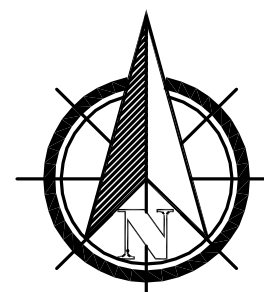
Hurricane City Application

Application Accepted Date: 10/30/2023		Valuation		\$	0.00
Type of Improvement: Site Plan (Preliminary)		PERMIT FEES			
Description:		Planning Fee		\$	200.00
Tenant / Project Name: Coleman/Murray		Planning Fee		\$	200.00
Bldg. Address: 560 N 1380 W Hurricane Utah		Sub Total:		\$	200.00
City: Hurricane City State: UT Zip: 84737		Permit Total:		\$	200.00
Subdivision: N/A Phase:		Amount Paid:		\$	0.00
Block: Lot #: Parcel #: H-3-1-33-1142		Remaining Due:		\$	200.00
Zone: R1-10					
Property Owner: COLEMAN ROGER G JR & LESLIE K					
Permit Contact: Gerald Murray Sr. P:(425) 241-4882					
Email: murraysrgerald@gmail.com					
CONTACT INFORMATION					
General Contractor: 5M Development LLC Utah and Gerald					
License #: Murray Sr. P: (425) 241-4882					
Address: PO BOX 1348					
City: ST. GEORGE State: UTAH Zip: 84771					
Email: murraysrgerald@gmail.com					
APPLICATION DETAILS					
		APPROVALS		DATE	INFO
Plan Review Finalized:		Yes	10/31/23	Brienna Spencer	
Setbacks					
Front: Rear: Left: Right:					
Min.					
Actual:					
APPLICATION NUMBER: PENDPSP23-39					
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 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: Gerald Murray Sr					
Signature of Applicant/Authorized Agent or Owner: Date:					
Gerald M Murray Sr. 10/31/2023					
Application Approved By: Date:					
Brienna Spencer 10/31/2023					
Application Issued By: Date:					
Receipt #: 7.719132-10/30/23					

PRELIMINARY SITE PLAN

H-3-1-33-1142

DATE:	10/24/2023
DRAWN BY:	E.A.M.
CHECKED BY:	M.R.F.
CLIENT:	GM



SCALE: 1" = 40'

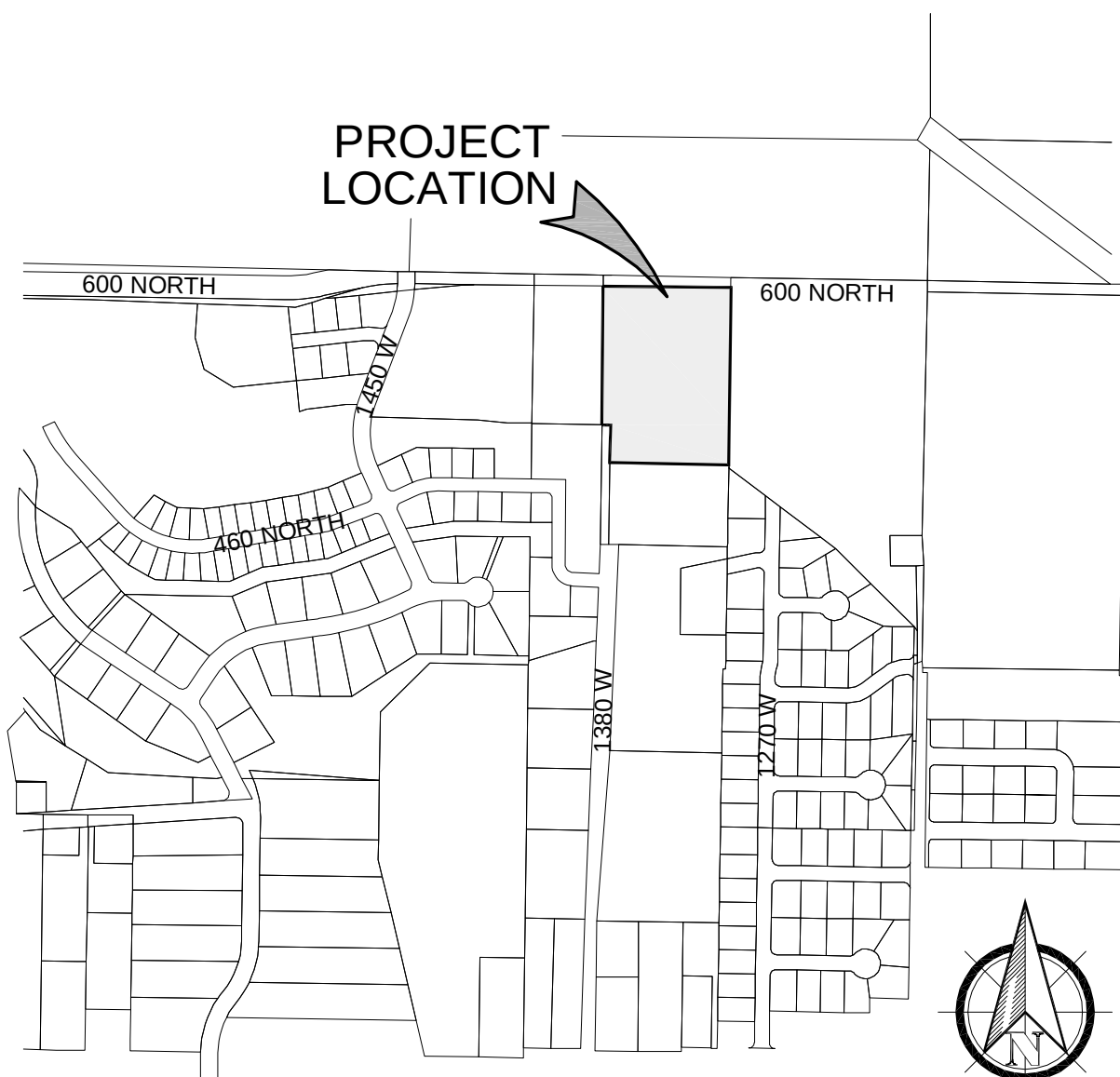
PRELIMINARY SITE PLAN
PARCEL H-3-1-33-1142
5M DEVELOPMENT, LLC
HURRICANE, UTAH 84737

PREMIER
Design & Engineering
75 EAST 100 NORTH IVINS, UTAH 84738 (435) 313-2267

SHEET

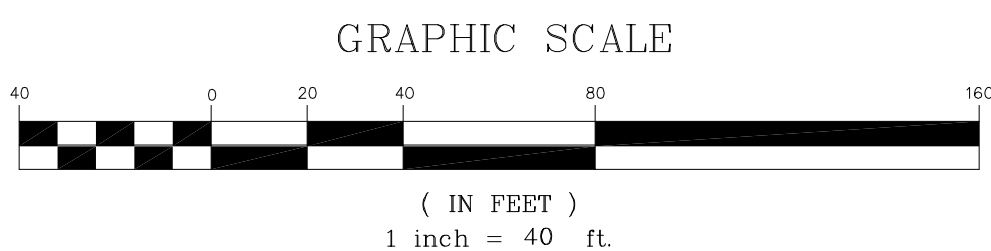
PSP

PARCEL H-3-1-28-22011



VICINITY MAP

N.T.S.



PARCEL H-3-1-33-1142 SITE DATA

PARCEL:	H-3-1-33-1142
ZONING:	R1-10
BUILDING HEIGHT:	+/- 25'-0"
BUILDING USE:	COMMERCIAL & RESIDENTIAL
SITE AREA:	236,762 SQ. FT. / 5.44 ACRES (100.0% OF SITE)
BUILDING AREA:	41,116 SQ. FT. / 0.94 ACRES (17.4% OF SITE)
PARKING & SIDEWALK AREA:	133,253 SQ. FT. / 3.05 ACRES (56.3% OF SITE)
LANDSCAPING AREA:	62,393 SQ. FT. / 1.43 ACRES (26.3% OF SITE)
PARKING REQUIRED:	1/250 SQ.FT. OFFICE/RETAIL = 6,120 / 250 = 24.5
PARKING REQUIRED:	1/250 SQ.FT. KITCHEN AREA = 1,600 / 250 = 6.4
PARKING REQUIRED:	1/100 SQ.FT. RESTAURANT AREA = 800 / 100 = 8
PARKING REQUIRED:	2 /UNIT + 1 GUEST / 3 UNITS = 56 x 2 = 112 + 56/3 = 18.6 // 112+18.6 = 130.6
PARKING REQUIRED TOTAL:	169.5 = 170 SPACES
PARKING PROVIDED:	216 SPACES (2 ACCESSIBLE) (12 ELECTRIC VEHICLE)

LAND USE DATA

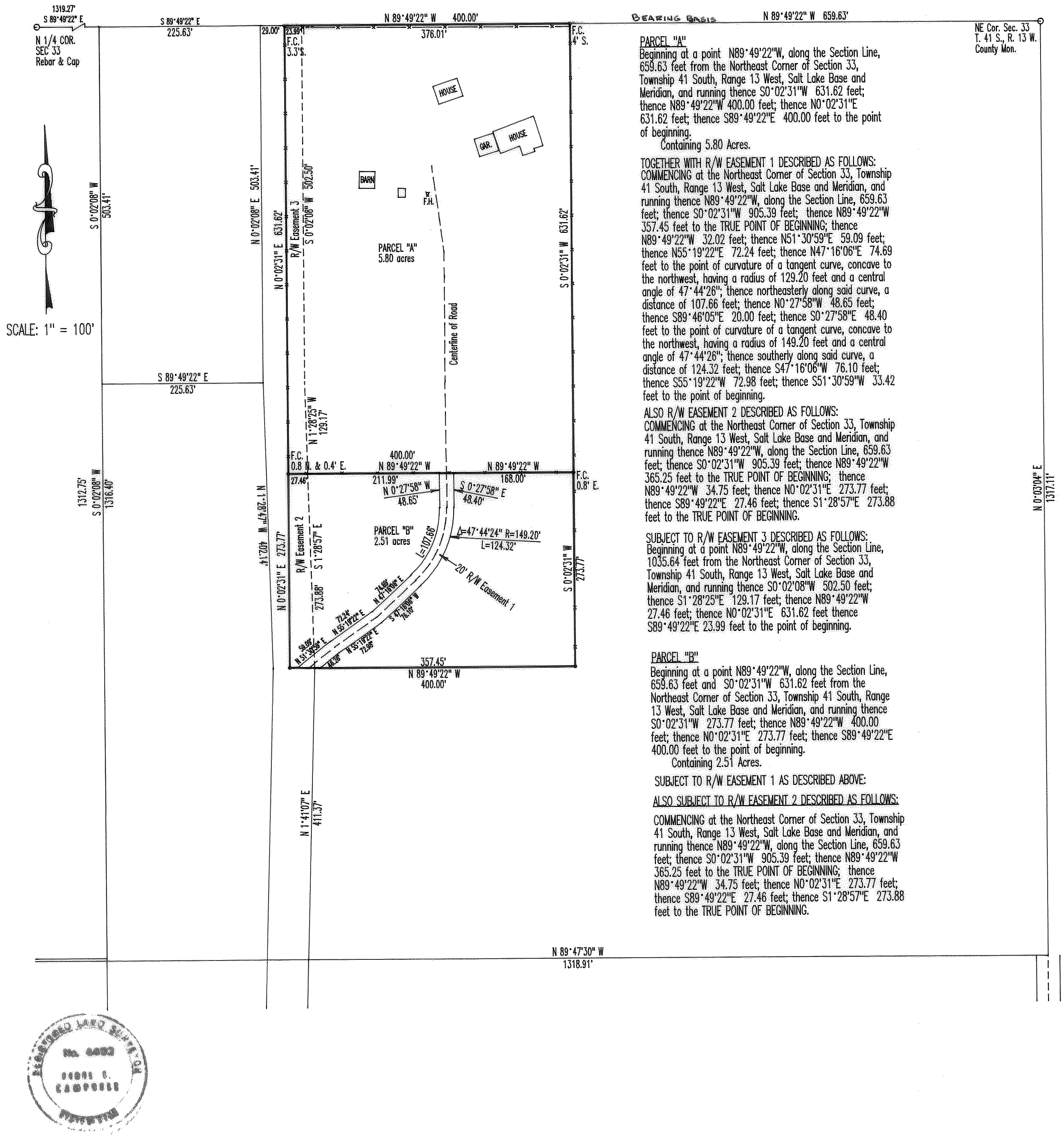
COMMERCIAL AREA
69,694 sq.ft.
1.599 ACRES
29.44% SITE AREA

RESIDENTIAL AREA
167,068 sq.ft.
3.835 ACRES
70.56% SITE AREA

BRATTON PROPERTY
WITHIN THE NE1/4 OF SECTION 33, T. 41 S., R. 13 W., SLB&M

Present Zone on Coleman parcel = R1-10

Proposed Zone Classification = Planned Commercial



Sec. 33, T41S, R13W, #3281-01

I FEREL L. CAMPBELL, DO
HEREBY CERTIFY THAT I AM
A REGISTERED LAND
SURVEYOR PRACTICING IN
THE STATE OF UTAH UNDER
LICENSE NO. 4492. I
FURTHER CERTIFY THAT I
HAVE MADE AN ACCURATE
SURVEY OF THIS PROPERTY
AND HAVE SET THE
CORNERS IN ACCORDANCE
WITH THIS PLAT.
Ferel L. Campbell
FEREL L. CAMPBELL
L.S. 4492

NARRATIVE

- ☐ SET CORNERS OF EXISTING DEED DESCRIPTION
- ☒ DIVIDED EXISTING DESCRIPTION INTO 2 PARCELS & MADE NEW DESCRIPTIONS.
- ☐ SURVEYED & DESCRIBED ACCESS
- ☐ FENCELINE SURVEY & DESCRIPTION
- ☐ WELL LOCATED
- ☐ REVISED DESCRIPTION TO CLOSE
- ☐ OTHER

LEGEND

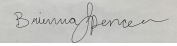
- ◆ = USGLO, or CO. MON FOR SEC. or 1/4 COR.
- = CITY STREET MONUMENT
- ▲ = LARGE BOLT (1 1/4" HEAD)
- = OTHER MON. FD.
- = SET 1/2" X 18" REBAR & CAP No. 4490 OR 4492
- ✕✕ = EXISTING FENCE
- R = RECORD BEARING OR DISTANCE
- P = PRORATED BEARING OR DISTANCE
- A.R.P. = AREA REFERENCE PLAT

BALLARD & CAMPBELL

332 W. 400 S.
Hurricane, Utah 84737
635-8726

Surveyed For: Bratton
Date: Feb. 2000
Scale: 1" = 100'
Basis of Bearings: N. 89° 49' 22" W. between the Northwest Cor. and the North 1/4 Cor. of Sec. 33, T. 41 S., R. 13 W., SLB&M

Application

Application Accepted Date: 10/17/2023					Valuation		\$	0.00		
Type of Improvement: Zone Change Application					PERMIT FEES					
Description:					Planning Fee		\$	500.00		
Tenant / Project Name: Coleman					Planning Fee		\$	500.00		
Bldg. Address: 560 N 1380 W Hurricane Utah					Sub Total:		\$	500.00		
City: Hurricane City State: UT Zip: 84737					Permit Total:		\$	500.00		
Subdivision: N/A Phase:					Amount Paid:		\$	500.00		
Block: Lot #: Parcel #: H-3-1-33-1142					Remaining Due:		\$	0.00		
Zone: R1-10										
Property Owner: Coleman Roger G Jr & Leslie K										
Permit Contact: Gerald Murray Sr. P:(425) 241-4882										
Email: murraysrgerald@gmail.com										
CONTACT INFORMATION										
General Contractor: Gerald Murray Sr. and 5M Development										
License #: LLC, Utah P: (425) 241-4882										
Address: PO BOX 1348										
City: ST. GEORGE State: UTAH Zip: 84771										
Email: murraysrgerald@gmail.com										
APPLICATION DETAILS										
					APPROVALS		DATE	INFO		
					Plan Review Finalized:		Yes	10/18/23	Brienna Spencer	
					Setbacks		Front:	Rear:	Left:	Right:
					Min.					
					Actual:					
					APPLICATION NUMBER: PENDZC23-26					
					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: Gerald Murray Sr					
					Signature of Applicant/Authorized Agent or Owner: Date:					
					Gerald Murray Sr,			10/18/2023		
					Application Approved By:			Date:		
								10/18/2023		
					Application Issued By:			Date:		
					Receipt #: 8.173587-10/17/23					



STAFF COMMENTS

Agenda Date:	1/4/2024
Application Number:	ZC23-26 / PSP23-39
Type of Application:	Zone Change
Action Type:	Legislative
Applicant:	Ronald and Leslie Coleman
Agent:	Gerald Murray Sr
Request:	A zone change from R1-10 to Planned Commercial
Location:	560 N 1380 W
Zoning:	R1-10
General Plan Map:	General Commercial

Discussion:

The applicant has proposed a zone change for 5.46 acres from R1-10 to planned commercial (PC). This property is along 600 N east of Painted Sands and west of Valley Academy. Earlier this year, the property was denied a zone change to neighborhood commercial (NC) since no development plan was proposed at that time. Direction was given for the applicant to come back with a development proposal. The applicant is now proposing a mixed use development with a retail/office building and drive-thru building on the north side adjacent to 600 N, and 55 residential units on the south side. The Planning Commission heard this item on December 14, 2023 and recommended approval.

	Zoning	Adjacent Land Use
North	OS	Tortoise Reserve
East	PF	Undeveloped property (future power substation)
South	R1-10, RA-1	Single family homes, some agriculture

The Moderate Income Housing Plan states that the City should “*Look at areas where “Missing Middle Housing” and mixed-use zones can be implemented within existing and future residential and commercial developments.*”

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

Response: The immediate vicinity of this property is relatively undeveloped. There is currently an undeveloped property zoned NC next door which could develop with similar uses to this one. There are scattered commercial properties and townhome developments along 600 N. The proposed development shown on the preliminary site plan would be considered harmonious with the intended future development of 600 N.

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

Response: PC zoning is designed to limit commercial uses to those that can be compatible with neighboring residences. This zone change would increase the allowable residential density on the property from approximately 19 units to approximately 57 units. Most traffic impacts associated with the development will be on 600 N. The proposed uses shown on the preliminary site plan would be allowed under PC zoning, and they are also consistent with the intended future development of 600 N; therefore, the amendment is not expected to adversely affect adjacent properties.

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

Response: The Joint Utility had no major concerns with availability of public facilities and services for this property. The site plan will need to be amended to address what concerns that they did have (see below).

JUC Comments

1. **Public Works:** Access to 600 N not allowed, only off 1380 W.
2. **Power:** Hurricane City Power has an existing overhead power line that runs along the west side of the 1380 W road alignment. This power line will be replaced. Load calculations for all buildings will be needed to design this project. HC Power charges a design fee for all new development that must be paid before construction drawings are signed.
3. **Sewer:** No exception to zone change. Existing sewer located at 450 N and 1380 W. Drive thrus will need interceptors.
4. **Streets:** Minimize access on 600 N.
5. **Water:** Water looping on 600 N or 1380 W.
6. **Engineering:** Per the Transportation Master Plan and the access agreement recorded against the property 1380 W is the only allowable access from 600 N for this property. A low point in 600 N’s pavement is near the center of the property. The applicant will need to propose a method to drain stormwater from the curb and gutter and convey said stormwater downstream. It seems installing a double inlet storm drain box and connecting said box to the nearby existing storm drain manhole would be easiest; however, a field survey must conclude if the connection is possible and the drainage study needs to evaluate if the downstream facilities can take it. The

southernmost and northernmost drive aisles should be made into public streets. The applicant should provide a utility plan, specifically stating what will be done with the existing water main on site. The nearest existing sewer manholes are offsite and may require consent of neighboring property owners. 60' is the master planned width for 1380 W. It appears strips of property with varying widths have been conveyed to Hurricane. Applicant will need to coordinate public utility easements with parcel to the west for power. The proposed access spacing along 1380 W is too narrow, 1380 W is a minor collector. The back of sidewalk and right of way.

7. **Fire:** Scale not correct. Possible turnaround required. No parking signs on streets 26' or smaller.
8. **Gas:** No comments
9. **Cable:** 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.

Items to Considers

The following are key items to consider:

Preliminary Site Plan-Staff Comments

1. The Planned Commercial zoning requires that 20% of the property be commercial and 20% of the property be residential. Per their site plan approximately 30% of the property is to be used commercially and 70% of the property is to be used residentially.
2. Planned Commercial zoning has a maximum density of 15 units per acre for the residential portion. The applicant is proposing 55 units, which meets this code.
3. Per their site plan all buildings will be approximately 25' tall (consistent with two story buildings).
4. Parking: Per HCC 10-34 the following uses have the parking requirements cited below:

<i>Restaurant, general</i>	<i>1 space per 100 square feet of gross floor area</i>	<i>10 spaces minimum</i>
<i>Retail, general</i>	<i>1 space per 250 square feet of gross floor area</i>	

<i>Office, general</i>	<i>1 space per 250 square feet of gross floor area</i>	<i>8 spaces minimum</i>
<i>Dwelling, multiple-family:</i>		
<i>Studio and 1 bedroom units</i>	<i>1.5 spaces per dwelling unit</i>	
<i>2 or more bedroom units</i>	<i>2 spaces per dwelling unit</i>	

The “retail/office” building would require 24 parking spaces, the “drive thru” would require 24 spaces and the residential units would require 110 parking spaces. Per their site plan 216 spaces are being provided, which is sufficient to meet this code.

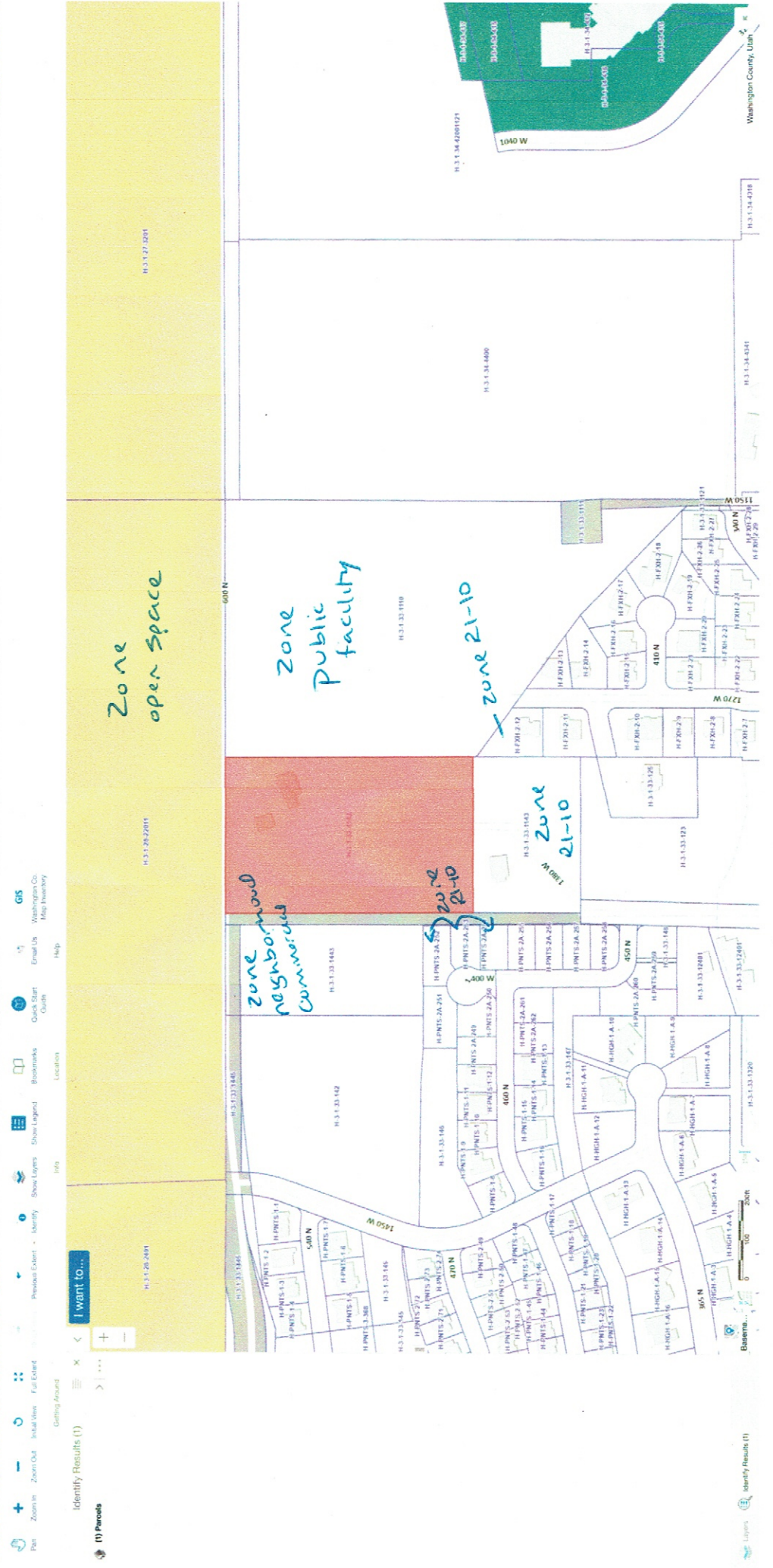
5. The EV charging stations on the site plan will need to meet Power Department standards.
6. A more detailed site plan will be needed with the preliminary plat application.

Findings:

Staff makes the following findings:

1. The proposed zone change is compatible with the General Plan Map and may meet some of its goals.
2. The proposed zone change is considered to be in harmony with some of the properties in the area, but not all of them.
3. The proposed zone change will have an impact on the area, but the impact is not considered adverse since growth is anticipated for this area.
4. The services are expected to be adequate for the development in this region.

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



ORDINANCE NO ZC23-26

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE FOR PARCEL H-3-1-33-4882 FROM R1-10, SINGLE FAMILY RESIDENTIAL 1 UNIT PER 10,000 SQUARE FEET, TO PLANNED COMMERCIAL (PC)

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

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 an adverse 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-3-1-33-4882 from R1-10 to Planned Commercial

PASSED AND APPROVED on this 4th day of January 2024.

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 4th day of January 2024. 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	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____

Cindy Beteag, City Recorder

EXHIBIT A
ZONING MAP



STAFF COMMENTS

Consideration and possible approval of ZC23-28 a **Zone Change Amendment request to amend the existing Canyons RV Planned Development Overlay** to approve a density bonus and approve the preliminary site plan for Ridge Crest, a 53 lot manufactured home subdivision located at 2860 W 200 N. VE Management and Investments Co, Applicant.
Brandee Walker, Agent

Discussion:

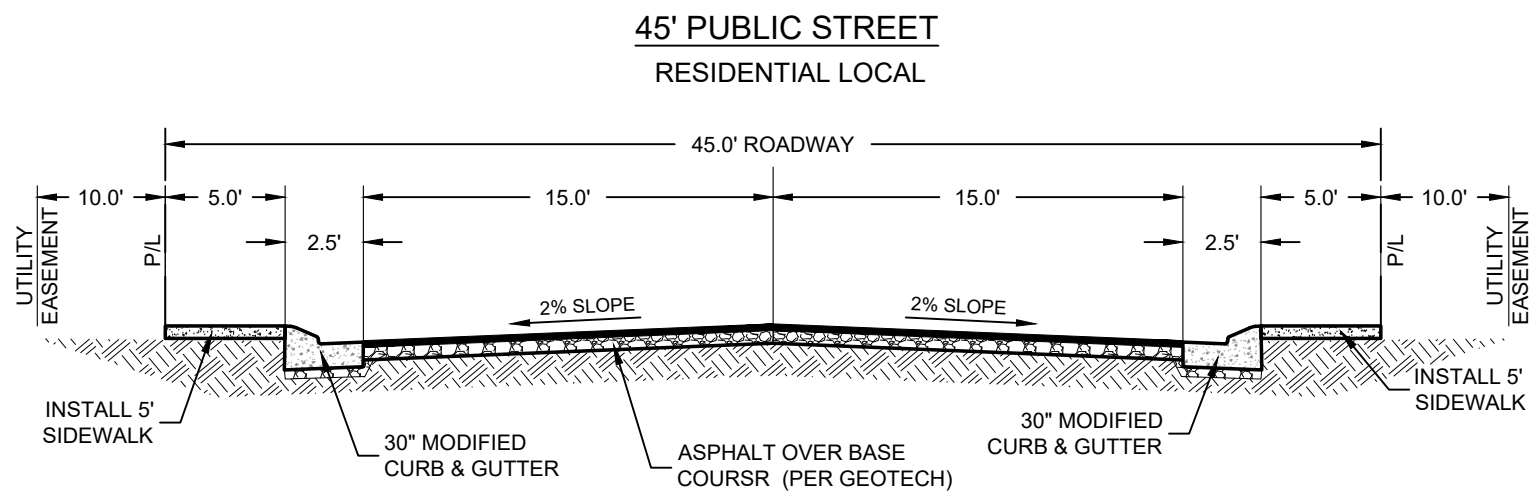
This is not a zone change, but the zone change application is being used to process a requested amendment to the Canyons RV PDO to allow for a density bonus to add three additional lots within the Ridge Crest development, and changes to the setback standards. Per HCC 10-23-6: *"Variations from applicable development standards of an underlying zone and [chapter 39](#) of this title may be approved as part of a preliminary site plan for a planned development pursuant to the provisions of this chapter."* And HCC 10-23-7 states: *"Amendments to approved plans and specifications shall be obtained by following the procedure required for preliminary plan approval."* The Planning Commission heard this item on December 14, 2023 and recommended approval.

Findings:

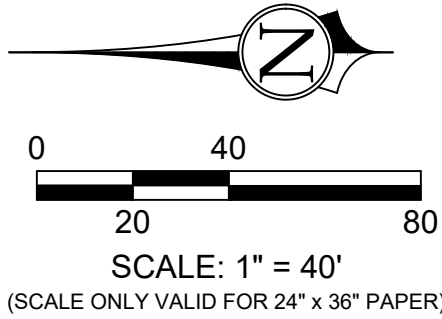
Recommendation:

Attachments:

1. Utility Plan
2. Vicinity Map
3. ZC23-28 Application
4. ZC23-28 Canyons RV_Ridge Crest CC staff report
5. Development_Plan
6. PSP23-37 Application
7. Site Plan



- LEGEND
- FIRE HYDRANT
 - WATER GATE VALVE
 - EXISTING WATER GATE VALVE
 - 3/4" WATER LATERAL & SERVICE WITH BOX
 - EXISTING WATER LINE
 - C-900 CLASS 150 WATER LINE
 - SEWER MANHOLE (SIZE AS NOTED ON PLAN)
 - 4" PVC SEWER LATERAL
 - EXISTING SEWER LINE
 - 8" SDR 35 PVC SEWER LINE
 - SEWER PRESSURE MAIN (REROUTE)
 - PROPOSED LOT LINE
 - PUBLIC UTILITY EASEMENT LINE



RIDGE CREST
PRELIMINARY UTILITY PLAN

1453 S. DIXIE DRIVE, SUITE 150
ST. GEORGE, UT 84770
435.986.0100



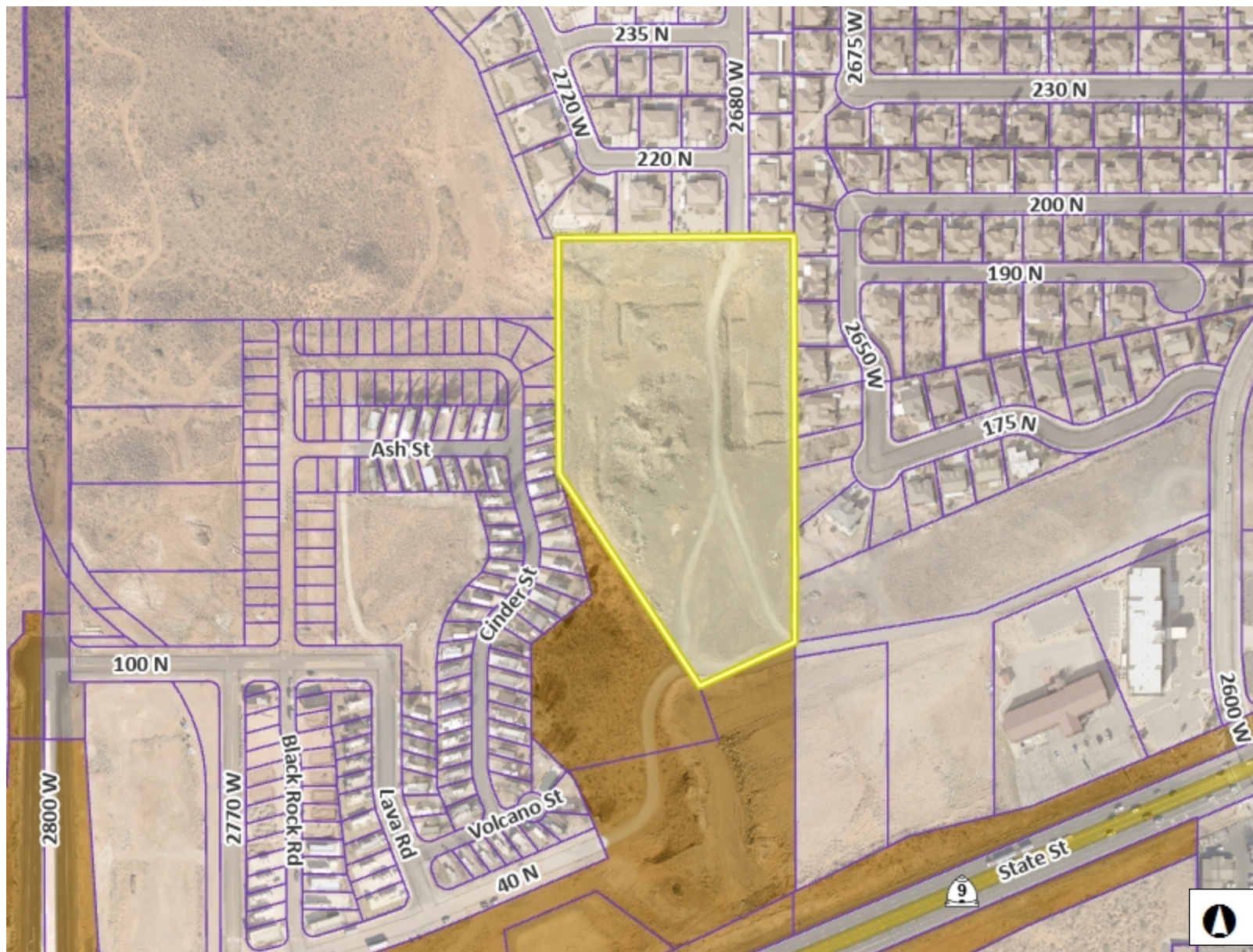
RIDGE CREST
PRELIMINARY SITE PLAN & PDO ZONING
LOCATED IN HURRICANE, UTAH

PROJ. #: 23295.00
DRAWN BY: BLW
DATE: 09/20/2023
CHECKED BY:
SCALE OF SHEET
HOR SCALE: 1" = 40'

SHEET
2
OF
2



Ridge Crest



Legend

- Parcels
- Ownership
 - U.S. Forest Service
 - U.S. Forest Service Wilderness
 - Bureau of Land Management
 - Bureau of Land Management Wilde
 - National Park Service
 - Shivwits 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

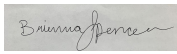
Notes

752.3 0 376.17 752.3 Feet

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.

Application

Application Accepted Date: 11/01/2023		Valuation		\$	0.00
Type of Improvement: <u>Zone Change Application</u>		PERMIT FEES			
Description: <u>PDO Zone Overlay to allow for a density bonus</u>		Planning Fee		\$	500.00
Tenant / Project Name: <u>Ridge Crest</u>		Planning Fee		\$	500.00
Bldg. Address: <u>2860 West 200 North</u>		Sub Total:		\$	500.00
City: <u>Hurricane City</u> State: <u>UT</u> Zip: <u>84737</u>		Permit Total:		\$	500.00
Subdivision: _____ Phase: _____		Amount Paid:		\$	500.00
Block: _____ Lot #: _____ Parcel #: <u>H-3-1-32-4409</u>		Remaining Due:		\$	0.00
Zone: <u>MH/RV with PDO</u>					
Property Owner: <u>VE Management & Investments Co</u>					
Permit Contact: <u>Brandee Walker</u> P:(435) 668-4023					
Email: <u>bwalker@civilsience.com</u>					
CONTACT INFORMATION					
Engineer of Record: <u>Civil Science</u>					
Email: <u>bwalker@civilsience.com</u> P: (435) 668-4023					
General Contractor: <u>VE Management & Investments Co</u>					
License #: _____ P: (435) 668-3728					
City: _____ State: _____ Zip: _____					
Email: <u>skylar@sprdevt.com</u>					
APPLICATION DETAILS					
					
APPROVALS		DATE		INFO	
Plan Review Finalized:		Yes		11/07/23 Brienna Spencer	
Setbacks	Front:	Rear:	Left:	Right:	
Min.					
Actual:					
APPLICATION NUMBER:				PENDZC23-28	
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: <u>Brandee Walker</u>					
Signature of Applicant/Authorized Agent or Owner: Date: _____					
Application Approved By: _____				Date: _____	
				11/07/2023	
Application Issued By: _____				Date: _____	
Receipt #: 8.173804-11/01/23					



STAFF COMMENTS

Agenda Date:	1/4/2024
Application Number:	ZC23-28 PSP23-32
Type of Application:	Zone Change (PDO Amendment)
Action Type:	Legislative
Applicant:	VE Management and Investments Co
Agent:	Brandee Walker
Request:	A Zone Change to amend an existing PDO
Location:	2860 W 200 N
Zoning:	MHRV PDO
General Plan Map:	Single Family

Discussion:

This is not a zone change, but the zone change application is used to process a requested amendment to the Canyons RV PDO to allow for a density bonus to add three additional lots within the Ridge Crest development, and changes to the setback standards. Per HCC 10-23-6: *"Variations from applicable development standards of an underlying zone and chapter 39 of this title may be approved as part of a preliminary site plan for a planned development pursuant to the provisions of this chapter."* And HCC 10-23-7 states: *"Amendments to approved plans and specifications shall be obtained by following the procedure required for preliminary plan approval."* The Canyons RV is an older development, first approved in the 1980s, that has gone through a series of different development proposals and zoning standards. Generally, at this point the Canyons is governed by the Mobile Home/Recreational Vehicle Park standards unless otherwise modified through the Planned Development Overlay.

The Planning Commission heard this item on December 14, 2023 and recommended approval.

These uses 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.

The zoning for manufactured homes and park models is currently in place and has been for decades, however manufactured homes and park models do meet a broad definition of “single family home” and MH/RV zone standards are contained within Hurricane single family residential standards in 10-13. Increasing the density by 5% would still be within the range of typical single family density.

During the Moderate Income Housing Plan and other discussions about growth with the City Council and other city leaders, a desire was expressed for new manufactured home communities that can provide an affordable option for people on a scale similar to single family homes. Single family homes could be built on these lots.

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

Response: The lot sizes and density would be in between the scale and density of Sky Ridge to the north and Canyons RV to the west.

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

Response: The development itself may have an impact on adjacent property, however it is unlikely that three additional units will have a major impact on the property. This development will continue the expansion of 2680 W through to 2600 W which will be a benefit to connectivity in the area.

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

Response: See JUC comments below. There are some layout and utilities issues with the overall development that need to be worked out, but there were no comments pertaining to the request for additional units.

JUC Comments

Public Works: Need second access. Need water loop and water model.

Power: Rocky Mountain Power has an easement for a power line across this property. A main feeder line will have to be installed along the future 100 N from 2600 W before power can supply the development. A small power line must also be connected through Canyon Villas development. Hurricane Power and civil engineers must work together for off-site power design.

Water: Water lines need to be looped for approval.

Streets: No comments

Sewer: 4” pressure line for Canyons RV runs through the project. Sewer not readily available-need to see off-site sewer plan.

Engineering: The applicant should coordinate with Hurricane City and UDOT to conclude what the expectations for 100 N (a master planned major collector with a trail on the south side) alignment should be. Meeting the existing portion of 100 N with standard horizontal curves will require adjustments to the

applicant's proposed alignment, regrading the existing slopes can have impacts on the proposed subdivision. Engineering suggests planning a public utility corridor separate from the detention/retention area, a road if possible. Ash Creek's standards don't support sewer mains through detention areas. The applicant should explore with the water department if a loop through Canyon RV's system would be feasible. Meeting Hurricane City standards and servicing the entire subdivision isn't possible without neighbors participation.

Fire: Need second access for 53 homes, 30 homes max on single access.

Cable: Add Centurylink notes to construction drawings

GIS: Main north-south street is "2680 W"

Water Conservancy: Washington County Water Conservancy District hereby acknowledges that based on the information provided, the plans adequately mitigate 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 applicant has indicated that this development is intended to be subdivided. A separate preliminary plat application will need to be submitted and approved.
2. The applicant is requesting a 5% density bonus for "provision of usable open space" and "enhanced overall design theme" the site plan shows 0.5 acres of common area and stormwater basin but provided no details on the enhanced overall design theme.
 - a. Hurricane City Code 10-23-8 states:

C. Density bonus. The City Council, after receiving a recommendation from the Planning Commission, may authorize a density bonus of up to 20 percent above the base density for a planned development. The purpose of a density bonus is to provide an incentive to an applicant to provide amenities that are not required by this chapter or the applicable underlying zone, and which otherwise would not be provided.

1. The basis for granting a density bonus shall be included in the findings required to approve a planned development set forth in subsection 10-23-7B of this chapter.

2. A density bonus may be authorized based upon provision of one or more of the following amenities. The maximum density bonus granted for any one class of amenities shall not exceed the percentage indicated.

a. Enhanced overall design theme (up to five percent):

(1) Landscaping is designed and installed along all streets of the development according to a theme which provides overall design unity;

(2) Theme lighting is used throughout the development for street lighting, walkway lighting, parking areas, entrances, and building exteriors;

(3) Perimeter fencing is used throughout the project that matches building design, such as, masonry columns or piers using the same brick or stone as the buildings; and

(4) *Special features such as fountains, streams, ponds, sculptures, buildings or other elements which establish a strong design theme for the development and are utilized in highly visible locations.*

Provision of usable open space (up to five percent):

(1) *Open space is integrated into the entire development and is connected to developed areas by a system of trails and walkways; and*

(2) *Stormwater detention facilities are designed, landscaped, and used for multiple purposes that are consistent with the overall design of the planned development and which reduce the perception of the area as a stormwater detention pond.*

The Planning Commission should request more detail on how these goals within the code will be met.

3. **Setbacks:**

- a. The applicant appears to be requesting a variation on the normal setbacks required in a PDO.
- b.

Property line	Requested setbacks	Current PDO setbacks
Front	15'	Dwellings: 14' Garages: 20'
Interior side	10'	15' aggregate. Minimum 5'
Street side	20'	15'
Rear	10'	10'

- c. It is not clear to staff why they seem to be requesting more strict setbacks in some cases, especially the side setbacks with how narrow the lots are.

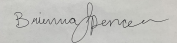
4. The site plan indicates the development will be developed in multiple phases based on utility availability

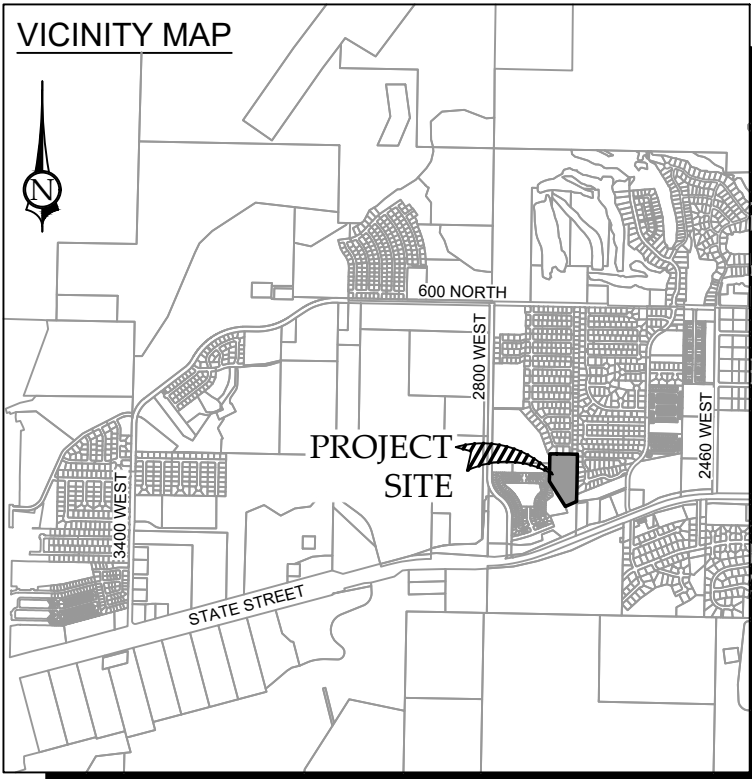
Findings: Staff makes the following findings:

1. The proposed amendment is compatible with the goals and policies of the General Plan
2. The proposed amendment is in harmony with the overall character of the existing development.
3. The proposed amendment will have little to no effect on adjacent properties.
4. Public facilities are adequate.

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

Application

Application Accepted Date: 10/11/2023		Valuation		\$	0.00						
Type of Improvement: Site Plan (Preliminary)		PERMIT FEES									
Description: 53 Lots		Planning Fee		\$	200.00						
Tenant / Project Name: Preliminary Site Plan - Ridge Crest		Planning Fee		\$	200.00						
Bldg. Address: 2860 West 200 North		Sub Total:		\$	200.00						
City: Hurricane City State: UT Zip: 84737		Permit Total:		\$	200.00						
Subdivision: Phase:		Amount Paid:		\$	0.00						
Block: Lot #: Parcel #: H-3-1-32-4409		Remaining Due:		\$	200.00						
Zone: MH/RV with PDO											
Property Owner: VE Management & Investments Co											
Permit Contact: Brandee Walker P:(435) 668-4023											
Email: bwalker@civilsience.com											
CONTACT INFORMATION											
Engineer of Record: Kelvin Smith											
Email: kcsmith@civilsience.com P: (435) 986-0100											
General Contractor: VE Management & Investments Co											
License #: P: (435) 668-3728											
City: State: Zip:											
Email: skylar@sprdevt.com											
APPLICATION DETAILS											
											
APPROVALS		DATE	INFO								
Plan Review Finalized:		Yes	11/08/23	Brienna Spencer							
Setbacks		Front:	Rear:	Left:	Right:						
Min.											
Actual:											
APPLICATION NUMBER:		PENDPSP23-37									
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 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: Brandee Walker											
Signature of Applicant/Authorized Agent or Owner: Date:											
Application Approved By:		Date:									
		11/08/2023									
Application Issued By:		Date:									
Receipt #: 8.173735-10/11/23											

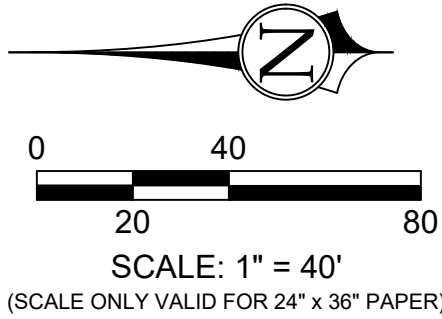


DRAINAGE NOTE
THE SITE SLOPES FROM EAST TO WEST CREATING A LOW POINT AND NATURAL LOCATION FOR A PROPOSED STORM WATER RETENTION BASIN ALONG THE WEST PROPERTY BOUNDARY. THE BASIN WILL BE APPROXIMATELY 2.5' DEEP OF WATER LEVEL.

- LEGEND**
- EXISTING GROUND CONTOUR
 - FINISH GRADE CONTOUR
 - PROPOSED LOT LINE
 - PROPOSED CURB & GUTTER
 - EXISTING CURB & GUTTER
 - EG EXISTING GROUND
 - PROPOSED SURFACE FLOW DIRECTION

PLANNED DEVELOPMENT OVERALY
BASE DENSITY : 6.15 DU/AC
DENSITY BONUS: 0.31 DU/AC (5%)
• PROVISION OF USABLE OPEN SPACE
• ENHANCED OVERALL DESIGN THEME
DENSITY PROPOSED: 6.46 DU/AC

PROJECT INFORMATION
AREA: 8.2 ACRES
ZONING: MH/RV WITH PDO
TOTAL UNITS: 53 SUBDIVIDED LOTS
DENSITY: 6.46 D.U./ACRE
OPEN SPACE/AMENITY/ COMMON USE: 0.50 ACRES
SETBACKS:
SIDE = 10' INTERIOR, 20' STREET
FRONT = 15'
REAR = 10'
PHASING: PROJECT WILL BE DEVELOPED IN MULTIPLE PHASES DETERMINED BY SEWER AND MARKET DEMAND
CONTACT: VE MANAGEMENT & INVESTMENTS CO. LLC
1240 E 100 S #2, ST. GEORGE, UT 84790
SKYLAR@SPRDEVT.COM



RIDGE CREST
PRELIMINARY SITE PLAN & PDO ZONING

RIDGE CREST
PRELIMINARY SITE PLAN & PDO ZONING
LOCATED IN HURRICANE, UTAH

PROJ. #:	23295.00
DRAWN BY:	BLW
DATE:	09/20/2023
CHECKED BY:	
SCALE OF SHEET	
HOR SCALE:	1" = 40'
SHEET	
1	OF
2	

1453 S. DIXIE DRIVE, SUITE 150
ST. GEORGE, UT 84770
435.986.0100





STAFF COMMENTS

Consideration and possible approval of ZC23-25 a **Zone Change Amendment request located at 119 S 700 W** from RM-2, multifamily 10 units per acre, to GC, General Commercial. Parcel H-266-J-1. Oliver and Rebekah Radtke, Applicant

Discussion:

The applicant is seeking a zone change from RM-2 to General Commercial on .26 acres of property. The applicants are proposing that the existing duplex, currently being rented long-term, be allowed to be rezoned to commercial to allow the owners to operate a short-term rental from the site. The Planning Commission heard this item on December 14, 2023 and recommended approval.

Findings:

Recommendation:

Attachments:

1. Ordinance ZC23-25 (Radtke Property)
2. Proposed Zoning
3. ZC23-25 Application
4. Legal Description
5. ZC23-25 Radtke CC staff report

ORDINANCE NO ZC23-25

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE FOR PARCEL H-266-J-1 FROM RM-2, MULTIPLE FAMILY RESIDENTIAL 10 UNITS PER ACRE, TO GENERAL COMMERCIAL (GC)

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

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 an adverse 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-266-J-1 from RM-2 to General Commercial

PASSED AND APPROVED on this 4th day of January 2024.

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 4th day of January 2024. 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	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____

Cindy Beteag, City Recorder

EXHIBIT A
ZONING MAP

I am proposing that the property of 119 S 700 W, be rezoned to commercial. The building directly to the North and South of this address are both commercial. To the North is State Farm and to the South is Freddy's Ink - Tattoo & Piercing Studio. The other buildings directly across from my property as well as all of the other buildings North of my property on 700 W, are all commercial buildings; Utah Tech, Hurricane PD, Hurricane Justice Court, Hurricane Dental Group, Scooter's Coffee, Chevron, and Super 8.

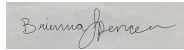
I believe that changing the property of 119 S 700 W to a commercial zone is harmonious with the overall character of existing development in the vicinity of my property, since the other properties are all commercial.

I believe this change will not adversely affect the adjacent properties and it will not take up/ use any more resources from the city than it currently does.

Thank you for your consideration,

Oliver & Rebekah Radtke

**Application**

Application Accepted Date: 10/31/2023		Valuation		\$	0.00	
Type of Improvement: Zone Change Application		PERMIT FEES				
Description: This is a 3504 sq ft duplex with a complete upper		Planning Fee		\$	500.00	
Tenant / Project Name: 119 S 700 W		Planning Fee		\$	500.00	
Bldg. Address: 119 S 700 W		Sub Total:		\$	500.00	
City: Hurricane City State: UT Zip: 84737		Permit Total:		\$	500.00	
Subdivision: NA Phase: NA		Amount Paid:		\$	0.00	
Block: Lot #: H-266-J Parcel #: H-266-J-1		Remaining Due:		\$	500.00	
Zone: RM-2						
Property Owner: Oliver and Rebekah Radtke						
Permit Contact: Oliver Radtke P:(920) 538-5317						
Email: oliverradtke12@gmail.com						
CONTACT INFORMATION						
General Contractor: OLIVER RADTKE						
License #: P: (920) 538-5317						
Address: 3527 W 175 N						
City: Hurricane State: UTAH Zip: 84737						
Email: Oliverradtke12@gmail.com						
APPLICATION DETAILS						
		APPROVALS		DATE	INFO	
		Plan Review Finalized:		Yes	11/08/23	Brienna Spencer
		Setbacks	Front:	Rear:	Left:	Right:
		Min.				
		Actual:				
		APPLICATION NUMBER: PENDZC23-25				
		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 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: Oliver Radtke				
		Signature of Applicant/Authorized Agent or Owner: Date:				
		Application Approved By:		Date:		
				11/08/2023		
		Application Issued By:		Date:		
		Receipt #: 8.173767-10/31/23				

The following is the description of the property at 119 S 700 W, Hurricane, UT 84737:

The building is a 3504 sq ft duplex, with an upper and lower living space, each floor is 1752 sq ft. The lower level is in the basement (underground). The building is currently zoned as RM-2.



STAFF COMMENTS

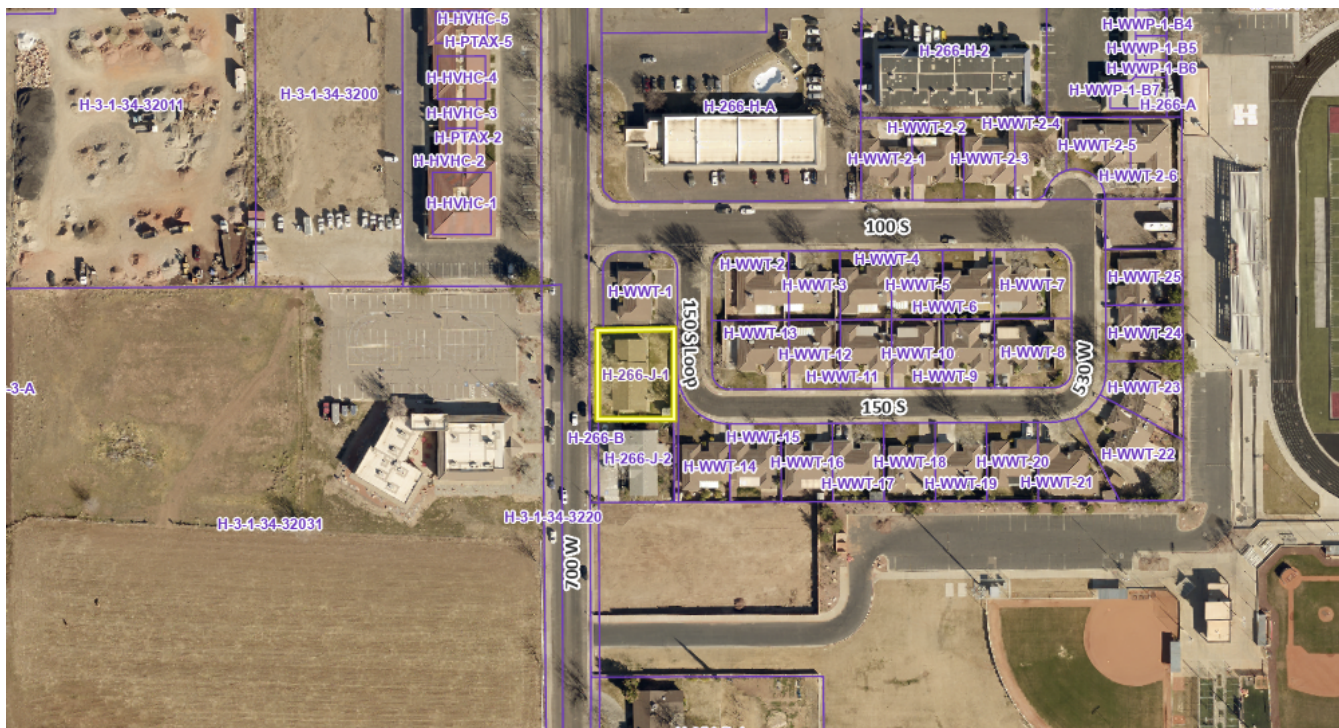
Agenda Date:	1/4/2024
Application Number:	ZC23-25
Type of Application:	Zone Change Application
Action Type:	Legislative
Applicant:	Oliver and Rebekah Radtke
Agent:	
Request:	A Zone Change from RM-2 to General Commercial
Location:	119 S 700 W
Zoning:	RM-2
General Plan Map:	Single Family

Discussion:

The applicant is seeking a zone change from RM-2 to General Commercial on .26 acres of property. The applicants are proposing that the existing duplex, currently being rented long-term, be allowed to be rezoned to commercial to allow the owners to operate a short-term rental from the site.

The Planning Commission heard this item on December 14, 2023 and recommended approval.

	Zoning	Adjacent Land Use
North	RM-2 PDO, HC	Commercial uses
East	RM-2 PDO	Duplexes
South	RM-2 PDO, HC	Commercial uses, Hurricane High School
West	RA-1	Utah Tech University



To change the zoning on any parcel of land within the City of Hurricane, the following questions need to be addressed:

10-7-7: ZONING MAP AND TEXT AMENDMENTS:

E. Approval Standards: A decision to amend the text of this title or the zoning map is a matter within the legislative discretion of the city council as described in subsection [10-7-5A](#) of this chapter. In making an amendment, the following factors should be considered:

- 1. Whether the proposed amendment is consistent with goals, objectives and policies of the city's general plan;*
- 2. Whether the proposed amendment is harmonious with the overall character of existing development in the vicinity of the subject property;*
- 3. The extent to which the proposed amendment may adversely affect adjacent property; and*
- 4. The adequacy of facilities and services intended to serve the subject property, including, but not limited to, roadways, parks and recreation facilities, police and fire protection, schools, stormwater drainage systems, water supplies, and wastewater and refuse collection.*

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 Single Family which requires:

These uses 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.

This property currently does not comply with the General Plan Map, being zoned RM-2 with a multifamily use. However, this zone change would increase the degree of conflict with the General Plan from beyond its current use.

The Moderate Income Housing Plan, passed as an appendix to the City's General Plan, calls on the City to "*limit expansion of short term rentals.*"

This proposed zone change is not consistent with the General Plan.

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

Response: The property is right on the edge of the more commercial development and the more residential portion of Hurricane.

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

Response: The proposed zoning will create much more traffic to the property than a residential zoning would. In addition, there is concern on the increase of traffic to the site considering its location on a major thoroughfare and the existing site conditions. Short-term rentals in and near residential zones are one of the most common nuisance issues with parking and noise that the City deals with on a regular basis. The police department has also expressed concerns that the project may exacerbate a lack of parking in the area.

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

Response: Facilities and services are adequate for this development. JUC had no major concerns about availability. Any change in the use will require utility upgrades and site improvements.

Other Considerations

Vacation Rentals

The city has 5200 vacation rentals built or approved in the past few years. Generally, staff would not recommend the approval of any more vacation rentals unless some amenities or other attractions are included in the proposal.

The City Council passed Ordinance 2023-20 on December 7th, 2023 prohibiting new whole home vacation rentals in single family zones and is considering proposals to restrict short-term rental use further. This proposal would seem to conflict with the City's plans to restrict vacation rentals to the resort areas of town.

Parking

Depending on the proposed use there are different off-street parking requirements. Due to the classification of 700 W there is incredibly limited on-street parking in the area, and any additional parking needs may spill onto the neighborhood streets behind this home. A short-term rental use would require one off-street parking space per bedroom. County records state there are six bedrooms on site, from site visits staff finds it hard to believe this standard can be met without extensive changes to the site.

JUC Comments:

Public Works: No comments

Power: If power needs are greater than what is currently supplied, the developer will contact HC Power with new load calculations to design a new power system.

Water: Okay

Streets: Would like to see the zoning stay at RM-2

Sewer: Short term rentals are placed on the commercial sewer billing.

Engineering: 700 W does not have its full master planned right of way at this location. Hurricane City standards prohibit commercial properties from having driveways that back onto a major collector like 700 W.

Fire: This property failed their fire inspection for a vacation rental license last year. Unless they have made some alterations they do not have the exiting they need to pass no matter the zone.

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.

Findings:

Staff makes the following findings:

1. The application does not meet the standards within the General Plan and General Plan Map.
2. This zone change is harmonious with some of the surrounding development to the north but not to the south.
3. The proposed amendment will have an adverse impact on the area.
4. Services are adequate to serve the property.
5. The current site was not designed with the stated use in mind and would require major renovations to bring into compliance with commercial standards.

Recommendation: Staff recommends the City Council review this application and the zone change based on standards and consider residents' comments. Staff would recommend denial of the zone change due to the proposed change not being consistent with the General Plan, and because it may adversely affect the surrounding area.



STAFF COMMENTS

Consideration and possible approval of a **preliminary plat for Horseman's Edge & Hurricane Cliffs Industrial**, a six lot residential subdivision and 23 lot industrial subdivision located at 3155 S 1100 W. Scott Stratton, Applicant. Karl Rasmussen, Agent.

Discussion:

The applicant has filed a preliminary plat for Horseman's Edge and Hurricane Cliff's Industrial. This is a split zoned subdivision between RA-0.5 and M-1. This was originally approved as a RA-0.5 PDO subdivision in 2021 and has since been rezoned so that three-quarters of the property is zoned industrial. The subdivision consists of six residential lots and 23 industrial lots. The Planning Commission heard this item on December 14, 2023 and recommended approval.

Findings:

Recommendation:

Attachments:

1. PP23-27 Horsemans Edge CC staff report
2. PP23-27
3. Preliminary_Plat_Map
4. Water_Will_Serve_Letter
5. Ash_Creek_Will_Sever_Letter

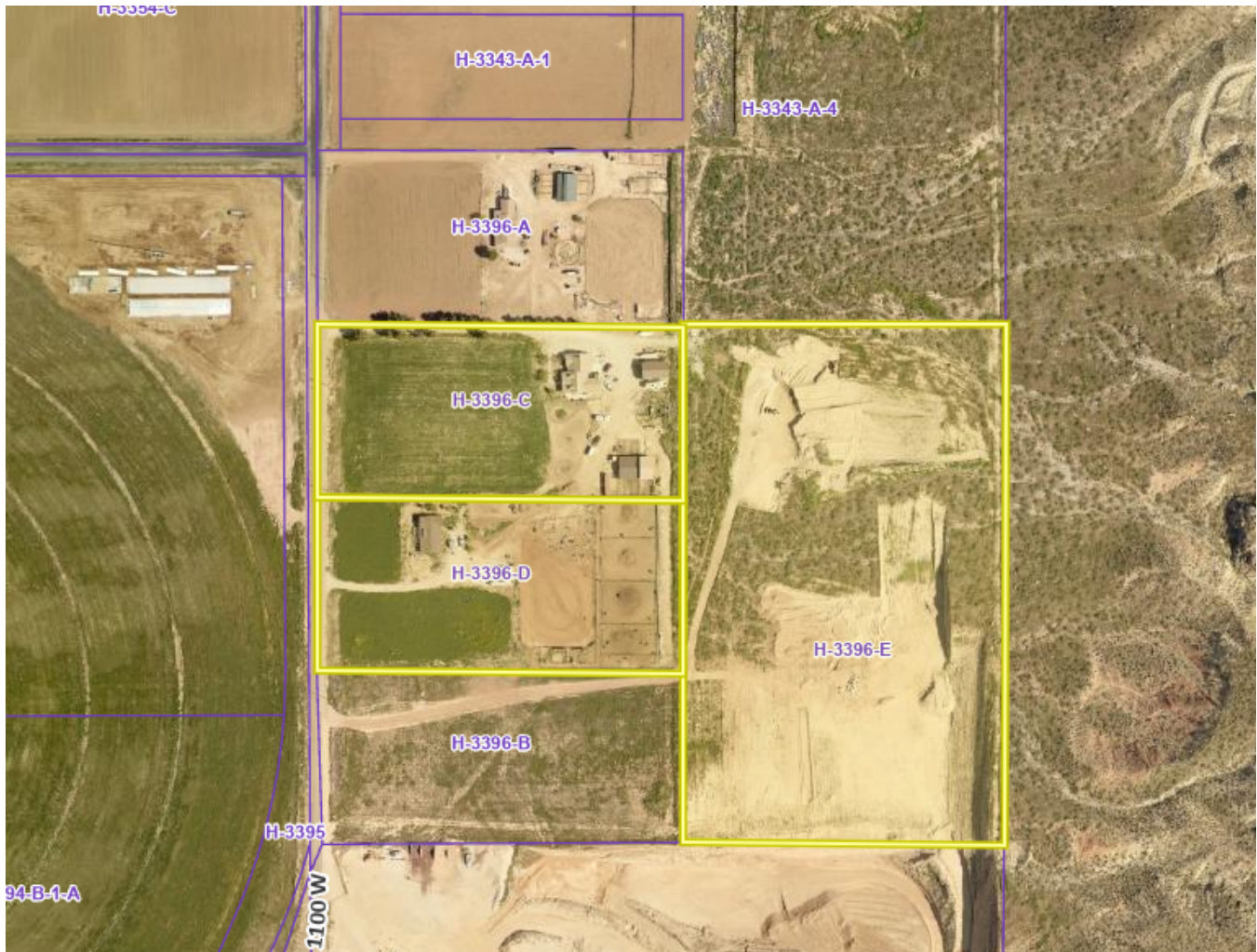


STAFF COMMENTS

Agenda Date:	1/4/2024
Application Number:	PP23-27
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	Scott Stratton
Agent:	Karl Rasmussen
Request:	Approval of a Preliminary Plat
Location:	3155 S 1100 W
Zoning:	RA-0.5, M-1
General Plan Map:	Rural Residential

Discussion:

The applicant has filed a preliminary plat for Horseman's Edge and Hurricane Cliff's Industrial. This is a split zoned subdivision between RA-0.5 and M-1. This was originally approved as a RA-0.5 PDO subdivision in 2021 and has since been rezoned so that three-quarters of the property is zoned industrial. The subdivision consists of six residential lots and 23 industrial lots. The Planning Commission heard this item on December 14, 2023 and recommended approval.



JUC Comments

The following items will need to be addressed:

1. **Power:** Horseman's Edge was originally designed as a residential subdivision, the new zone change asked for light industrial or commercial with the type of zone normally three phase power is needed, is this the case or can we move forward with initial designs? Plat is approved by Power Dept under the conditions that residential portion would be limited to 200 amps per lot and the rest could go to 400 amps, this is per contractual agreement between HC Power and the developers south of 1300 S.
2. **Water:** Need a water model.
3. **Street:** Will need improvements on 1100 W.
4. **Sewer:** No comments.
5. **Engineering:** Legal descriptions need to be updated. Will landscaped detention areas and open space be conveyed to a homeowners association or Hurricane City? Site data box needs to be updated to reflect what is on the plat. Special geotech investigation is required for development this close to the Hurricane Cliffs. Engineering encourages developer to prioritize reviewing development standards specified in HCC 10-28-2 with the geotech report as construction plans are made.

6. **Fire:** Scale too small to do full analysis
7. **Cable:** No comments
8. **Fiber:** Add Infowest notes
9. **Gas:** No comments
10. **Water Conservancy:** No comments

Staff Comments: Preliminary Plat

1. Zoning is RA-0.5 and M-1. All residential lots meet RA-0.5 standards. There are no minimum lot size standards in M-1, however most lots are around 0.5 acres. This size is smaller than typical for industrial lots in Hurricane, but similar sized lots do exist.
2. Planning staff appreciates the proposed open space and connectivity to the BLM-owned property in the Hurricane Cliffs.
3. Block lengths appear to comply with city code.
4. All lots should be labeled with lot size (Lots 11 and 12 are not labeled)
5. Standard road cross-sections are shown.
6. Will-serve letters from the water and sewer providers have been provided.
7. A note has been provided indicating the property is not in a desert tortoise take area.
8. Hurricane City Code 10-37-4 states:

Land shall be developed only where existing infrastructure is in place or will be timely provided to service proposed development. The City may require an analysis to be completed to determine whether adequate public facilities are available to service a development and whether such development will change existing levels of service or will create a demand which exceeds acceptable levels of service for roadways, intersections, bridges, storm drainage facilities, water lines, water pressure, sewer lines, fire and emergency response times, and other similar public services. The City may disapprove a proposed development if demand for public services exceeds accepted levels of service. No subsequent approval of such development shall be given until either the developer or the City installs improvements calculated to raise service levels to the standard adopted by the City.

Power capacity is currently limited in this area, however the developer has paid into a plan to get additional power capacity to this area in a timely manner. Water pressure is still a concern in this area of town.

Recommendation: Staff recommends the City Council review this application based on standards within Hurricane City Code. Staff recommends approval, subject to the plat being updated to address planning and engineering staff's comments.



Application

Application Accepted Date: 11/13/2023		Valuation		\$	0.00
Type of Improvement: Subdivision (Preliminary Plat)		PERMIT FEES			
Description: Pre-plat needed for this property		Planning Fee		\$	150.00
Tenant / Project Name: HORSEMAN'S EDGE & HURRICANE CLIFFS IND		Planning Fee		\$	150.00
Bldg. Address: 3155 South 1100 West		Sub Total:		\$	150.00
City: Hurricane City State: UT Zip: 84737		Permit Total:		\$	150.00
Subdivision: HORSEMAN'S EDGE & Phase:		Amount Paid:		\$	0.00
Block: HURRICANE CLIFFS Parcel #: H-3396-C, H-3396-D, H-3396-E		Remaining Due:		\$	150.00
Zone: RA-0.5 & M-1 3396-E					
Property Owner: Scott Stratton					
Permit Contact: Karl Rasmussen P:(435) 680-0816					
Email: karl@pv-eng.com					
CONTACT INFORMATION					
Engineer of Record: Karl Rasmussen					
Email: karl@pv-eng.com P: (435) 680-0816					
General Contractor: Scott Stratton					
License #: TBD P: (435) 229-1673					
City: State: Zip:					
Email: scottstratton4966@gmail.com					
APPLICATION DETAILS					
APPROVALS					
Plan Review Finalized:		Yes	11/27/23	Brienna Spencer	
Setbacks					
Front:		Rear:	Left:	Right:	
Min.					
Actual:					
APPLICATION NUMBER: PENDPP23-27					
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 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: Karl Rasmussen					
Signature of Applicant/Authorized Agent or Owner: Date:					
Application Approved By:		Date:			
		11/27/2023			
Application Issued By:		Date:			
Receipt #: 8.174437-11/13/23					

HORSEMAN'S EDGE LEGAL DESCRIPTION

AREA CONTAINS 463,161 SQUARE FEET OR 10.633 ACRES.

HURRICANE CLIFFS INDUSTRIAL PHASE 1 LEGAL DESCRIPTION

AREA CONTAINS 463,161 SQUARE FEET OR 10.633 ACRES.

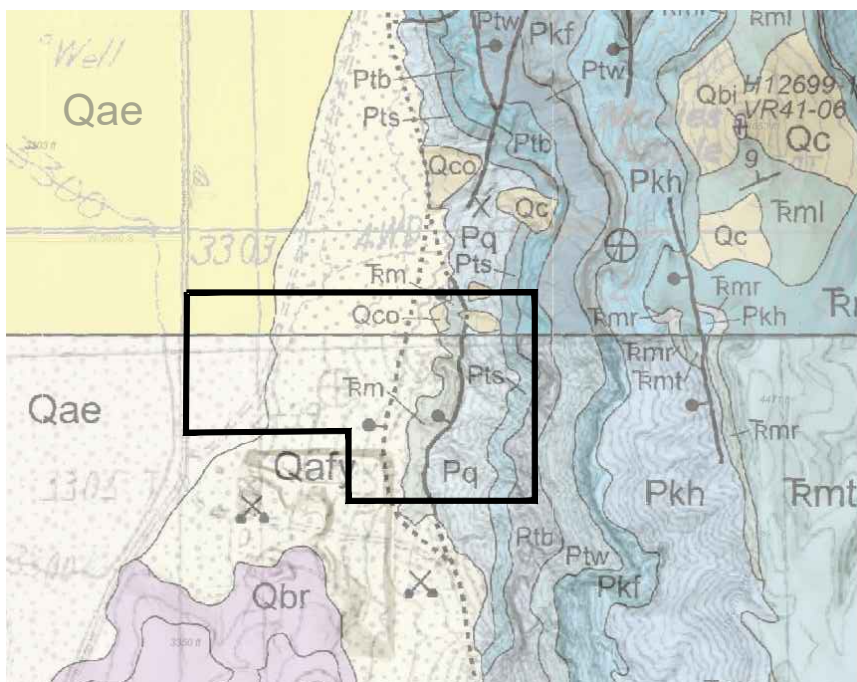
HURRICANE CLIFFS INDUSTRIAL PHASE 2 LEGAL DESCRIPTION

AREA CONTAINS 332,471 SQUARE FEET OR 7.632 ACRES.

HURRICANE CLIFFS INDUSTRIAL PHASE 3 LEGAL DESCRIPTION

AREA CONTAINS 278,293 SQUARE FEET OR 6.389 ACRES.

GEOLOGICAL REPORT



Plw: WOODS RANCH MEMBER -- GRAYISH-PINK TO VERY PALE-ORANGE, VERY THICK-BEDDED GYPSUM WITH INTERBEDS OF LIGHT-BROWNISH-GRAY SILTSTONE, PALE-RED SHALE, AND YELLOWISH-GRAY TO LIGHT-GRAY, LAMINATED TO THIN-BEDDED DOLOMITE AND LIMESTONE; FORMS SLOPE, COMMONLY COVERED WITH TALUS; BEDS DISTORTED FROM DISSOLUTION OF GYPSUM; 320 FEET (98 M) THICK.

OWNER / DEVELOPER

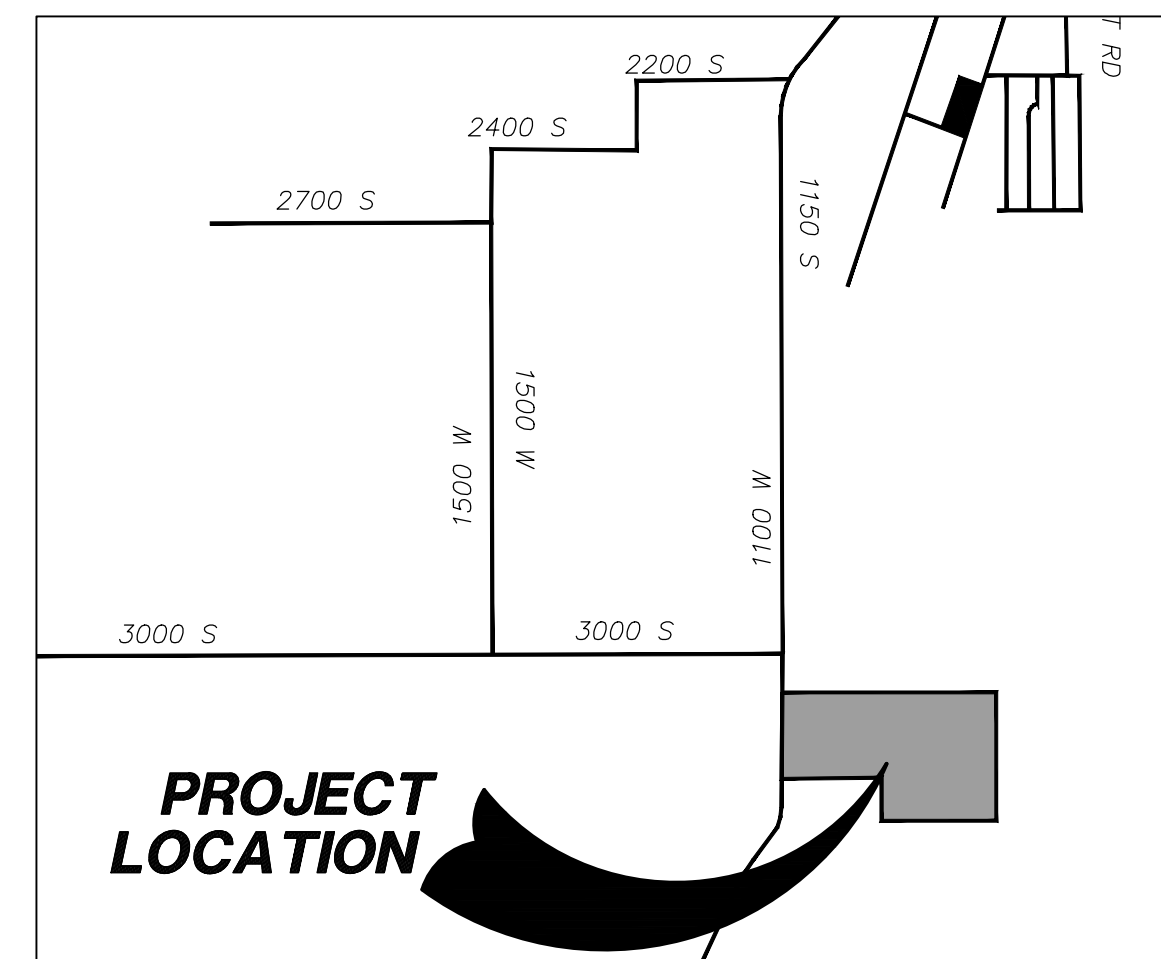
SCOTT STRATTON
DIAMONDS EDGE CONSTRUCTIONS LLC
256 N 200 W
BLANDING, UT 84511

SITE DATA:

TOTAL ACRES	24.66 ACRES
OPEN SPACE	1.62 ACRES
DETENTION AREA	0.25 ACRES
TOTAL LOTS	47 LOTS
UNITS/ACRE	1.91
PHASE 1	6 LOTS
PHASE 2	8 LOTS
PHASE 3	11 LOTS
PHASE 4	15 LOTS

GEOLOGICAL HAZARDS

FAULTS & SURFACE FAULTING	SPECIAL STUDY AREA
FLOODING	ZONE X-AREA OF MINIMAL FLOOD HAZARD
LANDSLIDE HAZARD	NONE
LIQUEFACTION	H2 - HIGH2 - WELL-SORTED SANDS, SILTY SANDS, AND GRAVELS, NO GROUND-WATER INFORMATION L2 - LOW2 - MODERATELY TO POORLY SORTED SANDS AND GRAVELS, NO GROUND-WATER INFORMATION
ROCKFALL HAZARD	H - HIGH ROCK FALL-HAZARD AREA
BRECCIA PIPES AND PALEOKARST	NONE
CALICHE	NONE
COLLAPSIBLE SOIL	HCS-HIGH COLLAPSIBLE SOILS CSC-FAN ALLUVIUM, PLEISTOCENE
EXPANSIVE SOIL	ESL/ESM-SOILS WITH LOW TO MODERATE SUSCEPTIBILITY TO EXPANSION
GYPSIFEROUS SOIL & ROCK	GSB - GYPSUM BEARING SOILS, CONCEALED
PIPING & EROSION	P&ES-SOILS SUSCEPTIBLE TO PIPING AND EROSION
SHALLOW BEDROCK	BRB-BURIED: AREAS WHERE DEPTH TO BEDROCK IS GENERALLY LESS 10 FEET BENEATH SOIL COVER
SHALLOW GROUND WATER	SGW3-MODERATELY TO FREELY DRAINING SOILS WITH SEASONAL OR TRANSIENT SHALLOW GROUND WATER
WIND BLOWN SAND	WBSL-LOW: MIXED-UNIT GEOLOGIC DEPOSITS WITH WIND-BLOWN COMPONENT



VICINITY MAP

N.T.S.

DESERT TORTOISE TAKE AREA

THE PROJECT IS NOT LOCATED IN A DESERT TORTOISE TAKE AREA (PER RED CLIFFS DESERT RESERVE TAKE AREA 7 & 10 MAP)

NARRATIVE

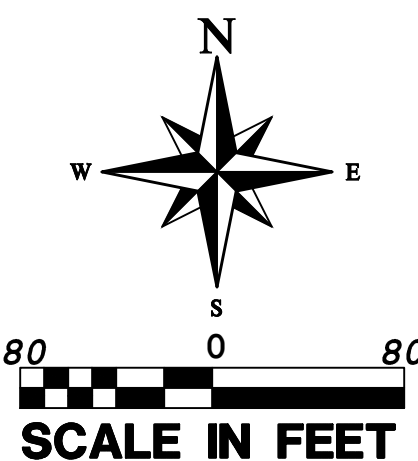
THE BASIS OF BEARING IS S0°02'49"E 2641.12 FEET FROM THE
NORTHWEST CORNER TO THE WEST QUARTER (1/4) CORNER OF SECTION
22.

THE PREVIOUSLY SUBMITTED ZONE CHANGE TO M-1 OVER PARCELS
H-3396-C, H-3396-D & H-3396-E.

THIS SUBDIVISION IS PROPOSED TO HAVE 29 LOTS.

STORM WATER DRAIN TO PROPOSED DETENTION BASINS

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHORD DIST.	CHORD BRG.	DELTA
C1	39.27'	25.00'	35.36'	S44°17'11"E	90°00'00"
C2	39.27'	25.00'	35.36'	S45°42'49"W	90°00'00"
C3	72.41'	226.00'	72.10'	S80°06'28"E	18°21'27"
C4	31.87'	174.00'	31.83'	S76°10'35"E	10°29'40"
C5	23.68'	174.00'	23.66'	N85°21'18"W	75°1'46"
C6	64.08'	200.00'	63.80'	S80°06'28"E	18°21'25"
C7	64.08'	200.00'	63.80'	S80°06'28"E	18°21'25"
C8	55.75'	174.00'	55.51'	S80°06'28"E	18°21'26"
C9	47.81'	226.00'	47.72'	S75°59'23"E	12°07'16"
C10	24.60'	226.00'	24.59'	S86°10'06"E	6°14'10"
C11	39.27'	25.00'	35.36'	S44°17'11"E	90°00'00"
C12	39.27'	25.00'	35.36'	S45°42'49"W	90°00'01"
C13	63.61'	226.00'	63.40'	N81°13'22"W	16°07'38"
C14	48.98'	174.00'	48.81'	N81°13'22"W	16°07'38"
C15	56.29'	200.00'	56.11'	S81°13'22"E	16°07'38"
C16	56.29'	200.00'	56.11'	S81°13'22"E	16°07'38"
C17	48.98'	174.00'	48.81'	S81°13'22"E	16°07'38"
C18	63.61'	226.00'	63.40'	S81°13'22"E	16°07'38"
C19	31.36'	20.00'	28.24'	S45°47'49"W	89°50'04"
C20	31.47'	20.00'	28.33'	S44°12'11"E	90°09'56"
C21	31.47'	20.00'	28.33'	S44°12'11"E	90°09'56"
C22	31.36'	20.00'	28.24'	S45°47'49"W	89°50'07"
C23	31.36'	20.00'	28.24'	S45°47'49"W	89°50'04"
C24	31.47'	20.00'	28.33'	N44°12'11"W	90°08'54"
C25	20.99'	95.00'	20.94'	N7°12'34"E	12°39'28"
C26	47.14'	30.00'	42.44'	S44°08'20"E	90°02'19"
C27	88.00'	65.00'	79.22'	N49°08'20"E	90°02'19"
C28	74.10'	56.00'	70.15'	S108°07'00"W	65°19'06"
C29	56.89'	65.00'	55.09'	N76°53'04"W	50°08'49"
C30	21.17'	95.00'	21.13'	S84°22'73"W	12°46'05"
C31	47.41'	20.00'	28.32'	N44°12'16"W	90°09'46"
C32	31.36'	20.00'	28.24'	S45°47'42"W	89°50'14"
C33	21.23'	95.00'	21.18'	S5°31'30"E	12°48'11"
C34	47.12'	30.00'	42.43'	N45°50'30"E	90°00'00"
C35	87.93'	56.00'	79.17'	N45°51'33"E	89°57'55"
C36	56.73'	65.00'	54.95'	S17°06'27"W	50°00'18"
C37	74.19'	65.00'	70.23'	S70°48'31"W	62°53'50"
C38	21.05'	95.00'	21.01'	N82°48'36"W	12°41'48"



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[illegible]

**PROVALUE
ENGINEERING, INC.**
ENGINEERS - LAND SURVEYORS - LAND PLANNERS
20 South 850 West, Suite 1
Hurricane City, Utah 84737
Phone: 435-668-8307



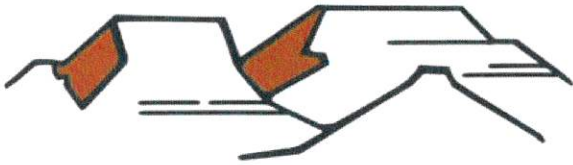
TITLE SHEET FOR:
**HORSEMAN'S EDGE &
HURRICANE CLIFFS INDUSTRIAL**
LOCATED IN SECTION 22, T42S, R13W, S1, R & M

LOCATED IN SECTION 22, T42S, R13W, S.L.B.&M.
HURRICANE CITY WASHINGTON COUNTY UTAH

DATE	11/8/2023
SCALE	1"=80'
JOB NO.	335-019
SHEET NO:	

1 OF 1

335-019 HORSEMAN'S EDGE PRE PLAT COMBINED.DWG



HURRICANE CITY

UTAH

Water Department
Ken Richins, Superintendent

Date: November 9, 2023

To Whom It May Concern:

Scott Stratton (the "Developer") has requested a culinary water will serve letter for the subdivision known as Horseman's Edger & Hurricane Cliffs Industrial, located at approximately 3053 S 1100 W in Hurricane, Utah (the "Project").

Infrastructure

The City currently has infrastructure to supply culinary water in the general area of the Project. However, Developer will be responsible to connect the Project to the existing water infrastructure, including the installation of infrastructure in dedicated public streets and as otherwise required to meet City standards. In addition, Developer may be required to obtain and supply a hydraulic water study to ensure the waterline will deliver required fire flows. A looped water system may be required.

Water Supply

As of the date of this letter, the city has adequate water to supply water to 6 residential connections 23 industrial connections within the Project. However, water within the City is a finite resource with limited supply. The ability of the City to supply water to previously approved projects, as well as continue to serve additional water customers, is contingent on water supplies being available from the Washington County Water Conservancy District (the "Conservancy District"). Therefore, the City's statements in this letter regarding the adequacy of water supply is (1) contingent on water being available from the Conservancy District and (2) shall expire one year from the date of this letter, after which a renewed will serve letter will be required for any property or lot that has not obtained a metered connection to the City's culinary water system. Developer is encouraged to obtain a guarantee of water from the Conservancy District.

General Requirements

In addition to the requirements and limitations described above, Developer shall be required to comply with all applicable laws, ordinances, policies, and construction and design standards. These requirements include, but are not limited to, secondary water system requirements and any obligations described in an applicable development agreement.

Sincerely,

Ken Richins
Water Department Superintendent



Ash Creek Special Service District

1350 S. Sand Hollow Road

Hurricane, UT 84737

Office: (435) 635-2348 Fax: (435) 635-8550

ashcreek@infowest.com

March 29, 2022

Hurricane City
Stephen Nelson
127 N. 870 W.
Hurricane, UT 84737

RE: Horseman's Edge

Stephen,

There is sewer capacity for this project. The developers understand and agree that they will need to get plan approval for the sewer system.

After approval, they agree to pay all costs associated with construction and impact fees. Please let us know if you have any questions.

Sincerely,

Amber Gillette, P.E.
Engineer
Ash Creek Special Service District



STAFF COMMENTS

Consideration and possible approval on a **preliminary plat for Hurricane Heights Townhomes Phase 5**, a two lot townhome subdivision located at 475 N 500 W. HH5, LLC, Applicant. Bret Peterson, Agent.

Discussion:

The applicant is proposing to add two additional lots to the Hurricane Heights Townhomes development. In designing the Hurricane Heights Hobby Garages development to the south, it was discovered that two stormwater basins were planned adjacent to each other. The two basins will now be combined and one of the basins will be converted into a duplex. This phase will also include shifting one unit in the approved Phase 5 and changing the cul-de-sac on 400 N to a knuckle into 530 W. The Planning Commission heard this item on December 14, 2023 and recommended approval.

Findings:

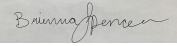
Recommendation:

Attachments:

1. PP23-28 Application
2. PP23-28 Hurricane Heights Phase 5 CC staff report
3. Preliminary_Plat_Map
4. Water_Will_Serve_Letter
5. Ash_Creek_Will_Sever_Letter

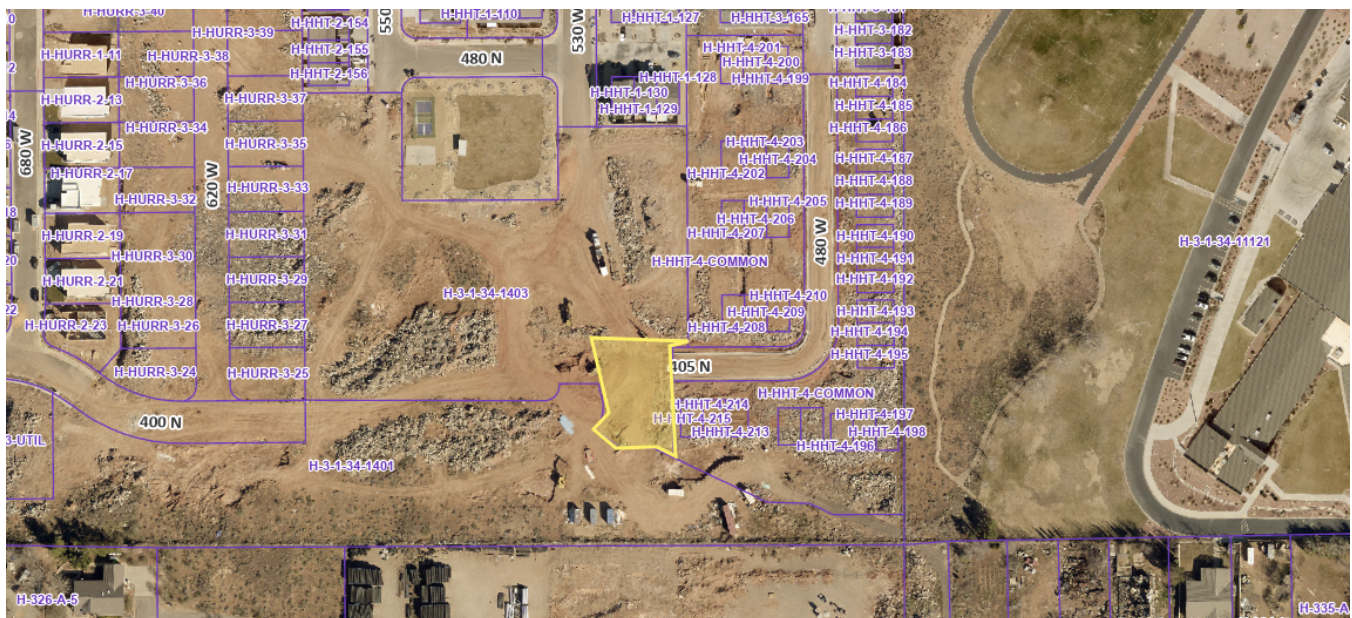


Application

Application Accepted Date: 11/21/2023		Valuation		\$	0.00															
Type of Improvement: Subdivision (Preliminary Plat)		PERMIT FEES																		
Description: This is an amended preliminary plat to add 1 addit		Planning Fee		\$	150.00															
Tenant / Project Name: Hurricane Heights Town Homes - Phase		Planning Fee		\$	150.00															
Bldg. Address: 475 N. 500 W.		Sub Total:		\$	150.00															
City: Hurricane City State: UT Zip: 84737		Permit Total:		\$	150.00															
Subdivision: Hurricane Heights Town Homes Phase: 5		Amount Paid:		\$	0.00															
Block: Lot #: NA Parcel #: H-3-1-34-1403		Remaining Due:		\$	150.00															
Property Owner: HH5, LLC																				
Permit Contact: Bret Peterson P:(801) 580-4445																				
Email: bret@basementsetc.com																				
CONTACT INFORMATION																				
General Contractor: HH5, LLC																				
License #: P: (801) 580-4445																				
Address: 13133 Grouse Pointe Cv																				
City: Draper State: UT Zip: 84020																				
Email: bret@basementsetc.com																				
APPLICATION DETAILS																				
																				
						APPROVALS		DATE	INFO											
						Plan Review Finalized:	Yes	11/27/23	Brienna Spencer											
<table><tr><td>Setbacks</td><td>Front:</td><td>Rear:</td><td>Left:</td><td>Right:</td></tr><tr><td>Min.</td><td></td><td></td><td></td><td></td></tr><tr><td>Actual:</td><td></td><td></td><td></td><td></td></tr></table>						Setbacks	Front:	Rear:	Left:	Right:	Min.					Actual:				
Setbacks	Front:	Rear:	Left:	Right:																
Min.																				
Actual:																				
APPLICATION NUMBER: PENDPP23-28																				
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: Bret Peterson																				
Signature of Applicant/Authorized Agent or Owner: Date:																				
Application Approved By:				Date:																
				11/27/2023																
Application Issued By:				Date:																
Receipt #: 8.174433-11/21/23																				

Agenda Date:	1/4/2024
Application Number:	PP23-28
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	HH5, LLC
Agent:	Bret Peterson
Request:	Approval of a Preliminary Plat
Location:	475 N 500 W
Zoning:	RM-2
General Plan Map:	Planned Community

Discussion: The applicant is proposing to add two additional lots to the Hurricane Heights Townhomes development. In designing the Hurricane Heights Hobby Garages development to the south, it was discovered that two stormwater basins were planned adjacent to each other. The two basins will now be combined and one of the basins will be converted into a duplex. This phase will also include shifting one unit in the approved Phase 5 and changing the cul-de-sac on 400 N to a knuckle into 530 W. The Planning Commission heard this item on December 14, 2023 and recommended approval.



Map is approximate

JUC Comments

Public Works: Need more detail on how drainage works

Water:. Okay. Need to extend new water lines.

Power: Will have to develop power to this spot.

Sewer:. No issue to additional two lots.

Engineering: The applicant should label the moved retention basin on the preliminary plat. Approved construction plans from 12/17/2018 are inconsistent with the proposed plat amendment. Amended construction plans must be reapproved by the JUC. Applicant should coordinate the construction plans for this project with Hurricane Heights Hobby Garages. The construction plans for Hurricane Heights Hobby Garages depicted changes to the original construction plans.

Streets: Okay with amendments

Fire: Okay

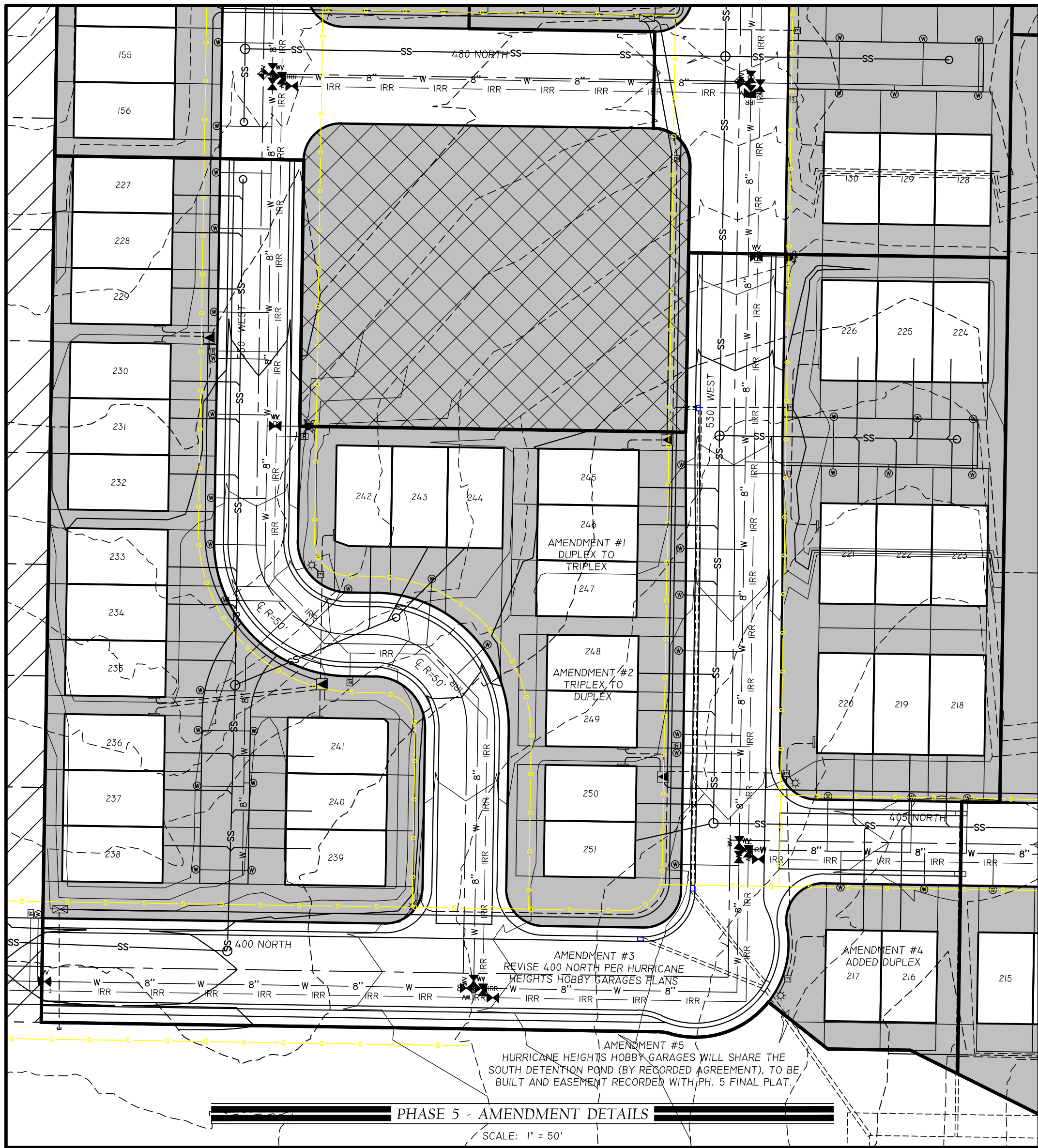
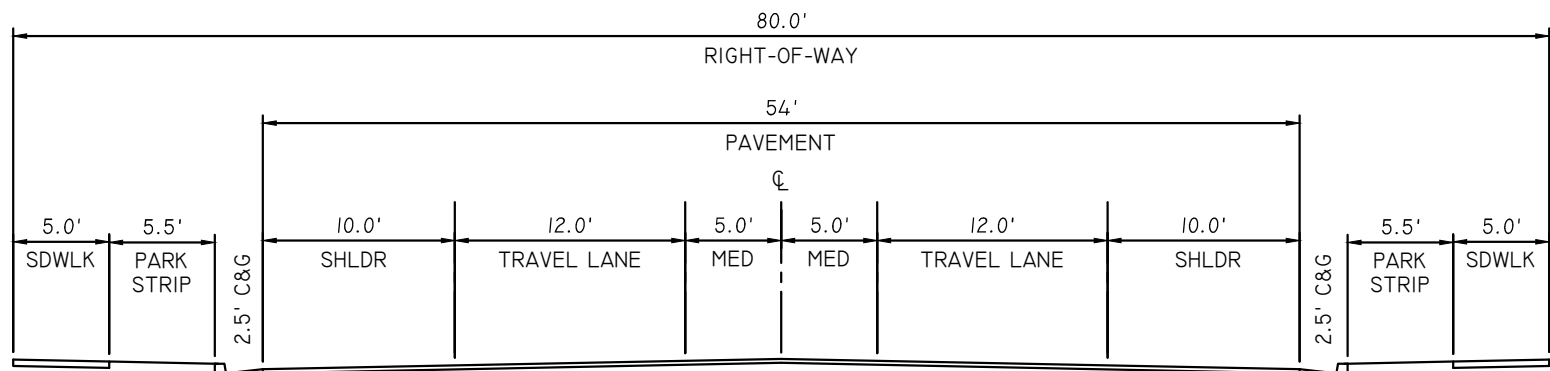
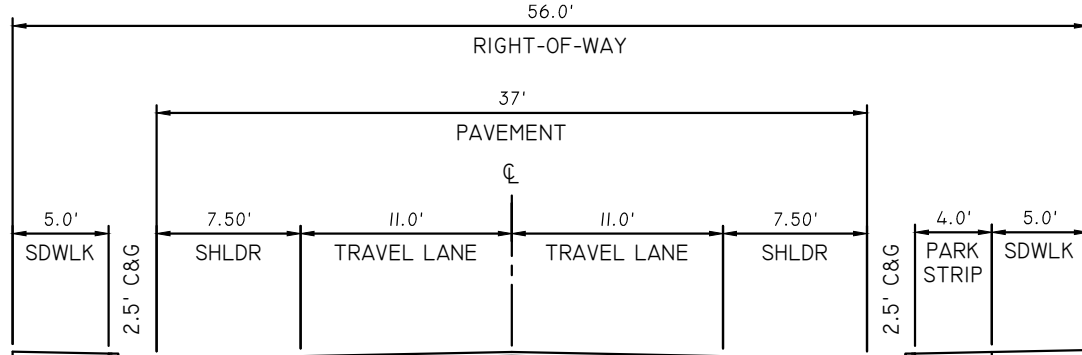
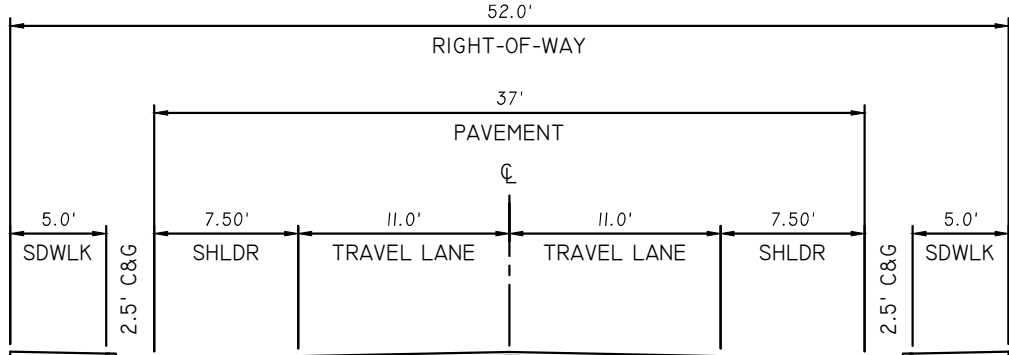
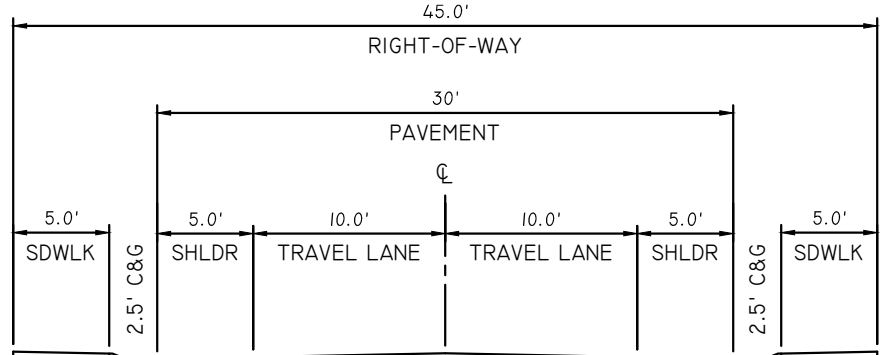
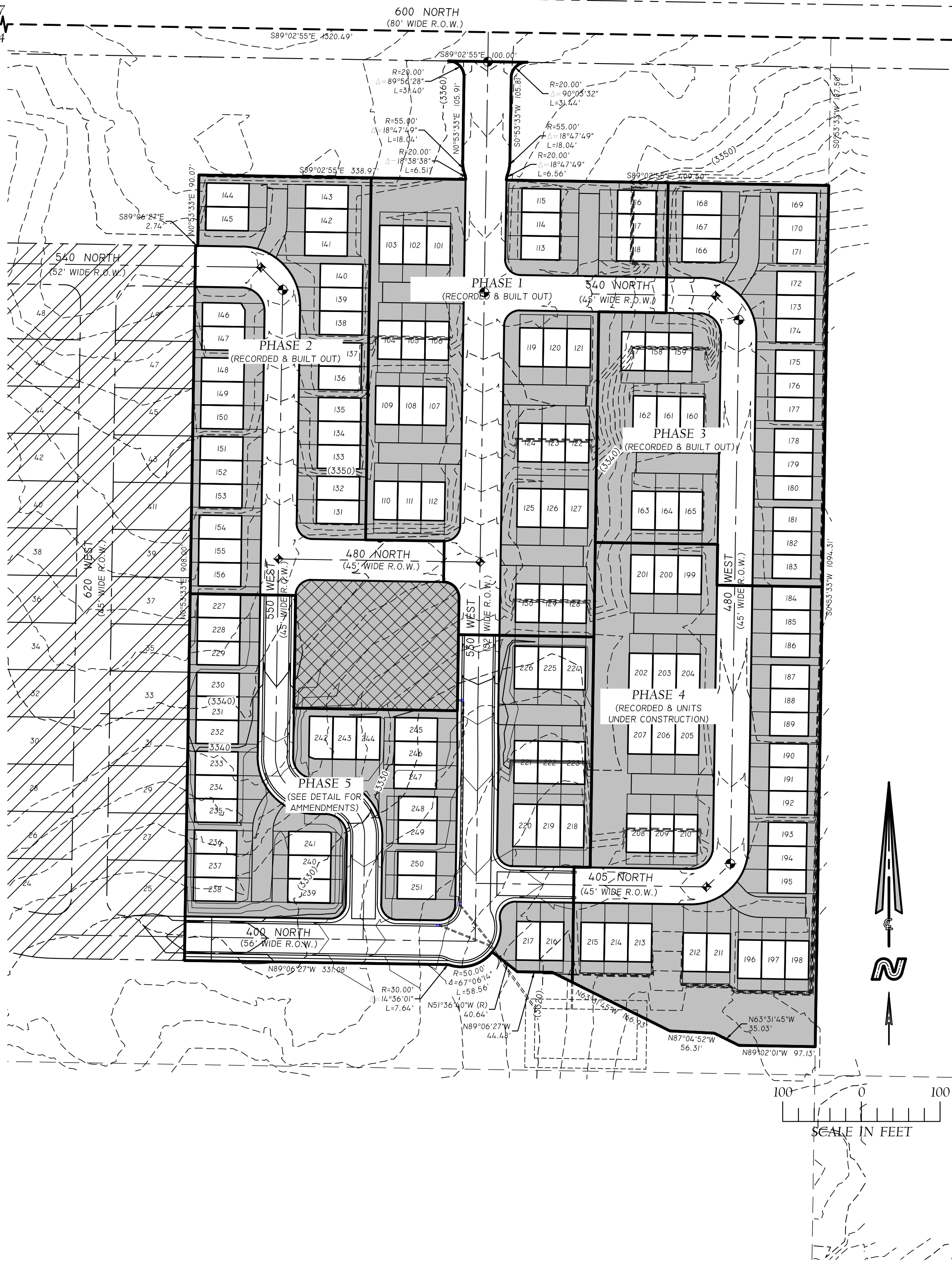
Phone/Cable: No comments

WCWCD: No comments

Staff Comments: Preliminary Plat

1. This property is zoned RM-2. The original preliminary plat for this development showed 149 units over 18.616 acres. The maximum density in RM-2 is ten units an acre or 186 units maximum for the entire development. The zoning would allow for two more units to be built.
2. If approved, new construction drawings for Phase 5 of Hurricane Heights Townhomes, reflecting these changes will need to be submitted.
3. The subdivision will presumably be developed in one phase.
4. A will-serve letter from the sanitary and culinary water provider has been provided.
5. A note indicating whether the plat is located in a desert tortoise take area has been provided.

Recommendation: Staff recommends the City Council review this application based on standards within Hurricane City Code. Staff recommends approval of the preliminary plat subject to staff and JUC comments.



UTILITIES & DRAINAGE NOTES:

- UTILITIES SHOWN ON THIS AMENDED PRELIMINARY PLAT THROUGHOUT PHASES 1 THRU 4 ARE EXISTING AND INSTALLED SPECIFICALLY FOR THIS SUBDIVISION AND FOLLOW THE APPROVED CONSTRUCTION DRAWINGS AND/OR DRAWINGS OF RECORD PROVIDED TO THE CITY FOLLOWING COMPLETION OF EACH PHASE.
- PHASE 5 WILL COMPLETE WATER LINE LOOPS, STORM DRAINAGE RUN-OFF AND CONTROL, AND SEWER (WITH THE ADDITION OF 2 UNITS).
- THE PREVIOUSLY "BURRITO TYPE" DETENTION IN THE CENTER-SOUTH OF THE PROJECT WILL BE AN OPEN DETENTION POND AND ACCOMMODATE DRAINAGE FROM THIS PROJECT AND THE FUTURE HURRICANE HEIGHTS HOBBY GARAGES.

PROPERTY ADDRESS:

475 NORTH 500 WEST, CITY OF HURRICANE, WASHINGTON COUNTY, UTAH.
N.W.1/4, NE1/4, SECTION 34, TOWNSHIP 41 SOUTH, RANGE 13 WEST OF THE SALT
LAKE BASE AND MERIDIAN.

DENSITY CALCS:

HURRICANE HEIGHTS TOWNHOMES

TYPICAL UNIT SIZE: 30' WIDE X 49' OR 54' DEEP

TOTAL AREA: 19.138 ACRES
TOTAL LOTS: 181
DENSITY: 7.9 UNITS/ACRE (EXCLUDING ROADWAYS 10.3 UNITS/ACRE)

TOTAL AREA LESS ROADWAYS: 637,812 SQ.FT. (14.642 ACRES)
GROUND FLOOR COVERAGE VARIES/UNIT: AVERAGE = 1411 SQ.FT. (INCLUDES PORCH UNDER 2ND FLOOR & GARAGE)
2ND FLOOR VARIES/UNIT: AVERAGE = 1106/2 = 553 SQ.FT.
TOTAL: 296,564 SQ.FT. (6.808 ACRES)

OPEN SPACE: 53.5% (7.834 ACRES)

GEOLOGICAL HAZARDS:

POTENTIAL GEOTECHNICAL CONSTRAINTS FOR HURRICANE HEIGHTS TOWNHOMES

THE FOLLOWING IS BASED ON THE UTAH GEOLOGICAL SURVEY SPECIAL STUDY 127, GEOLOGICAL HAZARDS
AND ADVERSE CONSTRUCTION CONDITIONS REPORT PREPARED FOR ST. GEORGE-HURRICANE METROPOLITAN
AREA, WASHINGTON COUNTY, UTAH 2008

BRECCIA PIPES AND PALEOKARST: NONE

FAULTS: NONE

LIQUIFACTION: NONE

LANDSLIDES: NONE

ROCKFALL: NONE

CALICHE: YES

GYPSIFEROUS ROCK: NO

PIPING & EROSION: NO

EXPANSIVE: LOW POSSIBILITY

WINDBLOWN SAND: NONE

SHALLOW GROUNDWATER: NONE

NOTE: A GEOTECHNICAL REPORT ADDRESSING THESE POTENTIAL HAZARDS WILL BE PROVIDED PRIOR TO
ANY CONSTRUCTION

DESERT TORTOISE TAKE:

THE PROJECT IS LOCATED IN A DESERT TORTOISE TAKE AREA (PER
R.C.D.R. TAKE AREA 7 MAP) BUT UNDERSTAND THAT THE AREA HAS
BEEN CLEARED AND IS NO LONGER A TAKE AREA.

LEGEND:

- HURRICANE HEIGHTS SUBDIVISION (NOT A PART OF THIS PRELIMINARY PLAT)
- PRIVATE AREA (WITH UNIT NUMBER) OR PUBLIC STREET (WITH STREET NAME)
- RECREATION AREA (0.774 ACRES) [EXISTING, W/UNDERGROUND DETENTION]
- COMMON AREA (PUBLIC UTILITY EASEMENT)

BOUNDARY DESCRIPTION:

HURRICANE HEIGHTS TOWNHOMES - OVERALL BOUNDARY (5 PHASES):

BEGINNING AT A POINT WHICH LIES SOUTH 89°02'55" EAST 1320.49 FEET ALONG THE SECTION LINE AND SOUTH 00°53'33" WEST 187.50 FEET ALONG THE EAST SIXTEENTH LINE FROM THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 41 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE CONTINUING ALONG SAID EAST SIXTEENTH LINE SOUTH 00°53'33" WEST 1094.31 FEET; THENCE LEAVING SAID EAST SIXTEENTH LINE NORTH 89°02'01" WEST 97.13 FEET; THENCE NORTH 63°31'45" WEST 35.03 FEET; THENCE NORTH 87°04'52" WEST 56.31 FEET; THENCE NORTH 63°31'45" WEST 166.93 FEET; THENCE NORTH 89°06'27" WEST 44.68 FEET; THENCE NORTH 51°36'40" WEST 40.64 FEET ALONG A RADIAL LINE TO A POINT ON THE ARC OF A 50.00 FOOT RADIUS CURVE CONCAVE NORTHERLY THE RADIUS POINT OF WHICH LIES NORTH 51°36'40" WEST; THENCE WESTERLY 58.56 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 67°06'14" TO THE POINT OF REVERSE CURVATURE OF A 30.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY; THENCE WESTERLY 7.64 FEET ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 14°36'01" TO THE POINT OF TANGENCY; THENCE NORTH 89°06'27" WEST 331.08 FEET TO THE SOUTHEAST CORNER OF HURRICANE HEIGHTS SUBDIVISION, PHASE 3, OFFICIAL RECORDS OF WASHINGTON COUNTY, UTAH; THENCE COINCIDENT WITH THE EASTERLY LINE OF SAID SUBDIVISION NORTH 00°53'33" EAST 552.00 FEET TO THE NORTHEAST CORNER OF SAID SUBDIVISION; THENCE SOUTH 89°06'27" EAST 2.74 FEET; THENCE NORTH 00°53'33" EAST 90.07 FEET; THENCE SOUTH 89°02'55" EAST 338.97 FEET TO A POINT ON THE CURVE OF A 20.00 FOOT RADIUS NON-TANGENT CURVE, CONCAVE WESTERLY, THE RADIUS POINT OF WHICH LIES NORTH 89°15'37" WEST; THENCE NORTHERLY 6.51 FEET ALONG THE ARC OF SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 18°30'58" TO THE POINT OF REVERSE CURVATURE OF A 55.00 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE NORTHERLY 18.04 FEET ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 18°47'49" TO THE POINT OF TANGENCY; THENCE NORTH 00°53'33" EAST 105.91 FEET TO THE POINT OF CURVATURE OF A 20.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY 31.40 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 89°56'28" TO THE POINT OF CUSP, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY OF 600 NORTH, AN 80.00 FOOT WIDE PUBLIC STREET; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 89°02'55" EAST 100.00 FEET TO THE POINT OF CUSP OF A 20.00 FOOT RADIUS TANGENT CURVE CONCAVE SOUTHEASTERLY THE RADIUS POINT OF WHICH LIES SOUTH 00°57'05" WEST; THENCE SOUTHWESTERLY 31.44 FEET ALONG THE ARC OF SAID TANGENT CURVE THROUGH A CENTRAL ANGLE OF 90°03'32" TO THE POINT OF TANGENCY; THENCE SOUTH 00°53'33" WEST 105.81 FEET TO THE POINT OF CURVATURE OF A 55.00 FOOT RADIUS CURVE CONCAVE WESTERLY; THENCE SOUTHWESTERLY 18.04 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 18°47'49" TO THE POINT OF REVERSE CURVATURE OF A 20.00 FOOT RADIUS CURVE CONCAVE EASTERLY; THENCE SOUTHERLY 6.56 FEET ALONG THE ARC OF SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 18°47'49" TO A POINT ON A NON-TANGENT LINE; THENCE SOUTH 89°02'55" EAST 409.50 FEET ALONG SAID NON-TANGENT LINE TO A POINT ON SAID EAST SIXTEENTH LINE AND THE POINT OF BEGINNING, CONTAINS 19.138 ACRES.

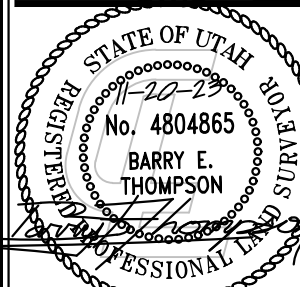
HURRICANE HEIGHTS TOWNHOMES
AMENDED PRELIMINARY PLAT

OWNER: HH5, LLC
13133 S. GROUSE POINTE COVE
DRAPER, UT. 84020
CONTACT PERSON: BRETT PETERSON
13133 S. GROUSE POINTE COVE
DRAPER, UT. 84020
(801) 580-4445
BRETT@ASENMENTSETC.COM

REVISIONS

NO.	DATE	APPROVED BY	REMARKS

Center Line
146 SOUTH STATE STREET, LAVERKIN, UTAH 84745
PHONE: (435) 767-8445



JOB # (CLIENT #)
2310-0261 (1081)
FILE NAME:
AMND PRE-PLAT 2.1

AMENDED PRELIMINARY PLAT
FOR
HURRICANE HEIGHTS TOWNHOMES

HH5, LLC

LOCATED IN THE NE1/4 SECTION 34, T41S, R13W, SUBRAN
CITY OF HURRICANE, WASHINGTON COUNTY, STATE OF UTAH

DATE:
November 20, 2023

SCALE:
1" = 100'

SHEET
1



City of Hurricane

Water Department
Ken Richins, Superintendent

May 8, 2018

To Whom It May Concern:

A will serve letter has been requested for the Hurricane Heights Subdivision, located at approximately 650 W 600 N in Hurricane, Utah.

Yes, we do have a culinary water main in the area of 650 W 600 N, Hurricane, UT.

A fire hydrant flow analysis will be required to ensure the main waterline will deliver the required fire flows. A hydraulic study will also be required.

Sincerely,

Connie Martin, Administrative Assistant



November 21, 2023

Hurricane City
Gary Cupp
127 N. 870 W.
Hurricane, UT 84737

Subject: Hurricane Heights Phase 5

Gary,

There is sewer capacity for this project. The developers understand and agree that they will need to get plan approval for the sewer system.

After approval, they agree to pay all costs associated with construction and impact fees. Please let us know if you have any questions.

Sincerely,

Amber Gillette, P.E.
Engineer
Ash Creek Special Service District



STAFF COMMENTS

Consideration and possible approval of an **amended final plat for Dixie Springs Plat C** located at 3700 W 2640 S Circle. Heather Hugie, Applicant. Rosenberg Associates, Agent.

Discussion:

The applicant has applied to amend the final plat for Dixie Springs Plat C to combine Lots 231 and 232 into one lot. Combining lots within a recorded subdivision requires approval of an amended final plat. The Planning Commission heard this item on December 14, 2023 and recommended approval.

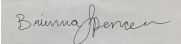
Findings:

Recommendation:

Attachments:

1. AFP23-18 Application
2. AFP23-18 Dixie Springs Plat C Lots 231 _ 232 CC Staff Report
3. Final_Plat_Map

**Application**

Application Accepted Date: 11/29/2023		Valuation		\$	0.00	
Type of Improvement: Subdivision (Final Plat Amendment)		PERMIT FEES				
Description: Combine said two lots		Planning Fee		\$	150.00	
Tenant / Project Name: Gardiner Investments		Planning Fee		\$	150.00	
Bldg. Address: 3700 W 2640 S circle		Sub Total:		\$	150.00	
City: Hurricane City State: UT Zip: 84737		Permit Total:		\$	150.00	
Subdivision: Dixie springs Phase: C		Amount Paid:		\$	150.00	
Block: Lot #: 231,232 Parcel #: DSP-C-231, DSP-C-232		Remaining Due:		\$	0.00	
Property Owner: Gardiner Investments						
Permit Contact: Heather Hugie P:(435) 757-5878						
Email: hhugie@gmail.com						
CONTACT INFORMATION						
Engineer of Record: Rosenberg						
Email: codya@racivil.com P: (435) 619-9203						
General Contractor: Heather Hugie						
License #: 8571384-5501 P: (435) 757-5878						
Address: 2829 S 3200 W						
City: Hurricane State: UT Zip: 84737						
Email: hhugie@gmail.com						
APPLICATION DETAILS						
		APPROVALS		DATE	INFO	
		Plan Review Finalized:		Yes	11/30/23	Brienna Spencer
		Setbacks	Front:	Rear:	Left:	Right:
		Min.				
		Actual:				
		APPLICATION NUMBER: PENDAFP23-18				
		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: Cody Arnoldson				
		Signature of Applicant/Authorized Agent or Owner: Date:				
		Application Approved By:		Date:		
				11/30/2023		
		Application Issued By:		Date:		
		Receipt #: 8.174578-11/29/23				



STAFF COMMENTS

Agenda Date:	1/4/2024
Application Number:	AFP23-18
Type of Application:	Amended Final Plat
Action Type:	Administrative
Applicant:	Heather Hugie
Agent:	Rosenberg Associates
Request:	Approval of an Amended Final Plat
Location:	3700 W 2640 W Cir
Zoning:	R1-10
General Plan Map:	Single Family

Discussion: The applicant has applied to amend the final plat for Dixie Springs Plat C to combine Lots 231 and 232 into one lot. Combining lots within a recorded subdivision requires approval of an amended final plat. The Planning Commission heard this item on December 14, 2023 and recommended approval.



JUC Comments

1. **Public Works:** No comments
2. **Power:** Dixie Power area. No comments received.
3. **Water:** One service will need to be plugged and abandoned at the water main
4. **Streets:** Okay with amendment to combine lots, but unsure about vacating rear and side easements.
5. **Sewer:** There are two laterals on the proposed new lot. One lateral will need to be cut, capped, and abandoned.
6. **Engineering:** Maintain PUE on 3700 W.
7. **Fire:** Cul-de-sac must meet 96' turnaround per IFC 2021.
8. **Phone/Cable:** No comments
9. **WCWCD:** No comments

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. The existing 10 foot public utility along 3700 W should be maintained.
4. 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.

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 SUBDIVIDED INTO A LOT AND PUBLIC UTILITY EASEMENT TO BE HEREFTER KNOWN AS:

DIXIE SPRINGS SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C" - PARTIAL AMENDMENT "B"

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 _____, 20__.

GARDIN INVESTMENTS LLC, A UTAH LIMITED LIABILITY COMPANY

_____) - MANAGER OF GARDIN INVESTMENTS LLC

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT:

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

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

FULL NAME SIGNATURE: _____

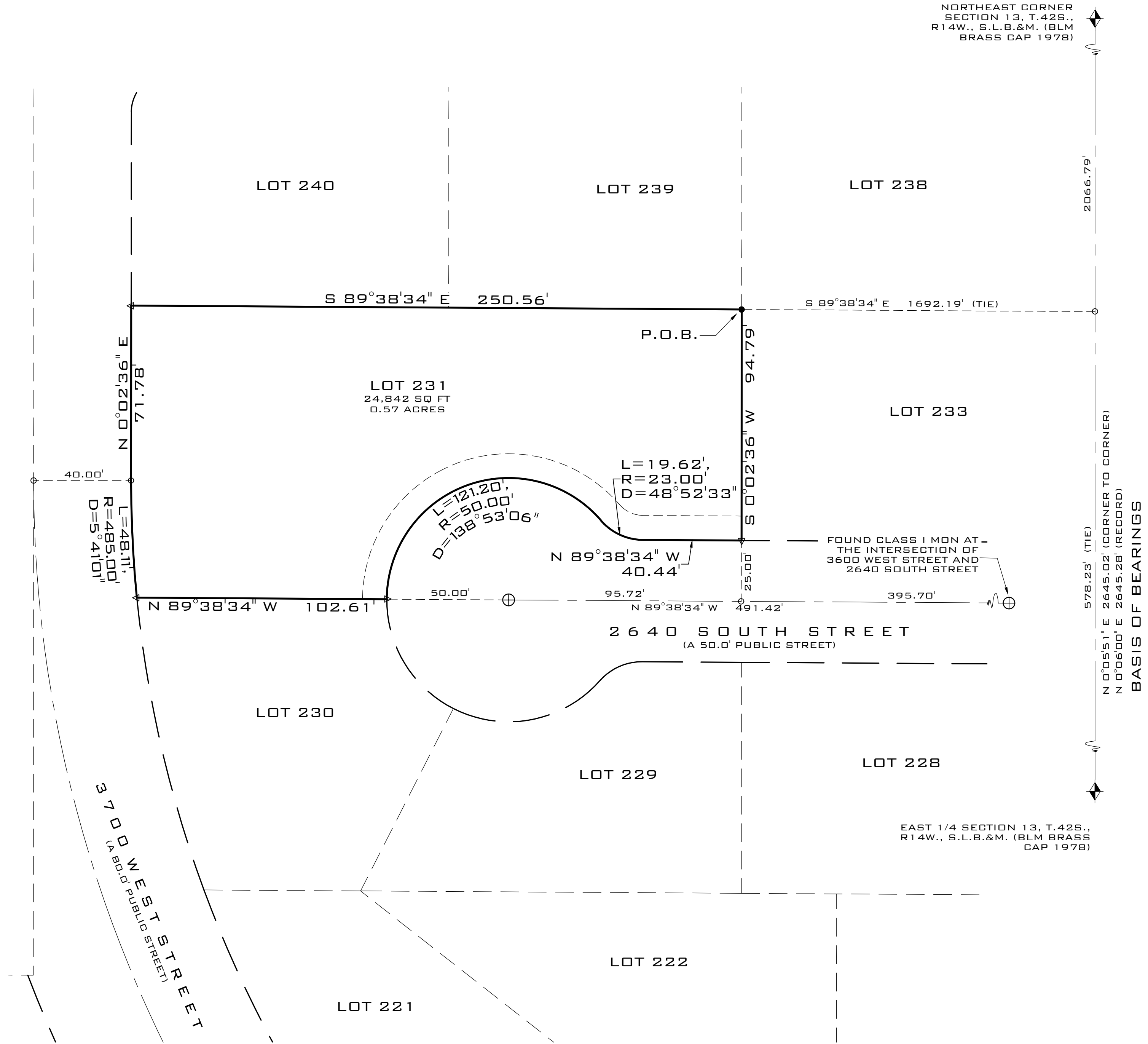
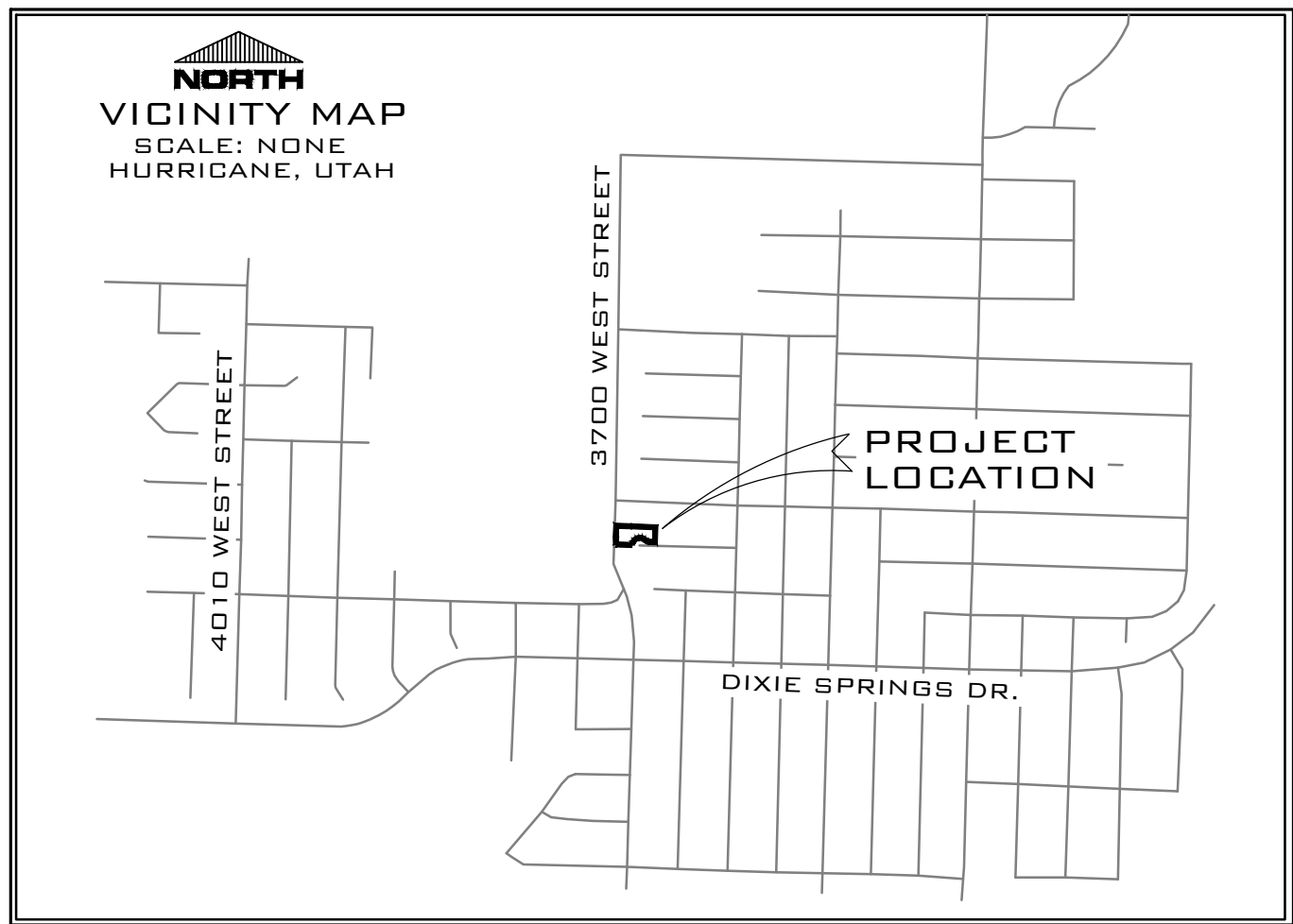
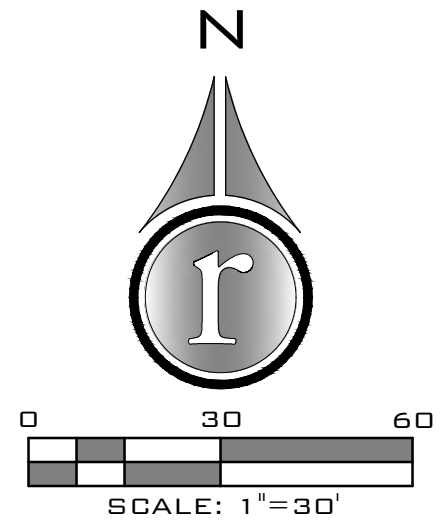
FULL NAME PRINT: _____

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)

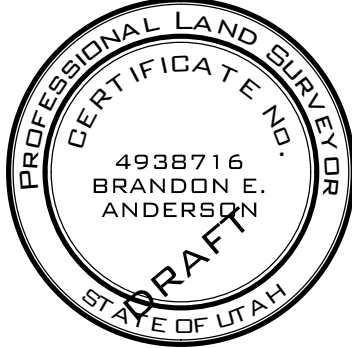


SURVEYOR'S CERTIFICATE:

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 OWNER, I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND HAVE SUBDIVIDED THE SAME TRACT INTO A LOT AND PUBLIC UTILITY EASEMENT TO BE HEREINAFTER KNOWN AS:

DIXIE SPRINGS SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C" - PARTIAL AMENDMENT "B"

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:

ALL OF LOTS 231 & 232 OF DIXIE SPRINGS SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C", AS FOUND ON FILE WITH THE WASHINGTON COUNTY RECORDER'S OFFICE AS ENTRY NO. 20170000709, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 233, DIXIE SPRINGS SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C", SAID POINT ALSO BEING NORTH 00°05'51" EAST 578.23 FEET ALONG THE SECTION LINE AND NORTH 89°38'34" WEST 1,692.19 FEET FROM THE EAST QUARTER CORNER OF SECTION 14, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING;

THENCE SOUTH 00°02'36" WEST 94.79 FEET ALONG THE WESTERLY LINE AND TO THE SOUTHWESTERLY CORNER OF SAID LOT 233, SAID POINT BEING ON THE NORTHERLY LINE OF 2640 SOUTH STREET;

THENCE WESTERLY ALONG SAID NORTHERLY LINE 2640 SOUTH STREET THE FOLLOWING (3) COURSES;

THENCE NORTH 89°38'34" WEST 40.44 FEET;

THENCE NORTHWESTERLY 19.62 FEET ALONG AN ARC OF A 23.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 00°21'26" EAST, LONG CHORD BEARS NORTH 65°12'18" WEST 19.03 FEET WITH A CENTRAL ANGLE OF 48°52'33");

THENCE WESTERLY 121.20 FEET ALONG AN ARC OF A 50.00 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS SOUTH 49°13'59" WEST, LONG CHORD BEARS SOUTH 69°47'26" WEST 93.63 FEET WITH A CENTRAL ANGLE OF 138°53'06") TO THE NORTHEASTERLY CORNER OF LOT 230 OF SAID DIXIE SPRINGS SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C";

THENCE NORTH 89°38'10" WEST 102.61 FEET ALONG THE NORTHERLY LINE OF SAID LOT 230 TO THE EASTERLY LINE OF 3700 WEST STREET;

THENCE NORTHERLY ALONG SAID EASTERLY LINE OF 3700 WEST STREET THE FOLLOWING (2) COURSES;

THENCE NORTHERLY 48.11 FEET ALONG AN ARC OF A 485.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS NORTH 84°21'35" EAST, LONG CHORD BEARS NORTH 02°47'54" WEST 48.09 FEET WITH A CENTRAL ANGLE OF 05°41'01");

THENCE NORTH 00°02'36" EAST 71.78 FEET TO THE SOUTHWESTERLY CORNER OF LOT 240 OF SAID DIXIE SPRINGS SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C";

THENCE SOUTH 89°38'34" EAST 250.56 FEET ALONG THE SOUTHERLY LINE SAID LOT 240 TO AND ALONG THE SOUTHERLY LINE OF LOT 239, SAID DIXIE SPRING SUBDIVISION THIRD AMENDMENT AND EXTENSION PLAT "C" TO THE POINT OF BEGINNING.

CONTAINING 24,842 SQUARE FEET OR 0.57 ACRES.

AMENDMENT NOTE:

THE PURPOSES OF THIS AMENDMENT IS TO COMBINE LOTS 231 & 232 INTO ONE LOT, AND TO VACATE THE 10' REAR AND SIDE EASEMENTS ON SAID LOTS AND THE 20' EASEMENT BETWEEN SAID LOTS. NO OTHER CHANGES ARE MADE WITH THIS PLAT.

NOTES:

1. THERE EXISTS A 10 FOOT WIDE PUBLIC UTILITY EASEMENT ALONG 2640 SOUTH STREET.

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
THIRD AMENDMENT AND
EXTENSION PLAT "C"
PARTIAL AMENDMENT - B
(LOTS 231 & 232)

LOCATED IN THE N.E. QUARTER OF SECTION 13, TOWNSHIP 42
SOUTH, RANGE 14 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:	10/31/23 DATE:	C.G.A. DRAWN:
14010-23 JOB NUMBER:	1" = 30' SCALE:	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 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. THIS _____ DAY OF _____, 2023.

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

CHAPTER 39. SUBDIVISIONS

Sec. 10-39-1. General provisions.

- A. The underlying purpose and intent of this chapter is to promote the health, safety, convenience, and general welfare of the inhabitants of the City in the division or subdivision of land and related matters affected by each subdivision.
- B. Any proposed subdivision and its ultimate use shall be in the best interest of the public welfare and shall be in harmony with good neighborhood development of the area concerned, and the subdivider shall present evidence to this effect when requested to do so by the Planning Commission.
- C. In cases where unusual topographical or other exceptional conditions exist such as sensitive lands, collapsible soils or other conditions necessitating any exceptions from or additional requirements to this chapter, said exceptions or requirements may be set ~~by City Council after recommendation~~ by the Planning Commission and/or the City Engineer.

Sec. 10-39-2. Scope.

- A. No person shall subdivide any tract of land which is wholly or in part within the City boundaries except in compliance with this chapter.
- B. No person shall sell or exchange, or offer to sell or exchange, any parcel of land which is a part of a subdivision of a larger tract of land, or offer for recording in the office of the county recorder any deed conveying such a parcel of land, or any interest therein, unless such subdivision has been created pursuant to and in accordance with the provisions of this chapter.
- C. All lots, plots, or tracts of land located within a subdivision shall be subject to this chapter regardless of whether or not the tract is owned by the subdivider or a subsequent purchaser, transferor, or holder of the land.

- D. [The review cycle restrictions and requirements of this section do not apply to the review of subdivision applications affecting property within identified geological hazard areas, including land qualifying as sensitive lands within Title 10, Chapter 24 of this Code.](#)

Sec. 10-39-3. Definitions.

The following words and phrases used in this chapter, in addition to those listed in chapter 3 of this title, shall have the respective meanings hereafter set forth, unless a different meaning clearly appears from the context:

Adjacent landowner means any property owner of record, according to the records of the county recorder, whose property adjoins or abuts property proposed for subdivision, or any portion thereof.

Affected entity means as stated in statute, a county, municipality, independent special district, local district, school district, interlocal cooperation entity, specified public utility, or the state department of transportation, if:

- A. The entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- B. The entity has filed with the municipality a copy of the entity's general or long range plan; or
- C. The entity's boundaries or facilities are within one mile of land which is the subject of a general plan amendment or land use ordinance change.

Block means the land surrounded by streets and other rights-of-way other than an alley, or land which is designated as a block on any recorded subdivision plat.

Bona fide division or partition of land for agricultural purposes means the division of a parcel of land into two or more lots none of which is less than five acres in an area, and where no dedication of any street is required to serve any such lots or parcels of land so created.

City means Hurricane City, Utah.

City Council means the City Council of Hurricane City, Utah.

City Engineer means the City Engineer of Hurricane City, Utah, or a consulting engineering firm designated as the City Engineer by the City Council.

City Planner means the professional planner of the City, or person designated as such by the City Council.

Communications easement means an exterior easement for placement of facilities intended to be used in connection with the delivery of multichannel video programming services, cable services, information services, or telecommunications or telecommunications services.

Communications infrastructure means facilities planned to be used in connection with the delivery of multichannel video programming services, cable services, information services, telecommunications or telecommunications services, which term shall include, but not be limited to, conduit.

Construction drawings means Subdivision improvements plans, as defined herein.; see definition Subdivision improvement plans.

County means Washington County, Utah.

Culinary Water Authority means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

Dedication means land set aside by an owner for any general and public uses.

Easement means that portion of a lot or lots reserved for present or future use by a person or agency other than the legal owner or owners of said property or properties. The easement may be for use under, on, or above said lot or lots.

Final plat means the final drawing of the subdivision and dedication prepared for filing of record with the county recorder and in compliance with all the requirements set forth in this chapter and adopted pursuant thereto.

General plan means a plan, labeled "General Plan of Hurricane City," including maps or reports or both, which has been approved by the City Council as required by law, or such plan as it may be amended from time to time.

Joint Utility Committee means the representatives of the City, Ash Creek special service district, and franchisee utility companies authorized to review and sign construction drawings.

Lot means a separately delineated parcel of real property having a number and designation shown on a recorded subdivision plat, or a contiguous quantity of real property defined in a deed by metes and bounds which has a separate property identification number according to the records of the county recorder and is not shown on a recorded subdivision plat.

Lot right-of-way means a strip of land of not less than 26 feet wide connecting a lot to a street for use as private access to that lot.

Official zoning map means a zoning map adopted by the City Council pursuant to the provisions of Utah Code Annotated section 10-9a-501, as amended.

Open space means designated land within the subdivision which shall always remain undeveloped, which shall be included in improved parks and recreational areas, or which shall remain all natural.

Person means any individual, corporation, partnership, limited liability company, or partnership, firm, or association of individuals, however styled or designated.

Planning Commission means the Hurricane City Planning Commission. The Planning Commission shall be the “administrative land use authority” as defined in Utah State Code 10-9a-604.1(1)(b) as amended.

Plat means a map or depiction of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, and streets, or other divisions and dedications.

Review Cycle means the occurrence of:

_____ (i) the applicant's submittal of a complete subdivision land use application;

_____ (ii) the municipality's review of that subdivision land use application;

_____ (iii) the municipality's response to that subdivision land use application, in accordance with this section; and

_____ (iv) the applicant's reply to the municipality's response that addresses each of the municipality's required modifications or requests for additional information.

Sanitary Sewer Authority means the Ash Creek special service district, a public entity with responsibility to review and approve the feasibility of sanitary sewer services or on site wastewater systems within the City.

Security means an escrow agreement, irrevocable letter of credit, or other security instrument given by the subdivider to ensure the proper installation of public improvements.

Street means a thoroughfare which has been dedicated or abandoned to the public and accepted by proper public authority, or a thoroughfare not less than 26 feet wide which has been made public by right of use and which affords the principal access to the abutting property.

Street, arterial means a street, existing or proposed, which serves or is intended to serve as a major trafficway, and is designated on the general plan as a controlled access highway, major street, parkway or other equivalent term to identify those streets comprising the basic structure of the street plan.

Street, collector means a street, existing or proposed, which is the main means of access to an arterial street system.

Street, cul-de-sac means a street which originates from a designated City street with no other outlet and forcing a radius turn area, not to exceed 660 feet in length without the written approval of the City Council, the Planning Commission and the Fire Chief.

Street, private means a right-of-way or easement in private ownership not dedicated or maintained as a public street.

Street, residential means a street, existing or proposed, which is supplementary to a collector street and which serves or is intended to serve local needs of a neighborhood.

Subdivider means any individual, firm, association, syndicate, copartnership, corporation, trust or other legal entity commencing proceedings under this chapter to effect a subdivision for himself or for another.

Subdivision:

A. Includes:

1. The division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat or other recorded instrument; and
2. Except as provided herein, divisions of land for all residential and nonresidential uses, including land used or to be used for commercial, agricultural and industrial purposes.

B. Does not include:

1. A bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;
2. A recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if no new lot is created and the adjustment does not violate applicable land use ordinances; or
3. A recorded document executed by the owner of record, revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property, or joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances.

The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" as to the unsubdivided parcel of property or subject the unsubdivided parcel to the provisions of this chapter.

Subdivision improvement plans means the civil engineering plans associated with required infrastructure and municipally controlled utilities required for a subdivision.

Subdivision ordinance review means review by the City to verify that a subdivision land use application meets the criteria of the City's subdivision ordinances.

Subdivision plan review means a review of the applicant's subdivision improvements and other aspects of the subdivision land use application to verify that the application complies with City ordinances and applicable standards and specifications.

Sec. 10-39-4. Necessity of plat; exemption from plat requirements.

All subdivisions shall be required to prepare and receive approval of a preliminary and final plat in accordance with the provisions of this chapter, except as follows:

- A. A subdivision creating no more than one new lot may be approved with written approval by City staff without the necessity of preparing and filing a preliminary plat or final plat if:
 - ~~1. Notice is provided by City as required by this Chapter.~~
 2. The proposed subdivision:
 - ~~a1. Is not traversed by the mapped lines of a proposed street as shown in the general plan unless the City staff has approved the location and dedication of any public street, municipal utility easement, any other easement, or any other land for public purposes as the municipality's ordinance requires; Is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes.~~
 - ~~b2. Has been approved by the culinary water authority and the sanitary sewer authority; Does not impact an existing easement or right-of-way or, if it does have an impact, evidence is shown that the impact will not impair the use of any such easement or right-of-way.~~
 - ~~c3. Is located in a zoned area; and Has been approved by the Culinary Water Authority and Sanitary Sewer Authority.~~
 - ~~d4. Conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance. Is located in a zoned area, and conforms to all applicable land use ordinances or has properly received a~~

~~variance from the requirements of an otherwise conflicting and applicable land use ordinance.~~

- B. 1. A lot or a parcel resulting from a division of agricultural land is exempt from the plat requirements of this chapter if the lot or parcel:
 - a. Qualifies as land in agricultural use under Section 59-2-502 of the Utah Code, as amended;
 - b. Meets the minimum size requirement of applicable zoning land use ordinances; and
 - c. Is not used and will not be used for any nonagricultural purpose.
- 2. The boundaries of each lot or parcel exempted under Subsection (A) and (B) of this Section shall be graphically illustrated on a record of survey map that, after receiving the same approvals as are required for a plat under Section 10-9a-604 of the Utah Code, as amended, shall be recorded with the Washington County Recorder.
- 3. If a lot or parcel exempted under Subsection (B)(1) of this Section is used for a nonagricultural purpose, the municipality may require the lot or parcel to comply with the requirements of Section 10-9a-603 of the Utah Code, as amended, and the subdivision requirements of this Chapter.
- C. 1. Documents recorded in the Washington County Recorder's Office that divide property by a metes and bounds description do not create an approved subdivision allowed by this Chapter unless the ~~certificate of~~ written approval required by Subsection (A) of this Section is attached to the document.
- 2. The creation of a lot under Subsection (A) of this section shall not be approved until a plan for providing utilities and other required improvements to the proposed lot has been reviewed and signed by members of the Joint Utility Committee. No building permit will be issued for said lot until the approved improvements are constructed and accepted.
- D. The boundaries of each lot or parcel exempted under subsection A or B of this section shall be described by deed and upon approval of City staff, shall be recorded with the county recorder. Lots or parcels created in violation of this section shall not be issued a building permit until the violation is corrected.

Sec. 10-39-5. Notice requirements.

- A. Notice of proposal to vacate some or all of a public street, right-of-way, or easement. The legislative body shall hold a public hearing and give notice of the date, place, and time of the hearing at least ten days before the public hearing by:
 - 1. Mailing notice to the record owner of each parcel that is accessed by the public street, right-of-way, or easement;
 - 2. Mailing notice to each affected entity;
 - 3. Posting notice on or near the street, right-of-way, or easement in a manner that is calculated to alert the public;
 - 4. Published on the City's official website until the public hearing concludes; and
 - 5. Publishing notice on the state public notice website.
- B. Notice for an amendment to a subdivision. For an amendment to a subdivision, the City shall provide notice of the date, time, and place of at least one public meeting.
 - 1. At least ten calendar days before the public meeting, the notice shall be:

- a. Mailed to the record owner of each parcel directly adjacent of the proposed amendment; or
 - b. Posted on the property.
- (1) The applicant must post a sign at least ten days before the public meeting in a visible location, that is sufficient in size, durable, and legible by passers-by.

Sec. 10-39-6. Preliminary plat process.

- A. Designation of Administrative Land Use Authority. The Planning Commission is designated as the Administrative Land Use Authority that reviews and approves or denies preliminary subdivision applications; provided, however, that the review and approval of subdivisions creating no more than one new lot under Section 10-39-4 of this Chapter is governed by that Section.
- B. Pre-Application Meetings.
 - 1. If an applicant requests a pre-application meeting, the City shall, within 15 business days after the request, schedule the meeting to review the concept plan and give initial feedback.
 - 2. At the pre-application meeting, the municipal staff shall provide or have available on the municipal website the following:
 - (i) copies of applicable land use regulations;
 - (ii) a complete list of standards required for the project;
 - (iii) preliminary and final application checklists; and
 - (iv) feedback on the concept plan.
- C. Review of Preliminary Plat Application.
 - 1. Preliminary plat applications shall comply with all requirements of this Title and Utah Code Title 10, Chapter 9a, as amended.
 - 2. The applicant shall (1) obtain and complete a preliminary plat application form and application checklist and (2) have the proposed plat and subdivision improvement plans prepared by a licensed engineer or surveyor.
 - 3. The applicant shall submit the completed application, proposed plat, proposed subdivision improvement plans, subdivider's agreement set out in section 10-39-12, and the required fees to the Planning Department.
 - 4. Planning Department staff shall review the submitted documents for completeness. Any proposed preliminary plat and subdivision improvement plan that, on its face, fails to comply with an applicable zoning ordinance or development agreement, shall render the application incomplete, and the applicant shall be notified of the incomplete application.
 - 5. Upon the Planning Department's determination of a complete application, the proposed preliminary plat and subdivision improvement plans shall be submitted for review to the Joint Utility Committee and appropriate City departments.
 - 6. No later than 15 business days after the day on which an applicant submits a complete preliminary subdivision land use application for a residential subdivision for single-family dwellings, two-family dwellings, or townhomes, the Joint Utility Committee and appropriate City departments shall complete the initial review of the application, including subdivision improvement plans.
 - 7. Upon the completion of the initial review of the application, the Zoning Administrator shall place the application on the next available Planning Commission agenda for a public hearing and consideration by the Planning Commission.
 - 8. Applicant or Applicant's authorized representative shall appear at the scheduled meeting before the Planning Commission to present the proposed preliminary plat and answer questions.

9. The Planning Commission may approve, deny, or approve with conditions a proposed preliminary subdivision plat.
- ~~1-10.~~ If a preliminary subdivision plat application complies with applicable municipal ordinances and the requirements of Utah Code Title 10, Chapter 9a, as amended, the Planning Commission shall approve the preliminary plat application.
- D. Approval of the preliminary subdivision plat by the Planning Commission shall authorize the subdivider to proceed with the preparation and review of a final subdivision plat application; provided, however, that an applicant may submit a final subdivision plat application to be processed concurrently with a preliminary subdivision application.
- E. After preliminary subdivision plat approval from the Planning Commission, a complete application for final subdivision plat approval must be submitted within one year of the preliminary plat approval date or the preliminary subdivision plat approval shall expire. The Planning Commission may authorize a onetime extension not to exceed one year, provided that a written request for extension is received by the City before the one year time period has expired.
- ~~D-F.~~ Approval of a preliminary subdivision plat by the Planning Commission shall not constitute approval of the subdivision improvement plans

All applications for preliminary plat approval shall be subject to the following:

- A. ~~City and/or applicant shall determine whether proposed subdivision is consistent with current zoning of the property.~~
- B. ~~If proposed subdivision is consistent with zoning designation, the applicant shall meet may request a Pre-Application meeting with planning staff to discuss the proposed project.~~
- C. ~~Applicant shall obtain a preliminary plat application form and complete the application, subdivision improvement plans, application checklist, and have a plat prepared by a licensed engineer or surveyor meeting all the requirements for a preliminary plat.~~
- D. ~~Applicant shall submit completed application, preliminary plat, subdivider's agreement pursuant to section 10-39-12 of this chapter, and required fee to planning department on or before deadline for submissions established by the City.~~
- E. ~~Staff shall review application and plat for completeness and obtain initial comments from Joint Utility Committee on the subdivision improvement plans. The Planning Department will make a determination of completeness, at which point the initial review process will begin. The initial review of the preliminary plat shall be completed within 15 business days.~~
- F. ~~Zoning Administrator shall place the item on an agenda for consideration at a public meeting before the Planning Commission.~~
- G. ~~Applicant or applicant's authorized representative shall appear at the scheduled meeting before the Planning Commission to discuss the preliminary plat, and answer questions, and receive recommendation from Planning Commission.~~
- H. ~~Planning Commission may approve the preliminary plat, deny the preliminary plat, or approve with conditions; recommend to the City Council approval, disapproval, or approval with conditions.~~
- I. ~~If a preliminary plat application complies with all applicable City ordinances and requirements of this section, the Planning Commission shall approve the preliminary plat application. Upon receiving a recommendation from the Planning Commission, the preliminary plat application will be placed on a City Council agenda. Applicant or applicant's authorized representative must appear at the City Council meeting when application is on the agenda. In the event the applicant fails to appear at the City~~

~~Council meeting, or if applicant fails to obtain approval from the City Council within six months said preliminary plat shall be considered void.~~

- ~~J. City Council may approve the plat, approve with conditions, recommend changes, send back to the Planning Commission, or deny the plat, subject to the following:~~
- ~~1. The City Council shall withhold approval of a preliminary or final plat if the plat contains a communications easement that may have the effect of prohibiting the ability of any person to provide multichannel video programming services, cable services, information services, telecommunications or telecommunications services within the subdivision. An easement including a communications easement that limits the ability of any landowner to access a local utility or franchised cable or telecommunications service provider without payment of a fee to cross the easement violates this section.~~
 - ~~2. The City Council shall withhold approval of a preliminary or final plat if the property to be dedicated for streets, roads, rights-of-way or other parcels intended for the use and benefit of the general public is not provided free and clear of any easements, unless the City Council finds that:~~
 - ~~a. The subdivider did not create the easement, and could not reasonably be expected to obtain a release of the easement; and~~
 - ~~b. Acceptance of the easement will not adversely affect the public.~~
- ~~KJ. Approval of the preliminary plat by the Planning Commission City Council shall authorize the subdivider to proceed with the preparation and review of construction drawings and the final plat.~~
- ~~LK. After preliminary plat approval from the Planning Commission City Council, a complete application for final plat approval must be submitted within one year of the preliminary plat approval date. The Planning Commission may authorize a onetime extension not to exceed one year, provided that a written request for extension is received by the City before the one year time period has expired.~~

Commented [GC1]: ...and subdivision improvement plans?

~~L. Approval of a preliminary plat by the Planning Commission shall not constitute approval of the subdivision improvement plans~~

Sec. 10-39-7. Preliminary plat requirements.

The preliminary plat shall include or be accompanied by the following:

- A. *Description.* In a title block located in the lower right hand corner of the sheet the following is required:
1. The proposed name of the subdivision.
 2. The location of the subdivision, including the address and the section, township and range.
 3. The names and addresses of the owner or subdivider if other than the owner.
 4. Date of preparation and north point.
 5. Scale shall be of sufficient size to adequately describe in legible form all required elements.
- B. *Existing conditions.* The preliminary plat shall show:
1. The location of the nearest monument.
 2. The boundary of the proposed subdivision and the acreage included.
 3. All property contiguous to the property to be subdivided and under the control of the subdivider, even though only a portion is being subdivided. (Where the plat submitted covers only a part of the subdivider's tract, a sketch of the prospective street system of the unplatted parts of the subdivider's land shall be submitted, and the street system of the part submitted shall be

considered in light of existing master street plan or other commission studies.) And all property contiguous to the proposed subdivision.

4. The location, width and names/numbers of all existing streets within 200 feet of the subdivision and of all prior streets or other public ways, easements, utility rights-of-way, parks and other public open spaces, within and adjacent to the tract.
5. The location of all wells and springs or seeps, proposed, active and abandoned, and of all reservoirs or ponds within the tract and at a distance of at least 100 feet beyond the tract boundaries.
6. Existing ditches, canals, natural drainage channels and open waterways and proposed realignments.
7. Contours at vertical intervals not greater than five feet.
8. Identification of potential geotechnical constraints on the project site (such as expansive rock and soil, collapsible soil, shallow bedrock and caliche, gypsiferous rock and soil, potentially unstable rock or soil units including fault lines, shallow ground water, and windblown sand) and recommendations for their mitigation.

C. *Proposed plan.* The subdivision plans shall show:

1. The layout of streets, showing location, widths and other dimensions of proposed streets, crosswalks, alleys and easements.
2. The layout, numbers and typical dimensions of lots. Designation of buildable area is required for each lot.
3. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.
4. Easements for water, sewers, drainage, utilities, lines and other purposes.
5. ~~Typical~~ street cross sections and street grades ~~where required by the Planning Commission.~~
6. A ~~tentative~~ plan or method by which the subdivider proposes to handle the stormwater drainage for the subdivision.
7. Approximate radius of all centerline curves on highways or streets.
8. Each lot shall abut a street shown on the subdivision plat or on an existing publicly dedicated street. ~~(Double frontage or flag lots shall be prohibited except where conditions make other design undesirable.)~~
9. All remnants of lots below minimum size left over after subdividing of a larger tract shall be added to adjacent lots or common areas, rather than allowed to remain as unusable parcels.
10. Where necessary, copies of any agreements with adjacent property owners relevant to the proposed subdivision shall be presented to the Planning Commission.
11. A letter from both the local sanitary sewer provider and culinary water provider indicating availability of service.
12. If the subdivision is to be built in phases, the plat shall show possible phasing lines.
13. A ~~tentative~~ plan or method for providing nondiscriminatory access to the subdivision for purposes of placement of communications infrastructure, and for purposes of placement of utility infrastructure.

14. Complete subdivision improvement plans shall be reviewed by the Joint Utility Committee.

D. ~~Required copies of plans:~~

- ~~1. Two copies of all full scale drawings.~~
- ~~2. One copy of each drawing on 11-inch by 17-inch sheets or eight and one-half by 11 if the project is small and the plans are legible at that size.~~

Sec. 10-39-8. ~~Subdivision Improvement Plans~~Construction drawings.

~~As part of a complete preliminary plat application, After preliminary plat approval by City Council,~~ the applicant shall have ~~subdivision improvement plans~~ construction drawings prepared by a licensed engineer for all on site and required off site improvements in accordance with the following:

- A. Final plan and profile must be prepared in accordance with:
 1. [Current Hurricane City land use ordinances](#);
 2. [Current Hurricane City standards and specifications](#);
 23. [Hurricane City drainage manual](#);
 34. [Ash Creek special service district construction standards](#);
 45. [Hurricane City power standards and specifications](#);
 6. [Applicable building code](#);
 57. [Applicable fire code](#); and
 68. [Dixie Escalante power standards and specifications](#), if applicable.
- B. Specific geotechnical recommendations for the design and construction of the proposed subdivision shall include the following if applicable:
 1. A general assessment of the requirements needed to develop on the site.
 2. Site preparation and grading and the suitability of on site soils for use as structural fill.
 3. Stable cut and fill slopes including recommendations concerning the effects of material removal and the introduction of water.
 4. Recommendations for foundation type and design criteria, including, but not limited to, bearing capacity of natural or compacted soils, provisions to mitigate the effects of expansive, compressible, or collapsible soils, differential settlement and varying soil strength, and the effects of adjacent loads.
 5. Anticipated total and differential settlement.
 6. Special design and construction considerations, as necessary, such as the excavation and replacement of unsuitable materials, excavation difficulties, stabilization, or special foundation provisions for problem soil conditions.
 7. Design criteria for restrained and unrestrained retaining or rockery wall.
 8. Moisture protection and surface drainage.
- ~~C. Eleven sets of complete drawings must be submitted to the Public Works Director. Construction drawings must contain a signature block for all required utility, City, and Ash Creek special service district representatives. Drawings shall be a minimum of 22 inches by 34 inches (full size).~~
- ~~D. Applicant shall request placement on a Joint Utility Committee agenda for initial review of the plans.~~
- ~~E. Applicant or applicant's authorized representative shall attend the Joint Utility Committee meeting when the item is on the agenda. Utility, franchisee, City, and Ash Creek representatives will take copies of plans to redline.~~

Commented [DH2]: Are we not requiring this anymore?

- F. ~~All street grades over five percent shall be noted on the preliminary plat.~~
- G. ~~When redlines are completed, Public Works Director shall prepare a summary of the needed changes and return redlined plans to applicant.~~
- H. ~~Applicant shall then submit three copies of the corrected construction drawings, addressing all redlined items, to the City Engineer for review and possible signature. After City Engineer signs, applicant must obtain all required signatures and return signed plans to Public Works Director for final signature.~~
- I. ~~C. Construction drawings~~ Subdivision improvement plans are valid for 24 months after final signature. ~~Subdivision improvement plans~~ Construction drawings signed more than 24 months prior to construction of improvements shall be ~~considered~~ expired. For a project where construction has started and all improvements shown on the plan will be constructed, the Public Works Director may permit construction to continue. ~~Subdivision improvement plans~~ Construction drawings showing multiple phases of a project are valid only for those improvements constructed within the first 24 months of approval. New approvals must be obtained and any new standards shall apply for future phases or delayed projects.

Sec. 10-39-9. Final plat and subdivision improvement plan application and approval process.

Application process:

- A. Once ~~the preliminary plat is~~ construction drawings are approved, applicant shall submit ~~a complete~~ completed final plat application, application checklist, subdivision improvement plans ~~paper copy of final plat in full size~~, an electronic copy of the final plat, required fee, and any other required documents to the Planning Department.
- B. Planning Department staff shall review the submitted documents for completeness. Upon the Planning Department's determination of a complete application, the proposed final plat and subdivision improvement plans shall be submitted for review to the Joint Utility Committee and appropriate City departments. The Planning Department will make a determination of completeness, at which point the initial review process shall begin.
 - 1. Subdivisions of single family homes, duplexes, and townhomes: No later than 20 business days after the day on which the applicant submits a complete final plat application, the City Joint Utility Committee shall have completed a review of the applicant's final subdivision land use application, including subdivision plan reviews.
 - a. In reviewing a subdivision land use application, any member of the Joint Utility Committee or applicable City department may require:
 - i. additional information relating to an applicant's plans to ensure compliance with municipal ordinances and approved standards and specifications for construction of public improvements; and
 - ii. modifications to plans that do not meet current ordinances, applicable standards or specifications, or do not contain complete information;
 - iii. Requests under sections (i) and (ii) shall be specific and include citations to ordinances, standards, or specifications that require the modifications to plans, and shall be indexed by the Public Works Director and provided to the applicant;
 - iv. Except for a modification or correction necessary to protect public health and safety or to enforce state or federal law, and unless a change or correction is necessitated by the applicant's adjustment to a plan set or an update to a phasing plan that adjusts the infrastructure needed for the specific development, a change or correction not addressed or referenced in a City's plan review is waived.

- b. No later than 20 business days after the City has returned requested modifications or additions to the applicant, the applicant shall provide to the City:
 - i. Revised subdivision improvement plans;
 - ii. A written explanation in response to the City's review comments, identifying and explaining the applicant's revisions and reasons for declining to make revisions, if any;
 - iii. The applicant's written explanation shall be comprehensive and specific, including citations to applicable standards and ordinances for the design and an index of revisions or additions for each required correction;
 - iv. If an applicant fails to address a review comment in the response, the review cycle is not complete and the subsequent review cycle may not begin until all comments are addressed;
 - v. If an applicant does not submit a revised plan within 20 business days after the municipality requires a modification or correction, the municipality shall have an additional 20 business days to respond to the plans.
 - c. After the applicant has responded to the final review cycle, and the applicant has complied with each modification requested in the City's previous review cycle, the City's previous review cycle, the City may not require additional revisions if the applicant has not materially changed the plan, other than changes that were in response to requested modifications or corrections.
 - d. If a final subdivision application complies with the requirements of applicable City ordinances, Utah Code Title 10, Chapter 9a, as amended, and the preliminary subdivision approval, the City shall approve the final subdivision application.
2. ~~S~~For all subdivisions not consisting of single family homes, townhomes or duplexes: The Joint Utility Committee shall review and reline the completed plans
 - a. When redlines are completed the Public Works Director shall prepare a summary of needed changes and return redlined plans to the applicant.
 - b. Applicant shall then submit corrected construction drawings addressing all redlined items to the City Engineer for review and verification that all redlines have been addressed.
 - c. Applicant shall then submit three copies of the corrected construction drawings to the City Engineer for possible signature. After the City Engineer signs, applicant must obtain all required signatures and return signed plans to Public Works Director for final signature
3. The process laid out in subsections (1) and (2) of this section for subdivisions consisting of single family homes, townhomes, or duplexes shall consistconstitute one review cycle. No more than four review cycles may be required, except as otherwise provided herein.
4. Any dispute involving the review of subdivisions consisting of single family homes, townhomes, or duplexes if, on the fourth or final review, the City fails to respond within 20 business days, the City shall, upon request of the property owner, and within 10 business days after the day on which the request is received: not resolved after the fourth and final review

cycle may be resolved, if the applicant requests within 10 business days of the end of the final review cycle, through one of the following processes:

- a. For a dispute arising from the subdivision improvement plans, specifically regarding design standards and specifications, assemble an appeal panel in accordance with Utah State Code 10-9a-508(5)(d) to review and approve or deny the final revised set of plans; or
 - b. For a dispute arising from an interpretation of this Title or other city ordinance the subdivision ordinance review, advise the applicant, in writing, of the deficiency in the application and of the right to appeal the determination to the City Appeals Board pursuant to section , the appeals board shall make a determination as laid out in 10-7-19 of this Ceode.
5. If an applicant makes a material change to a plan set, at any point after the first review cycle the City Engineer has the discretion to restart the review process of the final plat application, but only with respect to the portion of the plan set that the material change substantially affects.

Once all outstanding comments from the Joint Utility Committee have been addressed the applicant shall submit three copies of the corrected construction drawings, addressing all redlined items, to the City Engineer for review and possible signature. After City Engineer signs, applicant must obtain all required signatures and return signed plans to Public Works Director for final signature on the subdivision improvement plans and the final plat.

1. The City Engineer shall review the electronic copy of plat and notify the applicant or applicant's authorized representative of any required changes. Applicant shall make required changes and resubmit electronic and paper copies of final plat, one full size and one 11-inch by 17-inch for second review.

C. If plat is approved by City Engineer, he shall sign the plat and return to the Planning Department. If plat is not approved after second submittal, an additional fee must be paid before any subsequent reviews.

D. Upon signature of approved final plat, the final plat application shall be reviewed by the final plat approval staff.

E.C. Once the final plat approval staff has granted approval of a final plat and a bond or other financial security is in place in accordance with section 10-39-13 of this chapter, the subdivider may schedule a preconstruction meeting with the City Public Works Department. Upon receipt of written notice to proceed from City, construction of the subdivision may proceed. No construction shall be permitted prior to receipt of written notice to proceed.

Sec. 10-39-10. Final plat requirements.

A. *Required information.* The final plat shall show:

1. The name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office, as approved by the Planning Commission.
2. The boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for another public use, and whether any such area is reserved or proposed for dedication for a public purpose.
3. The lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage of all parcels, units, lots, and the length and width of the blocks and lots intended for sale.

4. Every existing right-of-way and easement grant of record ~~for communications infrastructure, for underground facilities as defined in Utah Code Annotated section 54-8a-2 and for other utility facilities.~~ Where the same is granted to a specific entity, that entity must be clearly identified.
5. True angles and distances to the nearest established street lines or official monument, which shall be accurately described on the plat and shown by appropriate symbols.
6. All street centerline data must be shown, together with its relationship to the property lines, corners, etc.
7. The accurate location of all monuments shall be shown on the plat, and shall be identified, including all United States, state, county or other official monuments.
8. The dedication to the public of all streets and highways included in the proposed subdivision (except approved private streets).
9. Street monuments to be installed by the subdivider in accordance with the requirements of the City standards. Locations of said monuments shall be approved by the City Engineer and indicated on the subdivider's plat by the appropriate symbols.
10. Accurate outlines and legal descriptions of any areas to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed or covenant for common uses by all property owners.
11. Where it is proposed that streets be constructed on property controlled by a public agency or utility company, approval for the location, improvement and maintenance of such streets shall be obtained from the public agency or utility company and entered on the final plat in a form approved by the City Attorney.
12. The parent parcel number, as shown on the records of the [county recorder in St. George, Utah](#) [Washington County Recorder](#).

B. *Required forms and certificates.* In addition the final plat shall contain the standard forms for the following:

1. A registered professional land surveyor's signed certificate of survey, together with a statement that:
 - a. The surveyor holds a license in accordance with Utah Code Annotated title 58, chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - b. The surveyor has completed a survey of the property described on the plat in accordance with Utah Code Annotated section 17-23-17 and has verified all measurements; and
 - c. Has placed monuments as represented on the plat.
2. The owner's certificate of dedication of all streets, roads, rights-of-way or other parcels intended for the use and benefit of the general public.
3. Mortgagee or other lienholder's consent to record, if applicable.
4. A notary public's acknowledgment of the signature of the mortgagee or each owner signing the plat.
5. Certificate of approval of Ash Creek special service district.
6. A note stating as follows: Hurricane City operates a municipal culinary water system with limited water supply. Approval of a plat by Hurricane City does not guarantee that sufficient water will be available to serve lots depicted on any plat. Any land use applicant may be required by Hurricane City to provide a guarantee of water availability. If there is any approval without a water guarantee, the applicant assumes the entire risk of water availability for a platted lot.
7. Certificate of approval and acceptance by the City as evidenced by the signature of the Mayor.
8. Certificate of approval of the City Engineer.

9. Certificate of approval as to form executed by the City Attorney.
 10. A one and one-half inch by five inch space in the lower right hand corner of the drawing for the use of the county recorder.
 11. Certificate of approval of the county treasurer.
- C. *Other information required.* The following information or documentation shall be submitted with the final plat or prior to recordation:
1. A [sworn statement or title report stating](#) that all taxes or special assessments payable on all property within the limits of the subdivision are paid in full, ~~or a letter stating that a satisfactory bond has been filed to secure such payment.~~
 2. An original copy for staff review of the proposed deed restrictions or CC&Rs in proposed final form with signature lines for all owners of any interest in the subdivision who would sign the final subdivision plat must be submitted with final plat application. After being approved by staff this document shall be signed, acknowledged by a notary public, and recorded in the office of the county recorder ~~along prior to or concurrently~~ with the final plat.
 3. An up-to-date title or subdivision report for the property being subdivided. [Applicant is responsible to ensure the final plat addresses and accounts for liens, easements, and other encumbrances on the property being subdivided.](#)
 4. Mylar of approved final plat submitted and reviewed for substantial conformance with paper final plat.
 5. Applicant shall be responsible to provide any additional information requested by the county recorder, including electronic versions of mylars.
- D. *Requirements for recordation.*
1. Final plat approval.
 2. Bond or other financial security in place.
 3. Final title or subdivision report prepared and submitted to the City Attorney [with an effective date within 30 days of the date the mylar is recorded.](#) ~~report should not be dated older than 30 days prior to submittal to City Attorney.~~
 4. Proof of satisfaction of payment of any water impact fee due Washington County Water Conservancy District, if applicable.
 5. [For property to be dedicated to the City for streets, roads, rights-of-ways, or other parcels intended for the use and benefit of the general public, free and clear title to the property, unless the encumbrance is an easement the acceptance of which will not adversely affect the public. Provided, however, that appropriate mortgagee or other lienholders' consent to record the final subdivision plat shall be adequate for purposes of this section to address liens recorded against the property.](#)
 546. All signatures must be on the mylar, including property owners of record according to the title report, City officials and Ash Creek special service district superintendent. The City Attorney shall be the last signer of the mylar just prior to recordation.
 657. Preliminary acceptance by City of all public and private improvements as shown on approved construction drawings.
 768. If submitted mylar shows [substantial-material](#) changes from the approved paper final [subdivision](#) plat, applicant shall submit an application for an amended plat and get approval of the amended plat before recordation will be permitted to occur.
- E. *Recordation of plat.* [Applicant shall be responsible to coordinate with the City Attorney for the recording of the final plat and for the payment of any recording fees. Applicant shall be responsible to ensure that, after the City Engineer signs a final subdivision plat mylar, the remaining conditions to qualify the mylar for](#)

recording are accomplished and the mylar is recorded with the county recorder within one year of the date of the City Engineer's signature. Any final subdivision plat mylar receiving final signature by the City Engineer approval shall be recorded at the office of the county recorder within one year of the date of said final approval. Applicant shall be responsible to coordinate with the City Attorney for the recording of the final plat and for the payment of any recording fees. Upon receipt of an extension request within 18 months from the date of original final plat approval, final plat approval staff shall grant a one-year extension of time to record, with the extension period ending two years from the date of original final plat approval. Any other or further extensions shall require the consent of the City Council. Failure to record the final plat obtain an extension within two years one year of the date of original final signature by the City Engineer plat approval date shall result in revocation of the final plat. When a final plat is revoked, a new preliminary plat must be approved before applying for new final plat approval.

Sec. 10-39-11. Subdivision streets and fencing.

A. Relation to adjoining street systems.

1. The arrangements of streets in new subdivisions shall make provision for the continuation of the existing streets to adjoining areas insofar as such may be deemed necessary by the Planning Commission for public requirements. New streets within subdivisions shall not preclude future access to adjoining properties.
2. Standard residential streets shall approach the arterial or collector streets at an angle of not less than 80 degrees.
3. Except as otherwise provided elsewhere in this Code, all subdivision streets and roadways shall be constructed and installed in accordance with the City roadway construction standards.

B. Fencing.

1. *Where required.* A solid masonry, chainlink or other nonclimbable 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 nonaccess 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.
2. *Prevent nuisance or hazard.* The Planning Commission may also require the construction or installation of a fence in any subdivision where the Planning Commission determines that the absence of a fence may create a nuisance or hazard to the welfare of the residents of the subdivision or the adjoining property.
3. *Agricultural fencing.* Unless otherwise waived by affected agricultural property owners, fencing abutting agricultural property shall be required of subdivider. Fencing shall meet or exceed the standard Utah Department of Transportation ("UDOT") Right-of-Way Fencing and Gates as described in UDOT's then-applicable Standard Specifications for Road and Bridge Construction, consisting of wire mesh and two strands of barbed wire. The affected agricultural property owner shall have the option to pay the additional cost to install a fence beyond this minimum standard. The fence, design, and materials shall be approved with the construction drawings for the subdivision together with other subdivision improvements. 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 subdivider will be required to install and maintain an electrical fence parallel to the new fence.

Sec. 10-39-12. Subdivider's agreement. (Reserved)

All applications for a subdivision shall be accompanied by an executed copy of the following agreement, as amended from time to time by the City Council. Said agreement shall be substantially in the following form:

SUBDIVIDER'S AGREEMENT WITH HURRICANE CITY

This agreement is entered into this ____ day of _____, between of _____, County of _____, State of _____, hereinafter referred to as "Subdivider," and Hurricane City, a municipal corporation of the State of Utah, located in Washington County, hereinafter referred to as the "City." Subdivider, on behalf of it/himself, its/his heirs, successors and assigns, hereby acknowledges, covenants and agrees that: (1) it/he has received and read a copy of the Hurricane City Subdivision Chapter of the Land Use Code and shall in all respects comply with the provisions contained therein; (2) all on-site and off-site improvements required to be constructed in connection with said subdivision shall be constructed and installed in accordance with the approved construction plans and drawings; and (3) in the event that legal action is required to be taken by Hurricane to enforce the terms of this agreement, Subdivider agrees that it/he shall be liable to pay all such legal costs and expenses incurred by Hurricane, including court costs and a reasonable attorneys fee.

DATED this ____ day of _____.

Subdivider Subdivider ____

Title

STATE OF UTAH-)

:-55-

COUNTY OF WASHINGTON-)

On the ____ day of _____, personally appeared before me _____, the signer(s) of the above instrument, who duly acknowledged to me that he/she executed the same on behalf of the Subdivider.

(SEAL)

NOTARY PUBLIC

Accepted by:

Hurricane City Zoning Administrator or Planning Director

All signatures to this agreement, other than for sole proprietorships, shall be accompanied by documentation acceptable to the City attesting to the fact that the signer hereof is authorized by the subdivider to enter into this agreement (e.g. a copy of a corporate resolution, copy of a partnership agreement, etc.).

Sec. 10-39-13. Guarantee of completion of improvements; form of surety; release of funds.

Subdivider shall guarantee improvements in accordance with the following:

- A. *Completion of improvements before recordation.* If subdivider desires to construct improvements as shown on approved construction drawings prior to recordation:
 1. Recordation of the plat shall not occur until the improvements required in connection with the subdivision have been completed and conditionally accepted.
 2. Subdivider shall provide guarantee of conditionally accepted improvements in a form acceptable to the City as shown in subsection C of this section in the following amount:
 - a. Ten percent of the total cost of all the required improvements shall be retained by the City during the 12-month (24-month if applicable) warranty period.

- B. *Recordation before completion of improvements.* If the subdivider desires to have a plat recorded prior to construction of improvements subdivider shall guarantee completion, within two years from the date of final plat approval by the City Council, of installation and construction of the required improvements in compliance with all City standards.
- C. *Form of surety.* In order to guarantee completion of improvements, subdivider shall provide one of the following types of sureties or guarantees:
 - 1. *Escrow.* The subdivider shall deposit with any insurance company, bank, or savings and loan institution in an escrow account an amount of money equal to at least 115 percent of the estimated costs of the improvements not constructed or installed by the subdivider plus ten percent of the cost of all the required improvements of the subdivision as a guarantee amount, as determined by the City Engineer. The escrow agreement shall be subject to approval by the City Attorney and shall be signed by the subdivider, the City, and the escrow holder, and shall contain substantially the following language:

AGREEMENT

The undersigned hereby promises and warrants that it has on deposit in an escrow account for the benefit of Hurricane City Corporation, the sum of _____ (\$_____), which represents at least one hundred fifteen percent (115%) of the costs of the engineer's estimated costs for improvements not constructed or installed by the subdivider plus ten percent (10%) of the cost of improvements of the _____ subdivision.

The undersigned hereby agrees that the foregoing sum of money shall be used exclusively for the purpose of paying for the costs of materials, construction, and installation of the improvements required by the Hurricane City Subdivision Chapter. The undersigned further agrees that the money held in an escrow account shall be paid out to the contractors installing and constructing the required improvements only upon approval of the City. The subdivider shall not withdraw from the escrow account any amount in excess of 100% of the estimated cost of the improvements, but shall pay from other sources any costs for such improvements which exceed the engineers estimate approved by the City.

After all improvements are made, completed and preliminarily accepted by the City, a sum equal to 10% of the estimated costs of improvements shall remain with the escrow holder for a period of 12 months as a warranty that all improvements are installed and inspected to City specifications, and that all defects occurring within the first 12 months (24 months if applicable) are corrected and approved by the City.

If, after 12 months (24 months if applicable), all or any part of the required improvements are not installed, constructed, and maintained according to the standards required in the Hurricane City Subdivision Ordinance, Hurricane City shall notify in writing the subdivider and escrow holder of the defects and shall make demand on the subdivider that the defects be corrected. If the defects are not corrected within 30 days, Hurricane City may correct the defects and charge to the escrow holder the costs of correcting the defects.

The escrow holder shall, on receiving reasonable proof from Hurricane City of the defect and that Hurricane City has incurred the cost of correcting the defect, pay to Hurricane City from the escrow account the cost of correcting the defect, and the escrow holder shall be held harmless by the parties by reason of payment to Hurricane City.

If, 12 months (24 months if applicable) after preliminary acceptance of the improvements required by City's standards and specifications and shown on approved construction drawings, the required improvements remain substantially free from latent defects, Hurricane City shall certify such fact to the escrow holder, and the escrow holder shall release to the subdivider any money still held in the escrow account, and the escrow holder shall be discharged of its obligations to Hurricane City.

(Authorized Signature)

The escrow agreement may contain such additional provisions as the parties deem necessary.

2. *Irrevocable letter of credit.* The subdivider shall file with the City an irrevocable letter of credit from a duly chartered state or national bank or savings and loan institution, which letter shall contain provisions substantially similar to that required in the escrow agreement.

The form of the irrevocable letter of credit shall be substantially as follows:

Name of Bank:

Address:

IRREVOCABLE LETTER OF CREDIT

To: Hurricane City Corporation

Date:

Letter of Credit No.:

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor for the account of _____, _____, (insert name of subdivider, subdivider's address) up to the aggregate amount of _____ (\$_____) (insert amount equal to one hundred fifteen percent, i.e., 115% of the estimated costs of the improvements not constructed or installed by the subdivider plus ten percent [10%] of the cost of all improvements of the subdivision as determined by the Engineer) drawn at sight on _____, _____, (insert name of bank, address of bank), accompanied by a statement signed by an officer of Hurricane City Corporation as follows: "We certify that the improvements related to the _____ (insert name of subdivision) have not been completed and the defects corrected in accordance with city ordinances and that this drawing represents the amount necessary to complete those improvements."

We hereby agree with drawers, endorsers and bona fide holders that all drafts under and in compliance with the terms of this credit will be duly honored upon presentation and delivery of documents as specified to the drawee or drawn and presented at our bank for negotiation on or before _____ (insert completion date plus 90 days). This Irrevocable Letter of Credit automatically renews for a one year term at the end of every term unless the Authorized Bank Officer provides Hurricane City written notice of termination thirty (30) days prior to the end of the term.

Very Truly Yours,

Authorized Bank Officer

3. *Other guarantee.* Such other financial guarantee that may be acceptable to the City Council.
- D. *Release of funds.* As the required improvements are satisfactorily installed and have been inspected by the City, funds which have been placed in escrow for those improvements will be authorized to be released for payment of those improvements. Escrow holder is authorized to release funds from this account only after receiving a written release from City. The City is not responsible to determine the party to be paid.

After all required improvements have been installed, the subdivider shall notify the City and request that the subdivision be granted preliminary acceptance and begin the warranty period. The subdivision will then be inspected by City, and if all improvements have been completed in accordance with City ordinances and specifications, as built plans have been delivered to the Public Works Department, and a final grading plan has been submitted, the City will grant preliminary acceptance. The subdivision will then begin the 12-month (24-month if applicable) warranty period. Ten percent of the total cost of all the required improvements, as specified above, shall be retained by the City during this warranty period.

All funds in escrow surplus to the warranty amount may then be released by the City.

The purpose of retaining the ten percent warranty amount is to guarantee that the improvements have been installed correctly and that they function properly. If any improvements have not been installed correctly or fail to function properly, and the subdivider fails to correct the deficiencies within 30 days of notification thereof, then

upon written notice by the City, escrow shall pay over to the City the amount necessary to complete, repair, or replace said improvements.

In the event the costs of completing, repairing, or replacing the unsatisfactory improvements exceed the amount remaining in the escrow account, the subdivider shall, within ten days of notice thereof, pay the excess amount to the City and shall also cause to restore the escrow account or irrevocable letter of credit to the prescribed ten percent warranty amount. The City shall not issue any building permits for the subdivision until the above referenced excess costs have been paid to the City and the warranty amount (ten percent of the total cost of improvements) has been restored.

Sec. 10-39-14. Warranty of completed improvements.

Upon completion of construction and installation of all required improvements, subdivider shall warrant that said improvements shall be and shall remain free from defects in material and workmanship for a period of 12 months after the date of preliminary acceptance by City, unless said warranty period is extended for a period of up to 24 months by the City Council upon a finding that a warranty period of 12 months is inadequate to protect the public health, safety and welfare for any of the following reasons:

- A. The prior poor or substandard performance by the subdivider or contractor responsible for construction and installation of the improvements;
- B. The presence or existence of unstable soil conditions within the subdivision or adjacent area;
- C. Extreme fluctuations in climatic conditions that would or could reasonably prevent the discovery of substandard or defective performance within a 12-month period; or
- D. Any other exceptional reason or circumstances which in good faith is determined by the City Council to require a longer warranty period.

The subdivider shall be responsible to make all repairs to and maintain the improvements and every part thereof in good working condition during the guarantee period without cost to the City.

Sec. 10-39-15. Enforcement and permits.

- A. In order to enforce compliance with this chapter, the Building Official shall not issue any permit for the proposed erection, construction, reconstruction, alteration of any structure, or use of any land until the provisions of this chapter have been met. No City officer or employee shall issue any permit or license for the construction or installation of any building or structure or use on any subdivision lot until the following conditions have been met:
 1. Such subdivision plat shall have been approved and recorded in the office of the county recorder.
 2. Infrastructure improvements shown on approved construction plans for the subdivision:
 - a. Have been constructed and installed and preliminarily accepted; or
 - b. The City has received and accepted an improvement completion assurance for the subdivision in accordance with this chapter, and the following improvements have been constructed, installed, tested and accepted in accordance with the requirements of the building or fire code:
 - (1) A road base of untreated, compacted and graded gravel;
 - (2) Sewer, storm drains and storm drain facilities;
 - (3) Curb and gutter unless otherwise not required by this Code;
 - (4) Water system, including water lines and hydrants; and
 - (5) Power lines.
- B. All required improvements must be complete within 12 months of notice to proceed.

- C. The City may call upon the improvement completion assurance filed with the City for all improvements not completed within 12 months of the notice to proceed or when the first building within the subdivision seeks an occupancy permit, whichever is sooner.
- D. It shall be prohibited for anyone to start construction on any building within a subdivision until they have fulfilled the requirements of this chapter.
- E. Any license or permit issued in conflict with this chapter shall be null and void.
- F. Notwithstanding the provisions of subsection A above, a building permit may be issued for:
 - 1. A single model home in a subdivision, provided that a certificate of occupancy shall not be granted and the model home may not be used or occupied for any reason until the subdivision plat has been approved and recorded.
 - 2. A model home complex within a master planned community with a planned development overlay upon approval by the City Council of an amendment to the development agreement stating the terms and conditions for issuance of the building permit.

Sec. 10-39-16. Plat amendments.

The procedure for consideration and approval of any addition, alteration, modification, or change to an approved plat shall be substantially the same as is required for initial plat approval unless the Zoning Administrator determines that such addition, alteration, modification, or other change does not constitute a significant change from the intent or effect of the approved plat.

Sec. 10-39-17. Fees.

The following fees are hereby established:

- A. *Preliminary plat application fee.* At the time of filing of the preliminary plat, the subdivider shall deposit with the City a nonrefundable fee made payable to Hurricane City. The City Council shall by resolution from time to time prescribe the amount of such fee, which shall be for the purpose of reimbursing the City for the expense of checking and reviewing such final subdivision plats.
- B. *Final plat application fee.* At the time of filing of the final plat, the subdivider shall deposit with the City a nonrefundable fee made payable to Hurricane City. The City Council shall by resolution from time to time prescribe the amount of such fee, which shall be for the purpose of reimbursing the City for the expense of checking and reviewing such final subdivision plats, and inspecting subdivision improvements.
- C. *Habitat conservation fee.* Before plat is released for recordation, subdivider shall pay applicable per acre habitat conservation impact fee to City.
- D. *Recording fee.* At the time of recording the final plat, the subdivider shall be responsible for payment of the recording fee.

Sec. 10-39-18. Penalty; validity.

- A. *Penalty.* Any subdivider or other person who shall violate or fail to comply with any of the provisions for this chapter shall be guilty of a class B misdemeanor, and punished as provided by law upon conviction.
- B. *Validity.* If any section, subsection, sentence, clause, or phrase of this chapter is, for any reason, held to be invalid, such holding shall not affect the validity of the remaining portion of this chapter.

CHAPTER 39. SUBDIVISIONS

Sec. 10-39-1. General provisions.

- A. The underlying purpose and intent of this chapter is to promote the health, safety, convenience, and general welfare of the inhabitants of the City in the division or subdivision of land and related matters affected by each subdivision.
- B. Any proposed subdivision and its ultimate use shall be in the best interest of the public welfare and shall be in harmony with good neighborhood development of the area concerned, and the subdivider shall present evidence to this effect when requested to do so by the Planning Commission.
- C. In cases where unusual topographical or other exceptional conditions exist such as sensitive lands, collapsible soils or other conditions necessitating any exceptions from or additional requirements to this chapter, said exceptions or requirements may be set by the Planning Commission and/or the City Engineer.

Sec. 10-39-2. Scope.

- A. No person shall subdivide any tract of land which is wholly or in part within the City boundaries except in compliance with this chapter.
- B. No person shall sell or exchange, or offer to sell or exchange, any parcel of land which is a part of a subdivision of a larger tract of land, or offer for recording in the office of the county recorder any deed conveying such a parcel of land, or any interest therein, unless such subdivision has been created pursuant to and in accordance with the provisions of this chapter.
- C. All lots, plots, or tracts of land located within a subdivision shall be subject to this chapter regardless of whether or not the tract is owned by the subdivider or a subsequent purchaser, transferor, or holder of the land.
- D. The review cycle restrictions and requirements of this section do not apply to the review of subdivision applications affecting property within identified geological hazard areas, including land qualifying as sensitive lands within Title 10, Chapter 24 of this Code.

Sec. 10-39-3. Definitions.

The following words and phrases used in this chapter, in addition to those listed in chapter 3 of this title, shall have the respective meanings hereafter set forth, unless a different meaning clearly appears from the context:

Adjacent landowner means any property owner of record, according to the records of the county recorder, whose property adjoins or abuts property proposed for subdivision, or any portion thereof.

Affected entity means as stated in statute, a county, municipality, independent special district, local district, school district, interlocal cooperation entity, specified public utility, or the state department of transportation, if:

- A. The entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- B. The entity has filed with the municipality a copy of the entity's general or long range plan; or
- C. The entity's boundaries or facilities are within one mile of land which is the subject of a general plan amendment or land use ordinance change.

Block means the land surrounded by streets and other rights-of-way other than an alley, or land which is designated as a block on any recorded subdivision plat.

Bona fide division or partition of land for agricultural purposes means the division of a parcel of land into two or more lots none of which is less than five acres in an area, and where no dedication of any street is required to serve any such lots or parcels of land so created.

City means Hurricane City, Utah.

City Council means the City Council of Hurricane City, Utah.

City Engineer means the City Engineer of Hurricane City, Utah, or a consulting engineering firm designated as the City Engineer by the City Council.

City Planner means the professional planner of the City, or person designated as such by the City Council.

Communications easement means an exterior easement for placement of facilities intended to be used in connection with the delivery of multichannel video programming services, cable services, information services, or telecommunications or telecommunications services.

Communications infrastructure means facilities planned to be used in connection with the delivery of multichannel video programming services, cable services, information services, telecommunications or telecommunications services, which term shall include, but not be limited to, conduit.

Construction drawings means *Subdivision improvements plans, as defined herein.*

County means Washington County, Utah.

Culinary Water Authority means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

Dedication means land set aside by an owner for any general and public uses.

Easement means that portion of a lot or lots reserved for present or future use by a person or agency other than the legal owner or owners of said property or properties. The easement may be for use under, on, or above said lot or lots.

Final plat means the final drawing of the subdivision and dedication prepared for filing of record with the county recorder and in compliance with all the requirements set forth in this chapter and adopted pursuant thereto.

General plan means a plan, labeled "General Plan of Hurricane City," including maps or reports or both, which has been approved by the City Council as required by law, or such plan as it may be amended from time to time.

Joint Utility Committee means the representatives of the City, Ash Creek special service district, and franchisee utility companies authorized to review and sign construction drawings.

Lot means a separately delineated parcel of real property having a number and designation shown on a recorded subdivision plat, or a contiguous quantity of real property defined in a deed by metes and bounds which has a separate property identification number according to the records of the county recorder and is not shown on a recorded subdivision plat.

Lot right-of-way means a strip of land of not less than 26 feet wide connecting a lot to a street for use as private access to that lot.

Official zoning map means a zoning map adopted by the City Council pursuant to the provisions of Utah Code Annotated section 10-9a-501, as amended.

Open space means designated land within the subdivision which shall always remain undeveloped, which shall be included in improved parks and recreational areas, or which shall remain all natural.

Person means any individual, corporation, partnership, limited liability company, or partnership, firm, or association of individuals, however styled or designated.

Planning Commission means the Hurricane City Planning Commission. The Planning Commission shall be the “administrative land use authority” as defined in Utah State Code 10-9a-604.1(1)(b) as amended.

Plat means a map or depiction of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, and streets, or other divisions and dedications.

Review Cycle means the occurrence of:

- (i) the applicant's submittal of a complete subdivision land use application;
- (ii) the City's review of that subdivision land use application;
- (iii) the City's response to that subdivision land use application, in accordance with this section; and
- (iv) the applicant's reply to the City's response that addresses each of the City's required modifications or requests for additional information.

Sanitary Sewer Authority means the Ash Creek special service district, a public entity with responsibility to review and approve the feasibility of sanitary sewer services or on site wastewater systems within the City.

Security means an escrow agreement, irrevocable letter of credit, or other security instrument given by the subdivider to ensure the proper installation of public improvements.

Street means a thoroughfare which has been dedicated or abandoned to the public and accepted by proper public authority, or a thoroughfare not less than 26 feet wide which has been made public by right of use and which affords the principal access to the abutting property.

Street, arterial means a street, existing or proposed, which serves or is intended to serve as a major trafficway, and is designated on the general plan as a controlled access highway, major street, parkway or other equivalent term to identify those streets comprising the basic structure of the street plan.

Street, collector means a street, existing or proposed, which is the main means of access to an arterial street system.

Street, cul-de-sac means a street which originates from a designated City street with no other outlet and forcing a radius turn area, not to exceed 660 feet in length without the written approval of the City Council, the Planning Commission and the Fire Chief.

Street, private means a right-of-way or easement in private ownership not dedicated or maintained as a public street.

Street, residential means a street, existing or proposed, which is supplementary to a collector street and which serves or is intended to serve local needs of a neighborhood.

Subdivider means any individual, firm, association, syndicate, copartnership, corporation, trust or other legal entity commencing proceedings under this chapter to effect a subdivision for himself or for another.

Subdivision:

A. Includes:

- 1. The division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat or other recorded instrument; and
- 2. Except as provided herein, divisions of land for all residential and nonresidential uses, including land used or to be used for commercial, agricultural and industrial purposes.

B. Does not include:

- 1. A bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting

combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

2. A recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if no new lot is created and the adjustment does not violate applicable land use ordinances; or
3. A recorded document executed by the owner of record, revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property, or joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances.

The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" as to the unsubdivided parcel of property or subject the unsubdivided parcel to the provisions of this chapter.

Subdivision improvement plans means the civil engineering plans associated with required infrastructure and municipally controlled utilities required for a subdivision.

Subdivision ordinance review means review by the City to verify that a subdivision land use application meets the criteria of the City's subdivision ordinances.

Subdivision plan review means a review of the applicant's subdivision improvements and other aspects of the subdivision land use application to verify that the application complies with City ordinances and applicable standards and specifications.

Sec. 10-39-4. Necessity of plat; exemption from plat requirements.

All subdivisions shall be required to prepare and receive approval of a preliminary and final plat in accordance with the provisions of this chapter, except as follows:

- A. A subdivision creating no more than one new lot may be approved with written approval by City staff without the necessity of preparing and filing a preliminary plat or final plat if:

The proposed subdivision:

1. Is not traversed by the mapped lines of a proposed street as shown in the general plan unless the City staff has approved the location and dedication of any public street, municipal utility easement, any other easement, or any other land for public purposes as the municipality's ordinance requires;
 2. Has been approved by the culinary water authority and the sanitary sewer authority;
 3. Is located in a zoned area; and
 4. Conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance.
- B. 1. A lot or a parcel resulting from a division of agricultural land is exempt from the plat requirements of this chapter if the lot or parcel:
 - a. Qualifies as land in agricultural use under Section 59-2-502 of the Utah Code, as amended;
 - b. Meets the minimum size requirement of applicable land use ordinances; and
 - c. Is not used and will not be used for any nonagricultural purpose.

2. The boundaries of each lot or parcel exempted under Subsection (A) and (B) of this Section shall be graphically illustrated on a record of survey map that, after receiving the same approvals as are required for a plat under Section 10-9a-604 of the Utah Code, as amended, shall be recorded with the Washington County Recorder.
 3. If a lot or parcel exempted under Subsection (B)(1) of this Section is used for a nonagricultural purpose, the municipality may require the lot or parcel to comply with the requirements of Section 10-9a-603 of the Utah Code, as amended, and the subdivision requirements of this Chapter.
- C.
1. Documents recorded in the Washington County Recorder's Office that divide property by a metes and bounds description do not create an approved subdivision allowed by this Chapter unless the written approval required by Subsection (A) of this Section is attached to the document.
 2. The creation of a lot under Subsection (A) of this section shall not be approved until a plan for providing utilities and other required improvements to the proposed lot has been reviewed and signed by members of the Joint Utility Committee. No building permit will be issued for said lot until the approved improvements are constructed and accepted.
- D. Lots or parcels created in violation of this section shall not be issued a building permit until the violation is corrected.

Sec. 10-39-5. Notice requirements.

- A. Notice of proposal to vacate some or all of a public street, right-of-way, or easement. The legislative body shall hold a public hearing and give notice of the date, place, and time of the hearing at least ten days before the public hearing by:
1. Mailing notice to the record owner of each parcel that is accessed by the public street, right-of-way, or easement;
 2. Mailing notice to each affected entity;
 3. Posting notice on or near the street, right-of-way, or easement in a manner that is calculated to alert the public;
 4. Published on the City's official website until the public hearing concludes; and
 5. Publishing notice on the state public notice website.
- B. Notice for an amendment to a subdivision. For an amendment to a subdivision, the City shall provide notice of the date, time, and place of at least one public meeting.
1. At least ten calendar days before the public meeting, the notice shall be:
 - a. Mailed to the record owner of each parcel directly adjacent of the proposed amendment; or
 - b. Posted on the property.
 - (1) The applicant must post a sign at least ten days before the public meeting in a visible location, that is sufficient in size, durable, and legible by passers-by.

Sec. 10-39-6. Preliminary plat process.

- A. Designation of Administrative Land Use Authority. The Planning Commission is designated as the Administrative Land Use Authority that reviews and approves or denies preliminary subdivision applications; provided, however, that the review and approval of subdivisions creating no more than one new lot under Section 10-39-4 of this Chapter is governed by that Section.

B. Pre-Application Meetings.

1. If an applicant requests a pre-application meeting, the City shall, within 15 business days after the request, schedule the meeting to review the concept plan and give initial feedback.
2. At the pre-application meeting, the municipal staff shall provide or have available on the municipal website the following:
 - (i) copies of applicable land use regulations;
 - (ii) a complete list of standards required for the project;
 - (iii) preliminary and final application checklists; and
 - (iv) feedback on the concept plan.

C. Review of Preliminary Plat Application.

1. Preliminary plat applications shall comply with all requirements of this Title and Utah Code Title 10, Chapter 9a, as amended.
2. The applicant shall (1) obtain and complete a preliminary plat application form and application checklist and (2) have the proposed plat and subdivision improvement plans prepared by a licensed engineer or surveyor.
3. The applicant shall submit the completed application, proposed plat, proposed subdivision improvement plans, subdivider's agreement set out in section 10-39-12, and the required fees to the Planning Department.
4. Planning Department staff shall review the submitted documents for completeness. Any proposed preliminary plat and subdivision improvement plan that, on its face, fails to comply with an applicable zoning ordinance or development agreement, shall render the application incomplete, and the applicant shall be notified of the incomplete application.
5. Upon the Planning Department's determination of a complete application, the proposed preliminary plat and subdivision improvement plans shall be submitted for review to the Joint Utility Committee and appropriate City departments.
6. No later than 15 business days after the day on which an applicant submits a complete preliminary subdivision land use application for a residential subdivision for single-family dwellings, two-family dwellings, or townhomes, the Joint Utility Committee and appropriate City departments shall complete the initial review of the application, including subdivision improvement plans.
7. Upon the completion of the initial review of the application, the Zoning Administrator shall place the application on the next available Planning Commission agenda for a public hearing and consideration by the Planning Commission.
8. Applicant or Applicant's authorized representative shall appear at the scheduled meeting before the Planning Commission to present the proposed preliminary plat and answer questions.
9. The Planning Commission may approve, deny, or approve with conditions a proposed preliminary subdivision plat.
10. If a preliminary subdivision plat application complies with applicable municipal ordinances and the requirements of Utah Code Title 10, Chapter 9a, as amended, the Planning Commission shall approve the preliminary plat application.

D. Approval of the preliminary subdivision plat by the Planning Commission shall authorize the subdivider to proceed with the preparation and review of a final subdivision plat application; provided, however, that an applicant may submit a final subdivision plat application to be processed concurrently with a preliminary subdivision application.

E. After preliminary subdivision plat approval from the Planning Commission, a complete application for final subdivision plat approval must be submitted within one year of the preliminary plat approval date or the preliminary subdivision plat approval shall expire. The Planning Commission may authorize a onetime

extension not to exceed one year, provided that a written request for extension is received by the City before the one year time period has expired.

- F. Approval of a preliminary subdivision plat by the Planning Commission shall not constitute approval of the subdivision improvement plans

Sec. 10-39-7. Preliminary plat requirements.

The preliminary plat shall include or be accompanied by the following:

- A. *Description.* In a title block located in the lower right hand corner of the sheet the following is required:
1. The proposed name of the subdivision.
 2. The location of the subdivision, including the address and the section, township and range.
 3. The names and addresses of the owner or subdivider if other than the owner.
 4. Date of preparation and north point.
 5. Scale shall be of sufficient size to adequately describe in legible form all required elements.
- B. *Existing conditions.* The preliminary plat shall show:
1. The location of the nearest monument.
 2. The boundary of the proposed subdivision and the acreage included.
 3. All property contiguous to the property to be subdivided and under the control of the subdivider, even though only a portion is being subdivided. (Where the plat submitted covers only a part of the subdivider's tract, a sketch of the prospective street system of the unplatted parts of the subdivider's land shall be submitted, and the street system of the part submitted shall be considered in light of existing master street plan or other commission studies.) And all property contiguous to the proposed subdivision.
 4. The location, width and names/numbers of all existing streets within 200 feet of the subdivision and of all prior streets or other public ways, easements, utility rights-of-way, parks and other public open spaces, within and adjacent to the tract.
 5. The location of all wells and springs or seeps, proposed, active and abandoned, and of all reservoirs or ponds within the tract and at a distance of at least 100 feet beyond the tract boundaries.
 6. Existing ditches, canals, natural drainage channels and open waterways and proposed realignments.
 7. Contours at vertical intervals not greater than five feet.
 8. Identification of potential geotechnical constraints on the project site (such as expansive rock and soil, collapsible soil, shallow bedrock and caliche, gypsiferous rock and soil, potentially unstable rock or soil units including fault lines, shallow ground water, and windblown sand) and recommendations for their mitigation.

C. *Proposed plan.* The subdivision plans shall show:

1. The layout of streets, showing location, widths and other dimensions of proposed streets, crosswalks, alleys and easements.
2. The layout, numbers and typical dimensions of lots. Designation of buildable area is required for each lot.
3. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.
4. Easements for water, sewers, drainage, utilities, lines and other purposes.
5. Street cross sections and street grades.
6. A plan or method by which the subdivider proposes to handle the stormwater drainage for the subdivision.
7. Approximate radius of all centerline curves on highways or streets.
8. Each lot shall abut a street shown on the subdivision plat or on an existing publicly dedicated street.
9. All remnants of lots below minimum size left over after subdividing of a larger tract shall be added to adjacent lots or common areas, rather than allowed to remain as unusable parcels.
10. Where necessary, copies of any agreements with adjacent property owners relevant to the proposed subdivision shall be presented to the Planning Commission.
11. A letter from both the local sanitary sewer provider and culinary water provider indicating availability of service.
12. If the subdivision is to be built in phases, the plat shall show possible phasing lines.
13. A plan or method for providing nondiscriminatory access to the subdivision for purposes of placement of communications infrastructure, and for purposes of placement of utility infrastructure.
14. Complete subdivision improvement plans shall be reviewed by the Joint Utility Committee.

Sec. 10-39-8. Subdivision Improvement Plans.

As part of a complete preliminary plat application, the applicant shall have subdivision improvement plans prepared by a licensed engineer for all on site and required off site improvements in accordance with the following:

- A. Final plan and profile must be prepared in accordance with:
1. Current Hurricane City land use ordinances;
 2. Current Hurricane City standards and specifications;
 3. Hurricane City drainage manual;
 4. Ash Creek special service district construction standards;
 5. Hurricane City power standards and specifications;
 6. Applicable building code;
 7. Applicable fire code; and
 8. Dixie Escalante power standards and specifications, if applicable.

- B. Specific geotechnical recommendations for the design and construction of the proposed subdivision shall include the following if applicable:
 - 1. A general assessment of the requirements needed to develop on the site.
 - 2. Site preparation and grading and the suitability of on site soils for use as structural fill.
 - 3. Stable cut and fill slopes including recommendations concerning the effects of material removal and the introduction of water.
 - 4. Recommendations for foundation type and design criteria, including, but not limited to, bearing capacity of natural or compacted soils, provisions to mitigate the effects of expansive, compressible, or collapsible soils, differential settlement and varying soil strength, and the effects of adjacent loads.
 - 5. Anticipated total and differential settlement.
 - 6. Special design and construction considerations, as necessary, such as the excavation and replacement of unsuitable materials, excavation difficulties, stabilization, or special foundation provisions for problem soil conditions.
 - 7. Design criteria for restrained and unrestrained retaining or rockery wall.
 - 8. Moisture protection and surface drainage.
- C. Subdivision improvement plans are valid for 24 months after final signature. Subdivision improvement plans signed more than 24 months prior to construction of improvements shall be expired. For a project where construction has started and all improvements shown on the plan will be constructed, the Public Works Director may permit construction to continue. Subdivision improvement plans showing multiple phases of a project are valid only for those improvements constructed within the first 24 months of approval. New approvals must be obtained and any new standards shall apply for future phases or delayed projects.

Sec. 10-39-9. Final plat and subdivision improvement plan application and approval process.

- A. Once the preliminary plat is approved, applicant shall submit a complete final plat application, application checklist, subdivision improvement plans, an electronic copy of the final plat, required fee, and any other required documents to the Planning Department.
- B. Planning Department staff shall review the submitted documents for completeness. Upon the Planning Department's determination of a complete application, the proposed final plat and subdivision improvement plans shall be submitted for review to the Joint Utility Committee and appropriate City departments.
 - 1. Subdivisions of single family homes, duplexes, and townhomes: No later than 20 business days after the day on which the applicant submits a complete final plat application, the City shall complete a review of the applicant's final subdivision land use application, including subdivision plan reviews.
 - a. In reviewing a subdivision land use application, any member of the Joint Utility Committee or applicable City department may require:
 - i. additional information relating to an applicant's plans to ensure compliance with municipal ordinances and approved standards and specifications for construction of public improvements; and
 - ii. modifications to plans that do not meet current ordinances, applicable standards or specifications, or do not contain complete information;

- iii. Requests under sections (i) and (ii) shall be specific and include citations to ordinances, standards, or specifications that require the modifications to plans, and shall be indexed by the Public Works Director and provided to the applicant;
 - iv. Except for a modification or correction necessary to protect public health and safety or to enforce state or federal law, and unless a change or correction is necessitated by the applicant's adjustment to a plan set or an update to a phasing plan that adjusts the infrastructure needed for the specific development, a change or correction not addressed or referenced in a City's plan review is waived.
 - b. No later than 20 business days after the City has returned requested modifications or additions to the applicant, the applicant shall provide to the City:
 - i. Revised subdivision improvement plans;
 - ii. A written explanation in response to the City's review comments, identifying and explaining the applicant's revisions and reasons for declining to make revisions, if any;
 - iii. The applicant's written explanation shall be comprehensive and specific, including citations to applicable standards and ordinances for the design and an index of revisions or additions for each required correction;
 - iv. If an applicant fails to address a review comment in the response, the review cycle is not complete and the subsequent review cycle may not begin until all comments are addressed;
 - v. If an applicant does not submit a revised plan within 20 business days after the municipality requires a modification or correction, the municipality shall have an additional 20 business days to respond to the plans.
 - c. After the applicant has responded to the final review cycle, and the applicant has complied with each modification requested in the City's previous review cycle, the City's previous review cycle, the City may not require additional revisions if the applicant has not materially changed the plan, other than changes that were in response to requested modifications or corrections.
 - d. If a final subdivision application complies with the requirements of applicable City ordinances, Utah Code Title 10, Chapter 9a, as amended, and the preliminary subdivision approval, the City shall approve the final subdivision application.
- 2. Subdivisions not consisting of single family homes, townhomes or duplexes: The Joint Utility Committee shall review and redline the completed plans
 - a. When redlines are completed the Public Works Director shall prepare a summary of needed changes and return redlined plans to the applicant.
 - b. Applicant shall then submit corrected construction drawings addressing all redlined items to the City Engineer for review and verification that all redlines have been addressed.
 - c. Applicant shall then submit three copies of the corrected construction drawings to the City Engineer for possible signature. After the City Engineer signs, applicant must

obtain all required signatures and return signed plans to Public Works Director for final signature

3. The process laid out in subsection (1) of this section for subdivisions consisting of single family homes, townhomes, or duplexes shall constitute one review cycle. No more than four review cycles may be required, except as otherwise provided herein.
 4. Any dispute involving the review of subdivisions consisting of single family homes, townhomes, or duplexes if, on the fourth or final review, the City fails to respond within 20 business days, the City shall, upon request of the property owner, and within 10 business days after the day on which the request is received:
 - a. For a dispute arising from the subdivision improvement plans, assemble an appeal panel in accordance with Utah State Code 10-9a-508(5)(d) to review and approve or deny the final revised set of plans; or
 - b. For a dispute arising from the subdivision ordinance review, advise the applicant, in writing, of the deficiency in the application and of the right to appeal the determination to the City Appeals Board pursuant to section 10-7-19 of this Code.
 5. If an applicant makes a material change to a plan set, the City Engineer has the discretion to restart the review process of the final plat application, but only with respect to the portion of the plan set that the material change substantially affects.
- C. Once the final plat approval staff has granted approval of a final plat and a bond or other financial security is in place in accordance with section 10-39-13 of this chapter, the subdivider may schedule a preconstruction meeting with the City Public Works Department. Upon receipt of written notice to proceed from City, construction of the subdivision may proceed. No construction shall be permitted prior to receipt of written notice to proceed.

Sec. 10-39-10. Final plat requirements.

A. *Required information.* The final plat shall show:

1. The name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office, as approved by the Planning Commission.
2. The boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for another public use, and whether any such area is reserved or proposed for dedication for a public purpose.
3. The lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage of all parcels, units, lots, and the length and width of the blocks and lots intended for sale.
4. Every existing right-of-way and easement grant of record. Where the same is granted to a specific entity, that entity must be clearly identified.
5. True angles and distances to the nearest established street lines or official monument, which shall be accurately described on the plat and shown by appropriate symbols.
6. All street centerline data must be shown, together with its relationship to the property lines, corners, etc.
7. The accurate location of all monuments shall be shown on the plat, and shall be identified, including all United States, state, county or other official monuments.

8. The dedication to the public of all streets and highways included in the proposed subdivision (except approved private streets).
 9. Street monuments to be installed by the subdivider in accordance with the requirements of the City standards. Locations of said monuments shall be approved by the City Engineer and indicated on the subdivider's plat by the appropriate symbols.
 10. Accurate outlines and legal descriptions of any areas to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed or covenant for common uses by all property owners.
 11. Where it is proposed that streets be constructed on property controlled by a public agency or utility company, approval for the location, improvement and maintenance of such streets shall be obtained from the public agency or utility company and entered on the final plat in a form approved by the City Attorney.
 12. The parent parcel number, as shown on the records of the Washington County Recorder.
- B. *Required forms and certificates.* In addition the final plat shall contain the standard forms for the following:
1. A registered professional land surveyor's signed certificate of survey, together with a statement that:
 - a. The surveyor holds a license in accordance with Utah Code Annotated title 58, chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - b. The surveyor has completed a survey of the property described on the plat in accordance with Utah Code Annotated section 17-23-17 and has verified all measurements; and
 - c. Has placed monuments as represented on the plat.
 2. The owner's certificate of dedication of all streets, roads, rights-of-way or other parcels intended for the use and benefit of the general public.
 3. Mortgagee or other lienholder's consent to record, if applicable.
 4. A notary public's acknowledgment of the signature of the mortgagee or each owner signing the plat.
 5. Certificate of approval of Ash Creek special service district.
 6. A note stating as follows: Hurricane City operates a municipal culinary water system with limited water supply. Approval of a plat by Hurricane City does not guarantee that sufficient water will be available to serve lots depicted on any plat. Any land use applicant may be required by Hurricane City to provide a guarantee of water availability. If there is any approval without a water guarantee, the applicant assumes the entire risk of water availability for a platted lot.
 7. Certificate of approval and acceptance by the City as evidenced by the signature of the Mayor.
 8. Certificate of approval of the City Engineer.
 9. Certificate of approval as to form executed by the City Attorney.
 10. A one and one-half inch by five inch space in the lower right hand corner of the drawing for the use of the county recorder.
 11. Certificate of approval of the county treasurer.
- C. *Other information required.* The following information or documentation shall be submitted with the final plat or prior to recordation:
1. A sworn statement or title report stating that all taxes or special assessments payable on all property within the limits of the subdivision are paid in full.
 2. An original copy for staff review of the proposed deed restrictions or CC&Rs in proposed final form with signature lines for all owners of any interest in the subdivision who would sign the final

subdivision plat must be submitted with final plat application. After being approved by staff this document shall be signed, acknowledged by a notary public, and recorded in the office of the county recorder prior to or concurrently with the final plat.

3. An up-to-date title or subdivision report for the property being subdivided. Applicant is responsible to ensure the final plat addresses and accounts for liens, easements, and other encumbrances on the property being subdivided.
4. Mylar of approved final plat submitted and reviewed for substantial conformance with paper final plat.
5. Applicant shall be responsible to provide any additional information requested by the county recorder, including electronic versions of mylars.

D. *Requirements for recordation.*

1. Final plat approval.
2. Bond or other financial security in place.
3. Final title or subdivision report prepared and submitted to the City Attorney with an effective date within 30 days of the date the mylar is recorded.
4. Proof of satisfaction of payment of any water impact fee due Washington County Water Conservancy District, if applicable.
5. For property to be dedicated to the City for streets, roads, rights-of-ways, or other parcels intended for the use and benefit of the general public, free and clear title to the property, unless the encumbrance is an easement the acceptance of which will not adversely affect the public. Provided, however, that appropriate mortgagee or other lienholders' consent to record the final subdivision plat shall be adequate for purposes of this section to address liens recorded against the property.
6. All signatures must be on the mylar, including property owners of record according to the title report, City officials and Ash Creek special service district superintendent. The City Attorney shall be the last signer of the mylar just prior to recordation.
7. Preliminary acceptance by City of all public and private improvements as shown on approved construction drawings.
8. If submitted mylar shows material changes from the approved paper final subdivision plat, applicant shall submit an application for an amended plat and get approval of the amended plat before recordation will be permitted to occur.

- E. *Recordation of plat.* Applicant shall be responsible to coordinate with the City Attorney for the recording of the final plat and for the payment of any recording fees. Applicant shall be responsible to ensure that, after the City Engineer signs a final subdivision plat mylar, the remaining conditions to qualify the mylar for recording are accomplished and the mylar is recorded with the county recorder within one year of the date of the City Engineer's signature. Failure to record the final plat within one year of the date of final signature by the City Engineer shall result in revocation of the final plat. When a final plat is revoked, a new preliminary plat must be approved before applying for new final plat approval.

Sec. 10-39-11. Subdivision streets and fencing.

A. *Relation to adjoining street systems.*

1. The arrangements of streets in new subdivisions shall make provision for the continuation of the existing streets to adjoining areas insofar as such may be deemed necessary by the Planning Commission for public requirements. New streets within subdivisions shall not preclude future access to adjoining properties.

2. Standard residential streets shall approach the arterial or collector streets at an angle of not less than 80 degrees.
3. Except as otherwise provided elsewhere in this Code, all subdivision streets and roadways shall be constructed and installed in accordance with the City roadway construction standards.

B. *Fencing.*

1. *Where required.* A solid masonry, chainlink or other nonclimbable 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 nonaccess 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.
2. *Prevent nuisance or hazard.* The Planning Commission may also require the construction or installation of a fence in any subdivision where the Planning Commission determines that the absence of a fence may create a nuisance or hazard to the welfare of the residents of the subdivision or the adjoining property.
3. *Agricultural fencing.* Unless otherwise waived by affected agricultural property owners, fencing abutting agricultural property shall be required of subdivider. Fencing shall meet or exceed the standard Utah Department of Transportation ("UDOT") Right-of-Way Fencing and Gates as described in UDOT's then-applicable Standard Specifications for Road and Bridge Construction, consisting of wire mesh and two strands of barbed wire. The affected agricultural property owner shall have the option to pay the additional cost to install a fence beyond this minimum standard. The fence, design, and materials shall be approved with the construction drawings for the subdivision together with other subdivision improvements.

Sec. 10-39-12. (Reserved)

Sec. 10-39-13. Guarantee of completion of improvements; form of surety; release of funds.

Subdivider shall guarantee improvements in accordance with the following:

- A. *Completion of improvements before recordation.* If subdivider desires to construct improvements as shown on approved construction drawings prior to recordation:
 1. Recordation of the plat shall not occur until the improvements required in connection with the subdivision have been completed and conditionally accepted.
 2. Subdivider shall provide guarantee of conditionally accepted improvements in a form acceptable to the City as shown in subsection C of this section in the following amount:
 - a. Ten percent of the total cost of all the required improvements shall be retained by the City during the 12-month (24-month if applicable) warranty period.
- B. *Recordation before completion of improvements.* If the subdivider desires to have a plat recorded prior to construction of improvements subdivider shall guarantee completion, within two years from the date of final plat approval by the City Council, of installation and construction of the required improvements in compliance with all City standards.
- C. *Form of surety.* In order to guarantee completion of improvements, subdivider shall provide one of the following types of sureties or guarantees:
 1. *Escrow.* The subdivider shall deposit with any insurance company, bank, or savings and loan institution in an escrow account an amount of money equal to at least 115 percent of the

estimated costs of the improvements not constructed or installed by the subdivider plus ten percent of the cost of all the required improvements of the subdivision as a guarantee amount, as determined by the City Engineer. The escrow agreement shall be subject to approval by the City Attorney and shall be signed by the subdivider, the City, and the escrow holder, and shall contain substantially the following language:

AGREEMENT

The undersigned hereby promises and warrants that it has on deposit in an escrow account for the benefit of Hurricane City Corporation, the sum of _____ (\$_____), which represents at least one hundred fifteen percent (115%) of the costs of the engineer's estimated costs for improvements not constructed or installed by the subdivider plus ten percent (10%) of the cost of improvements of the _____ subdivision.

The undersigned hereby agrees that the foregoing sum of money shall be used exclusively for the purpose of paying for the costs of materials, construction, and installation of the improvements required by the Hurricane City Subdivision Chapter. The undersigned further agrees that the money held in an escrow account shall be paid out to the contractors installing and constructing the required improvements only upon approval of the City. The subdivider shall not withdraw from the escrow account any amount in excess of 100% of the estimated cost of the improvements, but shall pay from other sources any costs for such improvements which exceed the engineers estimate approved by the City.

After all improvements are made, completed and preliminarily accepted by the City, a sum equal to 10% of the estimated costs of improvements shall remain with the escrow holder for a period of 12 months as a warranty that all improvements are installed and inspected to City specifications, and that all defects occurring within the first 12 months (24 months if applicable) are corrected and approved by the City.

If, after 12 months (24 months if applicable), all or any part of the required improvements are not installed, constructed, and maintained according to the standards required in the Hurricane City Subdivision Ordinance, Hurricane City shall notify in writing the subdivider and escrow holder of the defects and shall make demand on the subdivider that the defects be corrected. If the defects are not corrected within 30 days, Hurricane City may correct the defects and charge to the escrow holder the costs of correcting the defects.

The escrow holder shall, on receiving reasonable proof from Hurricane City of the defect and that Hurricane City has incurred the cost of correcting the defect, pay to Hurricane City from the escrow account the cost of correcting the defect, and the escrow holder shall be held harmless by the parties by reason of payment to Hurricane City.

If, 12 months (24 months if applicable) after preliminary acceptance of the improvements required by City's standards and specifications and shown on approved construction drawings, the required improvements remain substantially free from latent defects, Hurricane City shall certify such fact to the escrow holder, and the escrow holder shall release to the subdivider any money still held in the escrow account, and the escrow holder shall be discharged of its obligations to Hurricane City.

(Authorized Signature)

The escrow agreement may contain such additional provisions as the parties deem necessary.

2. *Irrevocable letter of credit.* The subdivider shall file with the City an irrevocable letter of credit from a duly chartered state or national bank or savings and loan institution, which letter shall contain provisions substantially similar to that required in the escrow agreement.

The form of the irrevocable letter of credit shall be substantially as follows:

Name of Bank:

Address:

IRREVOCABLE LETTER OF CREDIT

To: Hurricane City Corporation

Date:

Letter of Credit No.:

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor for the account of _____, _____, (insert name of subdivider, subdivider's address) up to the aggregate amount of _____ (\$_____) (insert amount equal to one hundred fifteen percent, i.e., 115% of the estimated costs of the improvements not constructed or installed by the subdivider plus ten percent [10%] of the cost of all improvements of the subdivision as determined by the Engineer) drawn at sight on _____, _____, (insert name of bank, address of bank), accompanied by a statement signed by an officer of Hurricane City Corporation as follows: "We certify that the improvements related to the _____ (insert name of subdivision) have not been completed and the defects corrected in accordance with city ordinances and that this drawing represents the amount necessary to complete those improvements."

We hereby agree with drawers, endorsers and bona fide holders that all drafts under and in compliance with the terms of this credit will be duly honored upon presentation and delivery of documents as specified to the drawee or drawn and presented at our bank for negotiation on or before _____ (insert completion date plus 90 days). This Irrevocable Letter of Credit automatically renews for a one year term at the end of every term unless the Authorized Bank Officer provides Hurricane City written notice of termination thirty (30) days prior to the end of the term.

Very Truly Yours,

Authorized Bank Officer

3. *Other guarantee.* Such other financial guarantee that may be acceptable to the City Council.

D. *Release of funds.* As the required improvements are satisfactorily installed and have been inspected by the City, funds which have been placed in escrow for those improvements will be authorized to be released for payment of those improvements. Escrow holder is authorized to release funds from this account only after receiving a written release from City. The City is not responsible to determine the party to be paid.

After all required improvements have been installed, the subdivider shall notify the City and request that the subdivision be granted preliminary acceptance and begin the warranty period. The subdivision will then be inspected by City, and if all improvements have been completed in accordance with City ordinances and specifications, as built plans have been delivered to the Public Works Department, and a final grading plan has been submitted, the City will grant preliminary acceptance. The subdivision will then begin the 12-month (24-month if applicable) warranty period. Ten percent of the total cost of all the required improvements, as specified above, shall be retained by the City during this warranty period.

All funds in escrow surplus to the warranty amount may then be released by the City.

The purpose of retaining the ten percent warranty amount is to guarantee that the improvements have been installed correctly and that they function properly. If any improvements have not been installed correctly or fail to function properly, and the subdivider fails to correct the deficiencies within 30 days of notification thereof, then upon written notice by the City, escrow shall pay over to the City the amount necessary to complete, repair, or replace said improvements.

In the event the costs of completing, repairing, or replacing the unsatisfactory improvements exceed the amount remaining in the escrow account, the subdivider shall, within ten days of notice thereof, pay the excess amount to the City and shall also cause to restore the escrow account or irrevocable letter of credit to the prescribed ten percent warranty amount. The City shall not issue any building permits for the subdivision until the above referenced excess costs have been paid to the City and the warranty amount (ten percent of the total cost of improvements) has been restored.

Sec. 10-39-14. Warranty of completed improvements.

Upon completion of construction and installation of all required improvements, subdivider shall warrant that said improvements shall be and shall remain free from defects in material and workmanship for a period of 12 months after the date of preliminary acceptance by City, unless said warranty period is extended for a period of up to 24 months by the City Council upon a finding that a warranty period of 12 months is inadequate to protect the public health, safety and welfare for any of the following reasons:

- A. The prior poor or substandard performance by the subdivider or contractor responsible for construction and installation of the improvements;
- B. The presence or existence of unstable soil conditions within the subdivision or adjacent area;
- C. Extreme fluctuations in climatic conditions that would or could reasonably prevent the discovery of substandard or defective performance within a 12-month period; or
- D. Any other exceptional reason or circumstances which in good faith is determined by the City Council to require a longer warranty period.

The subdivider shall be responsible to make all repairs to and maintain the improvements and every part thereof in good working condition during the guarantee period without cost to the City.

Sec. 10-39-15. Enforcement and permits.

- A. In order to enforce compliance with this chapter, the Building Official shall not issue any permit for the proposed erection, construction, reconstruction, alteration of any structure, or use of any land until the provisions of this chapter have been met. No City officer or employee shall issue any permit or license for the construction or installation of any building or structure or use on any subdivision lot until the following conditions have been met:
 - 1. Such subdivision plat shall have been approved and recorded in the office of the county recorder.
 - 2. Infrastructure improvements shown on approved construction plans for the subdivision:
 - a. Have been constructed and installed and preliminarily accepted; or
 - b. The City has received and accepted an improvement completion assurance for the subdivision in accordance with this chapter, and the following improvements have been constructed, installed, tested and accepted in accordance with the requirements of the building or fire code:
 - (1) A road base of untreated, compacted and graded gravel;
 - (2) Sewer, storm drains and storm drain facilities;
 - (3) Curb and gutter unless otherwise not required by this Code;
 - (4) Water system, including water lines and hydrants; and
 - (5) Power lines.
- B. All required improvements must be complete within 12 months of notice to proceed.
- C. The City may call upon the improvement completion assurance filed with the City for all improvements not completed within 12 months of the notice to proceed or when the first building within the subdivision seeks an occupancy permit, whichever is sooner.
- D. It shall be prohibited for anyone to start construction on any building within a subdivision until they have fulfilled the requirements of this chapter.
- E. Any license or permit issued in conflict with this chapter shall be null and void.
- F. Notwithstanding the provisions of subsection A above, a building permit may be issued for:

1. A single model home in a subdivision, provided that a certificate of occupancy shall not be granted and the model home may not be used or occupied for any reason until the subdivision plat has been approved and recorded.
2. A model home complex within a master planned community with a planned development overlay upon approval by the City Council of an amendment to the development agreement stating the terms and conditions for issuance of the building permit.

Sec. 10-39-16. Plat amendments.

The procedure for consideration and approval of any addition, alteration, modification, or change to an approved plat shall be substantially the same as is required for initial plat approval unless the Zoning Administrator determines that such addition, alteration, modification, or other change does not constitute a significant change from the intent or effect of the approved plat.

Sec. 10-39-17. Fees.

The following fees are hereby established:

- A. *Preliminary plat application fee.* At the time of filing of the preliminary plat, the subdivider shall deposit with the City a nonrefundable fee made payable to Hurricane City. The City Council shall by resolution from time to time prescribe the amount of such fee, which shall be for the purpose of reimbursing the City for the expense of checking and reviewing such final subdivision plats.
- B. *Final plat application fee.* At the time of filing the final plat, the subdivider shall deposit with the City a nonrefundable fee made payable to Hurricane City. The City Council shall by resolution from time to time prescribe the amount of such fee, which shall be for the purpose of reimbursing the City for the expense of checking and reviewing such final subdivision plats, and inspecting subdivision improvements.
- C. *Habitat conservation fee.* Before plat is released for recordation, subdivider shall pay applicable per acre habitat conservation impact fee to City.
- D. *Recording fee.* At the time of recording the final plat, the subdivider shall be responsible for payment of the recording fee.

Sec. 10-39-18. Penalty; validity.

- A. *Penalty.* Any subdivider or other person who shall violate or fail to comply with any of the provisions for this chapter shall be guilty of a class B misdemeanor, and punished as provided by law upon conviction.
- B. *Validity.* If any section, subsection, sentence, clause, or phrase of this chapter is, for any reason, held to be invalid, such holding shall not affect the validity of the remaining portion of this chapter.



STAFF COMMENTS

Agenda Date:	1/4/2024
Application Number:	LUCA23-12
Type of Application:	Land Use Code Amendment
Action Type:	Legislative
Applicant:	Hurricane City
Agent:	
Request:	Amend Title 10 Chapter 39 with regards to Subdivisions

Discussion:

Utah State Senate Bill 174 sets new state standards for how cities must review and approve subdivisions. The state legislature has given cities until February 1, 2024 to implement these new standards, which are intended to simplify the subdivision process for single-family dwellings, two-family dwellings, and townhomes. The key highlights of this bill are:

- The process has been streamlined from three to two steps consisting of preliminary and final plat reviews, with construction drawings being required with the preliminary plat application and approved with the final plat. (Review of construction drawings is a separate and additional step under the current process.)
- The City Council will no longer be the land use authority that reviews and approves, or denies, subdivision applications. (It is proposed that the Planning Commission be the administrative land use authority for approval of subdivisions.)
- The City cannot require pre-application meetings, but applicants can request one. (Our current ordinance requires this, but it's not enforced.)
- Maximum 20 business days for review subdivision plans with a maximum of four review cycles.
- If a preliminary plat application complies with all applicable City ordinances and requirements, the Planning Commission must approve the preliminary plat application.

The Planning Commission heard this item on December 14, 2023 and recommended approval.

Recommendation: Staff recommends the City Council consider the revised ordinance, and any public comments received at the public hearing, and approve the land use code amendment to Title 10 Chapter 39 as outlined in the discussion above and as presented in the documents attached to the January 4, 2024 agenda packet.

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 10 CHAPTER 39 WITH REGARDS TO SUBDIVISIONS**

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 grading permits 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 39 be amended within Hurricane City Code to read as follows:

CHAPTER 39. SUBDIVISIONS

Sec. 10-39-1. General provisions.

- A. The underlying purpose and intent of this chapter is to promote the health, safety, convenience, and general welfare of the inhabitants of the City in the division or subdivision of land and related matters affected by each subdivision.
- B. Any proposed subdivision and its ultimate use shall be in the best interest of the public welfare and shall be in harmony with good neighborhood development of the area concerned, and the subdivider shall present evidence to this effect when requested to do so by the Planning Commission.
- C. In cases where unusual topographical or other exceptional conditions exist such as sensitive lands, collapsible soils or other conditions necessitating any exceptions from or additional requirements to this chapter, said exceptions or requirements may be set by the Planning Commission and/or the City Engineer.

Sec. 10-39-2. Scope.

- A. No person shall subdivide any tract of land which is wholly or in part within the City boundaries except in compliance with this chapter.
- B. No person shall sell or exchange, or offer to sell or exchange, any parcel of land which is a part of a subdivision of a larger tract of land, or offer for recording in the office of the county recorder any deed conveying such a parcel of land, or any interest therein, unless such subdivision has been created pursuant to and in accordance with the provisions of this chapter.

- C. All lots, plots, or tracts of land located within a subdivision shall be subject to this chapter regardless of whether or not the tract is owned by the subdivider or a subsequent purchaser, transferor, or holder of the land.
- D. The review cycle restrictions and requirements of this section do not apply to the review of subdivision applications affecting property within identified geological hazard areas, including land qualifying as sensitive lands within Title 10, Chapter 24 of this Code.

Sec. 10-39-3. Definitions.

The following words and phrases used in this chapter, in addition to those listed in chapter 3 of this title, shall have the respective meanings hereafter set forth, unless a different meaning clearly appears from the context:

Adjacent landowner means any property owner of record, according to the records of the county recorder, whose property adjoins or abuts property proposed for subdivision, or any portion thereof.

Affected entity means as stated in statute, a county, municipality, independent special district, local district, school district, interlocal cooperation entity, specified public utility, or the state department of transportation, if:

- A. The entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
- B. The entity has filed with the municipality a copy of the entity's general or long range plan; or
- C. The entity's boundaries or facilities are within one mile of land which is the subject of a general plan amendment or land use ordinance change.

Block means the land surrounded by streets and other rights-of-way other than an alley, or land which is designated as a block on any recorded subdivision plat.

Bona fide division or partition of land for agricultural purposes means the division of a parcel of land into two or more lots none of which is less than five acres in an area, and where no dedication of any street is required to serve any such lots or parcels of land so created.

City means Hurricane City, Utah.

City Council means the City Council of Hurricane City, Utah.

City Engineer means the City Engineer of Hurricane City, Utah, or a consulting engineering firm designated as the City Engineer by the City Council.

City Planner means the professional planner of the City, or person designated as such by the City Council.

Communications easement means an exterior easement for placement of facilities intended to be used in connection with the delivery of multichannel video programming services, cable services, information services, or telecommunications or telecommunications services.

Communications infrastructure means facilities planned to be used in connection with the delivery of multichannel video programming services, cable services, information services, telecommunications or telecommunications services, which term shall include, but not be limited to, conduit.

Construction drawings means *Subdivision improvements plans, as defined herein.*

County means Washington County, Utah.

Culinary Water Authority means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

Dedication means land set aside by an owner for any general and public uses.

Easement means that portion of a lot or lots reserved for present or future use by a person or agency other than the legal owner or owners of said property or properties. The easement may be for use under, on, or above said lot or lots.

Final plat means the final drawing of the subdivision and dedication prepared for filing of record with the county recorder and in compliance with all the requirements set forth in this chapter and adopted pursuant thereto.

General plan means a plan, labeled "General Plan of Hurricane City," including maps or reports or both, which has been approved by the City Council as required by law, or such plan as it may be amended from time to time.

Joint Utility Committee means the representatives of the City, Ash Creek special service district, and franchisee utility companies authorized to review and sign construction drawings.

Lot means a separately delineated parcel of real property having a number and designation shown on a recorded subdivision plat, or a contiguous quantity of real property defined in a deed by metes and bounds which has a separate property identification number according to the records of the county recorder and is not shown on a recorded subdivision plat.

Lot right-of-way means a strip of land of not less than 26 feet wide connecting a lot to a street for use as private access to that lot.

Official zoning map means a zoning map adopted by the City Council pursuant to the provisions of Utah Code Annotated section 10-9a-501, as amended.

Open space means designated land within the subdivision which shall always remain undeveloped, which shall be included in improved parks and recreational areas, or which shall remain all natural.

Person means any individual, corporation, partnership, limited liability company, or partnership, firm, or association of individuals, however styled or designated.

Planning Commission means the Hurricane City Planning Commission. The Planning Commission shall be the "administrative land use authority" as defined in Utah State Code 10-9a-604.1(1)(b) as amended.

Plat means a map or depiction of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, and streets, or other divisions and dedications.

Review Cycle means the occurrence of:

(i) the applicant's submittal of a complete subdivision land use application;
(ii) the City's review of that subdivision land use application;
(iii) the City's response to that subdivision land use application, in accordance with this section; and

(iv) the applicant's reply to the City's response that addresses each of the City's required modifications or requests for additional information.

Sanitary Sewer Authority means the Ash Creek special service district, a public entity with responsibility to review and approve the feasibility of sanitary sewer services or on site wastewater systems within the City.

Security means an escrow agreement, irrevocable letter of credit, or other security instrument given by the subdivider to ensure the proper installation of public improvements.

Street means a thoroughfare which has been dedicated or abandoned to the public and accepted by proper public authority, or a thoroughfare not less than 26 feet wide which has been made public by right of use and which affords the principal access to the abutting property.

Street, arterial means a street, existing or proposed, which serves or is intended to serve as a major trafficway, and is designated on the general plan as a controlled access highway, major street, parkway or other equivalent term to identify those streets comprising the basic structure of the street plan.

Street, collector means a street, existing or proposed, which is the main means of access to an arterial street system.

Street, cul-de-sac means a street which originates from a designated City street with no other outlet and forcing a radius turn area, not to exceed 660 feet in length without the written approval of the City Council, the Planning Commission and the Fire Chief.

Street, private means a right-of-way or easement in private ownership not dedicated or maintained as a public street.

Street, residential means a street, existing or proposed, which is supplementary to a collector street and which serves or is intended to serve local needs of a neighborhood.

Subdivider means any individual, firm, association, syndicate, copartnership, corporation, trust or other legal entity commencing proceedings under this chapter to effect a subdivision for himself or for another.

Subdivision:

A. Includes:

1. The division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat or other recorded instrument; and
2. Except as provided herein, divisions of land for all residential and nonresidential uses, including land used or to be used for commercial, agricultural and industrial purposes.

B. Does not include:

1. A bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land,

- if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;
2. A recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if no new lot is created and the adjustment does not violate applicable land use ordinances; or
 3. A recorded document executed by the owner of record, revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property, or joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances.

The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a "subdivision" as to the unsubdivided parcel of property or subject the unsubdivided parcel to the provisions of this chapter.

Subdivision improvement plans means the civil engineering plans associated with required infrastructure and municipally controlled utilities required for a subdivision.

Subdivision ordinance review means review by the City to verify that a subdivision land use application meets the criteria of the City's subdivision ordinances.

Subdivision plan review means a review of the applicant's subdivision improvements and other aspects of the subdivision land use application to verify that the application complies with City ordinances and applicable standards and specifications.

Sec. 10-39-4. Necessity of plat; exemption from plat requirements.

All subdivisions shall be required to prepare and receive approval of a preliminary and final plat in accordance with the provisions of this chapter, except as follows:

- A. A subdivision creating no more than one new lot may be approved with written approval by City staff without the necessity of preparing and filing a preliminary plat or final plat if:

The proposed subdivision:

1. Is not traversed by the mapped lines of a proposed street as shown in the general plan unless the City staff has approved the location and dedication of any public street, municipal utility easement, any other easement, or any other land for public purposes as the municipality's ordinance requires;
2. Has been approved by the culinary water authority and the sanitary sewer authority;
3. Is located in a zoned area; and
4. Conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance.

- B. 1. A lot or a parcel resulting from a division of agricultural land is exempt from the plat requirements of this chapter if the lot or parcel:
 - a. Qualifies as land in agricultural use under Section 59-2-502 of the Utah Code, as amended;
 - b. Meets the minimum size requirement of applicable land use ordinances; and
 - c. Is not used and will not be used for any nonagricultural purpose.
- 2. The boundaries of each lot or parcel exempted under Subsection (A) and (B) of this Section shall be graphically illustrated on a record of survey map that, after receiving the same approvals as are required for a plat under Section 10-9a-604 of the Utah Code, as amended, shall be recorded with the Washington County Recorder.
- 3. If a lot or parcel exempted under Subsection (B)(1) of this Section is used for a nonagricultural purpose, the municipality may require the lot or parcel to comply with the requirements of Section 10-9a-603 of the Utah Code, as amended, and the subdivision requirements of this Chapter.
- C. 1. Documents recorded in the Washington County Recorder's Office that divide property by a metes and bounds description do not create an approved subdivision allowed by this Chapter unless the written approval required by Subsection (A) of this Section is attached to the document.
- 2. The creation of a lot under Subsection (A) of this section shall not be approved until a plan for providing utilities and other required improvements to the proposed lot has been reviewed and signed by members of the Joint Utility Committee. No building permit will be issued for said lot until the approved improvements are constructed and accepted.
- D. Lots or parcels created in violation of this section shall not be issued a building permit until the violation is corrected.

Sec. 10-39-5. Notice requirements.

- A. Notice of proposal to vacate some or all of a public street, right-of-way, or easement. The legislative body shall hold a public hearing and give notice of the date, place, and time of the hearing at least ten days before the public hearing by:
 - 1. Mailing notice to the record owner of each parcel that is accessed by the public street, right-of-way, or easement;
 - 2. Mailing notice to each affected entity;
 - 3. Posting notice on or near the street, right-of-way, or easement in a manner that is calculated to alert the public;
 - 4. Published on the City's official website until the public hearing concludes; and
 - 5. Publishing notice on the state public notice website.

- B. Notice for an amendment to a subdivision. For an amendment to a subdivision, the City shall provide notice of the date, time, and place of at least one public meeting.
 - 1. At least ten calendar days before the public meeting, the notice shall be:
 - a. Mailed to the record owner of each parcel directly adjacent of the proposed amendment; or
 - b. Posted on the property.
 - (1) The applicant must post a sign at least ten days before the public meeting in a visible location, that is sufficient in size, durable, and legible by passers-by.

Sec. 10-39-6. Preliminary plat process.

- A. Designation of Administrative Land Use Authority. The Planning Commission is designated as the Administrative Land Use Authority that reviews and approves or denies preliminary subdivision applications; provided, however, that the review and approval of subdivisions creating no more than one new lot under Section 10-39-4 of this Chapter is governed by that Section.
- B. Pre-Application Meetings.
 - 1. If an applicant requests a pre-application meeting, the City shall, within 15 business days after the request, schedule the meeting to review the concept plan and give initial feedback.
 - 2. At the pre-application meeting, the municipal staff shall provide or have available on the municipal website the following:
 - (i) copies of applicable land use regulations;
 - (ii) a complete list of standards required for the project;
 - (iii) preliminary and final application checklists; and
 - (iv) feedback on the concept plan.
- C. Review of Preliminary Plat Application.
 - 1. Preliminary plat applications shall comply with all requirements of this Title and Utah Code Title 10, Chapter 9a, as amended.
 - 2. The applicant shall (1) obtain and complete a preliminary plat application form and application checklist and (2) have the proposed plat and subdivision improvement plans prepared by a licensed engineer or surveyor.
 - 3. The applicant shall submit the completed application, proposed plat, proposed subdivision improvement plans, subdivider's agreement set out in section 10-39-12, and the required fees to the Planning Department.
 - 4. Planning Department staff shall review the submitted documents for completeness. Any proposed preliminary plat and subdivision improvement plan that, on its face, fails to comply with an applicable zoning ordinance or development agreement, shall render the application incomplete, and the applicant shall be notified of the incomplete application.
 - 5. Upon the Planning Department's determination of a complete application, the proposed preliminary plat and subdivision improvement plans shall be submitted for review to the Joint Utility Committee and appropriate City departments.

6. No later than 15 business days after the day on which an applicant submits a complete preliminary subdivision land use application for a residential subdivision for single-family dwellings, two-family dwellings, or townhomes, the Joint Utility Committee and appropriate City departments shall complete the initial review of the application, including subdivision improvement plans.
 7. Upon the completion of the initial review of the application, the Zoning Administrator shall place the application on the next available Planning Commission agenda for a public hearing and consideration by the Planning Commission.
 8. Applicant or Applicant's authorized representative shall appear at the scheduled meeting before the Planning Commission to present the proposed preliminary plat and answer questions.
 9. The Planning Commission may approve, deny, or approve with conditions a proposed preliminary subdivision plat.
 10. If a preliminary subdivision plat application complies with applicable municipal ordinances and the requirements of Utah Code Title 10, Chapter 9a, as amended, the Planning Commission shall approve the preliminary plat application.
- D. Approval of the preliminary subdivision plat by the Planning Commission shall authorize the subdivider to proceed with the preparation and review of a final subdivision plat application; provided, however, that an applicant may submit a final subdivision plat application to be processed concurrently with a preliminary subdivision application.
- E. After preliminary subdivision plat approval from the Planning Commission, a complete application for final subdivision plat approval must be submitted within one year of the preliminary plat approval date or the preliminary subdivision plat approval shall expire. The Planning Commission may authorize a onetime extension not to exceed one year, provided that a written request for extension is received by the City before the one year time period has expired.
- F. Approval of a preliminary subdivision plat by the Planning Commission shall not constitute approval of the subdivision improvement plans

Sec. 10-39-7. Preliminary plat requirements.

The preliminary plat shall include or be accompanied by the following:

- A. *Description.* In a title block located in the lower right hand corner of the sheet the following is required:
1. The proposed name of the subdivision.
 2. The location of the subdivision, including the address and the section, township and range.
 3. The names and addresses of the owner or subdivider if other than the owner.
 4. Date of preparation and north point.
 5. Scale shall be of sufficient size to adequately describe in legible form all required elements.
- B. *Existing conditions.* The preliminary plat shall show:

1. The location of the nearest monument.
 2. The boundary of the proposed subdivision and the acreage included.
 3. All property contiguous to the property to be subdivided and under the control of the subdivider, even though only a portion is being subdivided. (Where the plat submitted covers only a part of the subdivider's tract, a sketch of the prospective street system of the unplatted parts of the subdivider's land shall be submitted, and the street system of the part submitted shall be considered in light of existing master street plan or other commission studies.) And all property contiguous to the proposed subdivision.
 4. The location, width and names/numbers of all existing streets within 200 feet of the subdivision and of all prior streets or other public ways, easements, utility rights-of-way, parks and other public open spaces, within and adjacent to the tract.
 5. The location of all wells and springs or seeps, proposed, active and abandoned, and of all reservoirs or ponds within the tract and at a distance of at least 100 feet beyond the tract boundaries.
 6. Existing ditches, canals, natural drainage channels and open waterways and proposed realignments.
 7. Contours at vertical intervals not greater than five feet.
 8. Identification of potential geotechnical constraints on the project site (such as expansive rock and soil, collapsible soil, shallow bedrock and caliche, gypsiferous rock and soil, potentially unstable rock or soil units including fault lines, shallow ground water, and windblown sand) and recommendations for their mitigation.
- C. *Proposed plan.* The subdivision plans shall show:
1. The layout of streets, showing location, widths and other dimensions of proposed streets, crosswalks, alleys and easements.
 2. The layout, numbers and typical dimensions of lots. Designation of buildable area is required for each lot.
 3. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.
 4. Easements for water, sewers, drainage, utilities, lines and other purposes.
 5. Street cross sections and street grades.
 6. A plan or method by which the subdivider proposes to handle the stormwater drainage for the subdivision.
 7. Approximate radius of all centerline curves on highways or streets.
 8. Each lot shall abut a street shown on the subdivision plat or on an existing publicly dedicated street.
 9. All remnants of lots below minimum size left over after subdividing of a larger tract shall be added to adjacent lots or common areas, rather than allowed to remain as unusable parcels.
 10. Where necessary, copies of any agreements with adjacent property owners relevant to the proposed subdivision shall be presented to the Planning Commission.

11. A letter from both the local sanitary sewer provider and culinary water provider indicating availability of service.
12. If the subdivision is to be built in phases, the plat shall show possible phasing lines.
13. A plan or method for providing nondiscriminatory access to the subdivision for purposes of placement of communications infrastructure, and for purposes of placement of utility infrastructure.
14. Complete subdivision improvement plans shall be reviewed by the Joint Utility Committee.

Sec. 10-39-8. Subdivision Improvement Plans.

As part of a complete preliminary plat application, the applicant shall have subdivision improvement plans prepared by a licensed engineer for all on site and required off site improvements in accordance with the following:

- A. Final plan and profile must be prepared in accordance with:
 1. Current Hurricane City land use ordinances;
 2. Current Hurricane City standards and specifications;
 3. Hurricane City drainage manual;
 4. Ash Creek special service district construction standards;
 5. Hurricane City power standards and specifications;
 6. Applicable building code;
 7. Applicable fire code; and
 8. Dixie Escalante power standards and specifications, if applicable.
- B. Specific geotechnical recommendations for the design and construction of the proposed subdivision shall include the following if applicable:
 1. A general assessment of the requirements needed to develop on the site.
 2. Site preparation and grading and the suitability of on site soils for use as structural fill.
 3. Stable cut and fill slopes including recommendations concerning the effects of material removal and the introduction of water.
 4. Recommendations for foundation type and design criteria, including, but not limited to, bearing capacity of natural or compacted soils, provisions to mitigate the effects of expansive, compressible, or collapsible soils, differential settlement and varying soil strength, and the effects of adjacent loads.
 5. Anticipated total and differential settlement.
 6. Special design and construction considerations, as necessary, such as the excavation and replacement of unsuitable materials, excavation difficulties, stabilization, or special foundation provisions for problem soil conditions.
 7. Design criteria for restrained and unrestrained retaining or rockery wall.
 8. Moisture protection and surface drainage.

- C. Subdivision improvement plans are valid for 24 months after final signature. Subdivision improvement plans signed more than 24 months prior to construction of improvements shall be expired. For a project where construction has started and all improvements shown on the plan will be constructed, the Public Works Director may permit construction to continue. Subdivision improvement plans showing multiple phases of a project are valid only for those improvements constructed within the first 24 months of approval. New approvals must be obtained and any new standards shall apply for future phases or delayed projects.

Sec. 10-39-9. Final plat and subdivision improvement plan application and approval process.

- A. Once the preliminary plat is approved, applicant shall submit a complete final plat application, application checklist, subdivision improvement plans, an electronic copy of the final plat, required fee, and any other required documents to the Planning Department.
- B. Planning Department staff shall review the submitted documents for completeness. Upon the Planning Department's determination of a complete application, the proposed final plat and subdivision improvement plans shall be submitted for review to the Joint Utility Committee and appropriate City departments.
 - 1. Subdivisions of single family homes, duplexes, and townhomes: No later than 20 business days after the day on which the applicant submits a complete final plat application, the City shall complete a review of the applicant's final subdivision land use application, including subdivision plan reviews.
 - a. In reviewing a subdivision land use application, any member of the Joint Utility Committee or applicable City department may require:
 - i. additional information relating to an applicant's plans to ensure compliance with municipal ordinances and approved standards and specifications for construction of public improvements; and
 - ii. modifications to plans that do not meet current ordinances, applicable standards or specifications, or do not contain complete information;
 - iii. Requests under sections (i) and (ii) shall be specific and include citations to ordinances, standards, or specifications that require the modifications to plans, and shall be indexed by the Public Works Director and provided to the applicant;
 - iv. Except for a modification or correction necessary to protect public health and safety or to enforce state or federal law, and unless a change or correction is necessitated by the applicant's adjustment to a plan set or an update to a phasing plan that adjusts the infrastructure needed for the specific development, a change or correction not addressed or referenced in a City's plan review is waived.

- b. No later than 20 business days after the City has returned requested modifications or additions to the applicant, the applicant shall provide to the City:
 - i. Revised subdivision improvement plans;
 - ii. A written explanation in response to the City's review comments, identifying and explaining the applicant's revisions and reasons for declining to make revisions, if any;
 - iii. The applicant's written explanation shall be comprehensive and specific, including citations to applicable standards and ordinances for the design and an index of revisions or additions for each required correction;
 - iv. If an applicant fails to address a review comment in the response, the review cycle is not complete and the subsequent review cycle may not begin until all comments are addressed;
 - v. If an applicant does not submit a revised plan within 20 business days after the municipality requires a modification or correction, the municipality shall have an additional 20 business days to respond to the plans.
 - c. After the applicant has responded to the final review cycle, and the applicant has complied with each modification requested in the City's previous review cycle, the City's previous review cycle, the City may not require additional revisions if the applicant has not materially changed the plan, other than changes that were in response to requested modifications or corrections.
 - d. If a final subdivision application complies with the requirements of applicable City ordinances, Utah Code Title 10, Chapter 9a, as amended, and the preliminary subdivision approval, the City shall approve the final subdivision application.
2. Subdivisions not consisting of single family homes, townhomes or duplexes:
The Joint Utility Committee shall review and redline the completed plans
- a. When redlines are completed the Public Works Director shall prepare a summary of needed changes and return redlined plans to the applicant.
 - b. Applicant shall then submit corrected construction drawings addressing all redlined items to the City Engineer for review and verification that all redlines have been addressed.
 - c. Applicant shall then submit three copies of the corrected construction drawings to the City Engineer for possible signature. After the City Engineer signs, applicant must obtain all required signatures and return signed plans to Public Works Director for final signature

3. The process laid out in subsection (1) of this section for subdivisions consisting of single family homes, townhomes, or duplexes shall constitute one review cycle. No more than four review cycles may be required, except as otherwise provided herein.
 4. Any dispute involving the review of subdivisions consisting of single family homes, townhomes, or duplexes if, on the fourth or final review, the City fails to respond within 20 business days, the City shall, upon request of the property owner, and within 10 business days after the day on which the request is received:
 - a. For a dispute arising from the subdivision improvement plans, assemble an appeal panel in accordance with Utah State Code 10-9a-508(5)(d) to review and approve or deny the final revised set of plans; or
 - b. For a dispute arising from the subdivision ordinance review, advise the applicant, in writing, of the deficiency in the application and of the right to appeal the determination to the City Appeals Board pursuant to section 10-7-19 of this Code.
 5. If an applicant makes a material change to a plan set, the City Engineer has the discretion to restart the review process of the final plat application, but only with respect to the portion of the plan set that the material change substantially affects.
- C. Once the final plat approval staff has granted approval of a final plat and a bond or other financial security is in place in accordance with section 10-39-13 of this chapter, the subdivider may schedule a preconstruction meeting with the City Public Works Department. Upon receipt of written notice to proceed from City, construction of the subdivision may proceed. No construction shall be permitted prior to receipt of written notice to proceed.

Sec. 10-39-10. Final plat requirements.

A. *Required information.* The final plat shall show:

1. The name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office, as approved by the Planning Commission.
2. The boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for another public use, and whether any such area is reserved or proposed for dedication for a public purpose.
3. The lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage of all parcels, units, lots, and the length and width of the blocks and lots intended for sale.
4. Every existing right-of-way and easement grant of record. Where the same is granted to a specific entity, that entity must be clearly identified.

5. True angles and distances to the nearest established street lines or official monument, which shall be accurately described on the plat and shown by appropriate symbols.
 6. All street centerline data must be shown, together with its relationship to the property lines, corners, etc.
 7. The accurate location of all monuments shall be shown on the plat, and shall be identified, including all United States, state, county or other official monuments.
 8. The dedication to the public of all streets and highways included in the proposed subdivision (except approved private streets).
 9. Street monuments to be installed by the subdivider in accordance with the requirements of the City standards. Locations of said monuments shall be approved by the City Engineer and indicated on the subdivider's plat by the appropriate symbols.
 10. Accurate outlines and legal descriptions of any areas to be dedicated or reserved for public use, with the purposes indicated thereon, and of any area to be reserved by deed or covenant for common uses by all property owners.
 11. Where it is proposed that streets be constructed on property controlled by a public agency or utility company, approval for the location, improvement and maintenance of such streets shall be obtained from the public agency or utility company and entered on the final plat in a form approved by the City Attorney.
 12. The parent parcel number, as shown on the records of the Washington County Recorder.
- B. *Required forms and certificates.* In addition the final plat shall contain the standard forms for the following:
1. A registered professional land surveyor's signed certificate of survey, together with a statement that:
 - a. The surveyor holds a license in accordance with Utah Code Annotated title 58, chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - b. The surveyor has completed a survey of the property described on the plat in accordance with Utah Code Annotated section 17-23-17 and has verified all measurements; and
 - c. Has placed monuments as represented on the plat.
 2. The owner's certificate of dedication of all streets, roads, rights-of-way or other parcels intended for the use and benefit of the general public.
 3. Mortgagee or other lienholder's consent to record, if applicable.
 4. A notary public's acknowledgment of the signature of the mortgagee or each owner signing the plat.
 5. Certificate of approval of Ash Creek special service district.
 6. A note stating as follows: Hurricane City operates a municipal culinary water system with limited water supply. Approval of a plat by Hurricane City does not guarantee that sufficient water will be available to serve lots depicted on any plat. Any land use

applicant may be required by Hurricane City to provide a guarantee of water availability. If there is any approval without a water guarantee, the applicant assumes the entire risk of water availability for a platted lot.

7. Certificate of approval and acceptance by the City as evidenced by the signature of the Mayor.
8. Certificate of approval of the City Engineer.
9. Certificate of approval as to form executed by the City Attorney.
10. A one and one-half inch by five inch space in the lower right hand corner of the drawing for the use of the county recorder.
11. Certificate of approval of the county treasurer.

C. *Other information required.* The following information or documentation shall be submitted with the final plat or prior to recordation:

1. A sworn statement or title report stating that all taxes or special assessments payable on all property within the limits of the subdivision are paid in full.
2. An original copy for staff review of the proposed deed restrictions or CC&Rs in proposed final form with signature lines for all owners of any interest in the subdivision who would sign the final subdivision plat must be submitted with final plat application. After being approved by staff this document shall be signed, acknowledged by a notary public, and recorded in the office of the county recorder prior to or concurrently with the final plat.
3. An up-to-date title or subdivision report for the property being subdivided. Applicant is responsible to ensure the final plat addresses and accounts for liens, easements, and other encumbrances on the property being subdivided.
4. Mylar of approved final plat submitted and reviewed for substantial conformance with paper final plat.
5. Applicant shall be responsible to provide any additional information requested by the county recorder, including electronic versions of mylars.

D. *Requirements for recordation.*

1. Final plat approval.
2. Bond or other financial security in place.
3. Final title or subdivision report prepared and submitted to the City Attorney with an effective date within 30 days of the date the mylar is recorded.
4. Proof of satisfaction of payment of any water impact fee due Washington County Water Conservancy District, if applicable.
5. For property to be dedicated to the City for streets, roads, rights-of-ways, or other parcels intended for the use and benefit of the general public, free and clear title to the property, unless the encumbrance is an easement the acceptance of which will not adversely affect the public. Provided, however, that appropriate mortgagee or other

lienholders' consent to record the final subdivision plat shall be adequate for purposes of this section to address liens recorded against the property.

6. All signatures must be on the mylar, including property owners of record according to the title report, City officials and Ash Creek special service district superintendent. The City Attorney shall be the last signer of the mylar just prior to recordation.
 7. Preliminary acceptance by City of all public and private improvements as shown on approved construction drawings.
 8. If submitted mylar shows material changes from the approved paper final subdivision plat, applicant shall submit an application for an amended plat and get approval of the amended plat before recordation will be permitted to occur.
- E. *Recordation of plat.* Applicant shall be responsible to coordinate with the City Attorney for the recording of the final plat and for the payment of any recording fees. Applicant shall be responsible to ensure that, after the City Engineer signs a final subdivision plat mylar, the remaining conditions to qualify the mylar for recording are accomplished and the mylar is recorded with the county recorder within one year of the date of the City Engineer's signature. Failure to record the final plat within one year of the date of final signature by the City Engineer shall result in revocation of the final plat. When a final plat is revoked, a new preliminary plat must be approved before applying for new final plat approval.

Sec. 10-39-11. Subdivision streets and fencing.

A. *Relation to adjoining street systems.*

1. The arrangements of streets in new subdivisions shall make provision for the continuation of the existing streets to adjoining areas insofar as such may be deemed necessary by the Planning Commission for public requirements. New streets within subdivisions shall not preclude future access to adjoining properties.
2. Standard residential streets shall approach the arterial or collector streets at an angle of not less than 80 degrees.
3. Except as otherwise provided elsewhere in this Code, all subdivision streets and roadways shall be constructed and installed in accordance with the City roadway construction standards.

B. *Fencing.*

1. *Where required.* A solid masonry, chainlink or other nonclimbable 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 nonaccess 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.
2. *Prevent nuisance or hazard.* The Planning Commission may also require the construction or installation of a fence in any subdivision where the Planning Commission determines that the absence of a fence may create a nuisance or hazard to the welfare of the residents of the subdivision or the adjoining property.

3. *Agricultural fencing.* Unless otherwise waived by affected agricultural property owners, fencing abutting agricultural property shall be required of subdivider. Fencing shall meet or exceed the standard Utah Department of Transportation (“UDOT”) Right-of-Way Fencing and Gates as described in UDOT’s then-applicable Standard Specifications for Road and Bridge Construction, consisting of wire mesh and two strands of barbed wire. The affected agricultural property owner shall have the option to pay the additional cost to install a fence beyond this minimum standard. The fence, design, and materials shall be approved with the construction drawings for the subdivision together with other subdivision improvements.

Sec. 10-39-12. (Reserved)

Sec. 10-39-13. Guarantee of completion of improvements; form of surety; release of funds.

Subdivider shall guarantee improvements in accordance with the following:

- A. *Completion of improvements before recordation.* If subdivider desires to construct improvements as shown on approved construction drawings prior to recordation:
 1. Recordation of the plat shall not occur until the improvements required in connection with the subdivision have been completed and conditionally accepted.
 2. Subdivider shall provide guarantee of conditionally accepted improvements in a form acceptable to the City as shown in subsection C of this section in the following amount:
 - a. Ten percent of the total cost of all the required improvements shall be retained by the City during the 12-month (24-month if applicable) warranty period.
- B. *Recordation before completion of improvements.* If the subdivider desires to have a plat recorded prior to construction of improvements subdivider shall guarantee completion, within two years from the date of final plat approval by the City Council, of installation and construction of the required improvements in compliance with all City standards.
- C. *Form of surety.* In order to guarantee completion of improvements, subdivider shall provide one of the following types of sureties or guarantees:
 1. *Escrow.* The subdivider shall deposit with any insurance company, bank, or savings and loan institution in an escrow account an amount of money equal to at least 115 percent of the estimated costs of the improvements not constructed or installed by the subdivider plus ten percent of the cost of all the required improvements of the subdivision as a guarantee amount, as determined by the City Engineer. The escrow agreement shall be subject to approval by the City Attorney and shall be signed by the subdivider, the City, and the escrow holder, and shall contain substantially the following language:

AGREEMENT

The undersigned hereby promises and warrants that it has on deposit in an escrow account for the benefit of Hurricane City Corporation, the sum of _____ (\$_____), which represents at least one hundred fifteen percent (115%) of the costs of the engineer's estimated costs for improvements not constructed or installed by the subdivider plus ten percent (10%) of the cost of improvements of the _____ subdivision.

The undersigned hereby agrees that the foregoing sum of money shall be used exclusively for the purpose of paying for the costs of materials, construction, and installation of the improvements required by the Hurricane City Subdivision Chapter. The undersigned further agrees that the money held in an escrow account shall be paid out to the contractors installing and constructing the required improvements only upon approval of the City. The subdivider shall not withdraw from the escrow account any amount in excess of 100% of the estimated cost of the improvements, but shall pay from other sources any costs for such improvements which exceed the engineers estimate approved by the City.

After all improvements are made, completed and preliminarily accepted by the City, a sum equal to 10% of the estimated costs of improvements shall remain with the escrow holder for a period of 12 months as a warranty that all improvements are installed and inspected to City specifications, and that all defects occurring within the first 12 months (24 months if applicable) are corrected and approved by the City.

If, after 12 months (24 months if applicable), all or any part of the required improvements are not installed, constructed, and maintained according to the standards required in the Hurricane City Subdivision Ordinance, Hurricane City shall notify in writing the subdivider and escrow holder of the defects and shall make demand on the subdivider that the defects be corrected. If the defects are not corrected within 30 days, Hurricane City may correct the defects and charge to the escrow holder the costs of correcting the defects.

The escrow holder shall, on receiving reasonable proof from Hurricane City of the defect and that Hurricane City has incurred the cost of correcting the defect, pay to Hurricane City from the escrow account the cost of correcting the defect, and the escrow holder shall be held harmless by the parties by reason of payment to Hurricane City.

If, 12 months (24 months if applicable) after preliminary acceptance of the improvements required by City's standards and specifications and shown on approved construction drawings, the required improvements remain substantially free from latent defects, Hurricane City shall certify such fact to the escrow holder, and the escrow holder shall release to the subdivider any money still held in the escrow account, and the escrow holder shall be discharged of its obligations to Hurricane City.

(Authorized Signature)

The escrow agreement may contain such additional provisions as the parties deem necessary.

2. *Irrevocable letter of credit.* The subdivider shall file with the City an irrevocable letter of credit from a duly chartered state or national bank or savings and loan institution, which letter shall contain provisions substantially similar to that required in the escrow agreement.

The form of the irrevocable letter of credit shall be substantially as follows:

Name of Bank:

Address:

IRREVOCABLE LETTER OF CREDIT

To: Hurricane City Corporation

Date:

Letter of Credit No.:

Gentlemen:

We hereby establish our irrevocable letter of credit in your favor for the account of _____, _____, (insert name of subdivider, subdivider's address) up to the aggregate amount of _____ (\$ _____) (insert amount equal to one hundred fifteen percent, i.e., 115% of the estimated costs of the improvements not constructed or installed by the subdivider plus ten percent [10%] of the cost of all improvements of the subdivision as determined by the Engineer) drawn at sight on _____, _____, (insert name of bank, address of bank), accompanied by a statement signed by an officer of Hurricane City Corporation as follows: "We certify that the improvements related to the _____ (insert name of subdivision) have not been completed and the defects corrected in accordance with city ordinances and that this drawing represents the amount necessary to complete those improvements."

We hereby agree with drawers, endorsers and bona fide holders that all drafts under and in compliance with the terms of this credit will be duly honored upon presentation and delivery of documents as specified to the drawee or drawn and presented at our bank for negotiation on or before _____ (insert completion date plus 90 days). This Irrevocable Letter of Credit automatically renews for a one year term at the end of every term unless the Authorized Bank Officer provides Hurricane City written notice of termination thirty (30) days prior to the end of the term.

Very Truly Yours,

Authorized Bank Officer

3. *Other guarantee.* Such other financial guarantee that may be acceptable to the City Council.
- D. *Release of funds.* As the required improvements are satisfactorily installed and have been inspected by the City, funds which have been placed in escrow for those improvements will be authorized to be released for payment of those improvements. Escrow holder is authorized to release funds from this account only after receiving a written release from City. The City is not responsible to determine the party to be paid.

After all required improvements have been installed, the subdivider shall notify the City and request that the subdivision be granted preliminary acceptance and begin the warranty period. The subdivision will then be inspected by City, and if all improvements have been completed in accordance with City ordinances and specifications, as built plans have been delivered to the Public Works Department, and a final grading plan has been submitted, the City will grant preliminary acceptance. The subdivision will then begin the 12-month (24-month if applicable) warranty period. Ten percent of the total cost of all the required improvements, as specified above, shall be retained by the City during this warranty period.

All funds in escrow surplus to the warranty amount may then be released by the City.

The purpose of retaining the ten percent warranty amount is to guarantee that the improvements have been installed correctly and that they function properly. If any improvements have not been installed correctly or fail to function properly, and the subdivider fails to correct the deficiencies within 30 days of notification thereof, then upon written notice by the City, escrow shall pay over to the City the amount necessary to complete, repair, or replace said improvements.

In the event the costs of completing, repairing, or replacing the unsatisfactory improvements exceed the amount remaining in the escrow account, the subdivider shall, within ten days of notice thereof, pay the excess amount to the City and shall also cause to restore the escrow account or irrevocable letter of credit to the prescribed ten percent warranty amount. The City shall not issue any building permits for the subdivision until the above referenced excess costs have been paid to the City and the warranty amount (ten percent of the total cost of improvements) has been restored.

Sec. 10-39-14. Warranty of completed improvements.

Upon completion of construction and installation of all required improvements, subdivider shall warrant that said improvements shall be and shall remain free from defects in material and workmanship for a period of 12 months after the date of preliminary acceptance by City, unless said warranty period is extended for a period of up to 24 months by the City Council upon a finding that a warranty period of 12 months is inadequate to protect the public health, safety and welfare for any of the following reasons:

- A. The prior poor or substandard performance by the subdivider or contractor responsible for construction and installation of the improvements;
- B. The presence or existence of unstable soil conditions within the subdivision or adjacent area;
- C. Extreme fluctuations in climatic conditions that would or could reasonably prevent the discovery of substandard or defective performance within a 12-month period; or
- D. Any other exceptional reason or circumstances which in good faith is determined by the City Council to require a longer warranty period.

The subdivider shall be responsible to make all repairs to and maintain the improvements and every part thereof in good working condition during the guarantee period without cost to the City.

Sec. 10-39-15. Enforcement and permits.

- A. In order to enforce compliance with this chapter, the Building Official shall not issue any permit for the proposed erection, construction, reconstruction, alteration of any structure, or use of any land until the provisions of this chapter have been met. No City officer or employee shall issue any permit or license for the construction or installation of any building or structure or use on any subdivision lot until the following conditions have been met:

1. Such subdivision plat shall have been approved and recorded in the office of the county recorder.
 2. Infrastructure improvements shown on approved construction plans for the subdivision:
 - a. Have been constructed and installed and preliminarily accepted; or
 - b. The City has received and accepted an improvement completion assurance for the subdivision in accordance with this chapter, and the following improvements have been constructed, installed, tested and accepted in accordance with the requirements of the building or fire code:
 - (1) A road base of untreated, compacted and graded gravel;
 - (2) Sewer, storm drains and storm drain facilities;
 - (3) Curb and gutter unless otherwise not required by this Code;
 - (4) Water system, including water lines and hydrants; and
 - (5) Power lines.
- B. All required improvements must be complete within 12 months of notice to proceed.
- C. The City may call upon the improvement completion assurance filed with the City for all improvements not completed within 12 months of the notice to proceed or when the first building within the subdivision seeks an occupancy permit, whichever is sooner.
- D. It shall be prohibited for anyone to start construction on any building within a subdivision until they have fulfilled the requirements of this chapter.
- E. Any license or permit issued in conflict with this chapter shall be null and void.
- F. Notwithstanding the provisions of subsection A above, a building permit may be issued for:
1. A single model home in a subdivision, provided that a certificate of occupancy shall not be granted and the model home may not be used or occupied for any reason until the subdivision plat has been approved and recorded.
 2. A model home complex within a master planned community with a planned development overlay upon approval by the City Council of an amendment to the development agreement stating the terms and conditions for issuance of the building permit.

Sec. 10-39-16. Plat amendments.

The procedure for consideration and approval of any addition, alteration, modification, or change to an approved plat shall be substantially the same as is required for initial plat approval unless the Zoning Administrator determines that such addition, alteration, modification, or other change does not constitute a significant change from the intent or effect of the approved plat.

Sec. 10-39-17. Fees.

The following fees are hereby established:

- A. *Preliminary plat application fee.* At the time of filing of the preliminary plat, the subdivider shall deposit with the City a nonrefundable fee made payable to Hurricane City. The City Council shall by resolution from time to time prescribe the amount of such fee, which shall be for the purpose of reimbursing the City for the expense of checking and reviewing such final subdivision plats.
- B. *Final plat application fee.* At the time of filing the final plat, the subdivider shall deposit with the City a nonrefundable fee made payable to Hurricane City. The City Council shall by resolution from time to time prescribe the amount of such fee, which shall be for the purpose of reimbursing the City for the expense of checking and reviewing such final subdivision plats, and inspecting subdivision improvements.
- C. *Habitat conservation fee.* Before plat is released for recordation, subdivider shall pay applicable per acre habitat conservation impact fee to City.
- D. *Recording fee.* At the time of recording the final plat, the subdivider shall be responsible for payment of the recording fee.

Sec. 10-39-18. Penalty; validity.

- A. *Penalty.* Any subdivider or other person who shall violate or fail to comply with any of the provisions for this chapter shall be guilty of a class B misdemeanor, and punished as provided by law upon conviction.
- B. *Validity.* If any section, subsection, sentence, clause, or phrase of this chapter is, for any reason, held to be invalid, such holding shall not affect the validity of the remaining portion of this chapter.

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 4th day of January, 2024

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 4th day of January, 2024. 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	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____

Cindy Beteag, Recorder



STAFF COMMENTS

Consideration and possible approval of a **Memorandum of Understanding with the Washington County Water Conservancy District** regarding roadway improvements on Highway 318. -Mike Vercimak

Discussion:

As part of its Quail to Cottam Pipeline Project, the Water Conservancy District is planning to install a pipeline within Highway 318 (5300 West) near Quail Creek Reservoir. Hurricane City is responsible for maintaining the portion of that roadway that extends from the north access to Quail Creek State Park to the intersection at Old Hwy 91. Because of the fact that the existing asphalt is old and deteriorated and that major trenching and patching will result in an undesirable road surface, City Staff requested an alternative bid for the District's contractor to completely reconstruct the pavement for the City's portion of the roadway outside of the anticipated trenching and patching that would otherwise be done. The District did so, and the alternative bid came in at \$289,100. This amount is available in the budget. The District has prepared a Memorandum of Understanding whereby the City will pay the \$289,100 incurred for the City road improvements. If the City enters into this agreement, the project will construct a completely new roadway surface throughout the extent of the project. The MOU is included in the packet. The City Attorney has reviewed and approved the form of the MOU. City Staff recommend approval.

-Summary drafted by Dayton Hall, City Attorney

Findings:

Recommendation:

Attachments:

1. MOU (Interlocal Agreement) - Hurricane City Hwy 318 Roadway Replacement

MEMORANDUM OF UNDERSTANDING

Hurricane Waterline in Anderson Junction

Effective **January 17th, 2024** this Memorandum of Understanding (MOU) is made between Washington County Water Conservancy District (District) and Hurricane City (Hurricane) (jointly referred to as Parties, or separately as Party).

I. AUTHORITY

The statutes authorizing the District to enter into this MOU and engage in the activities described herein include but are not limited to Utah Code Sections 11-13-101 *et seq.* (Interlocal Cooperation Act), 17B-1-101 *et seq.* (Local District Powers), and 17B-2a-1001 *et seq.* (Water Conservancy District Act).

The statutes authorizing Hurricane to enter into this MOU and engage in the activities described herein include but are not limited to Utah Code Sections 11-13-101 *et seq.* (Interlocal Cooperation Act) and 10-8-1 *et seq.* (Municipal General Powers).

II. BACKGROUND

The District is constructing the Quail to Cottam Pipeline Project located near the Quail Creek Reservoir in Hurricane City. This pipeline has portions of the alignment that are within Highway 318 which is UDOT and Hurricane City Roadway. The pipeline is mostly located in the shoulder of the road and can be installed by only removing asphalt to the center line of the roadway. The district had discussions with Hurricane City, before going out to bid, about entering into an MOU and cost sharing to replace the asphalt across the entire roadway within the Hurricane City portions of Highway 318. Knowing this the district added an alternate bid (Schedule B) to the construction bid and received a cost to complete this work. The bid was awarded to Feller Enterprises and the cost for schedule B (Shown in exhibit A) was satisfactory to Hurricane City. Hurricane City would like to enter into an agreement to reimburse the district for the cost of schedule B, as shown in the attached Exhibit A, once the work is completed.

III. PROPOSED TRANSACTION

The costs associated with the Hurricane Asphalt will be added to the District's existing contract with Feller Enterprises (Contractor). Hurricane will reimburse the District for the amount specified in the Bid Schedule B (Exhibit A Asphalt Replacement) as work is completed and the Contractor submits partial payment and final payment requests. Hurricane will also reimburse the District for any change orders that have been reviewed and approved by Hurricane. All change orders will be incorporated into the Bid Schedules and the revised Bid Schedules will be considered an attachment to this MOU. Hurricane will provide its own inspector for the final acceptance of roadway.

IV. RESPONSIBILITIES OF PARTIES

To accomplish the Proposed Transaction described above, the Parties respectively agree to pursue in good faith the following:

A. Hurricane City

1. Reimburse the District for the amount specified in the Bid Schedule B as work is completed and approved by the District and Contractor submits partial and final payment requests approved by the District.
2. Reimburse the District for any funds spent on change orders for the Hurricane Asphalt that exceed the costs shown in the attached Bid Schedules
3. Provide inspector for final acceptance of roadway

B. Washington County Water Conservancy District

1. Submit partial payment and final payment requests with payments pertaining to the attached Bid Schedules to Hurricane for review and approval prior to making any payment to Contractor.
2. Coordinate project management with Hurricane City.
3. Pay in full each partial payment and final payment as work is completed and approved.
4. Submit a request for reimbursement to Hurricane after each payment is made.

VI. GENERAL

1. Amendment. This MOU may be amended through written agreement of all Parties.
2. Termination. Any Party may end its participation in this MOU for any reason and at any time by providing written notice to the other Parties. If not terminated earlier, this MOU will end when all of the Parties have fulfilled their respective commitments described above or **December 31, 2025**, whichever occurs first.
3. Other Agreements. Nothing in this MOU limits any Party from entering into other agreements with one another or with third parties.
4. Release. The Parties agree to release one another from any and all loss, injury, damages, debts, obligations, claims, demands, encumbrances, deficiencies, costs, penalties, suits, proceedings, expenses whether accrued, absolute, contingent or otherwise, including, without limitation, attorney's fees and costs (whether or not suit is brought) and other liabilities of every kind, nature and description arising out of performance under this MOU. This release shall survive any termination of this MOU. However, if a third party were to challenge anything arising out of the performance under this MOU, each Party will bear its own costs and incur any liabilities imposed by the third-party action.
5. No Third-Party Beneficiaries. Nothing in this MOU is intended to create any rights, duties, or obligations by the Parties to any person or entity not a party, and this MOU shall not be

deemed to give rise to any right by any person or entity not a party against any Party to this MOU. Nothing in this MOU is intended to nor shall be deemed to relieve or discharge the obligation or liability of any person or entity not a party to this MOU.

6. Authorities not altered. Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party on any matter within their respective jurisdictions. Nothing in this MOU shall require any of the Parties to perform beyond its respective authority.

7. Financial obligations. Nothing in this MOU shall require any of the Parties to assume any obligation or expend any sum in excess of authorization and appropriations available.

8. Immunity and defenses retained. Each Party retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.

9. Enforceability. The Parties agree that this MOU does not create any contractual, or any other legal obligations meant to be enforceable by operation of law.

10. Counterparts. This MOU may be executed in counterparts.

11. Paragraph Headings. The paragraph and subparagraph headings used herein are for convenience only and shall not be considered in the interpretation of this MOU.

12. Laws and Regulations. Any and all actions performed pursuant to this MOU will comply fully with all applicable Federal, State and local laws and regulations.

13. Points of Contact. Each Party designates below a primary point of contact (“POC”) to coordinate all matters concerning the carrying out of activities under this MOU. Any modifications to the POC will be provided in writing to the other parties. The contacts for work related to the project are:

Party	Point of Contact	Address	Telephone	e-mail
District	Randy Johnson	533 East Waterworks Dr. St. George, UT 84770	435.673.3617	Randy@wcwcd.org
Hurricane City	Arthur LeBaron	147 North 870 West Hurricane, UT 84737	435-635-2811	arthur@cityofhurricane.com

14. Exhibits. The following exhibits attached hereto are incorporated herein by this reference.

Exhibit A: Bid Schedule Summary

Entered into and effective on the date first written above:

Zachary Renstrom, General Manager
Washington County Water Conservancy District

Nanette Billings, Mayor
Hurricane City

APPROVED AS TO FORM:

Counsel for Hurricane City

Counsel for Washington County Water Conservancy District

Exhibit A

WASHINGTON COUNTY WATER CONSERVANCY DISTRICT



BID SCHEDULE SUMMARY - LOW BIDDER

QUAIL TO COTTAM PIPELINE PROJECT

Washington County Water Conservancy District

Bids Were Opened On: November 30, 2023

BASE BID - BID SCHEDULE A				Feller Enterprises	
Item No.	Description	Quantity	Unit	Unit Price	Amount
1	Mobilization, Demobilization, and Administrative Items	1	LS	\$120,000.00	\$120,000.00
2	Traffic Control	1	LS	\$71,435.96	\$71,435.96
3	Survey Control and Staking	1	LS	\$11,057.94	\$11,057.94
4	Stormwater Pollution Prevention Plan	1	LS	\$7,860.89	\$7,860.89
5	24-inch CL 350 Ductile Iron Pipe (Install)	19,227	LF	\$30.55	\$587,384.85
6	11.25" CL 350 24-inch Ductile Iron Fitting (Install)	26	EA	\$260.62	\$6,776.12
7	22.5" CL 350 24-inch Ductile Iron Fitting (Install)	10	EA	\$273.73	\$2,737.30
8	45" 24-inch CL 350 Ductile Iron Fitting (Install)	12	EA	\$273.73	\$3,284.76
9	90" 24-inch CL 350 Ductile Iron Fitting (Install)	8	EA	\$260.62	\$2,084.96
10	12-inch CL 350 Ductile Iron Pipe	86	LF	\$157.08	\$13,508.88
11	90" 12-inch CL 350 Ductile Iron Fitting	2	EA	\$1,285.84	\$2,571.68
12	10-inch CL 350 Ductile Iron Pipe	180	LF	\$122.52	\$22,053.60
13	11.25" 10-inch CL 350 Ductile Iron Fitting	1	EA	\$903.24	\$903.24
14	22.5" 10-inch CL 350 Ductile Iron Fitting	1	EA	\$905.09	\$905.09
15	45" 10-inch CL 350 Ductile Iron Fitting	2	EA	\$906.02	\$1,812.04
16	90" 10-inch CL 350 Ductile Iron Fitting	1	EA	\$1,022.68	\$1,022.68
17	8-inch CL 350 Ductile Iron Pipe	240	LF	\$95.33	\$22,879.20
18	90" 8-inch CL 350 Ductile Iron Fitting	1	EA	\$672.54	\$672.54
19	24" X 12" CL 350 Ductile Iron Tee (Install)	1	EA	\$677.61	\$677.61
20	24" X 10" CL 350 Ductile Iron Tee (Install)	2	EA	\$677.61	\$1,355.22
21	4-inch Sch 80 Drain/Blowoff Pipe	400	LF	\$56.82	\$22,728.00
22	4-inch CL 350 Ductile Iron Drain Pipe	450	LF	\$91.50	\$41,175.00
23	4-inch Combination Air Valve Assembly, See C/2660, Portion of Materials Provided by Owner	18	EA	\$11,098.56	\$199,774.08
24	Major Drain Assembly, See C/2672, Portion of Materials Provided by Owner	7	EA	\$3,709.15	\$25,964.05
25	Fiber Optic Conduit	19,400	LF	\$1.92	\$37,248.00
26	Fiber Optic Pull Box	20	EA	\$2,358.85	\$47,177.00
27	Split Case Pipe Encasement	3	EA	\$22,735.73	\$68,207.19
28	6-inch HDPE Temporary Water Main	1	LS	\$60,890.92	\$60,890.92
29	Water Service Connection, Open Cut for Lateral, See C/2638, Portion of Materials Provided by Owner	4	EA	\$3,511.41	\$14,045.64
30	Water Service Connection, Jack and Bore with 2" Casing, See C/2638, Portion of Materials Provided by Owner	3	EA	\$27,244.75	\$81,734.25
31	SR-318 Jack and Bore with 8-inch Steel Casing	1	LS	\$33,198.67	\$33,198.67
32	SR-318 Jack and Bore and 36" Casing	1	LS	\$51,325.55	\$51,325.55
33	Hydrant Connection, STA 69+00	1	EA	\$3,504.05	\$3,504.05
34	Hydrant Connection, STA 118+50	1	EA	\$3,504.05	\$3,504.05
35	External Joint Restraint on Hurricane Waterline, STA 38+70	2	EA	\$4,964.29	\$9,928.58
36	Tracer Wire Valve Box	20	EA	\$475.40	\$9,508.00
37	Temporary Water Service Connection, STA 68+00	1	LS	\$9,723.13	\$9,723.13
38	Quail Creek WTP PRV Vault	1	LS	\$93,360.28	\$93,360.28
39	Harrisburg PRV Vault	1	LS	\$102,846.83	\$102,846.83
40	Backup Hurricane City Connection Meter Vault	1	LS	\$84,022.39	\$84,022.39
41	Harrisburg Pipe Bridge Crossing	1	LS	\$81,962.37	\$81,962.37
42	12-inch D50 Riprap Stabilization	50	CY	\$48.68	\$2,434.00
43	18-inch D50 Riprap Stabilization	75	CY	\$48.68	\$3,651.00
44	Geotextile Fabric	400	SY	\$7.72	\$3,088.00
45	Bollard	11	EA	\$2,174.95	\$23,924.45
46	Alignment Grading (STA 11+50 to 13+00)	1	LS	\$4,722.36	\$4,722.36
47	10-inch Waterline Abandonment with Flowable Fill	1	LS	\$47,081.28	\$47,081.28
48	Access Road Widening and Intersection Raising (STA 32+50 to 39+00)	1	LS	\$13,027.61	\$13,027.61
49	Raise Existing Manholes	3	EA	\$2,443.70	\$7,331.10
50	Raise Existing Valve Boxes	4	EA	\$475.40	\$1,901.60
51	Remove and Reinstall Existing Gate STA 39+70	1	LS	\$3,329.47	\$3,329.47
52	Remove and Reinstall Fence Near Utah DNR Office	1	LS	\$3,502.95	\$3,502.95
53	Remove and Reinstall Road Sign in Harrisburg (STA 182+60)	1	LS	\$509.94	\$509.94
54	UDOT Asphalt Replacement	9,800	SY	\$53.43	\$523,614.00
55	Hurricane City Asphalt Replacement	7,300	SY	\$57.24	\$417,852.00

56	Flowable Fill Trench Backfill as Directed by Engineer	120	CY	\$134.44	\$16,132.80
57	Trench Stabilization Material as Directed by Engineer	50	CY	\$30.65	\$1,532.50
58	24-inch Double Offset Butterfly Valve (Install), See C/2662	3	EA	\$1,694.02	\$5,082.06
59	45" 12-inch CL 350 Ductile Iron Fitting	2	EA	\$1,088.14	\$2,176.28
60	12" x 12" CL 350 Ductile Iron Tee	1	EA	\$1,808.58	\$1,808.58
Bid Schedule A Price:					\$3,045,514.57

ALTERNATE BID - BID SCHEDULE B				Feller Ent.	
Item No.	Description	Quantity	Unit	Unit Price	Amount
1B	Full Road Replacement of Hurricane City Portion of SR-318 (Approx STA 131+00 to 169+50)	4900	SY	\$59.00	\$289,100.00
Bid Schedule B Price:					\$289,100.00



STAFF COMMENTS

Consideration and possible approval of **Ordinance 2024-02 approving a Land Use Code Amendment to Title 10, Chapter 32** of the City Code pertaining to water use efficiency standards. Hurricane City Applicant.

Discussion:

The proposed water conservation and landscaping amendments will only apply to new developments. The proposed amendments will bring the City's ordinances into line with the Washington County Water Conservancy District's ("District") Water Efficiency Standards, which are also the standards that need to be adopted for Hurricane City residents to qualify for the Water Efficient Landscape Rebate. The rebate is paid to property owners that remove grass and replace it with water-efficient landscaping, up to \$2.00 per square foot, but only residents in cities that have adopted the Water Efficiency Standards qualify for the rebate program.

On February 16, 2023, the City Council adopted new standards that were largely in line with the District's standards. However, there were a few provisions that were determined to be inconsistent with the required standards. The revisions proposed by this ordinance amendment will resolve those discrepancies.

A summary of the proposed changes follows:

1. Exemption area. To ensure that the Hurricane Fields area would maintain its agricultural feel, the current ordinance exempts new development in the historical canal area from the standards. The intent and purpose of that exemption was to allow new development to continue to have gardens, agricultural fields, and pastures without being subject to new landscaping standards. This exemption area was the primary concern that disqualified residents from the rebate program. However, after further discussions with the District, the issue has been addressed in the proposed ordinance in a more specific manner. Namely, the definition of "lawn," which is regulated, is defined as "nonagricultural land planted in closely, mowed, managed grass." Thus, the restrictions on lawn size do not apply to gardens, agricultural fields, or pastures. This clarification will allow new houses in the Hurricane Fields to continue to farm, have gardens, and raise farm animals without being subject to these new conservation standards.
2. Hot water recirculation system. New residential units in excess of 1,400 square feet will be required to install a hot water recirculation system, unless hot water can be delivered to the faucet without displacing more than .6 gallons of water.
3. Car wash facilities. The City ordinance already requires that new car washes use a water recirculation system. The proposed change would limit the amount of water that could be used per car to 35 gallons.

4. Misting systems. Misting systems are only permitted May through September when the temperatures exceed 90 degrees.
5. Golf Courses. All golf courses that use District or City water, even existing golf courses, shall be required to submit and follow a water budget and identify water conservation measures.
6. Manmade ornamental water features. The City ordinance already requires that water features utilize a recirculation pump and limits their number per subdivision. The proposed change limits water features to 25 square feet per parcel.
7. Metering. Individual residential units need to be separately metered or equipped so water delivered to each unit can be separately tracked. In multi-family projects with more than 5,000 square feet of outdoor irrigation, the outdoor water use needs to be metered separately from the living units.
8. Exceptions. The City can consider exceptions on a case-by-case basis for special purpose landscape areas such as stormwater management areas, cemeteries, etc.

Included in the packet is a redlined version of the proposed changes showing the revisions. Also included in the packet is a clean version with all of the proposed revisions incorporated into the draft. The Planning Commission heard this item on December 14, 2023 and recommended approval.

The City Attorney approves the form of the proposed ordinance. This summary was drafted by the City Attorney.

Findings:

Recommendation:

The Water Board met and discussed the proposed resolution on November 28, 2023, and unanimously recommended approval. The Planning Commission met on December 14, 2023, and unanimously recommended approval.

Attachments:

1. LUCA23-11 Water Conservation CC Staff Report
2. 231117 Ordinance 2023-___ Water Efficiency Standards Ordinance (Patterned After WCWCD model) (Redlined Version)
3. Ordinance 2023-21 Water Efficiency Standards



STAFF COMMENTS

Agenda Date:	1/4/2024
Application Number:	LUCA23-11
Type of Application:	Land Use Code Amendment
Action Type:	Legislative
Applicant:	Hurricane City
Agent:	
Request:	Amend Title 10 Chapter 32 with regards to water conservation and landscape standards

Discussion:

The proposed water conservation and landscaping amendments will only apply to new developments. The proposed amendments will bring the City's ordinances into line with the Washington County Water Conservancy District's ("District") Water Efficiency Standards, which are also the standards that need to be adopted for Hurricane City residents to qualify for the Water Efficient Landscape Rebate. The rebate is paid to property owners that remove grass and replace it with water-efficient landscaping, up to \$2.00 per square foot, but only residents in cities that have adopted the Water Efficiency Standards qualify for the rebate program.

On February 16, 2023, the City Council adopted new standards that were largely in line with the District's standards. However, there were a few provisions that were determined to be inconsistent with the required standards. The revisions proposed by this ordinance amendment will resolve those discrepancies.

A summary of the proposed changes follows:

1. Exemption area. To ensure that the Hurricane Fields area would maintain its agricultural feel, the current ordinance exempts new development in the historical canal area from the standards. The intent and purpose of that exemption was to allow new development to continue to have gardens, agricultural fields, and pastures without being subject to new landscaping standards. This exemption area was the primary concern that disqualified residents from the rebate program. However, after further discussions with the District, the issue has been addressed in

the proposed ordinance in a more specific manner. Namely, the definition of "lawn," which is regulated, is defined as "nonagricultural land planted in closely, mowed, managed grass." Thus, the restrictions on lawn size do not apply to gardens, agricultural fields, or pastures. This clarification will allow new houses in the Hurricane Fields to continue to farm, have gardens, and raise farm animals without being subject to these new conservation standards.

2. Hot water recirculation system. New residential units in excess of 1,400 square feet will be required to install a hot water recirculation system, unless hot water can be delivered to the faucet without displacing more than .6 gallons of water.
3. Car wash facilities. The City ordinance already requires that new car washes use a water recirculation system. The proposed change would limit the amount of water that could be used per car to 35 gallons.
4. Misting systems. Misting systems are only permitted May through September when the temperatures exceed 90 degrees.
5. Golf Courses. All golf courses that use District or City water, even existing golf courses, shall be required to submit and follow a water budget and identify water conservation measures.
6. Manmade ornamental water features. The City ordinance already requires that water features utilize a recirculation pump and limits their number per subdivision. The proposed change limits water features to 25 square feet per parcel.
7. Metering. Individual residential units need to be separately metered or equipped so water delivered to each unit can be separately tracked. In multi-family projects with more than 5,000 square feet of outdoor irrigation, the outdoor water use needs to be metered separately from the living units.
8. Exceptions. The City can consider exceptions on a case-by-case basis for special purpose landscape areas such as stormwater management areas, cemeteries, etc.

Included in the packet is a redlined version of the proposed changes showing the revisions. Also included in the packet is a clean version with all of the proposed revisions incorporated into the draft.

The Planning Commission heard this item on December 14, 2023 and recommended approval.

Recommendation: Staff recommends the City Council consider the revised ordinance and any public comments at the public hearing, and approve the land use code amendment to Title 10 Chapter 32 as outlined in the discussion above and as presented in the documents attached to the January 4, 2024 agenda packet.

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH ~~ADDING~~
AMENDING TITLE 10, CHAPTER 32 OF THE 10-32 WATER CONSERVATION TO
~~THE~~ HURRICANE CITY CODE.**

WHEREAS, water is a limited resource within Hurricane City and Southern Utah; and

WHEREAS, the City has been given a stewardship over these resources; and

WHEREAS, the City has previously adopted Ordinance No. 2020-13, codified in Section 8-1-10, imposing time of day water use restrictions and other water conservation measures; and

WHEREAS, the City previously adopted Ordinance No. 2023-04, amending Title 10, Chapter 32 to provide further for water conservation; and

WHEREAS, the City has determined that it is in the best interest of the health, safety, and welfare of the City's residents to adopt an ordinance further regulating certain landscaping to better conserve water; and

WHEREAS, the City wants to protect the rights of property owners within the City; and

WHEREAS, the City wants to maintain a high quality of life for those who live, work, and play within the City by allowing property owners to choose to take water conservation steps that meet their needs; and

BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah that Section 10-32 of the Hurricane City Code is amended to read as follows:

CHAPTER 32. LANDSCAPING AND ~~SCREENING~~WATER EFFICIENCY STANDARDS

Sec. 10-32-1. Purpose.

The purpose of this chapter is to promote public health, safety, and welfare by establishing minimum standards for the preservation, installation, and maintenance of landscaping and buffering and conserving the public's water resources by establishing minimum conservation standards for new development. ~~This chapter is intended to achieve the following objectives:~~

~~A.——To improve the aesthetic appearance of development by establishing minimum landscaping standards;~~

~~B.——To promote water conservation by encouraging the use of drought tolerant landscape material; and~~

~~C.——To maintain and improve environmental conditions by providing groundwater recharge areas and minimizing stormwater runoff, noise and glare.~~

Sec. 10-32-2 Applicability

The standards within this chapter shall be required for single and multi-family residential, commercial, institutional and industrial development; construction activity; and landscape installation that uses potable, secondary, or reuse water provided by the Washington County Water Conservancy District or Hurricane City.

These standards are not intended to conflict with Utah law. Any requirement in conflict with Utah law shall not apply.

Unless specified, all measures within these standards are applicable to all development and landscape installation undertaken after the adoption date of these standards.

Sec. 10-32-~~2~~3 Definitions

The following definitions shall apply to this ordinance:

Active Recreation Area: dedicated active play areas where irrigated lawn is used as the playing surface, such as a sports field designed for public use. Lawn areas within Aactive recreation areas shall be:

- i. a minimum of 1,500 contiguous square feet of lawn area
- ii. not less than 30 feet in any dimension
- iii. not less than 10 feet from areas dedicated to vehicular use, such as a street or parking lot
- iv. designed and located to be accessible to large populations, such as at a school, daycare, recreation center, senior center, public park, private park, water park or religious institution
- v. co-located with amenities, including but not limited to trash bins, benches, tables, walking paths, drinking water, playground equipment and/or other recreational amenities.~~An area that is dedicated to active play or other recreation purposes where grass may be used as the recreation surface. Examples of active recreation areas include sports fields, play areas, and other similar uses designated for outdoor activity.~~

~~Grass~~Lawn: irrigated nonagricultural land planted in closely mowed, managed grass.~~A surface layer of earth containing irrigated grass.~~

~~Hurricane Canal Company: A Utah non-profit corporation identified as the Hurricane Canal Company that provides secondary water to shareholders within the Hurricane City area.~~

Irrigation Plan: A plan that shows the components of an irrigation system, including water meter size, backflow prevention, precipitation rates, flow rate, operating pressure for each irrigation circuit, and identification of all irrigation equipment.

Landscape Area: Area within a lot, parcel, or development that is not the home footprint, driveway, sidewalk or patio. Areas utilized for agriculture are not Landscaped Areas.

Landscape Plan or Planting Plan: A plan that clearly and accurately identifies the location and species of new and existing trees, shrubs, ground covers, and other plants on a site, and any other landscape element, and includes an irrigation plan.

Mulch: material (such as, but not limited to, rock, bark, wood chips) uniformly applied upon the surface of the soil to reduce evaporation and weed growth. Mulches must allow penetration of water and air. For purposes of this standard, ungrouted pavers, stepping stones and artificial turf manufactured to be permeable to air and water may be considered mulch.

Park Strip: A typically narrow landscaped area located between the back-of-curb and sidewalk.

Planting Bed: areas of the landscape that consist of plants, such as trees, ornamental grasses, shrubs, perennials and other regionally appropriate plants.

Secondary Irrigation Water: Non-potable water that is untreated and used for irrigation of outdoor landscaping.

Secondary Irrigation System: A water system designed to deliver Secondary Irrigation Water to property for the purpose of irrigation of outdoor landscaping.

Water Park: A water play area designed for commercial uses or resort developments with enhanced water features, including but not limited to pools, slides, splash pads, spray grounds, lazy rivers, or similar recreational water related activities. Water Parks are distinguished from pools or splash pads in that they contain multiple water related features and are larger in impact.

Sec. 10-32-3. SeopeContinued Compliance and Enforcement.

Violations of the provisions of this chapter shall be governed by chapter 9 of this title.

~~Unless exempted as provided in subsection B of this section, or otherwise specifically provided elsewhere in this title, the standards and requirements for a landscape plan according to this chapter shall apply.~~

~~A.—Continuous maintenance.~~ Landscaping, buffering and site design features required by this chapter shall be continuously maintained as provided in this chapter.

~~B.—Exemption.~~ The provisions of this chapter shall not apply to any agricultural use.

Public, civil, ~~and~~ commercial and residential permitted uses in an agricultural zone are not exempt.

~~(Ord. 2011-11, 12-15-2011)~~

Sec. 10-32-4. Landscaping plan.

A. *Information required.* Whenever a landscaping plan is required by this title, such plan shall demonstrate compliance with the provisions of this chapter and shall show the following information:

1. Landscaping materials;
2. Location and spacing of existing and proposed plantings;
3. Plant sizes;
4. Proposed treatment of ground surfaces;
5. Irrigation plan.

- B. *Visual obstructions.* Landscape plans shall conform to the visual obstruction requirements of subsection 10-37-9E of this title.
(Ord. 2004-15, 6-17-2004)

Sec. 10-32-5. Deviation from strict compliance.

- A. *Deviations authorized.* Recognizing that site conditions and development constraints may vary greatly among sites, the Planning Commission may approve landscape plans that deviate from strict compliance with the provisions of this chapter. Any proposed deviation from the requirements of this chapter shall be:
1. Clearly identified on the proposed landscape plan; and
 2. Accompanied by a written description of the proposed deviation showing how the intent of this chapter will be met by the proposed plan.
- B. *Findings required.* The Planning Commission may authorize a landscape plan deviation only if it finds the deviation:
1. Is consistent with the intent of this chapter;
 2. Is justified by site constraints; ~~and~~
 3. Is of comparable quality to what would otherwise be required without a deviation; ~~and-~~
 4. Will conform to the Water Efficiency Standards set out in this chapter.

Sec. 10-32-6. Required landscaping.

- A. *General requirement.* Landscaped areas may include trees, shrubs, vegetative, organic and inorganic ground cover, and other organic and inorganic materials identified in an approved landscaping plan. All required landscape areas shall be occupied by plant material or ground cover. Areas between living plants shall have mulch upon the soil surface with exceptions for areas being restored to appear as native desert.
- B. *Landscaping adjacent to a public street.* Except for approved driveways and pedestrian walkways, a landscaped area of ten-foot minimum shall be provided adjacent and parallel to the frontage of a public street as follows:
1. A ten-foot wide landscaped area on any commercial development.
 2. At least one tree and three shrubs shall be planted for every 35 feet of street frontage in a required landscaped area. Such trees and shrubs may be clustered, provided that no tree shall be within five feet of another.
 3. The slope of any earth berm shall not exceed a vertical to horizontal ratio of one to two and shall be treated with suitable ground cover to prevent soil erosion.
- C. *Parking strip landscaping.* All parking strips shall be landscaped.
- D. *Parking lot landscaping.*
1. Every parking lot consisting of more than ten spaces and 3,500 square feet of area shall contain internal landscaped areas as follows:
 - a. *Multiple-family residential.* A minimum of ten percent of total parking lot area.
 - b. *Office and commercial.* A minimum of seven percent of total parking lot area.
 - c. *Industrial and warehouse.* A minimum of five percent of total parking lot area.
 2. For every ten required parking spaces, or portion thereof, a minimum of two shrubs and one deciduous tree shall be provided within the internal parking area. The species of such trees shall be such that at maturity a tree canopy is provided to shade the parking area below each tree.

3. Landscaped areas shall contain a minimum of 25 square feet and shall have a minimum average width of at least five feet.
 4. Landscape islands should be located in the following priority:
 - a. To define major drives and accessways;
 - b. To delineate ends of parking rows;
 - c. At aisle intersections; and
 - d. Within parking rows.
- F. *Landscaping in a multiple residential development.* Open space and common areas within a multiple residential development shall include a minimum of one tree and two shrubs per dwelling unit.
- (Ord. 2011-11, 12-15-2011)

Sec. 10-32-7. Plant material standards.

- A. *Plant characteristics.* Plant materials used to provide landscaping should be:
1. Drought tolerant;
 2. Have noninvasive growth habits;
 3. Have low maintenance characteristics; and
 4. Be commercially available.
- B. *Plant quality.* Plants installed pursuant to this chapter shall conform to or exceed the plant quality standards of the most recent edition of American Standard for Nursery Stock published by the American Nursery and Landscape Association.
- C. *Artificial plants.* No artificial plants shall be used to meet any standard of this chapter except by special permission of the Planning Commission.
- D. *Tree diameter and height.*
1. Trees planted to satisfy the standards of this chapter shall have a minimum caliper (diameter) of two inches measured at ground level.
 2. Evergreen trees planted to satisfy the standards of this chapter shall have a minimum height of four feet.
 3. Shrubs planted to satisfy the standards of this chapter shall have a minimum height of 18 inches at the time of planting.
- E. *Ground treatment.* Ground area within a required landscape area shall be landscaped and present a finished appearance upon completion of landscaping. Additional ground cover may consist of plant materials characterized by horizontal as well as vertical growth, generally not exceeding 18 inches in height. Up to 85 percent of additional ground cover may consist of ~~inert material~~mulch such as decomposed granite, gravel, crushed rock, bark chips, or other similar material. Porous landscape fabric shall be required under these types of ground cover.

(Ord. 2004-15, 6-17-2004)

Sec. 10-32-8. Installation, irrigation, and maintenance.

Any required landscaping shall be installed, irrigated, and maintained in accordance with the following standards:

- A. *Installation.* All landscaping shall be installed according to accepted nursery practices.
- B. *Verification of installation.* Prior to issuing a certificate of occupancy, the Zoning Administrator shall verify that the requirements of this chapter have been met and the

required landscaping and screening has been installed in compliance with the approved landscape plan.

- C. *Irrigation*. Landscape areas shall be irrigated as necessary to maintain required plant materials in good and healthy condition, while at the same time avoiding water waste through inefficient irrigation.
- D. *Maintenance*. Landscape areas, including park strips, shall be maintained in a healthy, neat, and orderly condition as follows:
 - 1. Landscaped areas shall be free of weeds and litter;
 - 2. Landscape structures (e.g. walls, fences) shall be repaired or replaced in a structurally sound condition consistent with original appearance; and
 - 3. The City may require that any dead trees, shrubs and plants be replaced within the current or next planting season.

(Ord. 2004-15, 6-17-2004)

Sec. 10-32-9. Substitute plant materials.

The Zoning Administrator may approve installation of comparable substitute plant materials to satisfy the requirements of an approved landscape plan when approved materials are unavailable or when other unforeseen conditions prevent the use of materials shown on an approved landscaping plan. Any significant change to approved landscaping plans shall be reviewed and approved by the Planning Commission.

(Ord. 2011-11, 12-15-2011)

Sec. 10-32-10. Temporary suspension of landscaping installation.

During periods of adverse weather conditions or when plants and landscape materials are not available, the Zoning Administrator may issue a temporary certificate of occupancy, provided the landowner enters into an agreement with the City that requires the installation of required landscaping within a reasonable time.

(Ord. 2011-11, 12-15-2011)

Sec. 10-32-11. Site feature buffering and screening.

The following site features shall be screened as provided below:

- A. *Trash receptacles*. Trash receptacles in a multiple-family residential, commercial, public facility, business/manufacturing park, or professional office zone shall be screened from view by a wall or fence which:
 - 1. Is at least six feet in height;
 - 2. Provides complete visual screening of the receptacle; and
 - 3. Is compatible in material and color with the main building on the lot.
- B. *Permitted outdoor storage*. Outdoor storage areas permitted by this title shall be screened from view by an opaque fence or wall. Nonopaque fencing, such as powder or vinyl coated chainlink, may be used to satisfy this requirement in industrial zones if vinyl slats are inserted into the fence.
- C. *Ground mounted utility boxes, meters, and mechanical equipment*. Ground mounted utility boxes, meters, and mechanical equipment shall be screened from view by landscaping or architectural elements compatible in material and color with the primary structure(s) on the premises. This requirement shall not apply to:

1. Rear and rear side yard locations adjacent to other service or mechanical areas not adjacent to a public street; and
2. Development in agricultural and single-family residential zones.

(Ord. 2004-15, 6-17-2004)

Sec. 10-32-12. Water ~~conservation~~Efficiency Standards.

~~A. Scope and Applicability. The standards of this section shall apply to all new construction and new development as set forth herein. The standards of this section shall not apply to residential development in areas historically serviced by the Hurricane Canal Company and serviced by a Secondary Irrigation System. This section shall not apply to any new or existing agricultural uses in any zone.~~

A. Indoor Requirements

1. Fixtures. New and future installations of plumbing fixtures must meet or exceed the water conservation requirements specified in Utah Code.

2. Hot water recirculation systems. Hot water recirculation systems shall be installed in single and multi-family properties exceeding 1,400 square feet unless hot water can be delivered without displacing more than 0.6 gallons of water.

3. Car Wash Facilities. All car wash facilities shall be plumbed during construction for water recycling systems and not exceed an average of 35 gallons of potable water per washed vehicle.

B. Outdoor Landscaping Standards. All landscape projects, including new installations and rehabilitation, shall comply with the following standards:

1. Where lawns are allowed, spray irrigation may be used. All other plant material must be irrigated from a drip irrigation system equipped with a pressure regulator filter, flush-end assembly and emitters rated for 20 gallons per hour (gph) or less.

2. Drip irrigation and sprinkler irrigation may not be served from the same irrigation valve.

3. Automated irrigation systems must use a US EPA WaterSense labeled smart controller or a similar weather-based controller if an appropriate WaterSense model is not available for the specific application.

4. The standards for living plant cover to help mitigate heat island impacts and soil erosion are set out in sections 10-32-6 and 10-32-8 of this chapter.

5. Lawn allowances:

i. ~~Lawns must be accessible for active use and may not be in streetscape frontages, parking lots, roundabouts, medians, driveways and other areas not conducive to access and safe use. Lawns may not be within 10 feet of a roadway.~~

ii. Single-family residential – 8% of any residential lot, or 2,500 square feet, whichever is less. Lots less than 7,500 square feet are allowed up to 600 square feet of lawn.

iii. Limited common area developments – single family homes with limited common areas designated for the exclusive use of the adjacent dwelling shall have the same allowances as a single-family home.

iv. Attached multi-family residential – up to 100 square feet per dwelling unit used in functional applications. Properties with less than 6 dwelling units are allowed up to 600 square feet of lawn.

v. Commercial, institutional and industrial – lawn areas are prohibited except where an Active Recreation Area is appropriate, such as at a childcare center or athletic complex.

vi. No lawn shall be less than 8 feet in any dimension, or upon a slope with a grade exceeding 25% (1 foot of rise per 4 feet of run). To the extent possible, spray irrigation should be free from obstructions (trees, signs, posts, enclosures, etc.).

6. Certain special purpose landscape areas (e.g., stormwater management areas, cemeteries, etc.) may receive exceptions from the slope or lawn allowances and other elements of the Landscaping Requirements. Exceptions shall be considered by the City on a case-by-case basis.

BC. Metering. ~~Commercial, industrial, and civic development. All new construction and new development in all commercial, industrial, and civic development in any zone, shall meet the landscape design standards and irrigation design standards of this section.~~

1. All attached and detached single-family dwelling units with ground floor square footage shall be separately metered, submetered, or equipped with alternative technology capable of tracking the water use of the individual unit.
2. All non-single family residential projects require separate meters for outdoor water use when irrigating more than 5,000 square feet.

~~Grass is not permitted outside of an Active Recreation Area. In addition, grass is prohibited in all Landscape Areas less than eight feet wide and on any slope that exceeds 15 percent.~~

- ~~2. Landscape and irrigation installers shall follow the plans that have been signed and approved by the City.~~
- ~~3. Each project shall propose and follow an approved Planting Plan of a Landscaped Area with water-efficient shade trees and bushes adequate in number and configuration to visually enhance the project, prevent heat islands, and prevent soil erosion. Planting Plans shall meet the minimum standards within this section.~~
- ~~4. If City-provided Secondary Irrigation Water is available, each project shall connect to the system for all outdoor water use. The Planning Commission may make minor exceptions, allowing use of treated water for outdoor plantings in small beautification areas, in its sole discretion.~~
- ~~5. Park strips. Grass is prohibited in all Park Strips. Parks Strips shall be maintained by the adjacent property owner unless otherwise maintained by an owners association. Park Strip widths and landscaping shall count towards commercial and industrial landscaping frontage requirements.~~

~~B. Residential development. All new residential construction and development in any zone shall meet the following landscape design standards and irrigation design standards:~~

- ~~1. Common areas. If the development has a common area jointly owned and maintained by a homeowners association, grass in a common area is not permitted outside of an active recreation area.~~
- ~~2. Park strips. Grass is prohibited in all park strips.~~
- ~~3. Controllers. Water-smart irrigation controllers are required.~~
- ~~4. Grass limitations for single family or two-family dwellings. Lawn area for single family or two-family dwellings shall not exceed eight percent (8%) of the lot square footage, up to a maximum of two thousand five hundred (2,500) square feet of lawn area.~~

CD. Other Regulations and Restrictions

1. All carwash projects shall utilize a water recirculation system.

21. Manmade ornamental water features are limited to 25 square feet per parcel and are limited to the parcel. New exterior, decorative water features in common areas are limited to five features per subdivision or site. Each feature shall utilize a recirculation pump system.

32. All golf courses using district or city supplied water shall have a separate meter for irrigation. All golf courses, without regard to date of construction, shall be required to submit and follow a water budget and identify water conservation measures for regular city and water provider review. New golf courses and expansions of existing golf courses using any water supplied by the City, the Washington County Water Conservancy District, or a canal or irrigation company are prohibited.

43. The creation of artificial ponds, lakes, or Water Parks as part of new commercial, resort, or residential development using any water supplied by the City, the Washington County Water Conservancy District, or a canal or irrigation company is prohibited.

a. The City may approve a Water Park in a Recreation Resort development only by consolidating multiple pools or other recreation amenities to meet requirements in Hurricane City Code 10-26.

b. Improvements related to civic, stormwater facilities, and agriculture and livestock use are exempt from these provisions.

4. Misting systems. Misting systems are permitted from May through September when temperatures exceed 90 degrees.

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.
3. This Ordinance shall, after adoption and approval, take effect immediately upon publication or posting as required by law.

PASSED AND APPROVED this ____ day, _____ 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 ____ day of _____ 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

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 10, CHAPTER 32 OF THE HURRICANE CITY CODE.**

WHEREAS, water is a limited resource within Hurricane City and Southern Utah; and

WHEREAS, the City has been given a stewardship over these resources; and

WHEREAS, the City has previously adopted Ordinance No. 2020-13, codified in Section 8-1-10, imposing time of day water use restrictions and other water conservation measures; and

WHEREAS, the City previously adopted Ordinance No. 2023-04, amending Title 10, Chapter 32 to provide further for water conservation; and

WHEREAS, the City has determined that it is in the best interest of the health, safety, and welfare of the City's residents to adopt an ordinance further regulating certain landscaping to better conserve water; and

WHEREAS, the City wants to protect the rights of property owners within the City; and

WHEREAS, the City wants to maintain a high quality of life for those who live, work, and play within the City by allowing property owners to choose to take water conservation steps that meet their needs; and

BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah that Section 10-32 of the Hurricane City Code is amended to read as follows:

CHAPTER 32. LANDSCAPING AND WATER EFFICIENCY STANDARDS

Sec. 10-32-1. Purpose.

The purpose of this chapter is to promote public health, safety, and welfare by establishing minimum standards for the preservation, installation, and maintenance of landscaping and buffering and conserving the public's water resources by establishing minimum conservation standards for new development.

Sec. 10-32-2 Applicability

The standards within this chapter shall be required for single and multi-family residential, commercial, institutional, and industrial development; construction activity; and landscape installation that uses potable, secondary, or reuse water provided by the Washington County Water Conservancy District or Hurricane City.

These standards are not intended to conflict with Utah law. Any requirement in conflict with Utah law shall not apply.

Unless specified, all measures within these standards are applicable to all development and landscape installation undertaken after the adoption date of these standards.

Sec. 10-32-3 Definitions

The following definitions shall apply to this ordinance:

Active Recreation Area: dedicated active play areas where irrigated lawn is used as the playing surface, such as a sports field designed for public use. Lawn areas within active recreation areas shall be:

- i. a minimum of 1,500 contiguous square feet of lawn area
- ii. not less than 30 feet in any dimension
- iii. not less than 10 feet from areas dedicated to vehicular use, such as a street or parking lot
- iv. designed and located to be accessible to large populations, such as at a school, daycare, recreation center, senior center, public park, private park, water park or religious institution
- v. co-located with amenities, including but not limited to trash bins, benches, tables, walking paths, drinking water, playground equipment and/or other recreational amenities.

Lawn: irrigated nonagricultural land planted in closely mowed, managed grass.

Irrigation Plan: A plan that shows the components of an irrigation system, including water meter size, backflow prevention, precipitation rates, flow rate, operating pressure for each irrigation circuit, and identification of all irrigation equipment.

Landscape Area: Area within a lot, parcel, or development that is not the home footprint, driveway, sidewalk or patio. Areas utilized for agriculture are not Landscaped Areas.

Landscape Plan or Planting Plan: A plan that clearly and accurately identifies the location and species of new and existing trees, shrubs, ground covers, and other plants on a site, and any other landscape element, and includes an irrigation plan.

Mulch: material (such as, but not limited to, rock, bark, wood chips) uniformly applied upon the surface of the soil to reduce evaporation and weed growth. Mulches must allow penetration of water and air. For purposes of this standard, ungrouted pavers, stepping stones and artificial turf manufactured to be permeable to air and water may be considered mulch.

Park Strip: A typically narrow landscaped area located between the back-of-curb and sidewalk.

Planting Bed: areas of the landscape that consist of plants, such as trees, ornamental grasses, shrubs, perennials and other regionally appropriate plants.

Secondary Irrigation Water: Non-potable water that is untreated and used for irrigation of outdoor landscaping.

Secondary Irrigation System: A water system designed to deliver Secondary Irrigation Water to property for the purpose of irrigation of outdoor landscaping.

Water Park: A water play area designed for commercial uses or resort developments with enhanced water features, including but not limited to pools, slides, splash pads, spray grounds, lazy rivers, or similar recreational water related activities. Water Parks are distinguished from pools or splash pads in that they contain multiple water related features and are larger in impact.

Sec. 10-32-3. Continued Compliance and Enforcement.

Violations of the provisions of this chapter shall be governed by chapter 9 of this title.

Landscaping, buffering and site design features required by this chapter shall be continuously maintained as provided in this chapter. The provisions of this chapter shall not apply to any agricultural use. Public, civil, commercial, and residential permitted uses in an agricultural zone are not exempt.

Sec. 10-32-4. Landscaping plan.

- A. *Information required.* Whenever a landscaping plan is required by this title, such plan shall demonstrate compliance with the provisions of this chapter and shall show the following information:
 - 1. Landscaping materials;
 - 2. Location and spacing of existing and proposed plantings;
 - 3. Plant sizes;
 - 4. Proposed treatment of ground surfaces;
 - 5. Irrigation plan.
- B. *Visual obstructions.* Landscape plans shall conform to the visual obstruction requirements of subsection 10-37-9E of this title.

Sec. 10-32-5. Deviation from strict compliance.

- A. *Deviations authorized.* Recognizing that site conditions and development constraints may vary greatly among sites, the Planning Commission may approve landscape plans that deviate from strict compliance with the provisions of this chapter. Any proposed deviation from the requirements of this chapter shall be:
 - 1. Clearly identified on the proposed landscape plan; and
 - 2. Accompanied by a written description of the proposed deviation showing how the intent of this chapter will be met by the proposed plan.
- B. *Findings required.* The Planning Commission may authorize a landscape plan deviation only if it finds the deviation:
 - 1. Is consistent with the intent of this chapter;
 - 2. Is justified by site constraints;
 - 3. Is of comparable quality to what would otherwise be required without a deviation; and
 - 4. Will conform to the Water Efficiency Standards set out in this chapter.

Sec. 10-32-6. Required landscaping.

- A. *General requirement.* Landscaped areas may include trees, shrubs, vegetative, organic and inorganic ground cover, and other organic and inorganic materials identified in an approved landscaping plan. All required landscape areas shall be occupied by plant material or ground cover. Areas between living plants shall have mulch upon the soil surface with exceptions for areas being restored to appear as native desert.

- B. *Landscaping adjacent to a public street.* Except for approved driveways and pedestrian walkways, a landscaped area of ten-foot minimum shall be provided adjacent and parallel to the frontage of a public street as follows:
 - 1. A ten-foot wide landscaped area on any commercial development.
 - 2. At least one tree and three shrubs shall be planted for every 35 feet of street frontage in a required landscaped area. Such trees and shrubs may be clustered, provided that no tree shall be within five feet of another.
 - 3. The slope of any earth berm shall not exceed a vertical to horizontal ratio of one to two and shall be treated with suitable ground cover to prevent soil erosion.
- C. *Parking strip landscaping.* All parking strips shall be landscaped.
- D. *Parking lot landscaping.*
 - 1. Every parking lot consisting of more than ten spaces and 3,500 square feet of area shall contain internal landscaped areas as follows:
 - a. *Multiple-family residential.* A minimum of ten percent of total parking lot area.
 - b. *Office and commercial.* A minimum of seven percent of total parking lot area.
 - c. *Industrial and warehouse.* A minimum of five percent of total parking lot area.
 - 2. For every ten required parking spaces, or portion thereof, a minimum of two shrubs and one deciduous tree shall be provided within the internal parking area. The species of such trees shall be such that at maturity a tree canopy is provided to shade the parking area below each tree.
 - 3. Landscaped areas shall contain a minimum of 25 square feet and shall have a minimum average width of at least five feet.
 - 4. Landscape islands should be located in the following priority:
 - a. To define major drives and accessways;
 - b. To delineate ends of parking rows;
 - c. At aisle intersections; and
 - d. Within parking rows.
- F. *Landscaping in a multiple residential development.* Open space and common areas within a multiple residential development shall include a minimum of one tree and two shrubs per dwelling unit.

Sec. 10-32-7. Plant material standards.

- A. *Plant characteristics.* Plant materials used to provide landscaping should be:
 - 1. Drought tolerant;
 - 2. Have noninvasive growth habits;
 - 3. Have low maintenance characteristics; and
 - 4. Be commercially available.
- B. *Plant quality.* Plants installed pursuant to this chapter shall conform to or exceed the plant quality standards of the most recent edition of American Standard for Nursery Stock published by the American Nursery and Landscape Association.
- C. *Artificial plants.* No artificial plants shall be used to meet any standard of this chapter except by special permission of the Planning Commission.
- D. *Tree diameter and height.*
 - 1. Trees planted to satisfy the standards of this chapter shall have a minimum caliper (diameter) of two inches measured at ground level.

2. Evergreen trees planted to satisfy the standards of this chapter shall have a minimum height of four feet.
 3. Shrubs planted to satisfy the standards of this chapter shall have a minimum height of 18 inches at the time of planting.
- E. *Ground treatment.* Ground area within a required landscape area shall be landscaped and present a finished appearance upon completion of landscaping. Additional ground cover may consist of plant materials characterized by horizontal as well as vertical growth, generally not exceeding 18 inches in height. Up to 85 percent of additional ground cover may consist of mulch such as decomposed granite, gravel, crushed rock, bark chips, or other similar material. Porous landscape fabric shall be required under these types of ground cover.

Sec. 10-32-8. Installation, irrigation, and maintenance.

Any required landscaping shall be installed, irrigated, and maintained in accordance with the following standards:

- A. *Installation.* All landscaping shall be installed according to accepted nursery practices.
- B. *Verification of installation.* Prior to issuing a certificate of occupancy, the Zoning Administrator shall verify that the requirements of this chapter have been met and the required landscaping and screening has been installed in compliance with the approved landscape plan.
- C. *Irrigation.* Landscape areas shall be irrigated as necessary to maintain required plant materials in good and healthy condition, while at the same time avoiding water waste through inefficient irrigation.
- D. *Maintenance.* Landscape areas, including park strips, shall be maintained in a healthy, neat, and orderly condition as follows:
 1. Landscaped areas shall be free of weeds and litter;
 2. Landscape structures (e.g. walls, fences) shall be repaired or replaced in a structurally sound condition consistent with original appearance; and
 3. The City may require that any dead trees, shrubs and plants be replaced within the current or next planting season.

Sec. 10-32-9. Substitute plant materials.

The Zoning Administrator may approve installation of comparable substitute plant materials to satisfy the requirements of an approved landscape plan when approved materials are unavailable or when other unforeseen conditions prevent the use of materials shown on an approved landscaping plan. Any significant change to approved landscaping plans shall be reviewed and approved by the Planning Commission.

Sec. 10-32-10. Temporary suspension of landscaping installation.

During periods of adverse weather conditions or when plants and landscape materials are not available, the Zoning Administrator may issue a temporary certificate of occupancy, provided the landowner enters into an agreement with the City that requires the installation of required landscaping within a reasonable time.

Sec. 10-32-11. Site feature buffering and screening.

The following site features shall be screened as provided below:

- A. *Trash receptacles.* Trash receptacles in a multiple-family residential, commercial, public facility, business/manufacturing park, or professional office zone shall be screened from view by a wall or fence which:
 - 1. Is at least six feet in height;
 - 2. Provides complete visual screening of the receptacle; and
 - 3. Is compatible in material and color with the main building on the lot.
- B. *Permitted outdoor storage.* Outdoor storage areas permitted by this title shall be screened from view by an opaque fence or wall. Nonopaque fencing, such as powder or vinyl coated chainlink, may be used to satisfy this requirement in industrial zones if vinyl slats are inserted into the fence.
- C. *Ground mounted utility boxes, meters, and mechanical equipment.* Ground mounted utility boxes, meters, and mechanical equipment shall be screened from view by landscaping or architectural elements compatible in material and color with the primary structure(s) on the premises. This requirement shall not apply to:
 - 1. Rear and rear side yard locations adjacent to other service or mechanical areas not adjacent to a public street; and
 - 2. Development in agricultural and single-family residential zones.

Sec. 10-32-12. Water Efficiency Standards.

- A. *Indoor Requirements*
 - 1. *Fixtures.* New and future installations of plumbing fixtures must meet or exceed the water conservation requirements specified in Utah Code.
 - 2. *Hot water recirculation systems.* Hot water recirculation systems shall be installed in single and multi-family properties exceeding 1,400 square feet unless hot water can be delivered without displacing more than 0.6 gallons of water.
 - 3. *Car Wash Facilities.* All car wash facilities shall be plumbed during construction for water recycling systems and not exceed an average of 35 gallons of potable water per washed vehicle.
- B. *Outdoor Landscaping Standards.* All landscape projects, including new installations and rehabilitation, shall comply with the following standards:
 - 1. Where lawns are allowed, spray irrigation may be used. All other plant material must be irrigated from a drip irrigation system equipped with a pressure regulator filter, flush-end assembly and emitters rated for 20 gallons per hour (gph) or less.
 - 2. Drip irrigation and sprinkler irrigation may not be served from the same irrigation valve.
 - 3. Automated irrigation systems must use a US EPA WaterSense labeled smart controller or a similar weather-based controller if an appropriate WaterSense model is not available for the specific application.
 - 4. The standards for living plant cover to help mitigate heat island impacts and soil erosion are set out in sections 10-32-6 and 10-32-8 of this chapter.
 - 5. *Lawn allowances:*
 - i. Single-family residential – 8% of any residential lot, or 2,500 square feet, whichever is less. Lots less than 7,500 square feet are allowed up to 600 square feet of lawn.

- ii. Limited common area developments – single family homes with limited common areas designated for the exclusive use of the adjacent dwelling shall have the same allowances as a single-family home.
 - iii. Attached multi-family residential – up to 100 square feet per dwelling unit used in functional applications. Properties with less than 6 dwelling units are allowed up to 600 square feet of lawn.
 - iv. Commercial, institutional and industrial – lawn areas are prohibited except where an Active Recreation Area is appropriate, such as at a childcare center or athletic complex.
 - v. No lawn shall be less than 8 feet in any dimension, or upon a slope with a grade exceeding 25% (1 foot of rise per 4 feet of run). To the extent possible, spray irrigation should be free from obstructions (trees, signs, posts, enclosures, etc.).
6. Certain special purpose landscape areas (e.g., stormwater management areas, cemeteries, etc.) may receive exceptions from the slope or lawn allowances and other elements of the Landscaping Requirements. Exceptions shall be considered by the City on a case-by-case basis.

C. Metering.

- 1. All attached and detached single-family dwelling units with ground floor square footage shall be separately metered, submetered, or equipped with alternative technology capable of tracking the water use of the individual unit.
- 2. All non-single family residential projects require separate meters for outdoor water use when irrigating more than 5,000 square feet.

D. Other Regulations and Restrictions

- 1. Manmade ornamental water features are limited to 25 square feet per parcel and are limited to the parcel.
- 2. All golf courses using district or city supplied water shall have a separate meter for irrigation. All golf courses, without regard to date of construction, shall be required to submit and follow a water budget and identify water conservation measures for regular city and water provider review. New golf courses and expansions of existing golf courses using any water supplied by the City, the Washington County Water Conservancy District, or a canal or irrigation company are prohibited.
- 3. The creation of artificial ponds, lakes, or Water Parks as part of new commercial, resort, or residential development using any water supplied by the City, the Washington County Water Conservancy District, or a canal or irrigation company is prohibited.
 - a. The City may approve a Water Park in a Recreation Resort development only by consolidating multiple pools or other recreation amenities to meet requirements in Hurricane City Code 10-26.
 - b. Improvements related to civic, stormwater facilities, and agriculture and livestock use are exempt from these provisions.
- 4. Misting systems. Misting systems are permitted from May through September when temperatures exceed 90 degrees.

NOW THEREFORE, BIT 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.
3. This Ordinance shall, after adoption and approval, take effect immediately upon publication or posting as required by law.

PASSED AND APPROVED this 4th day, January 2024.

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 4th day of January 2024. 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	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____

Cindy Beteag, Recorder



STAFF COMMENTS

Consideration and possible approval of an **MOU with federal partners concerning the Northern Corridor highway project** and designating Arthur LeBaron as the point of contact under the MOU.

Discussion:

The purpose of the proposed MOU is to identify the City as a cooperating agency with the Bureau of Land Management and the United States Fish and Wildlife Service in the development of the Supplemental Environmental Impact Statement and Incidental Take Permit concerning the Northern Corridor highway right-of-way. The Northern Corridor is a proposed right-of-way through the protected area north of St. George and Washington, which would potentially connect the Red Hills Parkway to an I-15 interchange in northeastern Washington near Hurricane City limits. Under the MOU, the City would agree to participate in this process by reviewing documents, communicating, providing guidance regarding potential impacts on the City, and providing written comments. The city has no funding obligation under the MOU, except for the general overhead costs associated with participation. The City can withdraw from the MOU with 30 days' notice. To ensure the City's interests are addressed protected, and to maintain relationships with the City's counterparts, City staff believe that it is important that the City be actively involved in these types of projects. Staff recommend approval of the MOU and the designation of Arthur LeBaron as the point of contact. The City Attorney approves the form of the proposed MOU. The City Attorney drafted this summary.

Findings:

Recommendation:

Attachments:

1. 231211 NCor Hurricane City MOU

MEMORANDUM OF UNDERSTANDING

BLM-MOU-UT-C000 2024-004

United States Department of the Interior
Bureau of Land Management and United States Fish and Wildlife Service

and

Hurricane City, Utah

MEMORANDUM OF UNDERSTANDING

Between

THE U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT,
COLOR COUNTRY DISTRICT AND U.S. FISH AND WILDLIFE SERVICE, UTAH
ECOLOGICAL SERVICES FIELD OFFICE

and

Hurricane City, Utah

Concerning:

Preparation of a Supplemental Environmental Impact Statement
for the proposed
Northern Corridor highway right-of-way and Incidental Take Permit for the threatened Mojave
desert tortoise
in
Washington County, Utah.

I. INTRODUCTION

- A. The National Environmental Policy Act (NEPA) was passed by Congress in 1969 and signed into law on January 1, 1970. This legislation encourages environmental protection and informed decision-making. It provides the means to carry out these goals by:
 - 1. mandating that every Federal agency prepare a detailed statement of the effects of “major Federal actions significantly affecting the quality of the human environment,”
 - 2. establishing the need for agencies to consider alternatives to those actions,
 - 3. requiring the use of an interdisciplinary process in developing alternatives and analyzing environmental effects,
 - 4. requiring that each agency consult with and obtain comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved, and
 - 5. requiring that detailed statements and the comments and views of appropriate Federal, State, tribal, and local agencies be made available to the public.
- B. The Council on Environmental Quality (CEQ) regulations (40 CFR 1501.6) provide for and describe both lead and cooperating agency status and emphasize agency cooperation early in the NEPA process. To this end, the Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) invite the City of Hurricane (CITY) through a letter dated November 3, 2023 to participate in development of this Supplemental Environmental Impact Statement (SEIS) relative to its expertise and/or jurisdictional responsibility of local land use plans, policies, and controls for the area where the

Northern Corridor highway right-of-way and an Incidental Take Permit (ITP) for the threatened Mojave desert tortoise. This Memorandum of Understanding (MOU) is being developed as a result of the CITY's willingness to participate based on a letter sent by the CITY on December 1, 2023.

II. PURPOSE

The purpose of this MOU between the BLM, FWS, and the CITY is to identify the CITY as a cooperating agency and establish the roles and responsibilities of the BLM, FWS, and the CITY in the preparation of the SEIS and ITP. The BLM, FWS, and the CITY recognize the need to work together; to provide a basis for timely disposition of material issues or problems connected with the development of this SEIS and ITP; and to achieve maximum efficiency for their respective agencies. This MOU will serve as a specific MOU for the Northern Corridor SEIS and ITP.

III. AUTHORITY

- A. The authority of the BLM and FWS to enter and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
- B. Regulations implementing the above authority:
 - 1. CEQ regulations (40 CFR 1501 *et seq.*); and
 - 2. BLM planning regulations (43 CFR, Part 46 *et seq.*).
- C. The authorities of the CITY to enter into and engage in the activities described within this MOU include, but are not limited to:
 - 1. National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).
 - 2. Applicable CITY regulations, transportation plans, utility plans (including sources and transmission of water and power resources), existing Utility Development Protocols contained in the Habitat Conservation Plan and/or CITY policies.
- D. This agreement is not intended to limit any Federal or State laws, rules, or regulations. This agreement is not intended to give any agency or entity additional authority beyond current laws, rules, or regulations.

IV. PROCEDURES

- A. The BLM maintains responsibility for the administration and management of public lands. The BLM and FWS will be joint lead agencies in the NEPA process as described by Federal Regulations 40 C.F.R. § 1501.5; 1508.16; and 43 C.F.R. 46.220(c). As joint lead agencies, the BLM and FWS will rely on the Final SEIS, drafted pursuant to NEPA, as a basis for deciding whether to approve the Proposed Action or one of the alternatives analyzed in the SEIS in the agencies' decision documents.

V. The CITY agrees to become a cooperating agency in the NEPA process as described by Federal Regulations 40 CFR 1501.6; 1508.5; and 43 C.F.R. 46.225.

VI. Both Parties agree to:

1. Meet as needed on mutually agreed upon dates to review and evaluate the implementation of current conditions and trends concerning the intent and functioning of this MOU. This meeting will also serve as a coordination session to determine immediate and future timing requirements and the general programming of cooperative actions as related to the SEIS and ITP.
2. Adhere to the applicable laws and regulations of the United States, the regulations of the BLM and FWS, and the laws and regulations of the State of Utah.
3. Cooperate in apprising each other, as far in advance as possible, of any related actions or problems that might affect the SEIS or ITP and documentation process or that might affect either party.
4. Cooperate in the development and review of any operating guidelines or agreements between the CITY or the BLM, FWS, and other entities involved in the SEIS and ITP which might affect the writing of the SEIS and ITP.
5. Any agency participating in this MOU can opt out of participating in the SEIS and ITP by letter or email from the signing authority or designated agent with a 30-day notice.

VII. RESPONSIBILITIES

A. BLM and FWS Responsibilities:

1. Ensure that the CITY has an opportunity to review and comment on the SEIS and ITP and related documents and reports within its identified areas of expertise. If necessary, BLM and FWS may withhold certain documents from general circulation based on their proprietary nature or other Privacy Act concerns.
2. Coordinate the exchange of information among the Parties and the SEIS contractor and its subcontractors who will be preparing the SEIS and ITP. This will include the Plan of Development and reviewed and previously accepted baseline studies as references for the analysis.
3. Invite the CITY, along with other Cooperating Agencies, to attend meetings with Federal, State, Native American, regional, and local agencies, and other groups as appropriate to discuss the alternatives, expected public impacts, and mitigation.
4. Provide regular verbal and/or written progress updates of the NEPA review to the CITY along with the other Cooperating Agencies.
5. Obtain and consider input from the CITY on the inclusion or deletion of information in the NEPA process in areas of the CITY's jurisdiction or special expertise.
6. Review and consider the CITY's proposed alternatives, mitigation, or other relevant requests to determine if they should be carried forward into analysis in the SEIS in accordance with 40 CFR 1501.6(a) and 43 C.F.R. 46.230. The BLM and FWS will request additional clarification from the CITY regarding the requests if necessary for full consideration. The BLM and FWS will notify the CITY verbally or in writing of changes to the alternatives, preferred alternative, methods, or mitigation measures.

7. Review and consider each inconsistency or possible conflict with the CITY's applicable plans, policies, and controls, as documented by the CITY in writing. The BLM and FWS will consider potential methods for resolving the identified conflicts to the extent practicable in accordance with 40 CFR 1502.16, 40 CFR 1506.2, 43 C.F.R. 46.155, and other applicable laws and regulations.

VIII. CITY Responsibilities:

1. Participate as a Cooperating Agency in the document review and preparation of the SEIS and ITP as specified in applicable laws and regulations and described in the BLM's *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners*.
2. Participate in communications regarding the NEPA review of the SEIS, including, but not limited to, conference calls, meetings, and emails, particularly when such communication concerns the CITY's jurisdiction or special expertise. When appropriate, send a representative(s) to attend SEIS related meetings scheduled by the BLM and FWS (this could include public meetings for scoping or the Draft SEIS or ITP).
3. Provide guidance and expertise in reviewing and establishing baseline information and potential impacts concerning items of the CITY's jurisdiction or special expertise including transportation, environmental justice, socioeconomics, and CITY plans, policies, controls, regulations, and laws. Where appropriate for baseline studies that have already been deemed complete by the BLM or FWS, optionally review and provide comments or supplementary information that will be added to the SEIS record and considered in preparation of the SEIS and ITP.
4. Provide written comments on the Preliminary Draft SEIS and ITP with regard to any inconsistencies or possible conflicts with the CITY's plans or other policies and controls.
5. Provide written comments on SEIS's, ITP, other related documents, and proposed mitigation, for which review, and comments are requested by the BLM, within the established SEIS schedule. The CITY has the ability to provide comments on other documents and they will be added to the record and considered throughout the process.
6. To the maximum extent allowed under Utah Government Records Access and Management Act and other related laws, maintain the confidentiality of the documents and deliberations during the period prior to public release by the BLM or FWS of any SEIS related work products, including, but not limited to drafts, proprietary information, the plan of development, sensitive resource data and locations, baseline reports, and other NEPA-related documents.
7. Identify a point of contact (POC) and alternate POC to act on the CITY's behalf to coordinate comments and input throughout the NEPA process.
8. Funding for the CITY's participation in the SEIS and ITP development process will be the responsibility of the CITY.

IX. BLM, FWS, and CITY Joint Responsibilities:

1. The BLM will have the lead responsibility in maintaining the administrative record; however, the FWS and the CITY share the responsibility with the BLM for ensuring that documents related to the CITY's participation in the process are complete and accurate.
2. Resolve inconsistencies and conflict, where possible, early in the process prior to and at the Preliminary SEIS or ITP stage through working towards consensus and enhanced coordination and cooperation in accordance with, but not limited to, 43 CFR 46.110, the January 30, 2002 CEQ Memorandum for the Heads of Federal Agencies, *Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act*, and the BLM's *A Desk Guide to Cooperating Agency Relationships and Coordination with Intergovernmental Partners*.
3. Parties to this MOU will have access to all information relevant to the fulfillment of their responsibilities under this agreement. Data provided pursuant to this agreement may contain proprietary BLM, FWS, or CITY information. All records or information requested of either party by the other will be reviewed by the releasing party prior to release. To the extent permissible under law, any recipient of proprietary information agrees not to disclose, transmit, or otherwise divulge this information without prior approval from the releasing party. Any breach of this provision may result in termination of this MOU.

X. ADMINISTRATION

A. It is mutually agreed and understood by all parties that:

1. Nothing in this MOU will be construed as affecting the authorities of the participants or as binding beyond their respective authorities, or to obligate the BLM, FWS, or the CITY to any current or future expenditure in advance of the availability of appropriations from Congress for such expenditures. Nor does this agreement obligate the BLM, FWS, or CITY to spend funds on any particular project or purpose, even if funds are available.
2. Any information furnished to the BLM, FWS, or CITY during and related to the SEIS process may be subject to the Freedom of Information Act (5 U.S.C. 552), Utah Government Records Access and Management Act, or other laws and regulations.
3. This MOU in no way restricts the BLM, FWS, or CITY from participating in similar activities with other public or private agencies, organizations, and individuals, or from accepting contributions and donations for activities related to the preparation of the SEIS.
4. Nothing in this MOU shall obligate the BLM, FWS, or CITY to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the BLM, FWS, and CITY require execution of separate agreements and would be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statutes and regulations.

5. This MOU is not intended to and does not create, any right, benefit, or trust responsibility, substantive, or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
6. Conflicts between the participants concerning procedures under this MOU which cannot be resolved at the operational/staff level will be referred to successively higher levels as necessary for resolution.
7. Upon request by either of the parties, each party shall review this MOU to ensure that it continues to reflect the appropriate understandings and procedures to provide for current needs and capabilities and adherence to the Public Laws.
8. The terms of this MOU may be renegotiated at any time at the initiative of either party after providing a 30-day notice to the other party. Such changes will be in the form of an amendment and will become effective upon signature by the MOU participants. Any party may terminate their involvement under this MOU upon providing a 30-day written notice of such termination to the other parties. The Federal Government's liability shall be governed by the provisions of the Federal Tort Claims Act (28 U.S.C. 2671-80). The parties shall operate in conformance with the Code of Federal Regulations and the United States Code.
9. The participants shall comply with all Federal Statutes relating to nondiscrimination. These include but are not limited to a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, handicap, or national origin; b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §1681-16783, and §1685-1686), which prohibits discrimination on the basis of sex.
10. Unless otherwise provided, this agreement is not intended to supersede the provisions of other agreements between both parties, in whole or in part, unless there is a conflict between the two agreements. This MOU is limited to the preparation of the SEIS.

XI. APPENDICES

Any Appendices attached hereto are incorporated and made a part of this MOU and each shall be effective until modified or superseded. An appendix may be amended in writing upon mutual agreement of the Parties.

XII. APPROVALS

This MOU will become effective upon the last date of signature and shall remain in effect through: (A) Completion of the NEPA decision document; or (B) upon thirty days (30) advance written termination notice by the CITY, FWS, or the BLM.

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
COLOR COUNTRY DISTRICT

By:	_____	_____
	Gloria Tibbetts	Date
Title:	District Manager	
Address:	Color Country District	
	176 East D.L. Sargent Drive	
	Cedar City, Utah 84721	

U.S. DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
UTAH ECOLOGICAL SERVICES FIELD OFFICE

By:	_____	_____
	George Weekley	Date
Title:	Acting Field Supervisor	
Address:	Utah Ecological Services Field Office	
	2369 Orton Circle, Suite 50	
	West Valley City, Utah 84119	

HURRICANE CITY, UTAH

By:	_____	_____
	Nanette Billings	Date
Title:	Mayor	
Address:	147 N 870 W	
	Hurricane, UT 84737	

APPENDIX 1**BLM, FWS, and CITY SEIS CONTACTS**

	Primary Points of Contact	Alternate Points of Contact
BUREAU OF LAND MANAGEMENT		
Name	Jason West	Gloria Tibbetts
Title	Field Manager	District Manager
Phone	(435) 688-3201	(435) 865-3063
Email	jrwest@blm.gov	gtibbetts@blm.gov
U.S. FISH AND WILDLIFE SERVICE		
Name	Danielle Costantini	George Weekley
Title	Fish and Wildlife Biologist	Acting Field Office Supervisor
Phone	(801) 323-3961	(801) 554-7660
Email	danielle_costantini@fws.gov	george_weekley@fws.gov
HURRICANE CITY		
Name	Arthur LeBaron	
Title	City Engineer	
Phone	O: (435) 635-2811 Ext. 113 Cell: (435) 632-3462	
Email	arthur@cityofhurricane.com	

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS

For

HURRICANE CITY 2024 CHIP SEAL PROJECT

Hurricane, Utah

December, 2023



**HURRICANE CITY
DEPARTMENT OF PUBLIC WORKS**

Part 1

BID DOCUMENTS

ADVERTISEMENT FOR BIDS

RECEIPT OF BID PROPOSALS. Hurricane City, located at 147 North 870 West, Hurricane, Utah will accept Bids and a Statement of Qualifications from qualified contractors to complete the Hurricane City 2024 Chip Seal Project. Bids will be accepted at the Hurricane City office, 147 North 870 West in Hurricane until 2:00 PM, Wednesday, December 20, 2023. Hurricane City reserves the right to not award the project to the low bidder.

Technical questions regarding the Bidding Documents shall be directed to Arthur LeBaron, City Engineer, (435) 635-2811 x113, arthur@cityofhurricane.com.

OBTAINING BID DOCUMENTS, SPECIFICATIONS & DRAWINGS. Documents must be obtained from Hurricane City, 147 N 870 W Hurricane, UT 84737. You may call for plans at 435-635-2811 x113, or via email to weston@cityofhurricane.com. Electronic copies of the plans, contract documents, and specifications will be available at no cost.

Published in THE SPECTRUM: December 10 and 17, 2023.

INFORMATION FOR BIDDERS

BIDS and STATEMENTS OF QUALIFICATIONS (S.O.Q.) will be received by Hurricane City (herein called the "OWNER"), at Hurricane City Office, 147 North 870 West, Hurricane, Utah 84737 until 2:00 PM, Wednesday, December 20, 2023.

Each BID and S.O.Q. must be submitted in a sealed envelope, addressed to Hurricane City, 147 North 870 West, Hurricane, Utah 84737. Each sealed envelope containing a BID and S.O.Q. must be plainly marked on the outside as BID for Hurricane City 2024 Chip Seal Project 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 and S.O.Q. must be enclosed in another envelope addressed to the OWNER at Attn: Arthur LeBaron, 147 North 870 West, Hurricane, Utah 84737.

Each BID must be accompanied by a Statement of Qualifications. Contractors will be ranked and the project will be awarded based on the following criterion:

- | | |
|---|--------------------|
| 1. Statement of Qualifications (include work experience on similar projects, past performance, references, equipment, and subcontractor/subcontract work list). | 25 points possible |
| 2. Contract Time Reported in Calendar Days (include a detailed schedule with anticipated start/completion dates, project approach covering work operations, maintenance of traffic, access accommodations and other pertinent information). | 25 points possible |
| 3. Bid Price. | 50 points possible |

The City of Hurricane reserves the right to not award the project to the low bidder.

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 or reject any and all BIDS. 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.

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 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 and Statements of Qualifications have been compared, 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.

In lieu of a performance BOND and a payment BOND, 20% of each pay request will be retained until proper documentation of payment to subcontractors and suppliers has been submitted to the OWNER, after which the retained amount will be reduced to 5%, until final completion of the contract.

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 qualified BID will not be accepted.

The BIDDER is required to bid the contract time for this project with which the BIDDER guarantees they will complete the project. The contract time shall be inserted on the bid schedule.

Award will be made to the BIDDER with the highest rank as determined by Hurricane City.

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 ENGINEER for this project is Arthur LeBaron, PE.

BID

Proposal of _____ (hereinafter called "Bidder"), organized and existing under the laws of the State of _____ doing business as a _____. To the 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 2024 Chip Seal Project, 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 and other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract within on _____, 2024, and to fully complete the PROJECT on or before _____, 2024. Bidder further agrees to pay as liquidated damages, the sum of \$250.00 for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

_____ Addendum No. _____ Dated _____

_____ Addendum No. _____ Dated _____

HURRICANE CITY 2024 CHIP SEAL PROJECT

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 Engineer. 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.

LS = Lump Sum; EA = Each
LF = Lineal Feet SY = Square Yard
Funding for this project is by Hurricane City

BID SCHEDULE

Hurricane City 2024 Chip Seal Project Hurricane City Streets

Item #	Item	Quantity	Units	Unit Price	Total
1	Mobilization	1	Lump Sum		
2	Traffic Control	1	Lump Sum		
3	Chip Seal, Double Layer	73181*	SY		
4	LMCRS-2H Oil	246*	Ton		
TOTAL					

*Quantities may be increased or reduced to meet budget, based on unit bid prices.

ALTERNATE “A” BID SCHEDULE
Hurricane City 2024 Chip Seal Project
Hurricane City Streets

Item #	Item	Quantity	Units	Unit Price	Total
1	Mobilization	1	Lump Sum		
2	Traffic Control	1	Lump Sum		
3	Chip Seal, Double Layer (1380 West)	4001*	SY		
4	MC-3000 Oil	14*	Ton		
TOTAL					

*Quantities may be increased or reduced to meet budget, based on unit bid prices.

ATTEST:

(Seal – If Bid is by Corporation)

RESPECTFULLY SUBMITTED:

Address

Signature

Name

Title

**STATE OF UTAH
BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS, That _____
(Name of Contractor)

(Address)

(hereinafter called the "Principal") and the _____ a corporation created and existing under the laws of the State of _____, having its principal office in the City of _____ (hereinafter called the "Surety"), are held and firmly bound unto The People of the State of Utah (hereinafter called the "State"), in the full just sum of *Five (5%) of Attached Bid*, good and lawful money of the United States of America, for the payment of which said sum of money, well and truly to be made and done, the said Principal binds themselves (himself/herself, itself), their (his/her, its) heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents:

WHEREAS, the said Principal has submitted to the Hurricane City a proposal for _____
(Project Description),

and

WHEREAS, under the terms of the Laws of the State of Utah as above indicated, the said Principal has filed or intends to file this bond to guarantee that the Principal will execute all required contract proposal documents and furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the Principal's said proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the said Principal shall promptly execute and submit, and the City shall accept, all required contract proposal documents including such faithful performance bond or other bonds as may be required by law in accordance with the terms of the Principal's said proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said Surety has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this ____ day of _____ 20____ in the presence of:

(Company)

(Signature)

(Title)

Principal

(Company)

By _____ Surety
(Signature)

(Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).)

STATE OF UTAH
BID BOND

(Acknowledgment of principal, unless it be a corporation)

STATE OF UTAH

ss. :

COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF UTAH

ss. :

COUNTY _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

(Acknowledgment of Surety Company)

STATE OF UTAH

ss. :

COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____. that he/she is the _____ of _____ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

Part 2

AGREEMENT DOCUMENTS

NOTICE OF AWARD

To:

Date: _____, 2024

Project: Hurricane City 2024 Chip Seal Project

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated December, 2023, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$ _____

You are required to return an acknowledge copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 2024.

Hurricane City, Owner

By: _____

Name: Arthur O. LeBaron

Title: City Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD

is hereby acknowledged

by _____

this the _____ day of _____, 2024.

By _____

Name _____

Title _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

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 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 the CONTRACTOR is a Partnership, all partners should execute the 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 ____ day of _____, 2024 by and between the Hurricane City, hereinafter called OWNER" and _____, doing business as a _____, 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 Hurricane City 2024 Chip Seal Project
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 10 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 \$_____.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - A) Public Notice
 - B) Information for Bidders
 - C) Bid
 - D) Bid Bond
 - E) Agreement
 - F) Payment Bond
 - G) Performance Bond
 - H) Notice of Award
 - I) Notice to Proceed
 - J) Change Order
 - K) General Conditions
 - L) Supplementary General Conditions
 - M) City of Hurricane Standard Specifications for Design and Construction
 - N) Ash Creek SSD Standard Specifications for Design and Construction
 - O) Technical Specifications prepared or issued by Hurricane City, dated December, 2023.
 - P) Chip seal maps, dated December, 2023.
 - Q) ADDENDA:
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: Arthur O LeBaron

Title: City Engineer

(SEAL)

ATTEST:

Name: Cindy Beteag

Title: City Recorder

CONTRACTOR:

By: _____

Name: _____

(Please Type)

Address: _____

_SEAL)

ATTEST:

Name: _____

(Please Type)

Title: _____

NOTICE TO PROCEED

To:

Date:

Project: Hurricane City 2024 Chip Seal
Project

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 2024,
on or before _____, 2024, and you are to complete all on-site WORK on or before _____, 2024
(__ Calendar Days).

Hurricane City, Owner

By: _____

Name: Arthur O LeBaron

Title: City Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED
is hereby acknowledged
by _____

this the _____ day of _____, 2024.

By _____

Name _____

Title _____

CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: Hurricane City 2024 Chip Seal Project

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:

ENGINEER: _____

CONTRACTOR: _____

HURRICANE CITY: _____

Part 3

GENERAL CONDITIONS

GENERAL CONDITIONS

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2. Additional Instructions and Detail Drawings
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26. Arbitration
27. Taxes

1. DEFINITIONS. Wherever used in the STANDARD CONSTRUCTION DOCUMENTS, the following terms shall have the meanings indicated 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 DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

1.2. DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS - The Standard Documents: including Information for Contractors, Payment Bond, Performance Bond, General and Supplemental General Conditions, and Technical Specifications.

1.3. DEVELOPER - The person, firm or corporation responsible for developing the PROJECT and in this case is HURRICANE CITY; and for whom the CONSTRUCTION WORK is to be performed.

1.4. DEVELOPER'S ENGINEER - The person, firm or corporation with whom the DEVELOPER has executed an Agreement for design of the construction work for the PROJECT.

1.5. CONTRACTOR - The person, firm or corporation with whom the DEVELOPER has executed an Agreement to perform the construction work for the PROJECT.

1.6. CITY – Hurricane City, a public body, has jurisdiction over the WORK to be performed.

1.7. ENGINEER - The person, firm or corporation named as the CITY'S ENGINEER in the INFORMATION FOR CONTRACTORS.

1.8. CONSTRUCTION DRAWINGS - All the drawings and other data which have been prepared by the Developer's Engineer to show the characteristics and scope of the WORK to be performed; and have been approved by the CITY or the ENGINEER.

1.9. STANDARD DRAWINGS - All the standard drawings which have been prepared by the ENGINEER to show details of how the WORK is to be built.

1.10. FIELD ORDER - A written order effecting a change in the WORK, issued by the ENGINEER to the DEVELOPER or CONTRACTOR during construction.

1.11. PROJECT - The undertaking to be performed by the DEVELOPER and his CONTRACTOR in constructing the specific areas of the building as described in the STANDARD CONSTRUCTION DOCUMENTS.

1.12. RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the CITY who is assigned to the PROJECT site or any part thereof.

1.13. SPECIFICATIONS - Part of the STANDARD CONSTRUCTION DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship to be used in all construction.

1.14. 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.

1.15. SUBSTANTIAL COMPLETION - That date as certified by the CITY or the ENGINEER 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. Substantial completion can be extended if the contractor does not move forward toward final completion of the project in a timely manner.

1.16. SUPPLEMENTAL GENERAL CONDITIONS - Modifications to General Conditions and supplemental requirements for the Project.

1.17. 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.

1.18. 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.

1.19. WRITTEN NOTICE - Any notice to the DEVELOPER 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 DEVELOPER, DEVELOPER'S ENGINEER or CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK in accordance with the requirements of the STANDARD CONSTRUCTION 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 DEVELOPER or CONTRACTOR shall submit to the CITY such schedules, records and other data where applicable, as are required by the STANDARD CONSTRUCTION DOCUMENTS for the WORK to be performed.

3.2. The DEVELOPER 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, 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 STANDARD CONSTRUCTION DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the CITY.

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 DEVELOPER and the ENGINEER. The DEVELOPER or DEVELOPER'S ENGINEER, 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 DEVELOPER, DEVELOPER'S ENGINEER 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 ENGINEER shall promptly review all SHOP DRAWINGS, if required. The ENGINEER'S approval of any SHOP DRAWINGS shall not release the DEVELOPER 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 DEVELOPER and CONTRACTOR.

5.2. When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the DEVELOPER'S ENGINEER'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 DEVELOPER'S ENGINEER or the ENGINEER, 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 CITY or ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

6.1. It is understood that, except as otherwise specifically stated in the STANDARD CONSTRUCTION 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. Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR; and approved by the DEVELOPER'S ENGINEER or ENGINEER.

6.5. Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

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 CITY 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 CITY or the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the CITY or ENGINEER the required certificates of inspection, testing or approval.

7.5. Inspections, tests or approvals by the CITY, ENGINEER 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 CITY, ENGINEER 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 CITY or ENGINEER, it must, if requested by the CITY or the ENGINEER, be uncovered for their observation and replaced at the CONTRACTOR'S expense.

7.8. If the CITY or the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the CITY'S or ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the CITY or ENGINEER 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 performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS by reference to brand name or catalog number, and if, in the opinion of the CITY or ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the CITY or ENGINEER may approve its substitution and use by the CONTRACTOR.

9. PATENTS

9.1. The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; 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 CITY or ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

10.1. The DEVELOPER or DEVELOPER'S ENGINEER 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 DEVELOPER, 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 DEVELOPER, 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 CITY or ENGINEER 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 CITY or the ENGINEER 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 CITY or ENGINEER, shall act to prevent threatened damage, injury or loss. He will give the CITY or ENGINEER 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 CITY or ENGINEER 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 DEVELOPER and the CONTRACTOR, an adjustment shall be worked out between these two parties; with no cost to the CITY. Quantities on the bid schedule are estimates. Project quantities may need to be adjusted based on the bid price and the respective budget of each respective jurisdiction. Unit prices shall remain fixed unless quantities are adjusted beyond 20% of the original estimated quantity, at which threshold the CITY or the CONTRACTOR may request an adjustment of unit prices.

13.2. The CITY or ENGINEER, 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 DEVELOPER and the CONTRACTOR, an adjustment shall be worked out between these two parties; with no cost to the CITY.

14. CORRECTION OF WORK

14.1. The CONTRACTOR shall promptly remove from the premises all WORK rejected by the CITY or the ENGINEER 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 CITY 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 CITY may remove such WORK and store the materials at the expense of the CONTRACTOR.

15. SUBSURFACE CONDITIONS

15.1. The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the DEVELOPER, CITY or the ENGINEER 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 DEVELOPER 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 DEVELOPER and the CONTRACTOR; with no cost to the CITY.

16. SUSPENSION OF WORK, TERMINATION AND DELAY

16.1. The CITY or ENGINEER 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 CITY or ENGINEER; 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 is adjudged a bankrupt or 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 CITY or ENGINEER, or if he otherwise violates any provision of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, then the CITY or ENGINEER 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, require that the DEVELOPER 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 he may deem expedient; with no cost to the CITY.

17. COMPLETION AND ACCEPTANCE OF WORK

17.1 Prior to SUBSTANTIAL COMPLETION of WORK, the CITY, with the approval of the ENGINEER 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, substantial completion can be canceled and contract time continued if the CONTRACTOR does not complete the miscellaneous work in a timely manner.

17.2. The CITY 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 CITY.

17.3. Upon completion and acceptance of the WORK, the CITY or ENGINEER shall issue a certificate that the WORK has been accepted by him under the conditions of the STANDARD CONSTRUCTION DOCUMENTS.

17.4. The CONTRACTOR will indemnify and save the CITY, ENGINEER or the CITY'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 CITY'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 usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person: and

18.1.5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

18.2.1 A copy of the acceptable Certificates of Insurance filed with the CITY shall be delivered to the ENGINEER for review 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 CITY at least fifteen (15) days prior to cancellation.

18.2.2. All liability insurance policies for the project shall include and endorsement naming the CITY and ENGINEER as additional insured.

18.3. The Contract General Liability Insurance shall be 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 covered owned, hired and non-owned vehicles.

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

Neither Fire and Extended Coverage nor Builder's Risk Insurance are required for this project.

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 CITY 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 STANDARD CONSTRUCTION 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 CITY, 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 CITY. The policy shall name as the insured the CONTRACTOR, the CITY, and the ENGINEER.

19. CONTRACT SECURITY

19.1. The CONTRACTOR shall, before any work is begun on the PROJECT, furnish the CITY with a Performance bond and a Payment Bond in penal sums equal to the amount of the Agreement with the DEVELOPER, 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 is declared a bankrupt 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 CITY 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 CITY. 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 CITY and the ENGINEER 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, anyone directly or indirectly employed by any of them or anyone 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 CITY or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph 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 ENGINEER, 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 CITY reserves the right to let 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 CITY or ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

21.2. The CITY 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 CITY, 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 CITY 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 ENGINEER or the CITY.

22.3. The CONTRACTOR shall be fully responsible to the CITY for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

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 CITY 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. ENGINEER'S AUTHORITY

23.1. The ENGINEER shall act as the CITY'S representative during the construction period. He shall decide questions which 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 ENGINEER 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. Inspections may be made at the factory or fabrication plant of the source of material supply.

23.3. The ENGINEER will not be responsible for construction means, controls, techniques, sequences, procedures, or construction safety.

23.4. The ENGINEER shall promptly make decisions relative to interpretation of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

24. LAND AND RIGHTS-OF-WAY

24.1. The DEVELOPER 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 DEVELOPER 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 CITY 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 CITY or the ENGINEER 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 CITY 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 CITY or the ENGINEER 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 CITY 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.

Part 4

TECHNICAL SPECIFICATIONS

4.1 STANDARD SPECIFICATIONS AND REFERENCES

ARTICLE 1 – Standard Specifications

- 1.1 The City of Hurricane Specifications for Design and Construction (latest edition) and the City of Hurricane Underground Power Construction Standards (latest edition) shall govern the administration and construction of this Contract, except as modified in these special provisions, otherwise these Special Provisions shall govern the work.

The City's standard specifications and standard drawings can be found at:

<http://www.cityofhurricane.com/categories/departments/city-engineer/design-standards/>

The City's Underground standards can be found at:

<http://www.cityofhurricane.com/categories/departments/power/>

- 1.2 A copy of all applicable City Standards, as well as this document, shall be located at the job site at all times.
- 1.3 The Ash Creek SSD Specifications and Standard Drawings shall govern the construction of all sanitary sewer improvements.
- 1.4 The governing rankings in case of a discrepancy is:

Dimensions

1. Plan
2. Calculated
3. Scaled

Information

1. Special Provisions & Contract Documents
2. Plans
3. Measurement and Payment
4. Standard Specifications
5. Standard Drawings

END OF SECTION

4.2 LIMITATION OF OPERATIONS

ARTICLE 1 – Traffic Control

1.1 Traffic Control Plan

- a. Submit a Traffic Control Plan for review no less than 5 business days prior to commencing work. Traffic Control Plan must be approved prior to commencement of work.

1.2 Access:

- a. See Section 4.7 of the City of Hurricane Standards for Design and Construction.

ARTICLE 2 – Night and Weekend Work

- 2.1 Night work between 10:00 pm and 6:00 am will not be permitted without prior written permission from the Public Works Director.
- 2.2 The contractor shall provide a minimum of 7 calendar day notice prior to performing weekend work. Weekend work will only be permitted upon approval from the City's representative after proper notice has been submitted by contractor.
- 2.3 Each respective City accommodates and/or sponsors special events. It is the responsibility of the CONTRACTOR to coordinate work around special events. Work may have to be suspended to accommodate an event. These accommodations will be made at no extra cost to the City.

ARTICLE 3 – Chip Seal

- 3.1 See Section 4.6 of the City of Hurricane Standards for Design and Construction (included below).

ARTICLE 4 – Completion of Work

- 4.1 Work may begin as soon as written Notice to Proceed is issued by the City.
- 4.2 Work must be complete within the number of calendar days bid. Liquidated damages in the amount of \$250 per calendar day will be assessed for each day thereafter that work is not complete.

ARTICLE 6 – General Limitations

- 6.1 Do not disturb or damage any existing features such as signs, fences, walls, concrete fixtures, landscaping, etc. located within the project limits that are not called out in the plans. Replace and/or repair any of said features damaged at no additional cost to the City.
- 6.2 Maintain and coordinate all mail delivery and waste management services along the project corridor with the adjacent owners throughout the duration of construction.
 - a. United States Postal Service - 435-635-4781
 - b. Washington County Solid Waste - 435-628-2821
- 6.3 Public Relations: Designate a single individual as the point-of-contact (POC) for all coordination and communication with the City, private property owners, and utility companies. The individual must be onsite at all times when work is being performed and must give precedence to public relation inquiries over other work items. Public relation inquiries represent any inquiry from a person or organization outside the contractor's labor force.

END OF SECTION

4.3 MEASUREMENT AND PAYMENT

Hurricane City 2024 Chip Seal Project

1	Mobilization	Lump
	Includes all costs associated with mobilizing, demobilizing, and Quality Control for the Chip seal project. Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all offices, buildings, sanitary facilities and other facilities necessary for work on the project; and for all other work and operations which must be performed, or costs incurred, not otherwise paid for prior to beginning work on the various items on the project sites. This section includes preparation of construction scheduling, insurance, bonding and other incidental paper work required to initiate the project. Includes public relations, all of which shall be included in the lump sum price for the Mobilization item.	
	Amount Paid	When Paid
	The lesser of 25% of Mobilization or 2.5% of contract	With first estimate
	The lesser of 50% of Mobilization or 5% of contract	With any estimate following completion of 5% of contract
	The lesser of 75% of Mobilization or 7.5% of contract	With any estimate following completion of 10% of contract
	The lesser of 100% of Mobilization or 10% of contract	With any estimate following completion of 20% of contract
	Amount bid in excess of 10% of contract price.	Project Acceptance-Final

2	Traffic Control	Lump
	Includes all costs to furnish and maintain all signs and barricades needed to maintain safe and efficient traffic routes for the public. No work shall commence until the project has been adequately signed. All signs, barricades and channeling devices shall be kept clean and erected in accordance with the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD). This item also includes all flagging operations to safely complete any and all bid items, or as directed by the Engineer; all equipment, personnel, protective devices, and traffic control as required to direct traffic away from the construction activities. Includes all traffic control devices, detour signing, as required by the Limitation of Operations.	
	Amount Paid	When Paid
	25% of the bid item amount	With first estimate
	Remaining portion of bid item paid as a percentage of the contract completed	With each subsequent estimate

3	Chip Seal, Double Layer OR Chip Seal, Double Layer (1380 West)	Square Yard
	Includes all equipment, labor and materials required to clean and chip seal surfaces identified on the project maps, or as otherwise directed by the Engineer according to the specifications and requirements included in the Contract Documents and City Standards. The 1/2" chip gradation with accompanying spray rate is required for the Chip Seal, Double Layer pay item. The 5/8" chip gradation with accompanying spray rate is required for the Chip Seal, Double Layer (1380 West) pay item.	

4	LMCRS-2H Oil, OR MC-3000 Oil	Ton
Includes all equipment, labor, and materials required to furnish and spread at an appropriate rate, LMCRS-2H Oil at the specified rate or as directed by the Engineer. This item is to be used with the Chip Seal, Double Layer item. Providing and applying sand to mitigate surface bleeding is incidental to the project. MC-3000 Oil is to be used for the Chip Seal, Double Layer, 1380 West bid item.		

END OF SECTION

4.4 Section 4.6 of the Hurricane Standards for Design and Construction: BITUMINOUS SEAL COAT (CHIP SEAL):

- 4.6 BITUMINOUS SEAL COAT (CHIP SEAL).** Bituminous surface treatments (chip seals) shall be applied to the road surface only when required or approved by the City Engineer. The bituminous surface treatment shall consist of an application of bitumen covered with mineral aggregate and rolled to a smooth surface presenting an even texture. The materials used in the application of the bituminous surface treatment shall be bituminous mineral, and mineral aggregate, as specified below.

4.6.1 MATERIAL SPECIFICATIONS.

4.6.1.1 BITUMINOUS MATERIAL. For applications over existing pavement the bituminous material shall be cationic emulsified asphalt with a natural latex rubber material (type LMCRS-2H) and shall conform to the following requirements:

TEST	SPECIFICATION	PARAMETERS
Viscosity @ 122° F. Sieve Settlement, 5 days Demulsibility Storage Stability (1 day test) Ash Content	AASHTO T-59 AASHTO T-59 AASHTO T-59 AASHTO T-59 AASHTO T-59 ASTM D3723	100-300 sec. 0.3% max. 5% max. 40% min. 1% max. 0.2% max.
Tests on Residue by Drying: Percent Residue Penetration @ 77° F., (100 g., 5 sec.) Ductility @ 77° F., (5 cm./min.) Torsional Recovery	NV 756 AASHTO T-49 AASHTO T-51 NV 756	65% min. 40-150 mm. 40 cm. min. 18% min.
Particle Charge	AASHTO T-59	POSITIVE

For applications on non-paved surfaces the bituminous material shall be cut-back asphalt; medium curing (type MC-3000) and shall conform to the following requirements:

TEST	ASTM Test Method	PARAMETERS
Flash Point; COC; °F	D 92	150 Minimum
Kin. Viscosity @ 122°F.	D 2170	3,000 – 6,000
Distillate; % of total Vol.	D 402	
Up to 437°F	D 402	0 – 10
Up to 500°F	D 402	0 – 15
Up to 600°F	D 402	15 – 75
Up to 680°F	D 402	80 Minimum
Residue Viscosity @ 140°F	D 2171	300 – 1,200
Residue Penetration @ 77°F	D 5	120 – 300
Residue Ductility @ 77°F	D 113	100 Minimum
Solubility in trichloroethylene, %	D 2042	99 Minimum
Water, %	D 95	0.2 Maximum

4.6.1.2 AGGREGATE (CHIPS). Mineral aggregate shall consist of crushed stone or crushed gravel, free from adherent films of clay or dust, and shall be of such nature that a thorough coating of the bituminous material used in the work will not strip off upon contact with water.

The gravel or rock shall have a percent of wear not greater than thirty when tested by the Los Angeles Abrasion Test (AASHTO T-9 ASTM C 131).

Chips shall be cubical or pyramidal in shape with at least ninety-five (95) percent fractured faces. The crushed aggregate shall have a weighted percent of loss not exceeding ten percent by weight when subjected to five cycles of sodium sulfate and tested in accordance with AASHTO Designation T-104.

Stripping tests of the mineral aggregate which the Contractor proposes to use shall be furnished to the City's Representative before crushing operations begin. During aggregate crushing, additional stripping tests shall be furnished to the City's Representative upon request. No stripping test shall show a percent stripping greater than ten for LMCRS-2H asphalt. The chip shall be electrically compatible to the asphalt emulsion used.

The crushed aggregate shall conform to the gradation requirements shown in following tables.

**TABLE 4.11
GRADATION OF AGGREGATE FOR 1/2" CHIP SEAL COATS**

SIEVE SIZE	PERCENT BY WEIGHT PASSING (Ideal)	IDEAL GRADATION TOLERANCE (Percent)
1/2 Inch	100	0
3/8 Inch	95	+/- 5
No. 4	10	+/- 5
No. 8	2	+/- 2
No. 200	0.5	+/- 0.5

**TABLE 4.11a
GRADATION OF AGGREGATE FOR 5/8" CHIP SEAL COATS**

SIEVE SIZE	PERCENT BY WEIGHT PASSING (Ideal)	IDEAL GRADATION TOLERANCE (Percent)
5/8 Inch	100	0
1/2 Inch	95	+/- 5
1/4 Inch	5	+/- 5
No. 8	2	+/- 2
No. 200	0.5	+/- 0.5

The initial mineral aggregate used for the production of chips shall be retained on a one-inch sieve prior to being crushed to the gradation specified.

4.6.2 AGGREGATE QUALITY CONTROL. Prior to delivery to the project site the designated wear test, striping test, sodium sulfate test, fracture face count, and gradation tests shall be performed on the crushed aggregate. Each time a source changes said tests will be repeated.

All aggregate (chips) shall be tested for compliance with the gradation and fracture face count during the production of the chips. There shall be no less than one test performed for every five hundred tons of material produced or one day's production, whichever is less. One gradation test and fracture face count test shall be defined as the average results of tests taken on three different samples taken at one particular time.

All material produced shall be stockpiled in designated stockpile site(s).

When chips are delivered to the project stockpile site there shall be one gradation test conducted for every five hundred tons of material. If the gradation test requirements are not met, the City's Representative may require that the failed material be removed from the

stockpile. Chips shall be considered to be out of specification if one test (as defined herein above) fails.

The City's Representative will not accept any chips which do not meet all the designated specifications. No reduction in pay or other remedial terms will be allowed or negotiated.

In addition to the random acceptance samples taken at the stockpile, the City's Representative may sample the aggregate from any portion of stockpile which exhibits a non-uniform appearance.

The Contractor shall take immediate steps to bring the aggregate into specifications when test results show any deviation from the established maximum or minimum values for any sieve as shown in Table 4.11 of these specifications.

At designated stockpile site(s), the Contractor may be required to "push up" the unloaded aggregate into piles suitable for loading into the delivery dump trucks.

Extreme care shall be taken so as not to mix any of the crushed aggregate with the underlying material at the stockpile or the crushing site. In the event that there is contamination of the chip seal aggregate with foreign material, as determined by the City's Representative, or by tests conducted, the contaminated section of material shall be immediately removed from the stockpile or crushing area and properly disposed of. All contaminated material removed from the stockpile, or crushing area, shall be replaced with aggregate which meets the requirements of these specifications.

All testing required by the City's Representative, or by the plans and specifications, shall be performed by an independent testing laboratory. The Contractor shall do everything in his power to ensure that the City's Representative has full access to the testing procedure and shall deliver to the City's Representative any and all results of tests run. The Contractor shall not proceed with subsequent construction until certified copies of appropriate tests are delivered to the City's Representative. Any materials not properly tested shall be subject to rejection and removal.

4.6.3 EQUIPMENT. All tools, equipment and machines used in the performance of the work shall be subject to the approval of the City's Representative, and shall be maintained in satisfactory working conditions at all times.

4.6.3.1 ASPHALT DISTRIBUTOR. The asphalt distributor shall be equipped with a calibrated dipstick marked in gallons per inch of length, and an accurate thermometer and speedometer. The distributor shall also be capable of maintaining proper pump pressure to ensure a uniform distribution of liquid asphalt emulsion at all times. The pump shall be able to maintain the correct pump speed, or pressure, without either atomizing the asphalt or distorting the spray fan. However, the pump shall be able to maintain a pressure which shall be sufficient to prevent streaking from a non-uniform discharge of material from the individual nozzles.

The distributor shall be equipped with a rear-mounted spray bar capable of covering widths of six to fifteen feet in a single pass. The distributor tank shall be well insulated and be equipped with one or more heaters capable of bringing the asphalt emulsion to spray application temperature. The tank shall have a full circulating system which shall include the spray bar unit. The truck shall also be equipped with a

hand-spray for applying the asphalt emulsion to areas that cannot be reached with the spray bar.

The distributor shall be equipped with a computer which will automatically determine the discharge based on the nozzle size, the truck speeds for various application rates, and the corrections for temperature-viscosity variations.

4.6.3.2 AGGREGATE SPREADER. The spreader shall be a self-propelled Flarity chip spreader, or equal, capable of uniformly spreading aggregate at varying application rates as required. The spreader shall be equipped with a tachometer and/or a speedometer to ensure the maintenance of a uniform spreader speed. The aggregate spreader shall also be equipped with a device and so operated that the coarse particles of the screening shall be deposited on the bituminous binder before the finer particles.

4.6.3.3 ROLLERS. The Contractor shall provide at least two self propelled, smooth-tread, pneumatic tired rollers on the job during the chipping operations. Each roller shall weigh at least ten-tons and have staggered (offset) front and rear tires to obtain a uniformly rolled pass. Tire pressure in all tires shall be uniform and inflated to eighty psi. No steel wheel rollers shall be used to roll the chip seal surface treatments. Rolling speed shall not exceed ten miles per hour.

4.6.3.4 DUMP TRUCKS. The Contractor shall provide sufficient ten-wheel dump trucks during the chip sealing operations to ensure that the project can proceed without interruption. FREQUENT STOPS AND STARTS DURING THE CHIP SEAL OPERATION WILL NOT BE PERMITTED.

4.6.3.5 FRONT END LOADERS. The Contractor shall have on hand at least one front end loader to load the aggregate into the dump trucks from the aggregate stockpile(s). The loaders shall have at least a two-and-one-half yard capacity bucket.

4.6.3.6 POWER BROOMS. The Contractor shall provide at least one self-propelled rotary power broom or sweeper at the job site, and shall use said sweeper (supplemented with hand brooms as necessary) as required, to sweep the excess aggregate on the edge of each pass which will be in contact with the next pass so that there will be no build up of aggregate at the seams or joints between passes. The broomed aggregate shall be swept onto the freshly laid course.

4.6.4 BITUMINOUS CHIP SEAL CONSTRUCTION METHODS. The methods employed in installing bituminous chip seal(s) shall include, but are not limited to, the following:

4.6.4.1 SURFACE PREPARATION. All dust, dirt, tracked on clay and foreign material shall be removed from the surfaces to be sealed by sweeping the surface with power brooms, hand brooms, power blowers, or by flushing it with water or a combination of the above. All patching, crack filling and drainage improvements required by the City's Representative shall be completed prior to the commencement of the surface treatment application. After the cleaning operation has been completed, and prior to the application of the surface treatment, the area to be treated

will be inspected by the City's Representative to determine its fitness for receiving the surface treatment.

All sewer manhole lids, water valve covers and survey monument covers shall be protected from the application of the seal coat by placing building paper over the lids (cut to the exact dimensions of the lids) prior to the application of the seal coat. At the completion of the sealing operations, all protective coverings shall be removed from said survey monument covers, manhole lids and valve covers.

At the edges of all passes which will form longitudinal joints in the surface treatment (chip seal) the edge of the pass shall be swept clean of all chips for a distance of from four to six-inches back from the edge prior to the application of the adjacent pass to allow for overlap without chip buildup (humps) in the previous pass. Building paper shall be laid on all cross gutters (concrete waterways) to prevent the chip seal from being applied to said gutters. The Contractor shall place building paper at the beginning of all chip passes. Immediately after the chip application, the building paper shall be removed and destroyed.

4.6.4.2 ASPHALT APPLICATION. Application of the bituminous material shall not be permitted until the loaded aggregate trucks, rollers, and chip-spreader are in place and ready to apply, and roll, the cover aggregate. No surface will be chip sealed until authorization to do so has been obtained from the City's Representative. The asphalt material shall be applied at 0.32 to 0.45 gallons per square yard or as determined by the City's Representative and at a temperature between 125 degrees to 185 degrees Fahrenheit. The exact temperature used to apply the bituminous material shall be determined by the City's Representative.

The bituminous material shall be applied by an asphalt distributor, as described above, so that uniform distribution in the quantities specified is obtained over all points of the surface to be treated. All lightly-coated areas and spots missed by the distributor shall be properly treated with bituminous material applied by hand. No more asphalt shall be applied than can be covered with aggregate in sixty seconds or less. Distances between the distributor and chip-spreader shall be as close as possible, but in no case shall the chip-spreader be greater than fifty feet behind the distributor during the chipping operations.

4.6.4.3 AGGREGATE SPREADING. Immediately following the application of the bituminous material, the aggregate shall be evenly spread over the surface at a uniform quantity of twenty-five to thirty (25-30) pounds per square yard of surface area. Upon commencement of the work, and during its progress, the individual quantities of bitumen and aggregate may be varied to meet specific field conditions, as directed by the City's Representative. An adequate supply of aggregate shall be available on the job site to permit continual spreading operations. Aggregate shall be damp (not wet) prior to being spread on the surface. The aggregate shall be spread by using a self-propelled spreader machine (Flarity or equal). The aggregate shall be spread evenly by hand on all areas missed by the aggregate spreader. Back-spotting or sprinkling of additional aggregate over the areas having insufficient cover shall be done by hand and shall be continued during the operations whenever necessary.

As the distributor moves forward to spray the asphalt, the aggregate spreader shall start right behind it, spreading the damp chips uniformly and at the specified rate. The asphalt distributor shall travel at the same rate of speed as the chip spreader and in no case shall the two machines be separated by more than fifty feet during the sealing process. Operating the chip spreader at speeds which cause the chips to roll over after striking the bituminous-covered surface will not be permitted.

Excess aggregate deposited in localized areas shall be immediately removed with square-end shovels, and in areas where application is insufficient, additional aggregate shall be added by hand prior to the time the asphalt "breaks".

4.6.4.4 AGGREGATE COMPACTION. The treated surface shall be rolled with rubber-tired rollers immediately after the distribution of the cover aggregate, and rolling shall continue until the aggregate is properly seated in the binder. Rollers shall proceed in the longitudinal direction, working across the treated surface until the entire width and length of the treated surface has been rolled at least four times. All rolling shall be completed within one hour after the application of the cover aggregate. Rollers and gravel trucks shall not be operated at speeds great enough to kick up chips, and in no case shall rollers be operated above ten miles per hour. In all places not accessible to the rollers, the aggregate shall be adequately compacted with pneumatic type hand tampers. Any aggregate that becomes coated, or mixed with dirt or any other foreign material shall be removed, replaced with clean aggregate over a newly-sprayed surface, and then re-rolled as directed by the City's Representative.

Bituminous material and chips shall not be spread more than one hundred feet ahead of completion of initial rolling operations.

No aggregate will be allowed to be swept into the gutters, onto the sidewalks, or thrown onto private property. The Contractor shall be responsible for the clean up of any and all aggregate swept into these areas.

Prior to placing the second chip seal course on streets designated for double chip seals, the first course shall be thoroughly rolled to set the chips, then no less than 24 hours later the excess chips shall be removed. Upon removal of the excess chips, the second course may be applied.

4.6.4.5 LOOSE AGGREGATE REMOVAL. Upon completion of rolling, traffic will be allowed to use the streets at a speed not to exceed fifteen miles per hour for a period of not less than twenty four hours. After the chips are set in the bituminous binder, but not earlier than the following day, or as directed by City's Representative, loose chips on the surface of the road shall be broomed and removed in such a manner that the aggregate set in the binder will not be displaced. Excessive brooming will not be permitted. At the end of seven days, any excess chips shall be removed in such a manner that the aggregate set in the binder will not be displaced. Excessive rolling or brooming will not be permitted.

4.6.4.6 SANDING. After the surface has been opened to traffic, any excess bituminous material that comes to the surface (bleeds) shall be immediately covered with CLEAN SAND. The Contractor shall be required to have sufficient CLEAN sand (NOT DIRT) on hand or available to immediately sand any bleeding spots when

requested by the City's Representative. Sanding shall be accomplished by evenly spreading the sand over the affected area and then hand brooming the sand to a smooth even surface with no bumps, ruts, depressions or irregularities visible.

4.6.4.7 APPEARANCE. The completed chip sealed surface shall present a uniform appearance and shall be thoroughly rolled and compacted and free from ruts, humps, depressions or irregularities due to an uneven distribution of bituminous binder or aggregate. In the event the surface presents an unacceptable appearance, as determined by the City's Representative, the Contractor shall repair unacceptable areas in accordance with the City Representative's directions.

4.6.4.8 WEATHER LIMITATIONS. Chip seal treatments shall be placed only when the air temperature in the shade is above 75 degrees Fahrenheit. The chip seal shall not be placed when the temperature of the road surface is below 70 degrees Fahrenheit, above 120 degrees Fahrenheit, during rainy weather, when the surface is wet or during other unfavorable weather conditions as determined by the City's Representative.

Part 5

ADDENDA

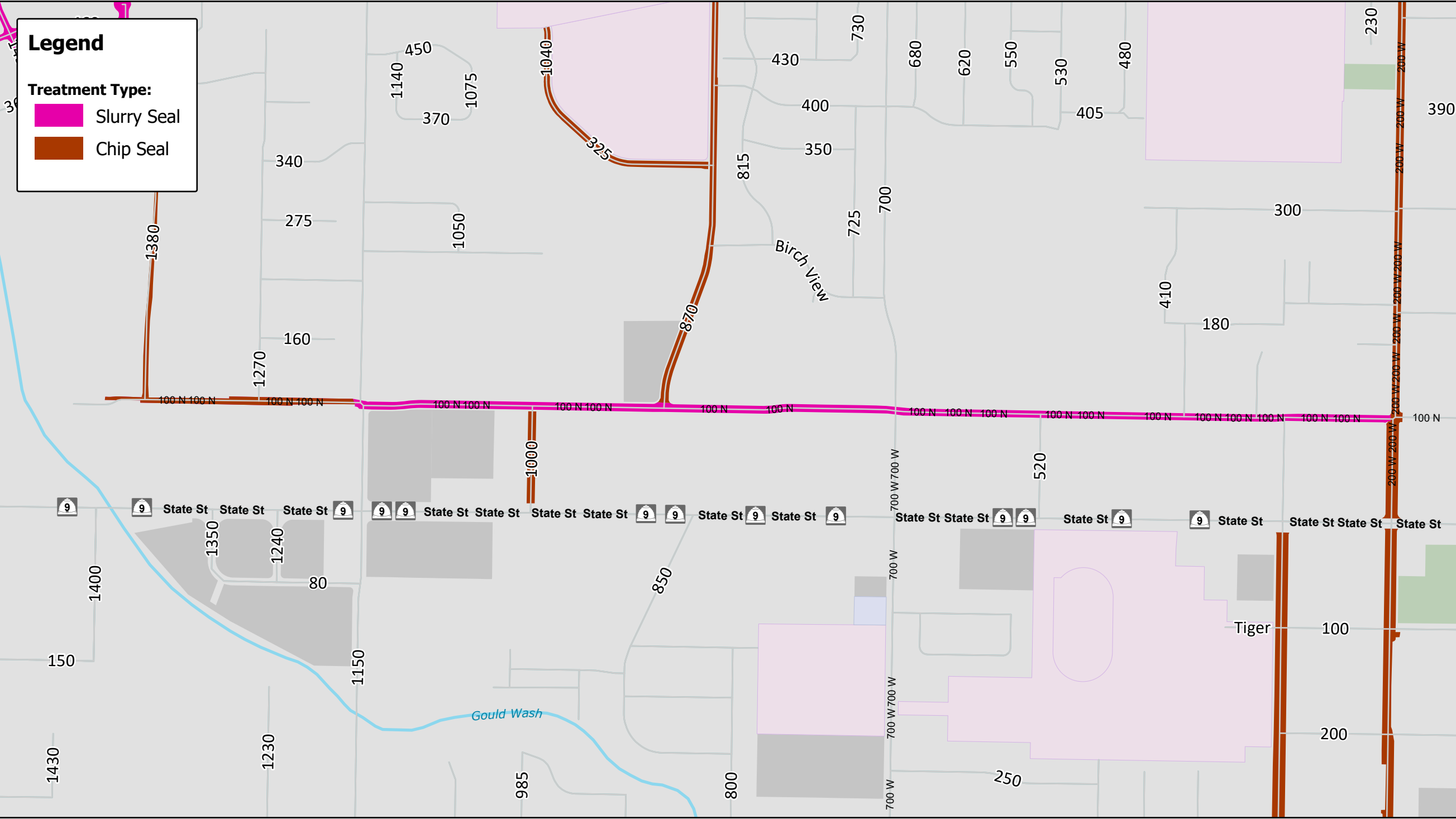
Part 6

Project Maps

100 North



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400 South / 100 West / 200 West (400 S - 975 N) / 300 West

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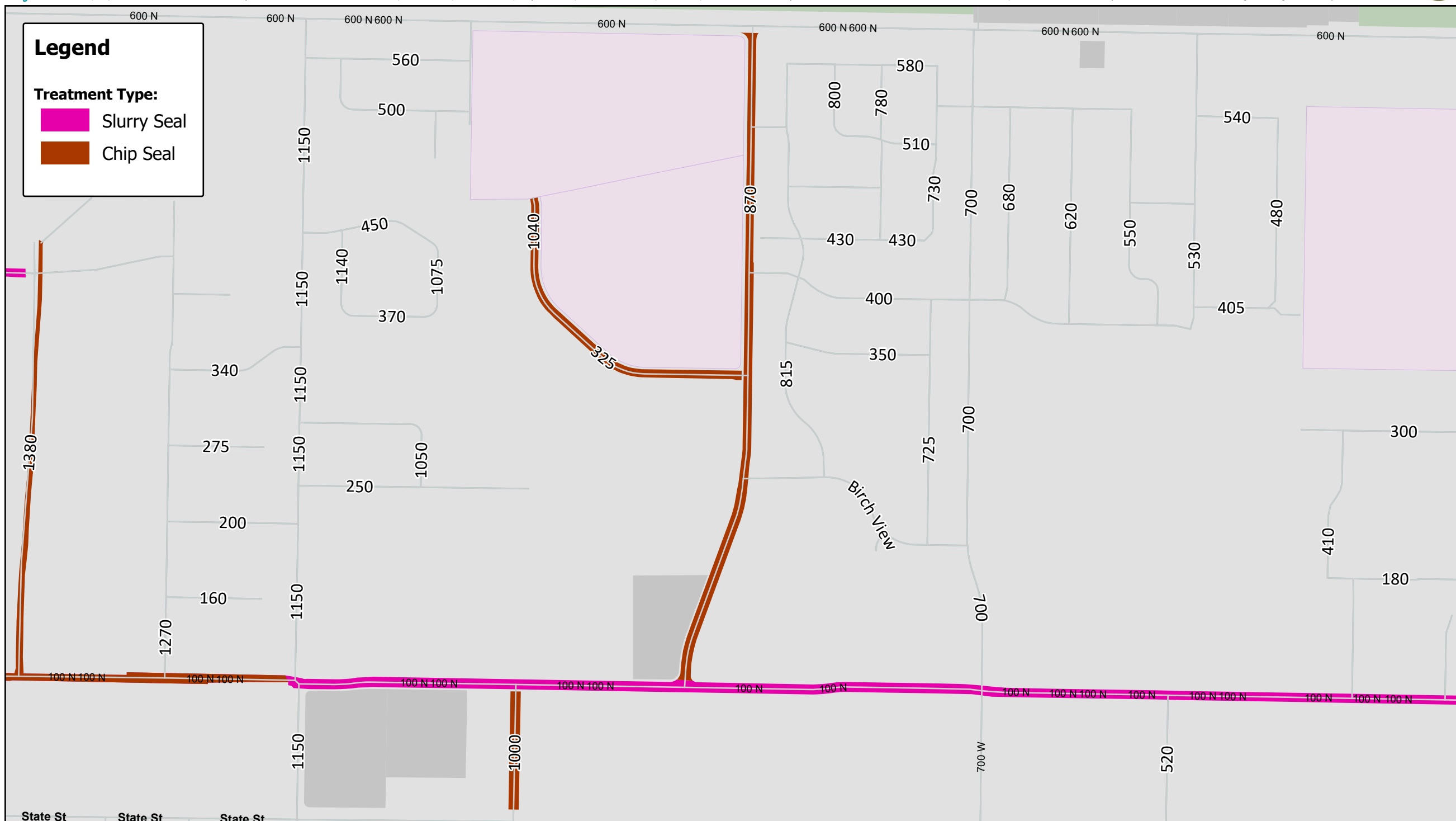


Dixie Springs Phase I

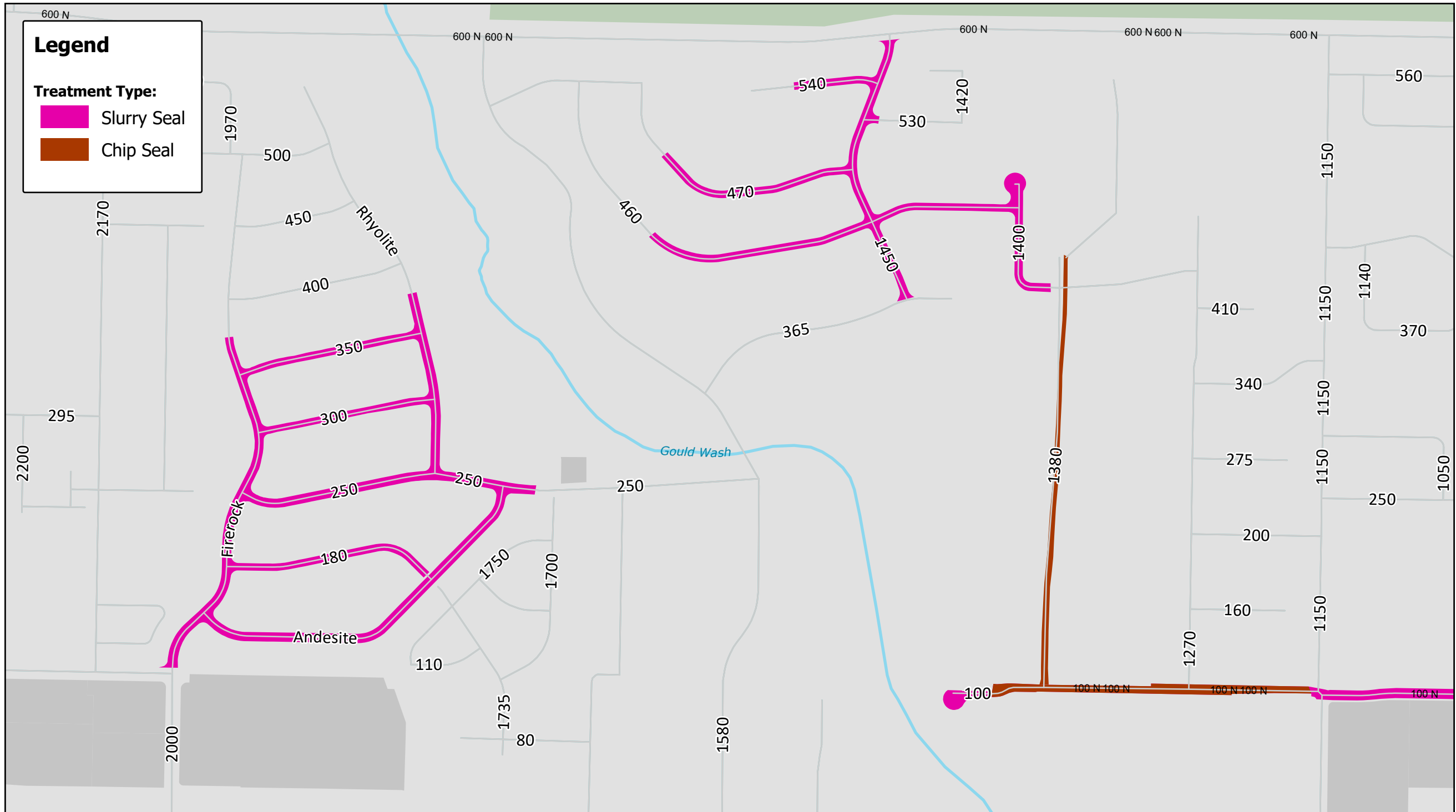
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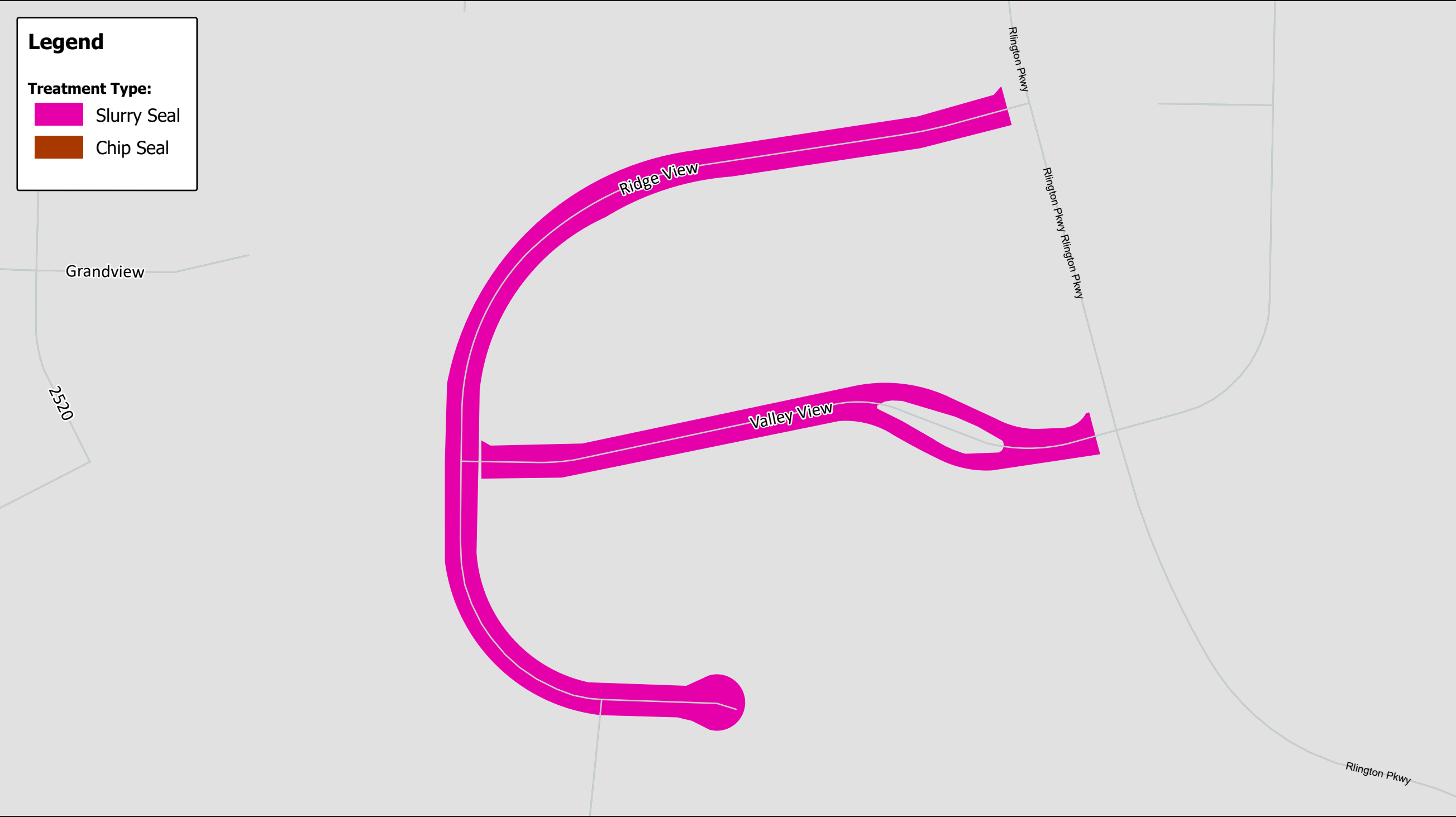
Ridge View and Valley View

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Legend

Treatment Type:

- Slurry Seal
- Chip Seal





Shadow Ridge



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Legend

Treatment Type:

-  Slurry Seal
-  Chip Seal

Washington

State St

Telegraph Rd

Telegraph Rd

6250

6200

200

225

385

6150

Coral Cove



Grandpa's Pond Park / Parks Office Parking

City of Hurricane
GIS Department



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Double Chip Area	Sq Yd
1000 West	2116
100 North	4672
300 West	14332
200 West	37337
870 West	10126
325 North	4598
Using LMCRS-2H Oil	
Double Chip Total:	73181

1380 West Double Chip Area	Sq Yd
1380 West	4001
Using PASS Oil, or MC3000	
1380 West Double Chip Total:	4001

2024 Slurry Seal Project Bid Tabulation

Contractor:			American Pavement		Morgan Pavement		M&M Asphalt		Asphalt Preservation		Engineer's Estimate	
Item	Quantity	Unit	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost	Unit Price	Cost
Mobilization	1	Lump Sum	\$ 4,000.00	\$ 4,000.00	\$ 15,300.00	\$ 15,300.00	\$ 2,500.00	\$ 2,500.00	\$ 16,250.00	\$ 16,250.00		\$ -
Traffic Control	1	Lump Sum	\$ 7,500.00	\$ 7,500.00	\$ 1,000.00	\$ 1,000.00	\$ 5,000.00	\$ 5,000.00	\$ 12,500.00	\$ 12,500.00		\$ -
Type II Slurry Seal	293511	SY	\$ 1.55	\$ 454,942.05	\$ 1.68	\$ 493,098.48	\$ 1.73	\$ 507,774.03	\$ 1.82	\$ 534,190.02	\$ 1.72	\$ 504,838.92
			Total:	\$ 466,442.05	Total:	\$ 509,398.48	Total:	\$ 515,274.03	Total:	\$ 562,940.02	Total:	\$ 504,838.92

Note: The Engineer's Estimate unit price included Mobilization and Traffic Control in the per square yard estimated unit cost.

CONTRACT DOCUMENTS AND TECHNICAL SPECIFICATIONS

For

HURRICANE CITY 2024 SLURRY SEAL PROJECT

Hurricane, Utah

December, 2023



**HURRICANE CITY
DEPARTMENT OF PUBLIC WORKS**

Part 1

BID DOCUMENTS

ADVERTISEMENT FOR BIDS

RECEIPT OF BID PROPOSALS. Hurricane City, located at 147 North 870 West, Hurricane, Utah will accept Bids and a Statement of Qualifications from qualified contractors to complete the Hurricane City 2024 Slurry Seal Project. Bids will be accepted at the Hurricane City office, 147 North 870 West in Hurricane until 2:00 PM, Wednesday, December 20, 2023. The Hurricane City reserves the right to not award the project to the low bidder.

Technical questions regarding the Bidding Documents shall be directed to Arthur LeBaron, City Engineer, (435) 635-2811 x113, arthur@cityofhurricane.com.

OBTAINING BID DOCUMENTS, SPECIFICATIONS & DRAWINGS. Documents must be obtained from Hurricane City, 147 N 870 W Hurricane, UT 84737. You may call for plans at 435-635-2811 x113, or via email to arthur@cityofhurricane.com. Electronic copies of the plans, contract documents, and specifications will be available at no cost.

Published in THE SPECTRUM: December 10 and 17, 2023.

INFORMATION FOR BIDDERS

BIDS and STATEMENTS OF QUALIFICATIONS (S.O.Q.) will be received by Hurricane City (herein called the "OWNER"), at Hurricane City Office, 147 North 870 West, Hurricane, Utah 84737 until 2:00 PM, Wednesday, December 20, 2023.

Each BID and S.O.Q. must be submitted in a sealed envelope, addressed to Hurricane City, 147 North 870 West, Hurricane, Utah 84737. Each sealed envelope containing a BID and S.O.Q. must be plainly marked on the outside as BID for Hurricane City 2024 Slurry Seal Project 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 and S.O.Q. must be enclosed in another envelope addressed to the OWNER at Attn: Arthur LeBaron, 147 North 870 West, Hurricane, Utah 84737.

Each BID must be accompanied by a Statement of Qualifications. Contractors will be ranked and the project will be recommended for award based on the following criterion:

- | | |
|---|--------------------|
| 1. Statement of Qualifications (include work experience on similar projects, past performance, references, equipment, and subcontractor/subcontract work list). | 25 points possible |
| 2. Contract Time Reported in Calendar Days (include a detailed schedule with anticipated start/completion dates, project approach covering work operations, maintenance of traffic, access accommodations and other pertinent information). | 25 points possible |
| 3. Bid Price. | 50 points possible |

Hurricane City reserves the right to not award the project to the low bidder.

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 or reject any and all BIDS. 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.

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 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 and Statements of Qualifications have been compared, 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.

In lieu of a performance BOND and a payment BOND, 20% of each pay request will be retained until proper documentation of payment to subcontractors and suppliers has been submitted to the OWNER, after which the retained amount will be reduced to 5%, until final completion of the contract.

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 qualified BID will not be accepted.

The BIDDER is required to bid the contract time for this project with which the BIDDER guarantees they will complete the project. The contract time shall be inserted on the bid schedule.

Award will be made to the BIDDER with the highest rank as determined by Hurricane City.

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 ENGINEER for this project is Arthur LeBaron, PE.

BID

Proposal of _____ (hereinafter called "Bidder"), organized and existing under the laws of the State of _____ doing business as a _____. To the 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 2024 Slurry Seal Project, 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 and other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract within on _____, 2024, and to fully complete the PROJECT on or before _____, 2024. Bidder further agrees to pay as liquidated damages, the sum of \$250.00 for each consecutive calendar day thereafter as provided in Section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

_____ Addendum No. _____ Dated _____

_____ Addendum No. _____ Dated _____

HURRICANE CITY 2024 SLURRY SEAL PROJECT

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 Engineer. 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.

LS = Lump Sum; EA = Each
LF = Lineal Feet SY = Square Yard

Funding for this project is by each respective municipality, per the bid schedules below:

BID SCHEDULE

Hurricane City 2024 Slurry Seal Project Hurricane City Streets

Item #	Item	Quantity	Units	Unit Price	Total
A-1	Mobilization	1	Lump Sum		
A-2	Traffic Control	1	Lump Sum		
A-3	Slurry Seal, Type II	293,511*	SY		
SCHEDULE A TOTAL					

*Quantities may be increased or reduced to meet budget, based on unit bid prices.

ATTEST:

(Seal – If Bid is by Corporation)

RESPECTFULLY SUBMITTED:

Address

Signature

Name

Title

**STATE OF UTAH
BID BOND**

KNOW ALL PERSONS BY THESE PRESENTS, That _____
(Name of Contractor)

(Address)
(hereinafter called the "Principal") and the _____ a
corporation created and existing under the laws of the State of _____, having its principal office in the City of
_____ (hereinafter called the "Surety"), are held and firmly bound unto The People of the State of Utah
(hereinafter called the "State"), in the full just sum of *Five (5%) of Attached Bid*, good and lawful money of the United
States of America, for the payment of which said sum of money, well and truly to be made and done, the said
Principal binds themselves (himself/herself, itself), their (his/her, its) heirs, executors and administrators, successors
and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these
presents:

WHEREAS, the said Principal has submitted to the Hurricane City a proposal for

(Project Description),

and

WHEREAS, under the terms of the Laws of the State of Utah as above indicated, the said Principal has filed
or intends to file this bond to guarantee that the Principal will execute all required contract proposal documents and
furnish such faithful performance or other bonds as may be required by law in accordance with the terms of the
Principal's said proposal.

NOW, THEREFORE, the condition of the foregoing obligation is such, that if the said Principal shall
promptly execute and submit, and the City shall accept, all required contract proposal documents including such
faithful performance bond or other bonds as may be required by law in accordance with the terms of the Principal's
said proposal, then this obligation shall be null and void, otherwise to remain in full force and virtue.

IN TESTIMONY WHEREOF, the said Principal has hereunto set his/her (their, its) hand and the said Surety
has caused this instrument to be signed by its authorized officer, the day and year above written.

Signed and delivered this ____ day of _____ 20____ in the presence of:

(Company)

(Signature)

(Title)

Principal

(Company)

By _____ Surety
(Signature)

(Title of Authorized Officer)

(The Surety Company shall append a single copy of a statement of its financial condition and a copy of the resolution authorizing the execution of Bonds by officers of the Company to the bond(s).)

STATE OF UTAH
BID BOND

(Acknowledgment of principal, unless it be a corporation)

STATE OF UTAH

ss. :

COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public

(Acknowledgment of principal, if a corporation)

STATE OF UTAH

ss. :

COUNTY _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____ that he/she is the _____ of _____ the corporation described in and which executed the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

(Acknowledgment of Surety Company)

STATE OF UTAH

ss. :

COUNTY OF _____

On this ____ day of _____ 20 ____, before me personally came _____ to me known and known to me to be the person, who being by me duly sworn, did depose and say that he/she resides in _____. that he/she is the _____ of _____ the corporation described in the foregoing instrument; and that he/she signed his/her name thereto by order of the Board of Directors of said Corporation.

Notary Public

Part 2

AGREEMENT DOCUMENTS

NOTICE OF AWARD

To:

Date: _____, 2024

Project: Hurricane City 2024 Slurry Seal Project

The OWNER has considered the BID submitted by you for the above-described WORK in response to its Advertisement for Bids dated December, 2023, and Information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$ _____

You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this ____ day of _____, 2024.

Hurricane City, Owner

By: _____

Name: Arthur O. LeBaron

Title: City Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD

is hereby acknowledged

by _____

this the _____ day of _____, 2024.

By _____

Name _____

Title _____

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

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 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 the CONTRACTOR is a Partnership, all partners should execute the 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 _____ day of _____, 2024 by and between Hurricane City, hereinafter called OWNER" and _____, doing business as a _____, 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 Hurricane City 2024 Slurry Seal Project
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 10 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 \$ _____.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - A) Public Notice
 - B) Information for Bidders
 - C) Bid
 - D) Bid Bond
 - E) Agreement
 - F) Payment Bond
 - G) Performance Bond
 - H) Notice of Award
 - I) Notice to Proceed
 - J) Change Order
 - K) General Conditions
 - L) Supplementary General Conditions
 - M) City of Hurricane Standard Specifications for Design and Construction
 - N) Ash Creek SSD Standard Specifications for Design and Construction
 - O) Technical Specifications prepared or issued by Hurricane City, dated December, 2023.
 - P) Slurry seal maps, dated December, 2023.
 - Q) ADDENDA:
No. _____ dated _____
No. _____ dated _____
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: Arthur LeBaron

Title: City Engineer

(SEAL)

ATTEST:

By: _____

Name: Cindy Beteag

Title: City Recorder

CONTRACTOR:

By: _____

Name: _____

(Please Type)

Address: _____

_SEAL)

ATTEST:

Name: _____

(Please Type)

Title: _____

NOTICE TO PROCEED

To:

Date: _____, 2024
Project: Hurricane City 2024 Slurry Seal
Project

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 2024, on or before _____, 2024, and you are to complete all on-site WORK on or before _____, 2024.

Hurricane City, Owner

By: _____

Name: Arthur O LeBaron

Title: City Engineer

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED
is hereby acknowledged

by _____

this the _____ day of _____, 2024.

By _____

Name _____

Title _____

CHANGE ORDER

Order No. _____
Date: _____
Agreement Date: _____

NAME OF PROJECT: Hurricane City 2024 Slurry Seal Project
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:
ENGINEER: _____
CONTRACTOR: _____
HURRICANE CITY: _____

Part 3

GENERAL CONDITIONS

GENERAL CONDITIONS

CONTENTS

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
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17. Completion and Acceptance of Work
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19. Contract Security
20. Indemnification
21. Separate Contracts
22. Subcontracting
23. Engineer's Authority
24. Land and Right-of-Way
25. Guaranty
26. Arbitration
27. Taxes

1. DEFINITIONS. Wherever used in the STANDARD CONSTRUCTION DOCUMENTS, the following terms shall have the meanings indicated 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 DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

1.2. DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS - The Standard Documents: including Information for Contractors, Payment Bond, Performance Bond, General and Supplemental General Conditions, and Technical Specifications.

1.3. DEVELOPER - The person, firm or corporation responsible for developing the PROJECT and in this case is HURRICANE CITY; and for whom the CONSTRUCTION WORK is to be performed.

1.4. DEVELOPER'S ENGINEER - The person, firm or corporation with whom the DEVELOPER has executed an Agreement for design of the construction work for the PROJECT.

1.5. CONTRACTOR - The person, firm or corporation with whom the DEVELOPER has executed an Agreement to perform the construction work for the PROJECT.

1.6. CITY – Hurricane City, a public body, has jurisdiction over the WORK to be performed.

1.7. ENGINEER - The person, firm or corporation named as the CITY'S ENGINEER in the INFORMATION FOR CONTRACTORS.

1.8. CONSTRUCTION DRAWINGS - All the drawings and other data which have been prepared by the Developer's Engineer to show the characteristics and scope of the WORK to be performed; and have been approved by the CITY or the ENGINEER.

1.9. STANDARD DRAWINGS - All the standard drawings which have been prepared by the ENGINEER to show details of how the WORK is to be built.

1.10. FIELD ORDER - A written order effecting a change in the WORK, issued by the ENGINEER to the DEVELOPER or CONTRACTOR during construction.

1.11. PROJECT - The undertaking to be performed by the DEVELOPER and his CONTRACTOR in constructing the specific areas of the building as described in the STANDARD CONSTRUCTION DOCUMENTS.

1.12. RESIDENT PROJECT REPRESENTATIVE - The authorized representative of the CITY who is assigned to the PROJECT site or any part thereof.

1.13. SPECIFICATIONS - Part of the STANDARD CONSTRUCTION DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship to be used in all construction.

1.14. 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.

1.15. SUBSTANTIAL COMPLETION - That date as certified by the CITY or the ENGINEER 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. Substantial completion can be extended if the contractor does not move forward toward final completion of the project in a timely manner.

1.16. SUPPLEMENTAL GENERAL CONDITIONS - Modifications to General Conditions and supplemental requirements for the Project.

1.17. 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.

1.18. 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.

1.19. WRITTEN NOTICE - Any notice to the DEVELOPER 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 DEVELOPER, DEVELOPER'S ENGINEER or CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK in accordance with the requirements of the STANDARD CONSTRUCTION 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 DEVELOPER or CONTRACTOR shall submit to the CITY such schedules, records and other data where applicable, as are required by the STANDARD CONSTRUCTION DOCUMENTS for the WORK to be performed.

3.2. The DEVELOPER 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, 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 STANDARD CONSTRUCTION DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the CITY.

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 DEVELOPER and the ENGINEER. The DEVELOPER or DEVELOPER'S ENGINEER, 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 DEVELOPER, DEVELOPER'S ENGINEER 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 ENGINEER shall promptly review all SHOP DRAWINGS, if required. The ENGINEER'S approval of any SHOP DRAWINGS shall not release the DEVELOPER 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 DEVELOPER and CONTRACTOR.

5.2. When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the DEVELOPER'S ENGINEER'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 DEVELOPER'S ENGINEER or the ENGINEER, 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 CITY or ENGINEER.

6. MATERIALS, SERVICES AND FACILITIES

6.1. It is understood that, except as otherwise specifically stated in the STANDARD CONSTRUCTION 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. Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR; and approved by the DEVELOPER'S ENGINEER or ENGINEER.

6.5. Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

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 CITY 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 CITY or the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the CITY or ENGINEER the required certificates of inspection, testing or approval.

7.5. Inspections, tests or approvals by the CITY, ENGINEER 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 CITY, ENGINEER 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 CITY or ENGINEER, it must, if requested by the CITY or the ENGINEER, be uncovered for their observation and replaced at the CONTRACTOR'S expense.

7.8. If the CITY or the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the CITY'S or ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the CITY or ENGINEER 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 performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS by reference to brand name or catalog number, and if, in the opinion of the CITY or ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the CITY or ENGINEER may approve its substitution and use by the CONTRACTOR.

9. PATENTS

9.1. The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the CITY harmless from loss on account thereof, except that the CITY shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified; 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 CITY or ENGINEER.

10. SURVEYS, PERMITS, REGULATIONS

10.1. The DEVELOPER or DEVELOPER'S ENGINEER 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 DEVELOPER, 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 DEVELOPER, 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 CITY or ENGINEER 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 CITY or the ENGINEER 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 CITY or ENGINEER, shall act to prevent threatened damage, injury or loss. He will give the CITY or ENGINEER 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 CITY or ENGINEER 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 DEVELOPER and the CONTRACTOR, an adjustment shall be worked out between these two parties; with no cost to the CITY. Quantities on the bid schedule are estimates. Project quantities may need to be adjusted based on the bid price and the respective budget of each respective jurisdiction. Unit prices shall remain fixed unless quantities are adjusted beyond 20% of the original estimated quantity, at which threshold the CITY or the CONTRACTOR may request an adjustment of unit prices.

13.2. The CITY or ENGINEER, 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 DEVELOPER and the CONTRACTOR, an adjustment shall be worked out between these two parties; with no cost to the CITY.

14. CORRECTION OF WORK

14.1. The CONTRACTOR shall promptly remove from the premises all WORK rejected by the CITY or the ENGINEER 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 CITY 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 CITY may remove such WORK and store the materials at the expense of the CONTRACTOR.

15. SUBSURFACE CONDITIONS

15.1. The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the DEVELOPER, CITY or the ENGINEER 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 DEVELOPER 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 DEVELOPER and the CONTRACTOR; with no cost to the CITY.

16. SUSPENSION OF WORK, TERMINATION AND DELAY

16.1. The CITY or ENGINEER 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 CITY or ENGINEER; 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 is adjudged a bankrupt or 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 CITY or ENGINEER, or if he otherwise violates any provision of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS, then the CITY or ENGINEER 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, require that the DEVELOPER 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 he may deem expedient; with no cost to the CITY.

17. COMPLETION AND ACCEPTANCE OF WORK

17.1 Prior to SUBSTANTIAL COMPLETION of WORK, the CITY, with the approval of the ENGINEER 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, substantial completion can be canceled and contract time continued if the CONTRACTOR does not complete the miscellaneous work in a timely manner.

17.2. The CITY 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 CITY.

17.3. Upon completion and acceptance of the WORK, the CITY or ENGINEER shall issue a certificate that the WORK has been accepted by him under the conditions of the STANDARD CONSTRUCTION DOCUMENTS.

17.4. The CONTRACTOR will indemnify and save the CITY, ENGINEER or the CITY'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 CITY'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 usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person: and

18.1.5. Claims for damages because of injury to or destruction of tangible property, including loss of use resulting there from.

18.2.1 A copy of the acceptable Certificates of Insurance filed with the CITY shall be delivered to the ENGINEER for review 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 CITY at least fifteen (15) days prior to cancellation.

18.2.2. All liability insurance policies for the project shall include and endorsement naming the CITY and ENGINEER as additional insured.

18.3. The Contract General Liability Insurance shall be 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 covered owned, hired and non-owned vehicles.

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

Neither Fire and Extended Coverage nor Builder's Risk Insurance are required for this project.

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 CITY 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 STANDARD CONSTRUCTION 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 CITY, 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 CITY. The policy shall name as the insured the CONTRACTOR, the CITY, and the ENGINEER.

19. CONTRACT SECURITY

19.1. The CONTRACTOR shall, before any work is begun on the PROJECT, furnish the CITY with a Performance bond and a Payment Bond in penal sums equal to the amount of the Agreement with the DEVELOPER, 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 is declared a bankrupt 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 CITY 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 CITY. 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 CITY and the ENGINEER 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, anyone directly or indirectly employed by any of them or anyone 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 CITY or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph 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 ENGINEER, 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 CITY reserves the right to let 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 CITY or ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

21.2. The CITY 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 CITY, 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 CITY 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 ENGINEER or the CITY.

22.3. The CONTRACTOR shall be fully responsible to the CITY for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

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 CITY 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. ENGINEER'S AUTHORITY

23.1. The ENGINEER shall act as the CITY'S representative during the construction period. He shall decide questions which 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 ENGINEER 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. Inspections may be made at the factory or fabrication plant of the source of material supply.

23.3. The ENGINEER will not be responsible for construction means, controls, techniques, sequences, procedures, or construction safety.

23.4. The ENGINEER shall promptly make decisions relative to interpretation of the DESIGN STANDARDS AND CONSTRUCTION SPECIFICATIONS.

24. LAND AND RIGHTS-OF-WAY

24.1. The DEVELOPER 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 DEVELOPER 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 CITY 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 CITY or the ENGINEER 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 CITY 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 CITY or the ENGINEER 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 CITY 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.

Part 4

TECHNICAL SPECIFICATIONS

4.1 STANDARD SPECIFICATIONS AND REFERENCES

ARTICLE 1 – Standard Specifications

- 1.1 The City of Hurricane Specifications for Design and Construction (latest edition) and the City of Hurricane Underground Power Construction Standards (latest edition) shall govern the administration and construction of this Contract, except as modified in these special provisions, otherwise these Special Provisions shall govern the work.

The City's standard specifications and standard drawings can be found at:

<http://www.cityofhurricane.com/categories/departments/city-engineer/design-standards/>

The City's Underground standards can be found at:

<http://www.cityofhurricane.com/categories/departments/power/>

- 1.2 A copy of all applicable City Standards, as well as this document, shall be located at the job site at all times.
- 1.3 The Ash Creek SSD Specifications and Standard Drawings shall govern the construction of all sanitary sewer improvements.
- 1.4 The governing rankings in case of a discrepancy is:

Dimensions

1. Plan
2. Calculated
3. Scaled

Information

1. Special Provisions & Contract Documents
2. Plans
3. Measurement and Payment
4. Standard Specifications
5. Standard Drawings

END OF SECTION

4.2 LIMITATION OF OPERATIONS

ARTICLE 1 – Traffic Control

1.1 Traffic Control Plan

- a. Submit a Traffic Control Plan for review no less than 5 business days prior to commencing work. Traffic Control Plan must be approved prior to commencement of work.

1.2 Access:

- a. See Section 4.7 of the City of Hurricane Standards for Design and Construction.

ARTICLE 2 – Night and Weekend Work

- 2.1 Night work between 10:00 pm and 6:00 am will not be permitted without prior written permission from the Public Works Director.
- 2.2 The contractor shall provide a minimum of 7 calendar day notice prior to performing weekend work. Weekend work will only be permitted upon approval from the City's representative after proper notice has been submitted by contractor.
- 2.3 Each respective City accommodates and/or sponsors special events. It is the responsibility of the CONTRACTOR to coordinate work around special events. Work may have to be suspended to accommodate an event. These accommodations will be made at no extra cost to the City.

ARTICLE 3 – Type II Slurry Seal

- 3.1 See Section 4.7 of the City of Hurricane Standards for Design and Construction.

ARTICLE 4 – Completion of Work

- 4.1 Work may begin as soon as written Notice to Proceed is issued by the City.
- 4.2 Work must be complete within the number of calendar days bid. Liquidated damages in the amount of \$250 per calendar day will be assessed for each day thereafter that work is not complete.

ARTICLE 6 – General Limitations

- 6.1 Do not disturb or damage any existing features such as signs, fences, walls, concrete fixtures, landscaping, etc. located within the project limits that are not called out in the plans. Replace and/or repair any of said features damaged at no additional cost to the City.
- 6.2 Maintain and coordinate all mail delivery and waste management services along the project corridor with the adjacent owners throughout the duration of construction.
 - a. United States Postal Service - 435-635-4781
 - b. Washington County Solid Waste - 435-628-2821
- 6.3 Public Relations: Designate a single individual as the point-of-contact (POC) for all coordination and communication with the City, private property owners, and utility companies. The individual must be onsite at all times when work is being performed and must give precedence to public relation inquiries over other work items. Public relation inquiries represent any inquiry from a person or organization outside the contractor's labor force.

END OF SECTION

4.3 MEASUREMENT AND PAYMENT

Hurricane City 2024 Slurry Seal Project

1	Mobilization	Lump
	Includes all costs associated with mobilizing, demobilizing, and Quality Control for the slurry seal project. Mobilization shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies and incidentals to the project site, for the establishment of all offices, buildings, sanitary facilities and other facilities necessary for work on the project; and for all other work and operations which must be performed, or costs incurred, not otherwise paid for prior to beginning work on the various items on the project sites. This section includes preparation of construction scheduling, insurance, bonding and other incidental paper work required to initiate the project. Includes public relations, all of which shall be included in the lump sum price for the Mobilization item.	
	Amount Paid	When Paid
	The lesser of 25% of Mobilization or 2.5% of contract	With first estimate
	The lesser of 50% of Mobilization or 5% of contract	With any estimate following completion of 5% of contract
	The lesser of 75% of Mobilization or 7.5% of contract	With any estimate following completion of 10% of contract
	The lesser of 100% of Mobilization or 10% of contract	With any estimate following completion of 20% of contract
	Amount bid in excess of 10% of contract price.	Project Acceptance-Final

2	Traffic Control	Lump
	Includes all costs to furnish and maintain all signs and barricades needed to maintain safe and efficient traffic routes for the public. No work shall commence until the project has been adequately signed. All signs, barricades and channeling devices shall be kept clean and erected in accordance with the "Manual on Uniform Traffic Control Devices for Streets and Highways" (MUTCD). This item also includes all flagging operations to safely complete any and all bid items, or as directed by the Engineer; all equipment, personnel, protective devices, and traffic control as required to direct traffic away from the construction activities. Includes all traffic control devices, detour signing, as required by the Limitation of Operations.	
	Amount Paid	When Paid
	25% of the bid item amount	With first estimate
	Remaining portion of bid item paid as a percentage of the contract completed	With each subsequent estimate

3	Slurry Seal, Type II	Each
	Includes all equipment, labor and materials required to clean and slurry seal surfaces identified on the project maps, or as otherwise directed by the Engineer according to the specifications and requirements included in the Contract Documents.	

END OF SECTION

4.4 Section 4.7 of the Hurricane Standards for Design and Construction: Asphalt Emulsion Seal Coat (Slurry Seal)

- 4.7 ASPHALT EMULSION SEAL COAT (SLURRY SEAL).** This sub-section covers the requirements for the application of slurry seal coats on existing road surfaces. The slurry seal surface treatment shall consist of a mixture of emulsified asphalt, mineral aggregate, mineral filler, set control additive, and water. The slurry shall be properly proportioned, mixed, and spread evenly on a prepared surface in accordance with these specifications, or as directed by the City's Representative. When cured, the slurry shall have a homogeneous appearance, fill all cracks, adhere firmly to the road surface, and have a skid resistant texture.

4.7.1 MATERIAL SPECIFICATIONS.

4.7.1.1 ASPHALT EMULSION. The asphalt emulsion shall conform to the specifications outlined in Tables 4.12, 4.13 and 4.14. Either cationic or anionic emulsion may be used, whichever is best suited to the aggregate and job conditions to be encountered, as determined by compatibility tests and procedures as specified in the latest edition of the ISSA Technical Bulletin #115.

Use a polymer modified emulsion CQS-1HP, meeting CQS-1H specification identified in AASHTO M 208 and ISSA A 105, using solid synthetic rubber or latex material.

Combine the polymer modifier with the base asphalt or asphalt emulsion at a minimum rate of 3 percent solids by weight of asphalt, prior to loading at the manufacturing plant. Use a polymer modified emulsion compatible with the mix design developed for the convention slurry seal. Verify that the shipment is the same as that stipulated in the mix design.

4.7.1.2 AGGREGATE. The mineral aggregate shall consist of angular sand, or crushed stone, that is free from dirt, organic matter, clay balls, and adherent films of clay, dust or other objectionable matter. When tested according to AASHTO T-176, the aggregate shall have a sand equivalent of not less than forty five (45), and the aggregate shall be non-plastic. When tested according to AASHTO T-104, the aggregate shall show a loss of not more than fifteen (15) percent, and when tested according to AASHTO T-96, the aggregate shall show a loss of not more than thirty five (35) percent.

The combined mineral aggregate shall conform to the requirements of type II or type III slurry as outlined in Table 4.15.

4.7.1.3 FILLER. The mineral filler shall conform to the requirements of AASHTO M-16 and shall be used to improve the gradation of the aggregate, to provide improved stability and workability of the slurry, and to increase the durability of the cured slurry.

4.7.1.4 SET CONTROL ADDITIVE. To control the setting time of the slurry mixture, an additive shall be added which will retard the set when a cationic emulsion is used, or accelerate the set when an anionic emulsion is used. The set control additive shall be aluminum sulfate or Portland Cement Type I/II, and shall be added to the slurry mix by an approved method that will assure uniform distribution and proper control. The exact amount shall be determined by conditions in the field and as directed by City's Representative.

**TABLE 4.12
SLURRY SEAL TEST SPECIFICATIONS
TESTS OF EMULSIONS**

TESTS	TEST METHOD	TYPE OF EMULSION	
		ANIONIC	CATIONIC
		Quick Setting	Quick Setting
		QS-1H	CQS-1H CQS-1H-LM
Particle Charge Test	D244	Negative	Positive
Viscosity, 60 ml., @ 77° F., 5 seconds	D244	15 min. to 100 max.	
Residue by distillation	D244	60 percent by weight, minimum	
Settlement After Five Days (%)	D244	5 percent maximum	
Sieve Test Wt., (%)	D244	0.10 maximum	
Cement Mixing Test	D244, 32-36	2 % Maximum	Not Applicable
Softening Point	AASHTO T53, ASTM D36	Minimum 135	

TABLE 4.13
SLURRY SEAL TEST SPECIFICATIONS
TESTS OF RESIDUE

TESTS	TEST METHOD	TYPE OF EMULSION	
	ASTM	ANIONIC	CATIONIC
		Quick Setting	Quick Setting
		QS-1H	CQS-1H CQS-1H-LM
Penetration 100 gm. @ 77 ⁰ F for 5 seconds	D244	40 to 90 mm	40 to 90 mm
Solubility in Trichloroethylene	D2042 4d	97.5 percent, minimum	
Ductility, 5 cm/mm @	D244	40 cm., minimum	

TABLE 4.14
SLURRY SEAL TEST SPECIFICATIONS
TESTS ON SLURRY SEAL JOB MIXTURE

TESTS	TEST METHOD		TYPE OF EMULSION	
	AASHTO	ASTM	ANIONIC	CATIONIC
			Quick Setting	Quick Setting
			QS-1H	CQS-1H CQS-1H-LM
Mixing Time @ 77 ⁰ F (ISSA TB #102)	---	---	120 seconds minimum	120 seconds minimum
Set Time Tests (30 minutes) Blotter Test (ISSA TB #102)	---	---	No Brown Stain	No Brown Stain
Displacement Test	---	---	No Displacement	No Displacement
Water Resistance Test @ 30 Min. (ISSA TB #102)	---	---	No Discoloration	No Discoloration
Wet Stripping Test, Coating (ISSA TB #114)	---	---	90 percent, minimum	
System Compatibility	---	---	Compatible	

**TABLE 4.15
SLURRY MIXTURE GRADATION**

Type of Slurry	II	III
General Usage	General seal, medium textured surfaces; second course slurry	First and/or second application of two-course slurry; highly textured surfaces
Sieve Size (USA Standard Series)	P E R C E N T P A S S I N G	
3/8 inch	100	100
No. 4	90-100	70-90
No. 8	65-90	45-70
No. 16	45-70	28-50
No. 30	30-50	19-34
No. 50	18-30	12-25
No. 100	10-21	7-18
No. 200	5-15	5-15

4.7.1.5 WATER. Water for the slurry mixture shall be potable and free from harmful soluble salts.

4.7.2 MATERIAL QUALITY CONTROL.

4.7.2.1 SAMPLING AND TESTING. Prior to the commencement of sealing operations, sources of all materials shall be selected and tested in accordance with the appropriate test requirements. Additional samples of materials shall be furnished as directed by the City's Representative during the progress of the work. The Contractor's proposed job mix design shall be approved by the City's Representative prior to the commencement of construction.

4.7.2.2 JOB MIX DESIGN. No slurry mixture shall be placed until a mix design submitted by the Contractor has been approved by the City's Representative. The exact proportions of asphalt emulsion, aggregate, mineral filler, and water to be used in the preparation of the slurry seal shall be determined by an approved testing laboratory experienced in slurry mix design procedures. The residual asphalt content of the mix shall be from 7.5 to 13.5 percent of the dry aggregate for type II slurry seal or 6.5 to 12 percent of the dry aggregate for type III slurry seal.

The slurry shall be a homogeneous mixture, sufficiently stable during the entire mixing-spreading period so that the emulsion will not “break”. There shall be no segregation of the fines from the coarser aggregate, and the liquid portion of the mix shall not float to the surface. If it is established that a satisfactory mixture meeting the requirements specified herein cannot be produced from the materials furnished, the materials shall be rejected and the Contractor shall submit new samples.

The wet track abrasion test shall not exceed a maximum wear loss of seventy five grams per square foot.

4.7.3 EQUIPMENT. The equipment, tools, and machines required for the performance of the work shall be subject to the approval of the City’s Representative and shall be maintained in a satisfactory working condition at all times.

4.7.3.1 SLURRY MIXING MACHINE. The slurry mixing machine shall be a continuous flow mixing unit, capable of delivering accurately predetermined proportions of aggregate, water and asphalt emulsion to a revolving spiraled multi-blade mixer tank, and of discharging the thoroughly-mixed product on a continuous basis. The aggregate shall be pre-wetted immediately prior to mixing with the emulsion. The mixing unit shall be capable of thoroughly blending all ingredients together without violent action. The mixing machine shall be equipped with an approved fines feeder with an accurate metering device or method of introducing a predetermined proportion of mineral filler into the mixer as the aggregate is fed into the mixer. The fines feeder shall be used when mineral filler is part of the aggregate blend. The mixing machine shall be equipped with a water pressure system and fog-type spray-bar adequate for completely fogging the surface to be sealed with up to 0.05 gallons of water per square yard, immediately ahead of the spreading equipment. The machine shall be capable of mixing materials at pre-set proportions regardless of the speed of the machine and without changing machine settings.

4.7.3.2 SLURRY SPREADER. Attached to the mixing machine shall be a mechanical-type squeegee distributor, having a rubber-like material in contact with the surface to be sealed to prevent unwanted egress of slurry. An appropriate mechanical device for lateral distribution of the slurry shall be operated within the spreader box. There shall also be a steering device and a flexible strike-off. The spreader box shall be adjustable to various widths from eight (8) to twelve (12) feet. The box shall be kept clean with no extensive build-up of asphalt and aggregate on the box. A burlap drag of at least one foot in width shall be attached to the back of the spreader box to smooth out irregularities in the slurry surface.

4.7.3.3 SURFACE CLEANING EQUIPMENT. Power brooms, power blowers, vacuums, air compressors, water flushing equipment, and hand brooms suitable for cleaning the road surface and cracks therein may be used for surface cleaning.

4.7.3.4 AUXILIARY EQUIPMENT. Hand squeegees, burlap mops, shovels and other equipment shall be provided as necessary to perform the work.

4.7.4 ASPHALT EMULSION SLURRY CONSTRUCTION METHODS.

4.7.4.1 RESIDENT NOTIFICATION. The Contractor shall be responsible for notifying all affected residents of pending cleaning and/or sealing operations on streets abutting their properties. Notification shall be no more than forty eight hours, or less than twenty four hours, in advance of said cleaning/sealing operations. If there should be any change in scheduling for a particular days production, the Contractor shall be required to notify all of the residents affected by the schedule change no later than one hour after the schedule change has been determined.

4.7.4.2 VEHICLE REMOVAL. The Contractor shall be responsible for the removal of all vehicles from the streets to be cleaned, and shall endeavor to notify the owners of the vehicles to move them prior to his cleaning operations. In the event owners of said vehicles cannot be located, the Contractor shall have them towed from the construction zone prior to cleaning and shall be responsible for all costs incurred for said towing.

4.7.4.3 PREPARATION OF SURFACE. In the event that patching or surface smoothing is required to prepare the street surface for the slurry seal, the Contractor shall patch the street surface with hot mix asphalt prior to the application of the slurry sealing. Prior to the application of the slurry seal, the City's Representative shall give approval that the surfaces have been properly prepared. No slurry seal material will be laid without the City's Representative approval.

4.7.4.4 CLEANING STREETS. Prior to the commencement of Slurry Seal operations, the Contractor shall thoroughly clean and remove all mud spots and loose or objectionable material from the existing pavement surface. Areas impregnated with grease, oil, or fuels shall be cleaned by grinding. Traffic paint not tightly bonded to the surface and any thermoplastic markings shall also be removed. The grinding machine used to remove the existing bituminous surface, paint, and pavement markings shall be a hydrostatically powered mandrel type device. The mandrel shall be studded with a minimum of 72 cutter bits to provide a pavement texture acceptable to the OWNER. Bits shall have tungsten carbide tips in forged steel holders and conical in shape. The mandrel device shall have a minimum cutting width of 12" and a variable cutting depth of 0" to 4". Areas inaccessible to the grinder will be treated and prepared with an alternate method approved by the OWNER. The debris produced by the grinding machine or other method shall be immediately removed from the pavement surface and disposed of at an acceptable location. It shall be the responsibility of the CONTRACTOR to protect existing facilities (i.e. concrete, valve boxes, manholes, survey monuments, etc.) Damaged facilities shall be replaced at the direction of the OWNER.

After the cleaning operations have been completed, and prior to the application of the surface treatment, the area to be treated will be inspected by the City's Representative to determine it's fitness for receiving the surface treatment. No surface shall be slurry sealed until authorization to do so has been obtained from the City's Representative.

4.7.4.5 SEWER MANHOLE LIDS AND WATER VALVE COVERS. Prior to the application of the seal coat, all sewer manhole lids, survey monument lids, storm drain manhole lids and water valve covers shall be protected from the

application of the slurry seal coat by placing building paper over the lids (cut to the exact dimensions of the frames so as to prevent the slurry seal from entering into the seam between the frame and lid). At the completion of the sealing operations, the Contractor shall remove all building paper protectors placed on said lids and covers.

4.7.4.6 TEST SECTION. Prior to full production, the Contractor shall place a test section of at least sixty square yards in an area designated by the City's Representative. The test section shall be placed using the same equipment, methods, and mix as will be used on the job.

If the test section should prove to be unsatisfactory, necessary adjustments to the mix design, equipment, and/or placement methods shall be made. Additional test sections, as required, shall be placed and evaluated for compliance with the specifications. If the test section does not conform to the specification requirements, the defective slurry seal shall be removed. Full production shall not begin without approval of the City's representative.

4.7.4.7 WATER FOG. Immediately prior to application of the slurry seal, the surface of the pavement shall be moistened with a fog spray of water, applied at the rate of 0.02 to 0.05 gallon per square yard from the spray bar attached to the slurry seal machine. No free water shall pond on the surface of the pavement following the fog spray. The rate of application of the fog spray shall be adjusted during the day to suit pavement temperatures, surface texture, humidity, and dryness of the pavement surface.

4.7.4.8 PREPARATION OF SLURRY. The slurry seal shall be mixed and applied with a slurry machine as outlined below. The amount and type of asphalt emulsion to be blended with aggregate shall be determined by the laboratory mix design. A minimum amount of water, added as specified by the City's Representative, shall be used as necessary, to obtain a workable and homogeneous mixture. The slurry mixture shall be of proper consistency with no segregation when deposited on the surface of the pavement and no additional elements shall be added. The slurry mixture shall show no signs of uncoated aggregate or premature breaking of emulsion, when applied to the pavement surface. Total time of mixing shall not exceed four minutes.

4.7.4.9 APPLICATION OF SLURRY. Sufficient quantities of the slurry seal mixture shall be fed into the spreader box such that a uniform and complete coverage of the pavement is obtained. The slurry seal machine shall be operated at such a speed that the amount of slurry in the spreader box shall remain essentially constant. The slurry seal shall be placed at a dry aggregate application rate within the following general limits: Type I slurry - 10-15 #/yd.²; Type II slurry - 15-20 #/yd.². The finished slurry thickness shall not be less than 3/8 of an inch. No build-up of the cured slurry seal mix shall be allowed to collect in the spreader box. No streaks caused by oversized aggregate particles, or build-up of slurry mix on squeegees, shall be left on the finished surface.

If a uniform thickness cannot be met with one application due to irregularities in the pavement surface, multiple applications shall be made. Where multiple applications

are required, as determined by the City's Representative, each application shall be thoroughly cured prior to the application of the subsequent courses.

4.7.4.10 HANDWORK. Approved squeegees and mops shall be used to spread slurry in areas not accessible to the slurry spreader box. Care shall be exercised in leaving no unsightly appearance from handwork. When doing handwork in small areas, especially fill-in behind the slurry machine, the material shall be spread and mopped in the direction of the machine pass.

4.7.4.11 JOINTS. The longitudinal joints between adjacent lanes shall have no visible lap, pinholes, or uncovered areas. Thick spots caused by overlapping shall be smoothed immediately with hand squeegees before the emulsion breaks. Overlaps which occur at transverse joints shall also be smoothed before the emulsion breaks, so that a uniform surface is obtained which contains no breaks or discontinuities.

4.7.4.12 CURING. Treated areas shall be allowed to cure until the treated pavement will not be damaged by traffic. The Contractor shall protect this area for the full curing period with suitable barricades or markers. Areas which are damaged before being opened to traffic shall be repaired by the Contractor.

4.7.4.13 WEATHER LIMITATIONS. The slurry seal shall not be applied when either atmospheric or pavement temperature is below 55 degrees, or above 100 degrees Fahrenheit, when raining or during periods of abnormally high relative humidity, or as determined by the City's Representative.

Part 5

ADDENDA

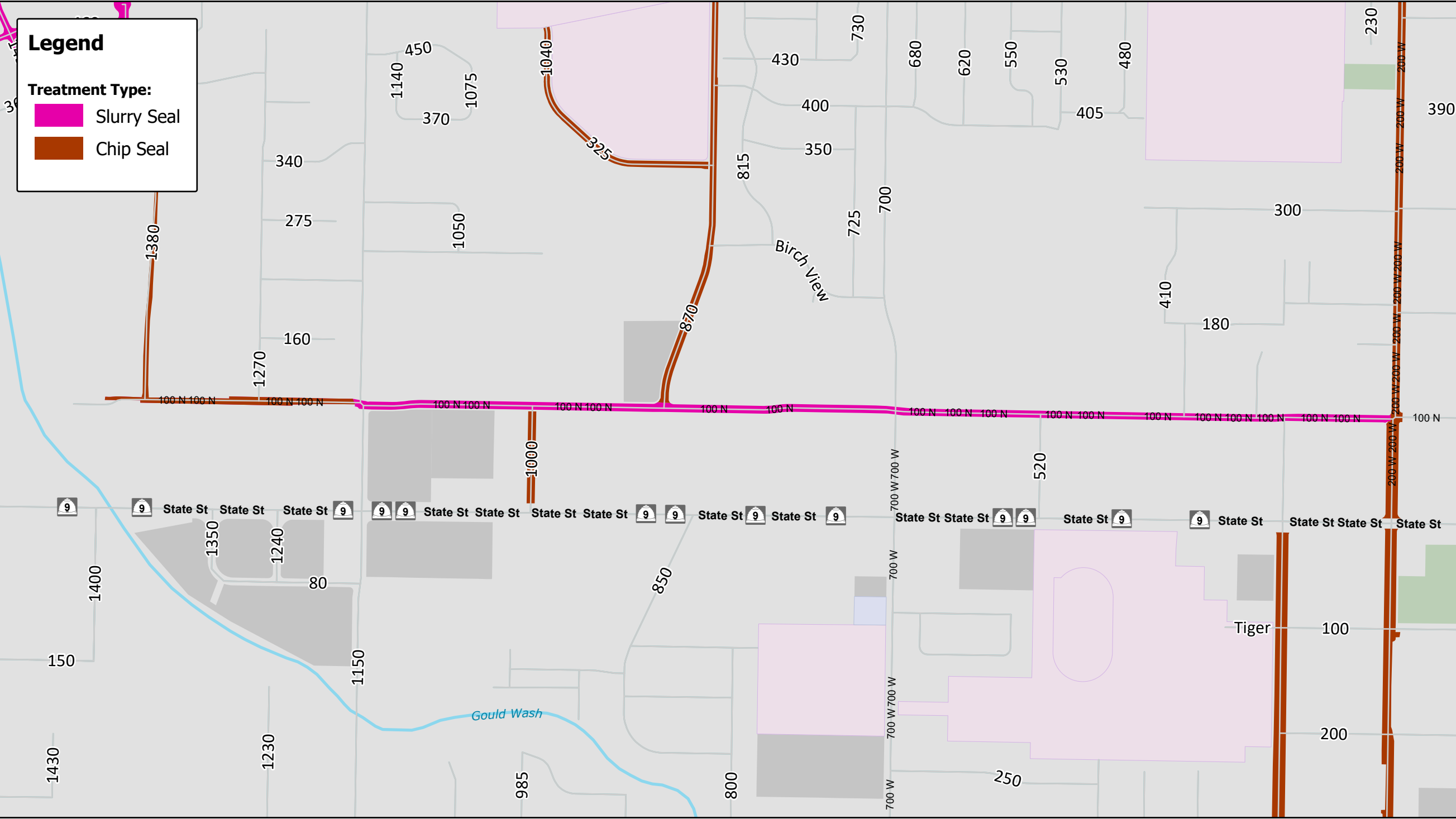
Part 6

Project Maps

100 North



This map is provided on an as is basis. The City of Hurricane makes no warranties expressed or implied as to the quality, and completeness, of the map and data provided. While the City of Hurricane has reviewed the information on this map, in no event shall the City of Hurricane be liable for damages arising from use by others.



400 South / 100 West / 200 West (400 S - 975 N) / 300 West

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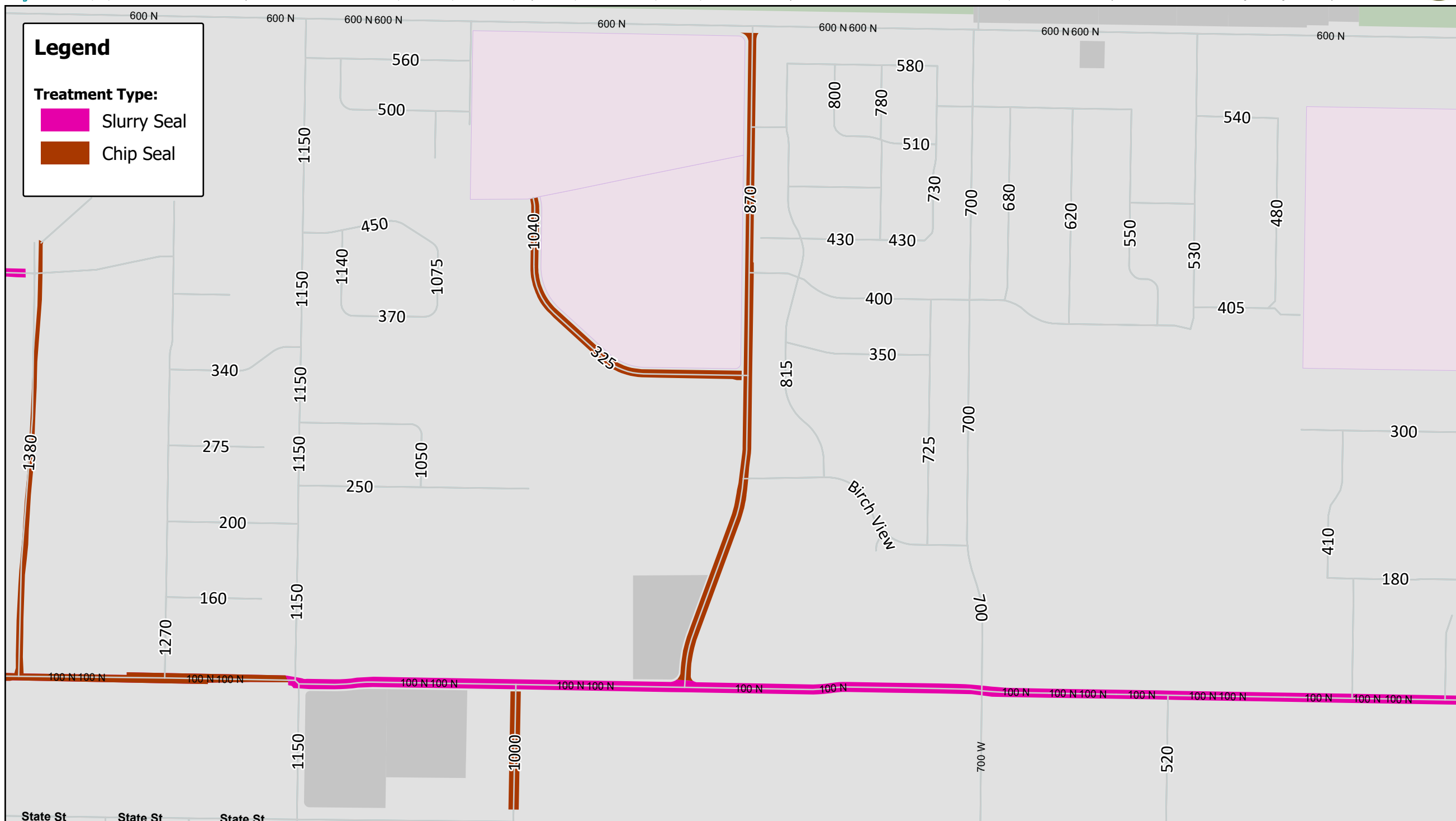


Dixie Springs Phase I

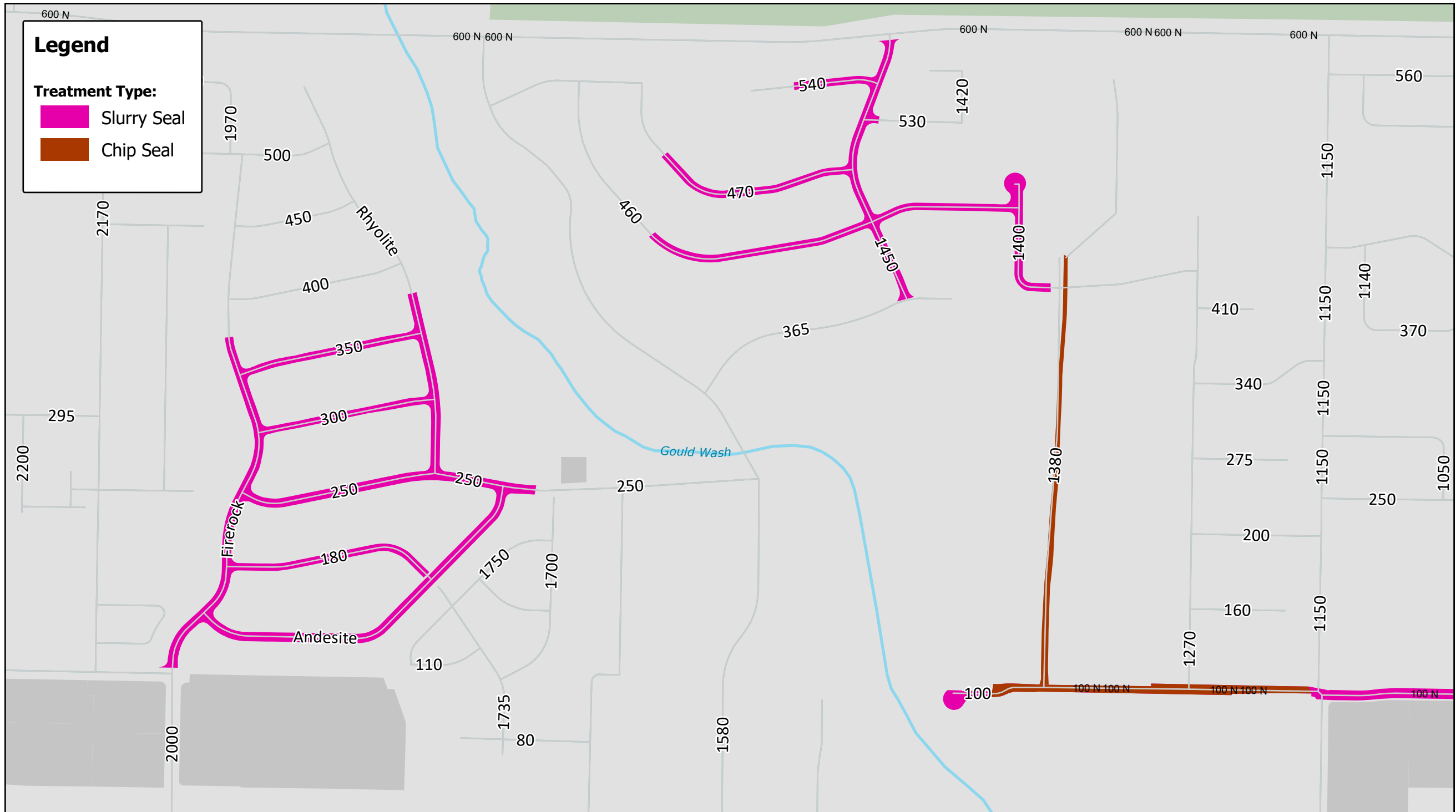
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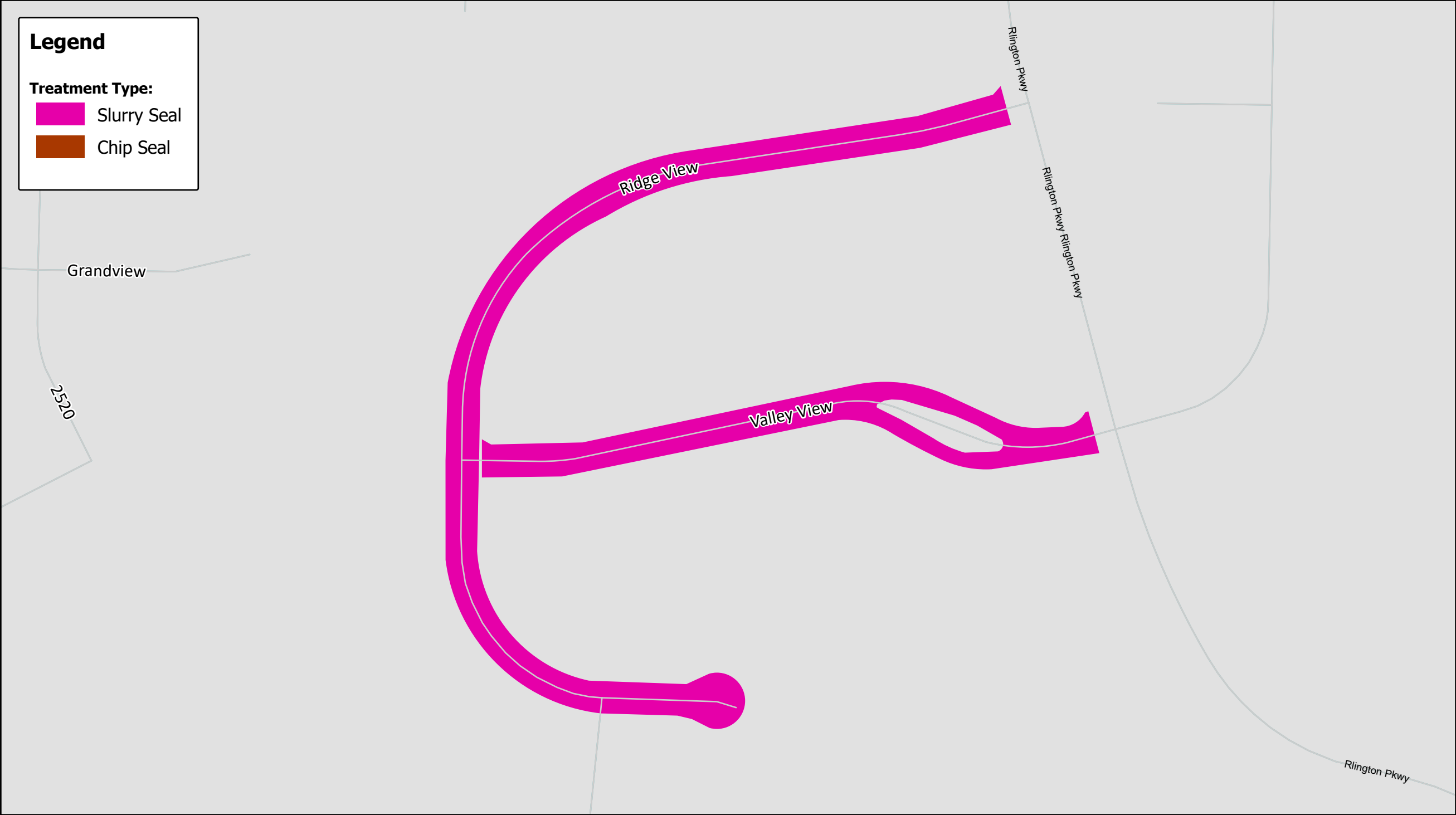
Ridge View and Valley View

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Legend

Treatment Type:

- Slurry Seal
- Chip Seal





Shadow Ridge



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Legend

Treatment Type:

-  Slurry Seal
-  Chip Seal





Grandpa's Pond Park / Parks Office Parking

City of Hurricane
GIS Department



This map is provided on an as is basis. The City of Hurricane makes no warranties expressed or implied as to the quality, and completeness, of the map and data provided. While the City of Hurricane has reviewed the information on this map, in no event shall the City of Hurricane be liable for damages arising from use by others.



Streets Area Estimate

Slurry Seal Area	Sq Yd
Painted Sands	15665
Fire Rock	27110
Dixie Springs	142052
100 North	23248
Valley View	9187
Ridge View	6881
400 S	20358
100 W	14726
Shadow Ridge	27351
Streets Total:	286578

Parking Lot Area Estimate

Slurry Seal Area	Sq Yd
Grandpa's Pond Park	5976
Parks Dept. Office	957
Parking Lot Total:	6933

Slurry Grand Total:	293511
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STAFF COMMENTS

Discussion and possible approval of **limited development of Liberty Village**. -Mayor Billings

Discussion:

Liberty Village is a proposed nonprofit development that will educate the public about American history, government and the public's responsibility to be involved citizens. Liberty Village would like to break ground early this year with a park and parking lot, and continue with other buildings in future years. Liberty Village is located on a portion of a 160 acre parcel that was granted a zone change in November of 2021. As a condition of the zone change, a development agreement was recorded that requires, among other things, that no development of the property would be approved until such time that utilities and services were available and had been extended to the property. This property is located within an area of the City where, due to inadequate public facilities (mostly water and power), subdivision applications have not been approved unless the developer has secured easements and constructed (or paid for the construction of) the necessary improvements to extend adequate capacity to the development. However, residential building permit applications on existing parcels, which do not require subdivisions and additional lots, have not been denied. Liberty Village is not seeking to subdivide the property.

Liberty Village is seeking approval from the City Council under the applicable development agreement to proceed with its plans to build the park and the associated buildings. The Water Department has reviewed the proposal and determined that the water infrastructure needed for this limited development is presently adequate. The Power Department has reviewed the proposal and has also determined that the existing infrastructure in the area will support the limited development. This determination is based on an assumption that some of the subdivisions already approved by the City (which would utilize all remaining capacity in the area) will not be constructed or will not be in need of service connections before that capacity becomes available.

City Staff recommend that the Council carefully consider the implications of the request. Developments in this area have not been permitted to proceed until the developer brings adequate utilities to the property. To ensure that the City does not overextend itself by granting entitlements beyond its current abilities, this practice should continue. If the Council chooses, it could find that Liberty Village is unique in that it is a nonprofit, educational development, which is not seeking to subdivide, and that its impact is comparable to residential building permits that are presently being allowed on existing parcels. If the Council chooses to do so, staff recommends the Council adopt the Record of Approval included in the packet. Granting Liberty Village's request will authorize Liberty Village to proceed with a preliminary site plan application and building permit applications.

Included in the packet are the: (1) proposed Record of Approval and (2) the governing Development Agreement.

This staff summary was prepared by Dayton Hall, City Attorney.

Findings:

Recommendation:

Attachments:

1. 231220 (v. 2) Record of Approval for Liberty Village
2. 230829 Balance of Nature DA (signed and recorded)
3. 2024_Jan 04 - LV Hurricane City Council Presentation_final

January 4, 2024

RECORD OF APPROVAL

for Liberty Village to Proceed under the Terms of the Development Agreement dated March 3, 2023, and Recorded with the County Recorder on August 22, 2023.

Recitals and Findings:

- A. Liberty Village is a proposed nonprofit development that will educate the public about American history, government and the public's responsibility to be involved citizens.
- B. Liberty Village is seeking to break ground early this year with a park and parking lot, and continue with other buildings in future years.
- C. Liberty Village is located on a portion of a 160-acre parcel that was granted a zone change in November of 2021. As a condition of the zone change, a development agreement was recorded that requires, among other things, that no development of the property would be approved until such time that utilities and services were available and had been extended to the property (the "Development Agreement").
- D. This property is located within an area of the City where, due to inadequate public facilities (mostly water, power, and associated easements and rights-of-ways), subdivision applicants have not been approved unless the developer has secured easements and constructed (or paid for the construction of) the necessary improvements to extend adequate capacity to the development.
- E. However, residential building permit applications on existing parcels, which do not require subdivisions and additional lots, have not been denied.
- F. Liberty Village is not seeking to subdivide the property.
- G. The City Council finds that Liberty Village distinguishable from other proposed developments because it is a nonprofit, educational development, which is not seeking to subdivide, and that its impact is comparable to residential building permits that are presently being allowed on existing parcels.
- H. The City Council finds that adequate public facilities presently exist to support the limited, educational development proposed for Liberty Village.

Approval:

- 1. Based on the findings within this document, the Hurricane City Council authorizes the Liberty Village project to proceed with development under the terms of the Development Agreement.

Conditions, Requirements, and Limitations:

- 1. Liberty Village shall be required to obtain and construct all requisite connections to City infrastructure, including securing the dedication of roadways, constructing roadways, constructing water, power, and other utility connections.
- 2. Liberty Village shall be required to apply for and obtain approval of a site plan for the project, and to comply with all other requirements of the City Code.
- 3. The approval within this document is only the City Council's authorization under the Development Agreement to proceed with development of Liberty Village, based on the

finding that adequate public facilities exist for the proposed, limited educational development.

4. Liberty Village assumes the risk that water flows, water pressures, electrical voltages, and similar utility services are inadequate to meet building and fire code requirements necessary for future approvals.
5. Except as stated in this document, all other requirements and conditions within the Development Agreement shall remain in full force and effect.

DATED this 4th day of January, 2024.

Nanette Billings, Mayor

Attest:

Cindy Beteag, Recorder

The foregoing document was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 4th day of January, 2024. Whereupon a motion to adopt and approve said document was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

	Yea	Nay	Abstain	Absent
David Hirschi	_____	_____	_____	_____
Kevin Thomas	_____	_____	_____	_____
Clark Fawcett	_____	_____	_____	_____
Drew Ellerman	_____	_____	_____	_____
Joseph Prete	_____	_____	_____	_____

Cindy Beteag

When Recorded Return to:
Hurricane City
147 N. 870 W.
Hurricane, UT. 84337
H-3373-NP-BL

DOC # 20230025316

Agreement Page 1 of 15
Gary Christensen Washington County Recorder
08/22/2023 02:25:59 PM Fee \$ 0.00
By HURRICANE CITY



**DEVELOPMENT AGREEMENT
FOR
BALANCE POINT PDO ZONE CHANGE**

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into as of the 3 day of March, 2023 (the "Effective Date"), by and between HURRICANE CITY, a Utah municipal corporation, hereinafter referred to as "City," and Molly's View, LLC, a Nevada limited liability company, hereinafter referred to as "Developer." The City and Developer are hereinafter collectively referred to as "Parties."

RECITALS

A. Developer is the owner of approximately 160 acres of land located within the City of Hurricane as is more particularly described on EXHIBIT A, attached hereto and incorporated herein by reference (the "Property").

B. On November 4, 2021, as shown in the City Council Minutes attached hereto as Exhibit B, the City Council approved a zone change as shown in EXHIBIT C attached hereto, with the conditions laid out within this agreement. The zoning shown at EXHIBIT C shows 132.95 acres zoned as R1-10 PDO and 26.67 acres zoned as M-1.

C. The City Council's approval was based in part on the Preliminary Site Plan proposed by Developer, which is attached hereto as Exhibit D.

D. Developer is willing to design and construct the Project in a manner that is in harmony with and intended to promote the long-range policies, goals, and objectives of the City's general plan, zoning and development regulations in order to receive the benefit of vesting for certain uses and zoning designations under the terms of this Agreement as more fully set forth below.

E. The City Council accepted Developer's proffer to enter into this Agreement to memorialize the intent of Developer and City and decreed that the effective date of the Vesting for the zoning be the date of the execution and delivery of this Agreement and the recording thereof as a public record on title of the Property in the office of the Washington County Recorder.

F. The City Council further authorized the Mayor of the City to execute and deliver this Agreement on behalf of the City.

G. The City has the authority to enter into this Agreement pursuant to Utah Code Section 10-9a-102(2) and relevant municipal ordinances, and desires to enter into this Agreement with the Developer for the purpose of guiding the development of the Property in accordance with the terms and conditions of this Agreement and in accordance with applicable City Ordinances.

H. This Agreement is generally consistent with, and all preliminary and final plats within the Property are subject to and shall conform with, the City's General Plan, Zoning

Ordinances, and Subdivision Ordinances, and any permits issued by the City pursuant to City Ordinances and regulations.

I. The Parties desire to enter into this Agreement to specify the rights and responsibilities of the Developer to develop the Property as expressed in this Agreement and the rights and responsibilities of the City to allow and regulate such development pursuant to the requirements of this Agreement.

J. The Parties understand and intend that this Agreement is a "development agreement" within the meaning of, and entered into pursuant to, the terms of Utah Code Ann., §10-9a-102.

K. The Parties intend to be bound by the terms of this Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Developer hereby agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into this Agreement, as a substantive part hereof.

2. Zoning. The Property shall be developed in accordance with (i) the requirements of an underlying zone of shown on EXHIBIT C, (ii) all other features as generally shown on the Preliminary Site Plan, and (iii) this Agreement. The Developer shall not seek to develop the Property in a manner that deviates materially from the attached Preliminary Site Plan in EXHIBIT D, as permitted by the aforementioned zoning designations for the Property, except as otherwise approved in writing by City.

3. Governing Standards. The Zoning Map, Preliminary Site Plan, the record of the City Council meeting, and this Agreement (together the "Approval Documents") establish the development rights for the Project, including the use, maximum density, intensity and general configuration for the Project. The Project shall be developed by the Developer in accordance with the Approval Documents. All Developer submittals must comply generally with the Approval Documents. Non-material variations to the Preliminary Site Plan, as defined and approved by the City's Zoning Administrator, such as exact building locations, location of local roadways, exact locations of open space and parking may be varied by the Developer without official City Council or Planning Commission approval. Such variations however shall in no way change the maximum density, use and intensity of the development of the Project.

4. Additional Specific Developer Obligations. As an integral part of the consideration for this agreement, the Parties agree that the densities and uses of the Property shall comply with the tabulations set forth in EXHIBIT E, attached hereto.

a.

5. Construction Standards and Requirements. All construction on the Property at the direction of the Developer shall be conducted and completed in accordance with the City Ordinances and Design Standards, including, but not limited to infrastructure construction,

setback requirements, minimum lot sizes, building height requirements, lot coverage requirements and all other zoning requirements.

- a. Acceptance of Improvements. The City shall accept all improvements which are intended for public use and which have been constructed by Developer or its agents in accordance with the City's standards and as shown on the approved construction drawings. Prior to the construction of any road, utility, or public improvements within the Project, the City shall review proposed construction drawings and require adjustments or changes to meet the requirements of this Agreement and applicable City standards. The City shall cooperate and allow Developer to construct the Offsite Improvements, and the City shall accept Developer's dedication of the Offsite Improvements. The City shall only accept improvements once improvements have been installed, inspected by the City or its representative, and a warrantee bond has been provided by Developer.
 - b. Unless otherwise specifically approved by the City Council and clearly labeled on the final subdivision plat, all roads within the Project shall be public roads. Upon final acceptance of such roads as having been constructed in conformity with all approved plans and City standards, City shall be responsible for maintenance of the roads at the same level of maintenance applicable to other similar roads within the City. City shall not be responsible for maintenance of any private road within the Project.
6. Adequate Public Facilities.
 - a. Developer understands, acknowledges and specifically agrees that: (a) power, water, and other utility services to the Property are not currently available and have not been extended to the Property; (b) the granting of this zone change does not in any way guarantee or warrant the availability and extension of power, water, or other utility services to the Property; (c) no application for any permit requiring the availability and extension of power, water, or other utility service, and no other request requiring the availability or extension of such utilities or services, shall be filed, made, or approved until such time that such utilities or services are available and have been extended to the Property; and (d) Developer assumes all risk and liability associated with any development activity on the Property, including but not limited to all costs incurred for engineering, feasibility studies, etc., in the event that such services do not become available and are not extended to the Property.
 - b. The City may deny any land use application for any development on the Property, including but not limited to preliminary and final plats, building permits, zone changes, and preliminary and final site plans if the City finds that (1) utilities, roadways, or other public facilities or infrastructure are inadequate to support the proposed development or (2) services are not in the vicinity of the proposed application. The City may consider approval of a project if the applicant can show that current utility systems, roadway

systems, and other public facilities and infrastructure are adequate to meet the demand for the project and the applicant can provide a plan on how to reasonably connect the systems, facilities, and infrastructure to the proposed development.

- c. As a prerequisite to any development application approval or development on the Property, Developer shall submit and receive approval of a full drainage plan for the site. This drainage plan shall provide plans for proper retention or detention for runoff generated by the development, together with a plan to mitigate impacts from regional historic stormwater runoff onto or through the Property in accordance with Hurricane City stormwater standards. The drainage plan shall be reviewed and approved by the City Engineer.

7. Reimbursement for Improvements. Developer and Hurricane City may enter into an agreement whereby the developer is reimbursed by the City for the cost of constructing eligible public facilities. All reimbursement agreements shall comply with Hurricane City Code 9-6.

8. Vested Rights and Reserved Legislative Powers.

- a. Vested Rights. As of the Effective Date, Developer shall have the vested right to develop and construct the Project in accordance with the uses, maximum permissible densities, intensities, and general configuration of development established in the Approval Documents, subject to compliance with the City Ordinances in existence on the Effective Date. The Parties intend that the rights granted to Developer under this Agreement are contractual and also those rights that exist under statute, common law and at equity. The Parties specifically intend that this Agreement grants to Developer “vested rights” as that term is construed in Utah’s common law and pursuant to Utah Code Ann., §10-9a-509.

- i. Examples of Exceptions to Vested Rights. Notwithstanding the foregoing, the Parties understand and agree that the Project will be required to comply with future changes to City Laws that do not limit or interfere with the vested rights granted pursuant to the terms of this Agreement. The following are examples for illustrative purposes of a non-exhaustive list of the type of future laws that may be enacted by the City that would be applicable to the Project:

- 1. Developer Agreement. Future laws that Developer agrees in writing to the application thereof to the Project;
- 2. Compliance with State and Federal Laws. Future laws which are generally applicable to all properties in the City and which are required to comply with State and Federal laws and regulations affecting the Project;

3. Safety Code Updates. Future laws that are updates or amendments to existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, or similar construction or safety related codes, such as the International Building Code, the APWA Specifications, AAHSTO Standards, the Manual of Uniform Traffic Control Devices or similar standards that are generated by a nationally or statewide recognized construction/safety organization, or by the State or Federal governments and are required to meet legitimate concerns related to public health, safety or welfare; or,
 4. Taxes. Taxes, or modifications thereto, so long as such taxes are lawfully imposed and charged uniformly by the City to all properties, applications, persons and entities similarly situated.
 5. Fees. Changes to the amounts of fees for the processing of Development Applications that are generally applicable to all development within the City (or a portion of the City as specified in the lawfully adopted fee schedule) and which are adopted pursuant to State law.
 6. Impact Fees. Impact Fees or modifications thereto which are lawfully adopted, imposed and collected.
- a. Reserved Legislative Powers. The Developer acknowledges that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to the City all of its police power that cannot be so limited. Notwithstanding the retained power of the City to enact such legislation of the police powers, such legislation shall not modify the Developer's vested right as set forth herein unless facts and circumstances are present which meet the exceptions to the vested rights doctrine as set forth in Section 10-9a-509 of the Municipal Land Use, Development, and Management Act, as adopted on the Effective Date, *Western Land Equities, Inc. v. City of Logan*, 617 P.2d 388 (Utah 1980), its progeny, or any other exception to the doctrine of vested rights recognized under state or federal law. Notwithstanding the foregoing, the City reserves the right to enact an ordinance in accordance with Utah Code Ann. §10-9a-504 establishing a temporary land use regulation for any part or all of the area within the municipality, including area within the Project, which prohibits or regulates issuance of any building permit or the erection, construction, reconstruction or alteration of any building or structure or any subdivision approval if the City Council makes a finding of compelling countervailing public interest in accordance with Utah and federal law after notice to Developer and an opportunity to be heard.

9. Default. An “Event of Default” shall occur under this Agreement if any party fails to perform its obligations hereunder when due and the defaulting party has not performed the delinquent obligations within sixty (60) days following delivery to the delinquent party of written notice of such delinquency. Notwithstanding the foregoing, if the default cannot reasonably be cured within that 60-day period, a party shall not be in default so long as that party commences to cure the default within that 60-day period and diligently continues such cure in good faith until complete.

10. Default and Remedies. Failure of a party to perform any of the Party’s obligations under this Agreement within a thirty (30) day period (the “**Cure Period**”) after written notice thereof from the other party shall constitute a default (“**Default**”) by such failing party under this Agreement; provided, however, that if the failure cannot reasonably be cured within thirty (30) days, the Cure Period shall be extended for the time period reasonably required to cure such failure so long as the failing party commences its efforts to cure within the initial thirty (30) day period and thereafter diligently proceeds to complete the cure. Such notice shall specify the nature of the alleged Default and the manner in which such Default may be satisfactorily cured, if possible. If the Default is cured, then no Default shall exist and the noticing Party shall take no further action.

- a. In the event of an uncured Default, the non-defaulting party shall, in addition to any other remedy allowed by law, be entitled to the court’s imposition of specific performance and /or injunctive relief, but not monetary damages. All rights and remedies under this Agreement, and /or statute or common law shall be deemed cumulative and the selection of one of the rights or remedies shall not be deemed a waiver of any other right or remedy.
- b. If City elects to consider terminating this Agreement due to a Default by Developer, then City shall give to Developer written notice of City’s intent to terminate this Agreement and the matter shall be scheduled for consideration and review by City’s legislative body at a duly noticed public meeting. Developer shall have the right to offer written and oral evidence prior to or at the time of said public meeting. If City’s legislative body determines that a material uncured Default has occurred and is continuing, City may thereafter pursue the remedy of termination through an appropriate judicial proceeding.

11. Specific Acts of Default. The Parties hereto agree that any of the following occurrences, acts or failure to act shall constitute a Default by Developer, for which City may elect to terminate the agreement in accordance with Section 8 above: (a) the filing of a petition in bankruptcy by Developer, (b) foreclosure on any portion of the Property which has the effect of creating an unapproved or illegal subdivision under Utah law or City ordinances, (c) the Developer’s failure to comply with the requirements of any Section above, or (d) Developer’s failure, without good cause as determined in good faith by City, for a period of five (5) years to commence construction of improvements in any new development phase or new Development Parcel. Upon such termination, all approvals or development rights granted hereunder to Developer shall lapse and all obligations of City hereunder shall cease.

12. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To the Developer: Balance of Nature
1568 S. River Rd
ST George, UT 84790

To the City: City of Hurricane
Attention: Dayton Hall, City Attorney
68 S. 700 W.
Hurricane, UT 84737

13. General Term and Conditions.

a. Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

b. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns (to the extent that assignment is permitted). Without limiting the generality of the foregoing, a "successor" includes a party that succeeds to the rights and interests of the Developer as evidenced by, among other things, such party's submission of land use applications to the City relating to the Property or the Project.

c. Non Liability of City Officials and Employees. No officer, representative, consultant, attorney, agent or employee of the City shall be personally liable to the Developer, or any successor in interest or assignee of the Developer, for any default or breach by the City, or for any amount which may become due to the Developer, or its successors or assignees, or for any obligation arising under the terms of this Agreement. Nothing herein will release any person from personal liability for their own individual acts or omissions.

d. Third Party Rights. Except for the Developer, the City and other parties that may succeed the Developer on title to any portion of the Property, all of whom are express intended beneficiaries of this Agreement, this Agreement shall not create any rights in and/or obligations to any other persons or parties. The Parties acknowledge that this Agreement refers to a private development and that the City has no interest in, responsibility for, or duty to any third parties concerning any improvements to the Property unless the City has accepted the dedication of such improvements

e. Further Documentation. This Agreement is entered into by the Parties with the recognition and anticipation that subsequent agreements, plans, profiles, engineering and other documentation implementing and carrying out the provisions of

this Agreement may be necessary. The Parties agree to negotiate and act in good faith with respect to all such future items.

f. Relationship of Parties. This Agreement does not create any joint venture, partnership, undertaking, business arrangement or fiduciary relationship between the City and the Developer.

g. Agreement to Run With the Land. This Agreement shall be recorded in the Office of the Washington County Recorder against the Property and is intended to and shall be deemed to run with the land, and shall be binding on and shall benefit all successors in the ownership of any portion of the Property.

h. Performance. Each party, person and/or entity governed by this Agreement shall perform its respective obligations under this Agreement in a manner that will not unreasonably or materially delay, disrupt or inconvenience any other party, person and/or entity governed by this Agreement, the development of any portion of the Property or the issuance of final plats, certificates of occupancy or other approvals associated therewith.

i. Applicable Law. This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Utah.

j. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

k. Consents and Approvals. Except as expressly stated in this Agreement, the consent, approval, permit, license or other authorization of any party under this Agreement shall be given in a prompt and timely manner and shall not be unreasonably withheld, conditioned or delayed. Any consent, approval, permit, license or other authorization required hereunder from the City shall be given or withheld by the City in compliance with this Agreement and the City Ordinances.

l. Approval and Authority to Execute. Each of the Parties represents and warrants as of the Effective Date this Agreement, it/he/she has all requisite power and authority to execute and deliver this Agreement, being fully authorized so to do and that this Agreement constitutes a valid and binding agreement.

m. Termination.

i. Notwithstanding anything in this Agreement to the contrary, it is agreed by the parties hereto that in the event the final plat for any portion of the Property has not been recorded in the Office of the Washington County Recorder within five (5) years from the date of this Agreement, or the Property has not received final site plan approval within five (5) years from the date of this Agreement (the "Term"), or upon the occurrence of an event of default of this Agreement that is not cured, the City shall have the right, but not the obligation, at

the sole discretion of the City Council, to terminate this Agreement as to the defaulting party (*i.e.*, the Developer). The Term may be extended by mutual agreement of the Parties.

ii. Upon termination of this Agreement for the reasons set forth herein, following the notice and process required hereby, the obligations of the City and the defaulting party to each other hereunder shall terminate, but none of the licenses, building permits, or certificates of occupancy granted prior to expiration of the Term or termination of this Agreement shall be rescinded or limited in any manner.

14. Assignability. The rights and responsibilities of Developer under this Agreement may be assigned in whole or in part by Developer with the consent of the City as provided herein.

- a. Notice. Developer shall give Notice to the City of any proposed assignment and provide such information regarding the proposed assignee that the City may reasonably request in making the evaluation permitted under this Section. Such Notice shall include providing the City with all necessary contact information for the proposed assignee.
- b. Partial Assignment. If any proposed assignment is for less than all of Developer's rights and responsibilities, then the assignee shall be responsible for the performance of each of the obligations contained in this Agreement to which the assignee succeeds. Upon any such approved partial assignment, Developer shall be released from any future obligations as to those obligations which are assigned but shall remain responsible for the performance of any obligations that were not assigned.
- c. Grounds for Denying Assignment. The City may only withhold its consent if the City is not reasonably satisfied of the assignee's reasonable financial ability to perform the obligations of Developer proposed to be assigned.
- d. Assignee Bound by this Agreement. Any assignee shall consent in writing to be bound by the assigned terms and conditions of this Agreement as a condition precedent to the effectiveness of the assignment.

15. Sale or Conveyance. If Developer sells or conveys parcels of land, the lands so sold and conveyed shall bear the same rights, privileges, intended uses, configurations, and density as applicable to such parcel and be subject to the same limitations and rights of the City as when owned by Developer and as set forth in this Agreement without any required approval, review, or consent by the City except as otherwise provided herein.

16. No Waiver. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

17. Severability. If any portion of this Agreement is held to be unenforceable for any reason, the remaining provisions shall continue in full force and effect.

18. Force Majeure. Except for termination of this Agreement due to Developer's failure to record a final plat or obtain a final site plan on the Property within five (5) years of the date of this Agreement, any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefore; acts of nature; governmental restrictions, regulations or controls; judicial orders; enemy or hostile government actions; wars, civil commotions; fires or other casualties or other causes beyond the reasonable control of the party obligated to perform hereunder shall excuse performance of the obligation by that party for a period equal to the duration of that prevention, delay or stoppage.

19. Amendment. This Agreement may be amended only in writing signed by the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first hereinabove written.



CITY:

HURRICANE CITY

ATTEST:

By: Cindy Belling
City Recorder Cindy Belling

By: Nanette Billings
Mayor Nanette Billings

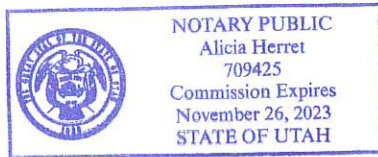
DEVELOPER:

By: [Signature]
Name: Douglas Howard
Title: CEO BALANCE OF NATURE

STATE OF UTAH)
COUNTY OF UTAH) :ss

CEO of

On the 10th day of August, 2023, personally appeared before me Douglas Howard, who being by me duly sworn, did say that he is the Molly's View, LLC, a Nevada limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company with proper authority and duly acknowledged to me that he executed the same.



Alicia Herret
Notary Public
Residing at: Washington, UT

EXHIBIT A
Legal Description Parcel:

The South One-Half of the Northeast Quarter (S½NE¼) and North One-Half of the Southeast Quarter (N½SE¼) of Section 17, Township 42 South, Range 13 West, of the Salt Lake Base and Meridian.

LEGAL DESCRIPTION FOR M-1 AND PDO R1-10 ZONES

ENTIRE PARCEL LEGAL DESCRIPTION:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N01°04'40"E, ALONG THE QUARTER SECTION LINE 1321.37 FEET TO THE CENTER QUARTER CORNER OF SAID SECTION; THENCE N01°04'40"E ALONG THE QUARTER SECTION LINE, 1322.71 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE S88°55'19"E ALONG THE SIXTEENTH LINE, 2629.96 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION; THENCE S01°02'06"W ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE EAST QUARTER CORNER OF SAID SECTION; THENCE S01°02'13" ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION; THENCE N88°57'47"W ALONG THE SIXTEENTH LINE, 2631.90 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 6,953,936 SQUARE FEET OR 159.640 ACRES

PARCEL LEGAL DESCRIPTION: M-1

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN;

THENCE N01°02'11"E ALONG THE QUARTER SECTION LINE, 894.38 FEET;

THENCE N30°35'24"E 206.36 FEET; THENCE N59°24'36"W 424.52 FEET;

THENCE N88°48'29"W 677.65 FEET;

THENCE S01°04'40"W 1285.11 FEET TO THE SIXTEENTH SECTION LINE;

THENCE S88°57'47"E ALONG SAID LINE, 946.09 FEET TO THE POINT OF BEGINNING.

AREA CONTAINS 1,205,901 SQUARE FEET OR 27.684 ACRES.

PARCEL LEGAL DESCRIPTION PDO: R1-10

COMMENCING AT THE SOUTHEAST CORNER OF SECTION 17, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN; THENCE N01°01'13"E ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE POINT OF BEGINNING;

THENCE N88°57'47"W ALONG THE SIXTEENTH SECTION LINE, 1685.81 FEET;

THENCE N01°02'11"E 894.38 FEET; THENCE N30°35'24"E 206.36 FEET;

THENCE N59°24'36"W 424.52 FEET; THENCE N88°48'29"W 677.65 FEET TO THE QUARTER SECTION LINE; THENCE N01°04'40"E ALONG SAID LINE, 36.26 FEET TO THE CENTER QUARTER CORNER OF SECTION 17;

THENCE N01°04'40"E ALONG THE QUARTER SECTION LINE, 1322.71 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION;

THENCE S88°55'19"E ALONG THE SIXTEENTH LINE, 2629.96 FEET TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION;

THENCE S01°02'06"W ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE EAST QUARTER CORNER OF SAID SECTION;

THENCE S01°02'13" ALONG THE EAST SECTION LINE, 1321.10 FEET TO THE SOUTHEAST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 17 TO THE POINT OF BEGINNING.

AREA CONTAINS 5,748,035 SQUARE FEET OR 131.957 ACRES.

EXHIBIT B
City Council Minutes for November 1, 2021

5. Consideration and possible approval of a proposed **zone change located at approximately 2700 S and 2300 W from RA-1 to R1-10 with a PDO for 133 acres and M-1 for approximately 27 acres.** Parcel number H-3373-NP. Molly's View, LLC Douglas Howard, CEO Applicant. Richard Wedig Agent.

Hurricane City Council Minutes – November 4, 2021

Tom Patent with Orcutt Winslow Architect reported that the applicant agrees to the development agreement, and he provided a Master Plan Booklet for the development. They will have to extend infrastructure to the site, and they have submitted the preliminary drainage plan. However, the water that flows through this site will have to be addressed. The mission and goal of the community is to create a community based on family, health, wellness, and spirituality. The project contains expansive community gardens and green space. The proposed community hospital and medical campus will provide emergency services for this area of town. Councilwoman Billings reported that people are excited about the American Village and the services the PID will provide.

Nanette Billings motioned to approve the zone change located at approximately 2700 S and 2300 W from RA-1 to R1-10 with a PDO for 133 acres and M-1 for approximately 27 acres as presented subject to staff comments and development agreement. Seconded by Kevin Tervort. Darin Larson, Dave Sanders, Nanette Billings, and Kevin Tervort, voting aye. Joseph Prete abstained. **Motion carried.**

EXHIBIT D Site Plan



*Liberty Village*TM

Dennis Leavitt, President
January 4, 2024

Freedom • Family • Faith





VISION

To be the premier source of inspiration and education for families and communities,
in the history and core principles of America's founding documents,
that will empower and preserve their liberties

MISSION

Provide best-in-class educational platforms, learning destinations, and patriotic celebrations
focused on the history and core principles of our nation's founding documents

Liberty Village



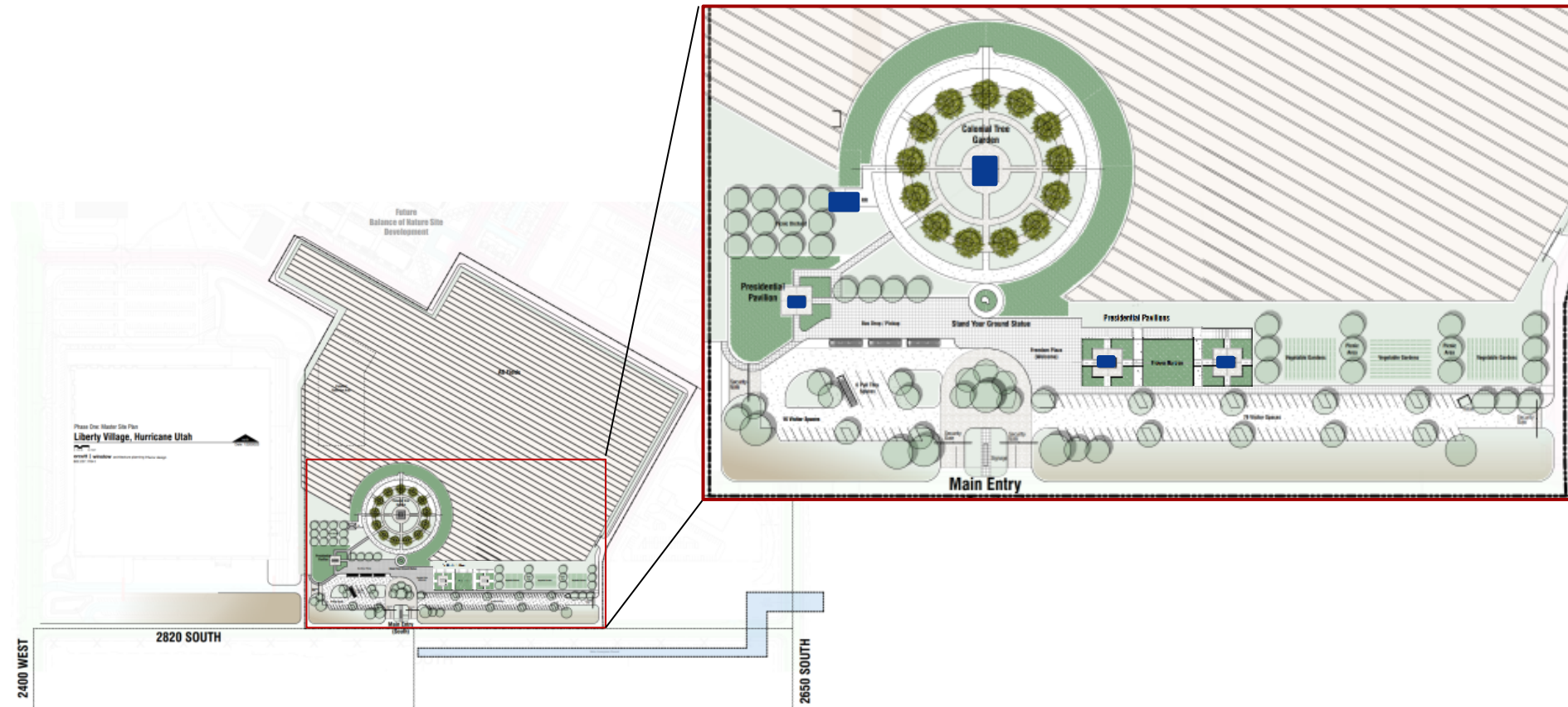


Liberty Village™

32-acre educational and immersive experience campus
educating visitors on our nation's historic founding documents,
its founders, and the principles that guided them

PHASE 1

Liberty Village.



PHASE 1 - Utility Plan

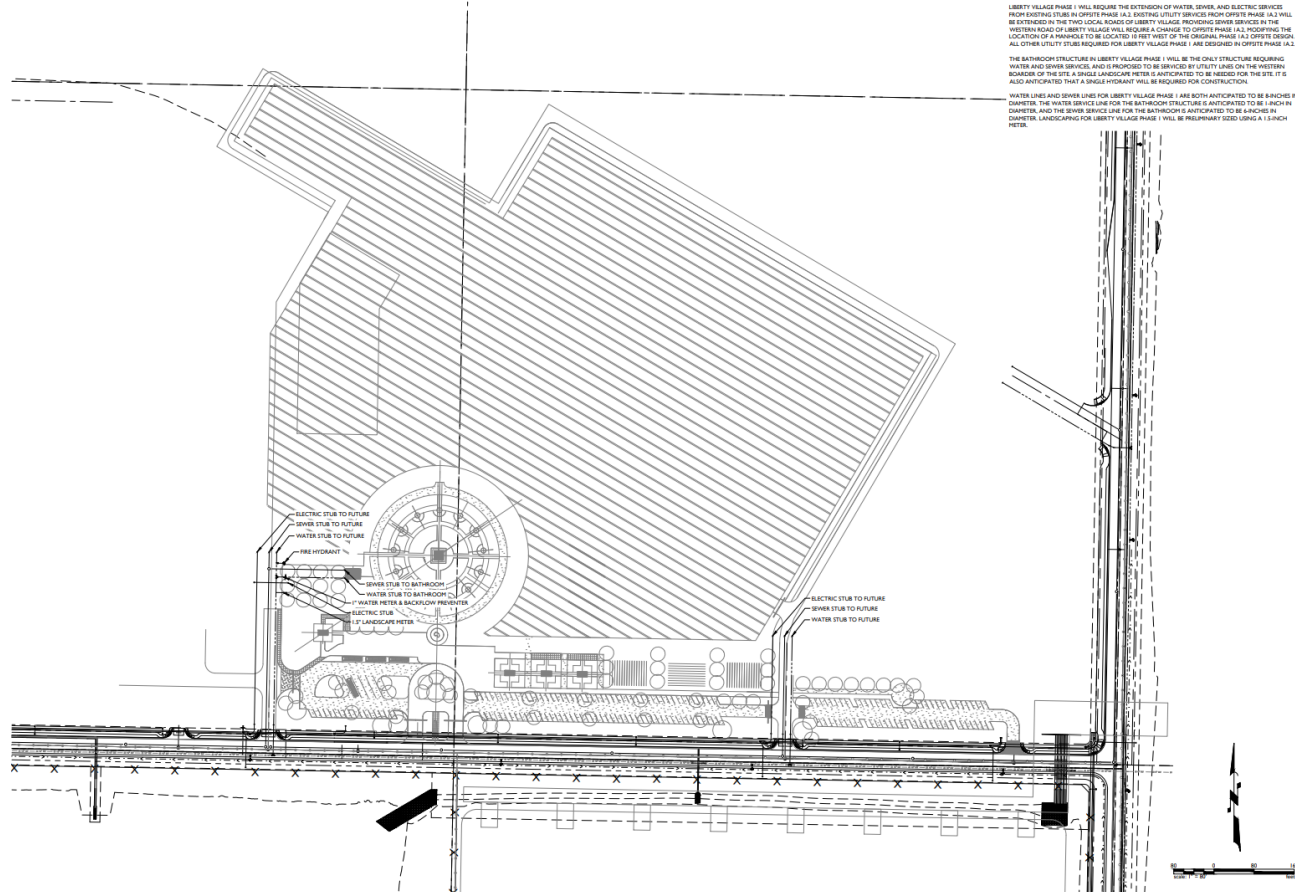
Liberty Village.

LIBERTY VILLAGE PHASE 1 NARRATIVE

LIBERTY VILLAGE PHASE 1 WILL REQUIRE THE EXTENSION OF WATER, SEWER, AND ELECTRIC SERVICES FROM EXISTING STUBS IN OPPOSITE PHASE 1A.2. EXISTING UTILITY SERVICES FROM OPPOSITE PHASE 1A.2 WILL BE EXTENDED IN THE TWO LOCAL ROADS OF LIBERTY VILLAGE. PROPOSED SEWER SERVICES IN THE WESTERN ROAD OF LIBERTY VILLAGE WILL REQUIRE A CHANGE TO OPPOSITE PHASE 1A.2. MOORING THE LOCATION OF A MANHOLE TO BE LOCATED 15 FEET WEST OF THE ORIGINAL PHASE 1A.2 OPPOSITE DESIGN. ALL OTHER UTILITY STUBS REQUIRED FOR LIBERTY VILLAGE PHASE 1 ARE DESIGNED IN OPPOSITE PHASE 1A.2.

THE BATHROOM STRUCTURE IN LIBERTY VILLAGE PHASE 1 WILL BE THE ONLY STRUCTURE REQUIRING WATER AND SEWER SERVICES, AND IS PROPOSED TO BE SERVICED BY UTILITY LINES ON THE WESTERN BORDER OF THE SITE. A SINGLE LANDSCAPE PETER IS ANTICIPATED TO BE NEEDED FOR THE SITE. IT IS ALSO ANTICIPATED THAT A SINGLE HYDRANT WILL BE REQUIRED FOR CONSTRUCTION.

WATER LINES AND SEWER LINES FOR LIBERTY VILLAGE PHASE 1 ARE BOTH ANTICIPATED TO BE 8-INCHES IN DIAMETER. THE WATER SERVICE LINE FOR THE BATHROOM STRUCTURE IS ANTICIPATED TO BE 1 INCH IN DIAMETER, AND THE SEWER SERVICE LINE FOR THE BATHROOM IS ANTICIPATED TO BE 6 INCHES IN DIAMETER. LANDSCAPING FOR LIBERTY VILLAGE PHASE 1 WILL BE PRELIMINARY SIZED USING A 1.5-INCH PETER.



13 COLONIES PLAZA

Liberty Village.



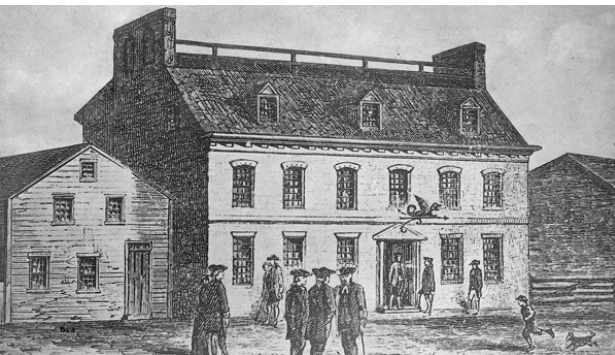
Education offerings

- Self-guided: Declaration of Independence
- The Miracle of the Constitution
- Understanding and Civilly Defending our Rights



Liberty Village.





The Green Dragon Tavern

- Established in 1654
- Popular meeting place for the Sons of Liberty, including Paul Revere & John Hancock
- Adorned with an aged copper dragon



Mount Hope Barn

- Built in 1860
- Visited by George Washington
- Once owned by the great, great grandson of William Bradford



Print Shop

- Isaiah Thomas, a Boston printer in the 1700's, printed a newspaper called the Massachusetts Spy
- The newspaper was political and published revolutionary ideas



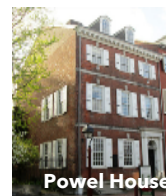
Blacksmith Shop



One-room Schoolhouse



Declaration House



Powel House



16-sided Barn



Plymouth - Jamestowne

MASTER PLAN

Liberty Village.





*Liberty Village*TM



STAFF COMMENTS

Consideration and possible approval of a **Letter of Commitment to participate in the Healthy Utah Community**-Kaden DeMille

Discussion:

The last few years Hurricane City has added several new recreational facilities to the community including the all-abilities park, bridge across the Virgin River in the Confluence Park and the rodeo grounds. It is anticipated in the near future Hurricane City will be completing basketball gyms, a trail along 600 North, additional ballfields and renovation of our city swimming pool.

In the past, our city leaders expressed interest in the Healthy Utah Community Program and we thought that this might be a good time to seek this designation if the council would like to move forward on being a part of this program. The agenda packet houses the requirements that the council can review and determine if they are interested in the program. If the council is interested, staff will work on completing the necessary requirements to make Hurricane City a Healthy Utah Community. --Kaden DeMille

Findings:

Recommendation:

Attachments:

1. Healthy Utah Community Criteria
2. UTAH Health



HEALTHY UTAH COMMUNITY

Healthy Utah Community Criteria

Provided by Get Healthy Utah and the Utah League of Cities and Towns, the **Healthy Utah Community** designation is awarded to cities and towns that do exemplary work to improve community health.

The designation lasts for three years, after which communities may apply for redesignation.

To Qualify for the Designation:

1. SUBMIT A LETTER OF COMMITMENT (required):

- ☐ Submit a letter from the mayor and city council (or equivalent) that indicates a commitment to improving community health. Applicants may use the letter template provided in this packet.

2. ORGANIZE A COMMUNITY COALITION (required):

- ☐ Organize a community health coalition, or identify one that already exists, to oversee earning and maintaining the Healthy Utah Community designation. The coalition must meet together at least once before applying.

The coalition should:

- Consist of at least FOUR individuals
- Meet together at least QUARTERLY

3. IDENTIFY HEALTH STRATEGIES (required):

- ☐ Describe what evidence-based health strategies are currently in place in your community. Strategies must be fully implemented to count and come from the following three categories: **Active Living, Access to Healthy Food, and Mental Health**. The number of strategies needed depends on the size of the community:
 - **Small Communities (Population: 0 - 9,999):** Have one strategy from each category (3 total)
 - **Mid-Sized Communities (Population: 10,000 - 64,999):** Have two strategies from each category (6 total)
 - **Large Communities (Population: 65,000+):** Have three strategies from each category (9 total)

4. DEVELOP A COMMUNITY HEALTH PLAN (required):

- ☐ Submit a community health plan. Use data to identify health needs in the community and choose additional health strategies to implement over the next three years. Fulfillment of this 3-year health plan will qualify a community for redesignation. Applicants may use a template provided by Get Healthy Utah.

Ready to Apply? Contact us at info@gethealthyutah.org to request a fillable application.
Visit www.GetHealthyUtah.org/HealthyUtahCommunity for additional resources.



MAINTAINING THE DESIGNATION

The **Healthy Utah Community** designation lasts for three years. Redesignation will be awarded if the community fulfills its community health plan by implementing additional health strategies since first designated.

The number of additional strategies needed depends on the size of the community:

- **Small Communities:** Implement one additional strategy every three years (one total)
- **Mid-Sized Communities:** Implement two additional strategies every three years (two total)
- **Large Communities:** Implement three additional strategies every three years (three total)

The community health coalition will oversee the fulfillment of the community health plan and play a key role in maintaining the designation over time.

1. LETTER OF COMMITMENT

SAMPLE TEMPLATE

Each qualifying community should submit a letter of commitment from the mayor and city council.
Please personalize the following template to best reflect your commitment to promoting community health.

<<Date>>

<<Community Name>>

<<Street Address>>

<<City, State, Zip Code>>



Dear Get Healthy Utah and the Utah League of Cities and Towns,

Thank you for the opportunity to apply for the Healthy Utah Community designation. It is with great pleasure that I submit <<**COMMUNITY NAME**>> as a qualified candidate. As the mayor and city council, we understand that health is foundational to a high-quality of life. We are committed to promoting community health and providing all residents with the opportunity to live well.

In preparation for applying for the designation, <<**COMMUNITY NAME**>> has made great strides in ensuring that every resident has access to healthy food, mental health resources, and opportunities to be physical active. To qualify as a Healthy Utah Community, <<**COMMUNITY NAME**>> has... <<**SUMMARY OF EFFORTS/QUALIFICATIONS**>>.

Moving forward, <<**COMMUNITY NAME**>> has every intention to continue prioritizing health in our community and government processes. We commit to addressing health equity by seeking out further opportunities to address health needs in our community, particularly among the most vulnerable. We look forward to fulfilling our 3-year community health plan.

As the elected leadership of our community, we understand that decisions made by local government have the potential to improve lives and community wellbeing. We are excited and committed to uphold health as a key priority during our administration and leadership.

Sincerely,

<<Mayor Name>>

<<Mayor Signature>>

<<Chair of the Council>>

<<Chair Signature>>



2. HEALTH COALITION

Coalition Information

Establish a coalition of diverse stakeholders (or identify one that already exists) to oversee the task of earning and maintaining the Healthy Utah Community designation. The coalition will ensure the community qualifies, complete the application, develop the community health plan, and oversee its implementation. The coalition requires a minimum of four individuals to meet quarterly and must meet together at least once before applying. For best outcomes, we encourage you to include members from underrepresented populations and recommend representation from the following sectors:

- City leadership
- [Local health department](#)
- Local hospital
- Local school district
- Business leaders
- Community members, CHWs, etc.

Name of the Coalition:

Date Coalition Was Organized:

Frequency the Coalition Meets:

Name of the Coalition Member	Organization	Position (Title, Department)

Comments about the Coalition:

3. HEALTH STRATEGIES

Requirements

Identify what health strategies are already implemented in your community. Strategies must come from each of the following categories: **Active Living**, **Access to Healthy Food**, and **Mental Health**. The number of strategies needed depends on population size:

- ☐ **Small Community (Population: 0 - 9,999):** Have one strategy from each category (3 total)
- ☐ **Mid-Sized Community (Population: 10,000 - 64,999):** Have two strategies from each category (6 total)
- ☐ **Large Community (Population: 65,000+):** Have three strategies from each category (9 total)

Strategies may come from the recommended strategy list on the next page, the statewide [Menu of Services](#), or be a strategy of your own choosing.

#	Strategy Implemented	Summary of Efforts
Small Community (3)		
1	Category: Strategy:	
2	Category: Strategy:	
3	Category: Strategy:	
Mid-Sized Community (6)		
4	Category: Strategy:	
5	Category: Strategy:	
6	Category: Strategy:	
Large Community (9)		
7	Category: Strategy:	
8	Category: Strategy:	
9	Category: Strategy:	

3. HEALTH STRATEGIES

ACTIVE LIVING:

- ☐ Conduct a messaging campaign to promote physical activity in your community
- ☒ Offer free and/or low-cost community sports programs for both adults and children
- ☒ Organize a free or low-cost fitness event for your community
- ☒ Develop a new walking/biking trail or add to an existing one *600 N*
- ☒ Add wayfinding signage for trails that provide both time and distance for routes
- ☒ Address active transportation connectivity gaps between key community destinations
- ☐ Conduct a mobility audit
- ☐ Establish joint-use agreements for a physical activity facility, such as a school playground, pool, etc.
- ☒ Improve physical activity among youth by promoting a physical activity resource, program, or best practice in schools (ex: Safe Routes to School)
- ☒ Create an active transportation plan or update an existing one
- ☒ Adopt an ordinance that requires new subdivisions to provide sidewalks and lights
- ☒ Adopt a Complete Streets policy requirement for new development
- ☒ Update ordinances, zoning, and land use policies to promote physical activity and active transportation
- ☐ Provide supplemental infrastructure to improve walk and bike-friendly environments in your community (ex: add bicycle racks, water stations, etc.)
- ☐ Implement a Crime Prevention Through Environmental Design strategy to improve public safety while recreating outdoors
- ☒ Implement one new worksite wellness strategy around physical activity among city employees and/or local businesses
- ☐ Earn a national or state designation for promoting health (ex: Bicycle Friendly Community, Age-Friendly Community, etc.)
- ☐ Partner with a local organization to implement a program listed on the Physical Activity Menu of Services
- ☐ Other:

ACCESS TO HEALTHY FOOD:

- ☐ Conduct a messaging campaign to promote healthy eating in your community
- ☒ Establish a farmers market that accepts SNAP benefits *?*
- ☒ Establish a community garden
- ☐ Create an edible park/food forest (link)
- ☐ Host a community program to promote healthy eating (ex: seed exchange, gardening classes, cooking classes, etc.)
- ☒ Improve physical activity among youth by promoting a healthy eating resource, program, or best practice in schools
- ☐ Improve access to emergency food by establishing a food pantry/program or improving an existing one
- ☒ Update ordinances, zoning, and land use policies to allow for better opportunities for urban agriculture *AG PROTECTION*
- ☒ Adopt ordinances that allow backyard poultry/animal husbandry
- ☐ Provide financial incentives for a grocery store to locate in an underserved area
- ☐ Improve the food retailer landscape (ex: expedite permitting for new stores that offer healthy food, limit the density of unhealthy food retailers, etc.)
- ☐ Encourage menu labeling with nutrition facts
- ☒ Promote enrollment in SNAP, WIC, school meal program, and other food access programs
- ☐ Conduct a Community Food Assessment or healthy food access audit
- ☐ Create a Food Policy Council or Task Force tasked with identifying recommendations for your community to follow.
- ☐ Adopt a city plan to improve access to healthy food in your community such as revising the general plan, creating a Community Food System Plan, etc.
- ☒ Implement one new worksite wellness strategy around healthy food among city employees and/or local businesses
- ☐ Partner with a local organization to implement a program listed on the Healthy Food Access Menu of Services
- ☐ Other:

MENTAL HEALTH:

- ☐ Destigmatize mental illness through a community campaign or event
- ☐ Increase awareness of mental health hotlines or local resources available in your community
- ☐ Offer suicide prevention trainings for individuals and/or organizations in your community
- ☐ Train first responders on mental health crises and suicide prevention
- ☐ Address mental illness among youth by promoting a mental health resource, program, or best practice in schools *ALREADY DOING*
- ☒ Implement a strategy to promote safe use and disposal of medications (ex: provide medication disposal services, educational campaigns, or programs)
- ☒ Implement a strategy to promote safe use of guns (ex: provide free gun locks/safes to community members, educational campaigns, or safety classes)
- ☐ Implement policies that limit access to addictive substances (ex: limit the density of alcohol outlets, regulate use of cigarettes/vaping devices etc.)
- ☐ Implement one new worksite wellness strategy around mental health among city employees and/or local businesses
- ☒ Host a reoccurring community event that promotes social connection for a vulnerable demographic (ex: lunches for the elderly, afterschool programs, etc.) *SUMMER LUNCH FOR KIDS*
- ☐ Beautify, enhance, or create a section of the community that promotes social gathering and connection
- ☒ Implement a program, reoccurring event, or establish an area of the community that promotes connection with nature
- ☐ Provide free Naloxone training and rescue kits to community members
- ☐ Partner with a local organization to implement a program listed on the Mental Health Menu of Services
- ☐ Other:



4. COMMUNITY HEALTH PLAN

Community Information

Community Size: ☐ Small Community (pop. 0 - 9,999) ☐ Mid-Sized Community (pop. 10,000 - 64,999) ☐ Large Community (pop. 65,000+)

Community Health Status

- Review the health data for your community found on the [Utah Healthy Places Index](#).
- Run a Community Snapshot Report for your small area on the [Public Health Indicator Based Information System \(IBIS\)](#). Include all available health indicators when prompted and review the results.
- Review community input. Potential resources include city/town meetings, the [USU Wellbeing Survey](#), or data from a community needs assessment conducted by your local health department.

Based on the data and community input, what are the three greatest health needs for your community? Why? What factors might be influencing these aspects of health?

Which demographic groups are experiencing the worst health outcomes? Consider race/ethnicity, age, geographic location, gender, etc. What factors might be influencing these disparities?

Community Health Plan

What additional strategies will you implement over the next three years to address the health needs and health disparities you have identified?

*Small communities must implement **one** new strategy. Mid-Sized communities must implement **two** new strategies. Large communities must implement **three** new strategies. Strategies may come from the recommended list, or be your own.*

Health Need/Focus Area	Strategy to be Implemented within 3 Years
Small (1)	
Mid-Sized (2)	
Large (3)	

Redesignation will be awarded after three years if the health strategy(s) above are successfully implemented, and a brief summary report is submitted.



Mayor
Nanette Billings

City Manager
Kaden C. DeMille



City Council
David Hirschi
Kevin Thomas
Clark Fawcett
Drew Ellerman
Joseph Prete

January 4, 2024

Hurricane City
147 N 870 W
Hurricane, Utah 84737

Dear Get Healthy Utah and the Utah League of Cities and Towns,

Thank you for the opportunity to apply for the Healthy Utah Community designation. It is with great pleasure that I submit **HURRICANE CITY** as a qualified candidate. As the mayor and city council, we understand that health is foundational to a high-quality of life. We are committed to promoting community health and providing all residents with the opportunity to live well.

In preparation for applying for the designation, **HURRICANE CITY** has made great strides in ensuring that every resident has access to healthy food, mental health resources, and opportunities to be physically active. To qualify as a Healthy Utah Community, **HURRICANE CITY** has.....

Moving forward, **HURRICANE CITY** has every intention to continue prioritizing health in our community and government processes. We commit to addressing health equity by seeking out further opportunities to address health needs in our community, particularly among the most vulnerable. We look forward to fulfilling our 3-year community health plan.

As the elected leadership of our community, we understand that decisions made by local government have the potential to improve lives and community wellbeing. We are excited and committed to uphold health as a key priority during our administration and leadership.

Sincerely,

Nanette Billings







STAFF COMMENTS

Closed Meeting held pursuant to Utah Code section 52-4-205, upon request

Discussion:

Findings:

Recommendation:

Attachments:

None