



HURRICANE CITY UTAH

Mayor

City Manager

Nanette Billings Kaden DeMille

City Council

Joseph Prete
Dave Sanders
David Hirschi
Kevin Thomas
Doug Heideman

Hurricane City Council Meeting Agenda

October 3, 2022
5:00 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.**

5:00 p.m. Pre-meeting

6:00 p.m. - Call to Order

Prayer

Thought

Pledge of Allegiance

Declaration of any conflicts of interest

Swearing in of the new Youth City Council

Public Forum – Comments from Public

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

OLD BUSINESS

1. Consideration and possible approval of **Ordinance 2022-50 amending Title 7, Chapters 4, 8, 10, 11; amending Title 13; and creating Title 7, Chapter 12 regarding Utility Franchises-Dayton Hall**
2. Consideration and possible approval of **Ordinance 2022-51 Amending Section 7-5 regarding the City Cemetery-Darren Barney**

NEW BUSINESS

1. Consideration and possible approval of a **donation to the Hurricane High School's robotics team Black Ops**
2. Consideration and possible approval of a **Domestic violence Proclamation-** Lindsey Boyer, DOVE Center
3. Consideration and possible approval of a **donation to the Foster Grandparent and Senior Companion Program-**Joanne Lyman, Five County Association of Governments
4. Consideration and possible approval of **allocating funds to the Tourism Board-** April Gates/Doug Heideman
5. Consideration and possible approval of **allocating funds to** whileyourintown.com-Nanette Billings
6. **Public Hearing** to take comments on the following:
 - a. The proposed temporary road closure at the intersection of the City streets designated as 1515 West and 200 South
7. Consideration and possible approval of Ordinance 2022-48 regarding a **temporary road closure at the intersection of the City streets designated as 1515 West and 200 South**
8. Consideration and possible approval of a **new airport lease template-**Dayton Hall
9. Consideration and possible approval of Resolution 2022-46 **appointing David Sterling to the Gateway at Sand Hollow Public Infrastructure District 1, 2, and 3 Board-**Matt Ence
10. Consideration and possible approval of Resolution 2022-45 **appointing Dustin Sullivan to the Coral Junction Public Infrastructure District Board-**Matt Ence
11. Consideration and possible approval of a preliminary plat for **Fox Meadows Estates, a 20 lot residential subdivision located at 2898 S 1100 W.** Gavin Godfrey Applicant. Luke Godrey Agent.
12. Discussion regarding the **approval process for Glamper's Inn Project-** Scott Nielson
13. Ordinance 2022-54 Consideration and possible approval of a **A Zone Change Amendment request for Steward Land Holdings located at approx.. 3112 West State Street from HC, highway commercial, to PC, planned commercial.** Parcel number H-3-1-31-3009. Steward Land Holdings Applicant. Brad Brown Agent.
14. Ordinance 2022-53 Consideration and possible approval of a **Land Use Code Amendment request to Title 10 Chapter 21: Agriculture Protection Overlay, Title 10 Chapter 14: Residential Agriculture Zoning Standards, Title 10 Chapter 7 Section 9: Conditional Use Permit Standards, and Title 10 Chapter 12: Agriculture Zoning Standards.**
15. Consideration and possible approval of an **amended final plat for Moccasin Flats Lot 18 & 19 located at approximately 4500 S 1100 W.** Anish Bhatia Hidden Rock Development Group Applicant. Bush and Gudge (Gregg Meyers) Agent.

16. Consideration and possible approval of an **amended final plat for Quail Lake Estates Lots 26 and 26A located at 4400 W State St #26**. Darrell and Christine Leigh Applicant. Ryan Scholes/Alpha Engineering Agent.
17. Consideration and possible approval of a **road dedication plat for Antenna Avenue**-Arthur LeBaron
18. Consideration and possible approval of a **donation to the Latino Resource Fair**-Luis Mendez & Dave Stirland

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 ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: September 29, 2022
RE: Franchise Ordinance

Introduction:

A franchise is necessary when a provider wants to place conduits, lines, or pipes within City rights-of-way to serve City residents. Internet providers are one example. Basically, the City leases its rights-of-way to private companies that need to use the rights-of-way to provide services. The purpose of a franchise ordinance is to govern the relationship between the City and private companies, including specifying the obligations of franchisee. Currently, there are five different chapters within the City Code that apply to these franchises, and they had overlapping and sometimes inconsistent provisions. I recommend we combine all of those five chapters into a single, comprehensive chapter, which I have done in the proposed ordinance.

Serving Older Developments:

In section 7-12-6, a franchisee would generally be required to provide service to the entire city within a time period that the Council and franchisee would agree to in a franchise agreement. However, the Council could elect to not require City-wide coverage in some situations, such as when it would be economically infeasible. The Council should carefully consider this requirement because it has the potential to discourage franchises because of the additional cost, which could be to the detriment of new development that might not get services because potential franchisees elect not to service the City.

Underground Installation and Pole Attachments:

Section 7-12-13 addresses this issue. As drafted, a franchisee will generally be required to place all new infrastructure underground, unless the Power Department grants the franchisee the right to put in its own poles or hang lines on the City's poles. The proposed ordinance gives the Power Department some factors to consider in deciding whether to allow the franchisee to build above ground, including whether requiring underground installation would limit the ability to get services to older parts of the City.

Franchisee Fee:

For many utilities, the amount the City charges franchisees will be dictated by state or federal law. To the extent it is not governed by state or federal law, the draft ordinance would allow the Council to charge up to 6% of gross revenue of the franchisee from services in the City.

Limiting Franchises:

Instead of placing a cap on the number providers, the proposed ordinance includes a substantial list of standards that the Council may consider when deciding whether to grant a franchise. These criteria are found in section 7-12-5. These standards in the proposed ordinance allow the Council to consider whether similar services are already available in the City when deciding to grant or deny a franchise.

Input from Affected Departments:

Since the Council reviewed this proposed ordinance in a previous meeting, I received some feedback from some of the department heads, which I have incorporated into the proposed ordinance.

Packet Materials:

There are two documents in your packet. The first document is the ordinance with redlines showing the changes that were made since you saw it in the previous meeting. The second document is the ordinance with those recent revisions incorporated and ready for your final consideration and approval.

**TITLE 7, CHAPTER 4 – RESERVED
TITLE 7, CHAPTER 8 – RESERVED
TITLE 7, CHAPTER 10 – RESERVED
TITLE 7, CHAPTER 11 – RESERVED
TITLE 13 – RESERVED**

**TITLE 7 – PUBLIC WAYS AND PROPERTY
CHAPTER 12 – UTILITY FRANCHISES**

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- Sec. 7-12-22. Revocation of Franchise; Fines and Penalties.**
- Sec. 7-12-23. Indemnification and Defense.**

Sec. 7-12-1. Findings; Authority.

A. Findings. The City finds as follows:

1. Franchise Standards. It is in the interests of the public to allow certain franchises within the City and to establish standards for Providers in a manner that:
 - a. Establishes minimum standards and criteria for franchising Providers utilizing public Rights-of-Way;
 - b. Fairly and reasonably compensates the City on a competitively neutral and nondiscriminatory basis as provided herein;
 - c. Encourages competition by establishing terms and conditions under which Providers may use the rights-of-way to serve the public;
 - d. Protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
 - e. Protects City police powers and the City's Rights-of-Way management authority in a manner consistent with federal and state law;
 - f. Protects the public interests in the development and use of the City infrastructure;
 - g. Protects the public's investment in improvements in the Rights-of-Way; and
 - h. Appropriately limits barriers to entry of franchising Providers.
2. Public Rights-of-Way. It is necessary and appropriate to develop uniform minimum standards for use of the public Rights-of-Way and to simplify City management of the rights-of-way. Public Rights-of-Way within the City:
 - a. Are critical to the travel and transport of persons and property in the business and social life of the City;
 - b. Are intended for public uses and must be managed and controlled consistent with that intent;
 - c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well-being of the City and its citizens; and
 - d. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the Rights-of-Way.
3. Compensation. The City should receive fair and reasonable compensation for use of the public Rights-of-Way in conjunction with franchises.
4. Local Concern. The regulation of utilities and services within the Rights-of-Way is of local concern.
5. Development of Services. It is in the best interests of the City's taxpayers and citizens to promote the rapid development of services, including into areas of the City previously developed, on a nondiscriminatory basis, to assure the availability of services to the entire community.

- B. *Authority*. The City adopts this chapter pursuant to its power to manage public Rights-of-Way; to ensure that those rights-of-way are used for public purposes; and to receive fair and reasonable compensation for the use of rights-of-way by Providers pursuant to common law, the Utah Constitution, and statutory authority.

Sec. 7-12-2. Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section. The words “shall” and “will” are mandatory, and “may” is permissive. Undefined words shall have their common and ordinary meaning.

Antenna means communication equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of wireless service.

Applicable Codes means the Utah State Code, Hurricane City Code, International Building Code (IBC), the International Fire Code, the National Electrical Code (NEC), National Electric Safety Code (NESC), as adopted and amended under Utah Code Annotated title 15A, State Construction and Fire Codes Act.

Applicable Standards means the structural standards for antenna supporting structures and antenna, known as ANSI/TIA-222, from the American National Standards Institute and the Telecommunications Industry Association.

Applicant means a Provider or their authorized agent who submits an application for an agreement or other authorizations that may be granted under this chapter.

City means Hurricane City, Utah, a Utah municipal corporation.

Eligible Support Structure means any monopole, utility pole, wireless support structure or related accessory equipment, as defined in this chapter, provided that it is existing at the time the relevant Application is filed with the City.

Franchise Agreement means a contract entered into in accordance with the provisions of this chapter between the City and a franchisee that sets forth the terms and conditions under which a Provider is authorized to place facilities in Rights-of-Way to provide utility, communications, video, telecommunication, or similar services.

Gross Revenue means all revenue or receipts derived by a Provider, or an affiliate of a Provider, in connection with its provision of services in the City governed by a Franchise Agreement. For purposes of revenue generated in relation to telecommunication services provided within the City, the definition of ‘gross receipts’ found in Utah Code Title 10, Chapter 1, Part 4, as amended, governs and applies. Gross Revenue includes all revenues of a provider that may be included as gross revenue within the meaning of Utah Code Title 11, Chapter 26, as amended.

Monopole means a structure in the right-of-way erected by an applicant or provider specifically to support SWFs.

Nondiscriminatory describes the equal treatment of similar situated entities unless there is a reasonable, competitively neutral basis for different treatment.

PSC means the Public Service Commission or any successor thereto.

Person includes any individual, corporation, partnership, association, joint stock company, trust or any other legal entity, but not the City.

Provider means a provider of utility, wireless, communication, or similar services that utilizes Rights-of-Way or other City-owned or City-controlled property to provide the service. A Provider includes, but is not necessarily limited to, a person or entity that has entered into a Franchise Agreement with the City.

RF means radio frequency.

Related Accessory Equipment refers to equipment used in conjunction with an Antenna or other component of SWFs which may be attached to a wireless support structure or located on the ground at or near the base of a wireless support structure.

Rights-of-Way or *Right-of-Way* refers to any area within, on, above and below alleys, public roads, highways, streets, easements, and other similar public property, and may include sidewalks, park-strips and other areas associated with them and controlled by the City, primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel, and which, by their nature, may properly be used for installation of a utility or communication system, or any dedicated general public utility easement that the City may authorize a Provider to use.

Service Area means the geographic area in which a Provider is authorized and required to provide services.

Subscriber means any person or entity lawfully receiving service(s) from Provider or an affiliate of Provider.

Small Wireless Facility (SWF) means a wireless facility on which each provider's Antenna could fit within an enclosure of no more than six cubic feet in volume and for which all related accessory equipment, whether mounted on the pole or the ground, is cumulatively no more than 28 cubic feet in volume.

Sec. 7-12-3. General Provisions; Scope and Application.

- A. *Franchise Required.* Every Provider shall apply for and obtain a Franchise Agreement, easement, or other authorization approved by the City Council prior to placing any infrastructure or facilities in a Right-of-Way.

- B. *Operations on City-Controlled Property.* Subject to the requirements and considerations of this chapter, the City Council may grant to any person a franchise, easement, or other appropriate authorization on such terms and conditions as it deems reasonable, for the purpose of entering upon, constructing, building, operating, and maintaining any business or for other use of the property owned or controlled by the City. Franchises, easements, and authorizations shall be construed narrowly; no rights shall pass by implication.
- C. *In writing.* Any franchise, easement, or other authorization granted by the City shall be in writing and any franchise, easement, or other authorization not in writing shall be void.
- D. *Nature of franchise.* A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right and consent to install, repair, maintain, remove, or replace facilities on, over and under the rights-of-way for the limited purposes and for the limited period as stated in a Franchise Agreement. Except as provided in this chapter, the right may not be subdivided, assigned or subleased. A Franchise Agreement does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the City's property. This subsection shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the lessee has obtained a franchise.
- E. *Authorizations nonexclusive.* Franchises, easements, or other authorizations granted by the City shall be nonexclusive.
- F. *Applicability; Conflicts.* This chapter shall be construed and applied in a manner consistent with all applicable federal and state statutes. To the extent the provisions of this chapter conflict with applicable federal or state statutes, the federal or state statutes shall govern and this chapter shall be applied accordingly. This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the maximum extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date hereof and to a provider providing services, without a franchise, prior to the effective date hereof. The revisions to this chapter adopted by ordinance and codified herein do not relieve a franchisee of any obligations that are included in an existing Franchise Agreement or that were relied on in the City's approval of an existing franchise.
- G. *Enforcement conditions.* In addition to containing such terms as the City may lawfully require, any Franchise Agreement granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, liquidated damages, as appropriate, and rights of termination or revocation.
- H. *City failure to enforce.* A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any Franchise Agreement granted pursuant to this chapter by reason of any failure of the City to enforce prompt compliance.
- I. *Exercise of police power.* To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

Sec. 7-12-4. Application for Franchise.

- A. *Application fee.* Every application for a franchise shall be accompanied by a nonrefundable application fee as may be set by the City Council from time to time by resolution and an agreement to pay reasonable costs incurred by the City to pay the costs of studying, investigating, and otherwise processing such application. City may require payment of a deposit to ensure payment of said reasonable costs incurred.
- B. *Information required.* A Provider seeking a Franchise Agreement, easement, or other authorization shall file an application with the City Recorder. The application shall contain or be accompanied by the following information:
1. The name, address, and telephone number of the applicant.
 2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:
 - a. The names, residence addresses and business addresses of all officers, directors and partners or business associates of the applicant.
 - b. The names, residence addresses and business addresses of all persons and entities having controlling, or being entitled to have or control five percent or more of the ownership of the applicant, and the respective ownership share of each such person or entity.
 - c. The names and addresses of any parent of the applicant to the ultimate parent; and the names and addresses of each entity responsible in whole or in part for management or operation of the applicant, along with a description of the nature of the responsibilities of such entity or entities.
 - d. A description of the services intended to be provided by applicant.
 - e. A description of the previous experience of the applicant in providing services and constructing systems used to provide services; and an identification of all communities in the state where applicant, or any affiliate, provides services.
 - f. Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance, and use of the Rights-of-Way, as well as Provider's ability to make payments owed to the City during the term of any Franchise Agreement.
 - g. Information showing that the applicant has the technical and financial resources to build and operate any infrastructure or facilities that will be placed in Rights-of-Way.
 - h. Information regarding the character qualifications of the applicant.
 - i. A copy of the order from the PSC granting a certificate of convenience or necessity, if applicable.
 3. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:
 - a. A map or maps showing the precise geographic area for which applicant seeks a Franchise Agreement.
 - b. Plans showing any existing locations of the system that will be used to provide services.

- C. *Additional information.* The City may request such additional information as it deems necessary to determine whether or not the application should be granted. The failure to file a complete application, or to provide additional information requests, is grounds for rejecting or denying an application.
- D. *Determination by City.* The City Council shall determine whether to award any franchise, easement, or other authorization based on and taking into account considerations relevant to the use of the Rights-of-Way and the public interest, health, and safety, without competitive bidding.
- E. *Renewals.* Franchise renewals shall be according to applicable state and federal law. The City and grantee by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

Sec. 7-12-5. Standards For Granting or Denying Applications.

- A. *Standards.* The City Council may schedule such public hearings and conduct such investigations as are necessary to determine whether granting the application is in the public interest, considering the following:
 - 1. The qualifications of the applicant, including but not limited to the following:
 - a. Years in business;
 - b. Number of employees and crews;
 - c. Existing infrastructure in southern Utah;
 - d. Number of redundant carriers, if any;
 - e. Amount of equipment;
 - f. Adequate General Liability insurance;
 - g. Existing relationships with other municipalities;
 - h. References from other municipalities;
 - i. Employee certifications related to the installation and maintenance of the proposed system;
 - j. Products or services offered by Provider;
 - k. Whether customer support services are locally situated;
 - l. Availability of physical path redundancy by Provider;
 - m. Capabilities of Provider's network;
 - n. Provider's historical gross and net revenues;
 - o. Ability of Provider to timely serve brownfield or legacy areas;
 - p. Availability of local technical support.
 - 2. Whether the application for construction and extension of the system is reasonable, considering the needs of the community;
 - 3. Whether the application, if granted, is likely to result in any portion of the City being unserved or underserved by the proposed system;
 - 4. Whether the application, if granted, would limit or enhance competition in the provision of communications services in the City;
 - 5. Whether the applicant is willing and able to comply with its obligations under applicable law, and to agree to franchise conditions to protect the City against harm and liability, and ensure the franchise is enforceable;
 - 6. Whether the applicant is willing to agree to conditions that ensure that entities using its system can comply with conditions imposed under other provisions of

- this Code, including, without limitation, obligations imposed under chapter 10 of this title and title 13, chapter 1 of this Code and franchises issued thereunder;
7. Whether the application requires the City to agree to conditions, or viability of the system depends upon, conditions that may harm consumers;
 8. Whether similar services are already available within the City; and
 9. Any other relevant information related to the applicant's proposed franchise.
- B. *Conditions.* The City Council may deny an application under this chapter or condition the approval of an application on such conditions, terms, requirements, or restrictions as it finds necessary to protect the public interest.

Sec. 7-12-6. Extension of Service; Duty to Serve; Community Access Services.

- A. *Minimum Service Area.* Except as provided in this section, the City shall not approve any franchise that provides for a Service Area smaller than the City boundaries, as it existed as of the effective date of the Franchise Agreement. The City may grant a franchise that permits a grantee to serve areas annexed after the effective date of the franchise. The foregoing does not apply where an applicant shows that the Service Area is economically infeasible; that granting a franchise for a smaller area will not adversely affect the development of competition throughout the City; and that the proposed Service Area is such that granting a franchise for that area will not unfairly disadvantage any franchised Provider.
- B. *Time to provide service.* A Provider must complete construction of its system within a reasonable time, so that it passes by all dwelling units within its Service Area, which time shall be specified in the franchise and subject to the density requirements in subsection D of this section.
- C. *Sequence of construction.* As a condition of receiving a franchise, each Provider must submit a plan for the sequence of construction that ensures it does not discriminate against residents of the City based on income. The plan must show the timing of construction by geographic area and the schedule for completion of construction by geographic area. A schedule for completion of construction may be tied to the success of the applicant in the marketplace. In determining whether the plan is acceptable, the City may take into account:
1. The amount of time required to build out the system to serve the City;
 2. The amount of construction required to serve the Service Area; and
 3. The time required to provide the applicant reasonable opportunities to recover its investment.
- D. *Extension of Service and Density requirements.* A Provider may, but is not required to, serve any portion of its Service Area where the density is less than five dwelling units per linear quarter mile unless the potential Subscriber agrees to pay extension charges as provided in this section. In extending service, the following requirements shall be met:
1. In any portion of the Service Area where the density is five dwelling units or more per linear quarter mile, a Provider shall provide service to any person that requests it at its normal connection fee; provided that Provider is able to reasonably obtain all easements or permissions, if any, which are necessary to extend service relating thereto. Where the distance from the Right-of-Way to the demarcation point on the potential Subscriber's premises is greater than 150 feet, a

Provider may charge an additional, reasonable fee to recover the actual costs of extending the system the additional distance.

2. In areas with less than five residential units per linear quarter mile, a Provider shall offer a cost sharing arrangement with residents desiring service wherein each will bear their proportionate share of construction costs. For example, if there are four dwelling units per linear quarter mile, Provider must extend service if the potential Subscriber(s) are willing to each pay one-fifth of the cost of extending the system to pass by the dwelling unit(s), and the Provider must bear the remaining construction cost. Should additional residents actually subscribe to service in areas where Subscribers have already paid a proportionate share under the extension cost sharing formula, Subscribers who have previously paid a proportionate share shall be reimbursed pro rata for their contribution or proportional share thereof. In such case, the pro rata shares shall be recalculated and each new Subscriber shall pay the new pro rata share, and all Subscribers who previously paid a proportionate share shall receive pro rata refunds. However, one year after completion of a project, Subscribers who have paid a share of line extension costs shall no longer be eligible for refunds.
3. The Subscriber who must pay additional amounts for extended connections or for distribution cable construction, as provided in subsection D2 of this section, shall be given a written estimate of the additional amount payable by them prior to their subscription, and they shall in no event be required to pay more than five percent over this estimate.

E. Extension of Service to Public Buildings and Facilities. The density requirements of subsection D of this section do not apply to public buildings and public facilities. Upon request from the City, a Provider shall timely extend service to the public buildings and public facilities identified by the City. Franchise Agreements may contain a provision whereby the City makes certain concessions in exchange for services being provided to Public Buildings of Facilities free of charge.

F. Use of City-Owned Conduits or Facilities. The City may allow or require a Provider to utilize City-owned conduits, infrastructure, or facilities to facilitate the Provider's ability to serve the Provider's service area, upon terms agreeable to the City.

E.G. The City may require a Provider to provide reasonable in-kind consideration in the form of conduit, facilities, or capacity in order to promote educational and governmental uses of the system, or in connection with the City's promotion of public, educational or governmental uses of the system.

F.H. In lieu of requiring a Provider to build out to service the entire City as described in this section, the City Council may require a Provider to contribute to a fund to ensure all portions of the City are served by an acceptable and equivalent system.

G.I. The franchise fee and other consideration provided for under this chapter is not in lieu of any tax or assessment; any fee for the use of the Rights-of-Way payable by Provider to provide any other service; or any fee designed to recover costs associated with managing the Rights-of-Way, including by way of example, permit fees and pole attachment fees.

Sec. 7-12-7. Reporting Requirements; Books and Records.

- A. *Reporting Requirements.* Each Provider shall prepare annual reports to monitor compliance with the terms of a Franchise Agreement. By January 31 of each year, each grantee shall provide the City with a detailed statement of revenues for the previous year derived in connection with the provision of services in the City, sworn as accurate by an officer of the Provider, which statement shall identify:
1. The number of Subscribers, by category of service;
 2. Service revenues, by category of service;
 3. Equipment revenues, by category of equipment;
 4. Other revenues, identifying the source of the revenues;
 5. The amount of any deduction from gross revenues, identifying the reason for the deduction, and the manner in which it was calculated;
 6. If revenues are allocated among the City and other entities, the total revenues, and the manner in which the revenues were allocated.
- B. The annual report shall be in a form the City prescribes, or if there is no form, in a form consistent with the manner in which Provider maintains its books and records.
- C. *Right to access.* The City shall have the right to review and make copies of books and records relevant to its enforcement of a Franchise Agreement and applicable law, including this chapter. Upon the City's request, books and records shall be produced at a convenient location in the City, or if books and records cannot be produced there, at a mutually agreeable location. To the extent the Utah Government Records and Management Act, Utah Code Annotated title 63G, chapter 2, and other applicable law permits, the City may agree in a Franchise Agreement that information contained within the books and records of Provider provided to the City shall be kept confidential by the City, and may agree to provide Provider reasonable notice of any request received by the City for disclosure of any books and records requested by Provider to remain confidential, so that the Provider may take appropriate action to protect confidential information from disclosure.
- D. *Prompt response required.* Provider shall promptly respond to requests for information from the City related to a Franchise Agreement or Provider's compliance with applicable law.
- E. *Audit.* In addition to other rights within this section, for the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided that the City shall not audit the books and records of the Provider more often than annually. The Provider shall be required to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid 95 percent or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within 30 calendar days of written notice. The City may accept any amount offered by the Provider to remedy the incorrect payment, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

Sec. 7-12-8. Franchise Fee.

- A. *Terms of payment.* Each Provider shall pay a franchise fee in connection with provision of services in an amount calculated as a percentage of Provider's annual Gross Revenue, as defined in this chapter. The annual payment shall be 6% of the Provider's annual Gross Revenue or the maximum amount permitted under federal or state law, whichever is less. Franchise fees shall be paid on a schedule set out in a Franchise Agreement. To the extent federal or state law requires or allows a different government entity or agency to collect the fees, the Franchise Agreement may provide for such arrangement. Acceptance of payment shall not be construed as an accord that the amount paid is correct nor shall it be construed to release any claim which the City may have for any further sums payable under this section. Any franchise fees which remain unpaid after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12.5% per annum until paid.
- B. *Exemption from rate limitations.* Nothing in this chapter prevents the City from securing an exemption from rate limitations as permitted by state law, including the exemption permitted by Utah Code 10-1-404, as amended. Upon satisfying the requirements for an exemption from rate limitations, the rates applied pursuant to this chapter shall be applied accordingly.
- C. *Costs.* A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any franchise application, renewal, or Provider-initiated renegotiation of a Franchise Agreement; or amendment of this chapter; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations.
- D. *Publication costs.* A provider shall assume any publication costs associated with its franchise that may be required by law.

Sec. 7-12-9. Term of Franchise.

A franchise granted pursuant to this Chapter shall be for a term established in a Franchise Agreement. In no event shall any franchise term exceed 15 years.

Sec. 7-12-10. Transfers of Franchise.

- A. *Consent of City required.* Unless specifically provided for in a Franchise Agreement and this chapter, a franchise or system shall not be sold, assigned, leased, subleased, mortgaged, transferred or conveyed in any manner whatsoever, either in whole or in part, voluntarily or involuntarily, nor shall any right, title or interest therein, either legal or equitable, pass to or vest in any person or entity other than the person or entity named as the Provider in the Franchise Agreement without the prior written consent of the City, obtained in accordance with the provisions of this section. Any attempt by the Provider to sell, assign, transfer or convey any interest in the franchise without obtaining the prior written consent of the City shall constitute a default in the Franchise Agreement.
- B. *Changes of control included.* A "sale," "transfer" or "conveyance" of the franchise shall include any acquisition of the controlling interest of Provider, whether through purchase of stock, merger, consolidation or any other change of control. Without limiting the

foregoing, a rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 20 percent of the voting interest or management control of the Provider.

- C. *Considerations of City.* At least 120 days before a proposed sale, assignment, transfer or conveyance of a Provider's franchise is scheduled to become effective, such Provider shall petition in writing for the City's written consent to the proposed sale, assignment, transfer or conveyance. The City will not unreasonably withhold its consent, but without limitation, it may consider the technical ability, financial capability, legal qualifications and general character qualifications of the purchaser, assignee or transferee, including its experience and service record in other communities. A request for consent to the sale, assignment or transfer hereunder shall be made to the City in writing and the Provider and the proposed purchaser, assignee or transferee must cooperate with the City in its investigation of the transfer. A request for consent may be denied if the Provider or proposed purchaser, assignee or transferee fail to timely provide the City information the City requests in connection with its review of the transfer.
- D. *Approval without response.* The City shall be deemed to have approved a proposed sale, transfer or assignment in the event that its response is not communicated in writing to the Provider within 120 days following receipt of the petition for consent to the proposed sale, transfer or assignment, unless the City and Provider agree to an extension of this period, subject to the following conditions:
 - 1. Transferee shall assume all obligations and liability of the former Provider, known and unknown.
 - 2. An approval without response is not a representation, express or implied, that the Provider is in compliance with the franchise.
 - 3. A sale, assignment or transfer shall not relieve the former Provider of its liabilities under this chapter until the sale, assignment or transfer actually takes place unless otherwise specifically relieved by the City.
- E. *Approval where PSC approval is required.*
 - 1. *Notification.* When a transaction requires the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction and provide a certification from the successor entity that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement and assumes all obligations thereunder; and the successor or entity is seeking, or has obtained, the approval of the PSC.
 - 2. *Where PSC approval is obtained.* Upon receipt of a notification and certification in accordance with subsection E1 of this section, the City shall send notice affirming the transfer of the franchise to the successor entity, the effectiveness of which shall be conditioned upon PSC approval, and compliance with any conditions established by the PSC. Provided that, if the City has good cause to believe that the successor entity may not comply with this Code or the franchise agreement, it may require an application for the transfer. The application shall comply with, and shall be reviewed in accordance with this chapter.
- F. *Assignment for creditors.* Notwithstanding any other provision of this chapter or a Franchise Agreement:

1. A franchise shall automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.
 2. However, the franchise may be reinstated if, within the 120-day period:
 - a. The assignment, receivership or trusteeship is vacated; or
 - b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and the Franchise Agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the franchise agreement and this chapter.
- G. *Foreclosure or judicial sale.* Notwithstanding any other provision of this chapter:
1. In the event of foreclosure or other judicial sale of any of the Provider's system or associated property, the City may revoke the franchise at a public hearing before the City Council, by serving notice upon the Provider and the successful bidder at the sale.
 2. The franchise shall terminate 30 calendar days after serving such notice, unless:
 - a. The City approves the transfer of the franchise to the successful bidder; and
 - b. The successful bidder agrees with the City to assume and be bound by the terms and conditions of the franchise and applicable law.

Sec. 7-12-11. Continuity Upon Termination or Transfer.

In the event of a termination, revocation, or transfer of Provider's franchise for whatever reason, Provider shall ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. At the City's request, Provider shall cooperate with the City to operate Provider's system for a temporary period following termination or transfer of the franchise as necessary to maintain and to ensure an orderly transition from one operator to another to avoid disruption of public streets and public property, and to ensure continuity of service to Subscribers. During such period, the system shall be operated as if the terms and conditions of this chapter and Franchise Agreement continue to apply.

Sec. 7-12-12. General Conditions and Requirements for Use of Rights-of-Way.

Every Provider's system shall be subject to the following with respect to its facilities in the Rights-of-Way:

- A. *Quality and performance of work.* All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner, using materials of good and durable quality. If, at any time, it is determined by an agency or court of competent jurisdiction, or by the City in the exercise of its lawful authority, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public

health, safety or welfare then the Provider shall, at its own cost and expense, promptly correct all such conditions.

- B. *Licenses and permits.* A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade, or repair the system, including, but not limited to, any necessary approvals from persons and/or the City to use private property, easements, poles, or conduits. A Provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval, or authorization is required.

C. *Relocation of system.*

1. *New grades or lines; excavation requirements.* If the City shall elect to alter or change the grade or location of any Right-of-Way, or if the City requires it as part of any public project, a Provider shall, at its own expense and within 30 days after written notice from the City, except as otherwise required by law, remove and relocate its system, and in each instance comply with the standards and specifications of the City, including the City's excavation ordinances. Provider's failure to comply with its obligation to remove or relocate its system pursuant to this chapter shall constitute a breach of the applicable Franchise Agreement.
2. *Relocation for other entities authorized to use Rights-of-Way.* A Provider shall promptly locate and relocate facilities to permit installation of additional utilities and infrastructure. ~~with costs borne in accordance with normal industry procedures and applicable law.~~ A Provider's obligation to relocate facilities includes situations where development of roadways and utilities pursuant to City standards requires that the facilities be relocated. The costs to locate and relocate facilities shall be borne by the Provider.
3. *Emergency; City authority to move system.* The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of any system within the rights-of-way, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section.
4. *Temporary move for third party.* A Provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A Provider may impose a reasonable charge on any person other than the City for any such movement of its systems.

D. *Protection of structures, landmarks.*

1. *Protection of City property.* In connection with the construction, maintenance, repair, upgrade or removal of the system, a Provider shall, at its own cost and expense, protect any and all existing structures and property belonging to the City and all designated landmarks, as well as all other structures within any designated landmark district. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other

City structure on, over or under the Rights-of-Way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City any City property, structure, or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider.

2. *Restoring surfaces; fee or bond.* Without limiting the foregoing, in case of any disturbance of asphalt, pavement, sidewalk, driveway, or other surfacing, a Provider shall, at its own expense, replace and restore all asphalt, paving, sidewalk, driveway, or other surface of any Right-of-Way, street, or alley disturbed in accordance with the standards and specifications of the City. When a Provider cuts asphalt in a Right-of-Way, the Provider shall maintain the asphalt cut for perpetuity or until the roadway is completely repaved. The Provider shall fully comply with any ordinance adopted by the City requiring a road opening fee or bond to protect against the costs to the City if a Right-of-Way surface or other City infrastructure is disturbed and not properly restored.
- E. *Obstructions prohibited.* In connection with the construction, maintenance, upgrade, repair, or removal of a system, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guideway systems, railways, passenger travel or other traffic to, from or within the City without the prior consent of the appropriate authorities.
- F. *Location; minimum interference.* All structures, lines, pipes, and equipment installed by a Provider within the City shall be located and installed in accordance with City ordinances governing street excavation and use of public Rights-of-Way and shall be located so as not to obstruct or interfere with the proper use of Rights-of-Way and other public ways and places, and to cause a minimum of interference with the rights of property owners who abut any of the said Rights-of-Way alleys and other public ways and places, and not to interfere with existing public utility installations. All cables, wires, and other associated equipment shall be installed, where possible, parallel with electric and telephone lines of the incumbent local exchange carrier, and shall utilize existing poles, conduits, and other facilities whenever possible. Any use of existing poles shall be conditioned on the approval of the Hurricane City Power Department, which approval may be withheld at the Power Department's discretion as described in Section 7-12-13 of this Chapter.
- G. *Safety precautions.* A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements, including, but not limited to, the National Electrical Safety Code.
- H. *Repair of Rights-of-Way.* If a Provider fails to maintain or restore public property, structures, or Rights-of-Way to the City's specifications and as set out in this chapter within a reasonable time, specified by the City, the City may after notice, or without notice if an imminent danger exists, repair the property itself, and the Provider shall compensate the City for all costs it incurs in connection with the same. The City shall

submit to such a provider an itemized statement of the cost incurred and the provider shall, within 30 days after receipt of the statement, pay to the City the invoiced amount. The City shall not be liable to Provider, and Provider shall defend and indemnify City, for any damage or loss incurred by Provider relating in any way to the City's repair or maintenance of the public property.

I. *Inspection and supervision of construction.*

1. At all reasonable times, a Provider shall permit examination by any duly authorized representative of the City of the system and its effect on the Rights-of-Way.
2. The City may require a Provider to prepare reports regarding the progress of work being performed, or that it is required to perform, in the Rights-of-Way.

J. *Trimming trees; authority.* A Provider may trim any trees upon and overhanging the streets, alleys, sidewalks, public easements, or Rights-of-Way of the City so as to prevent the branches of such trees coming in contact with the wires and cables of the Provider, provided that the Provider complies with all applicable City ordinances governing tree pruning or trimming. The Provider is responsible for harm caused to the trees by improper pruning or trimming. Prior to undertaking any tree trimming, Provider shall notify City and/or other property owner of Provider's intent.

Sec. 7-12-13. Underground installation of facilities; Pole Agreements.

- A. *Underground installation.* A Provider shall construct and install its system underground, unless a Provider secures authorization to construct its system aboveground or secures a pole agreement from the City as described in this section.
- B. *Provider's use of City's utility poles.* The Hurricane City Power Department may, at-in its sole discretion; (1) permit a Provider to construct and install its system aboveground or (2) enter into a pole agreement with a Provider to allow a Provider to place system components on a City's utility pole, based on the following considerations:
1. The feasibility of placing the Provider's system underground;
 2. The negative impacts on City property of placing the Provider's system underground;
 3. The negative impacts on the City's ability to manage, maintain, and utilize the City's utility poles if the Provider's system is placed aboveground or on the City's utility poles;
 4. Whether the Provider's request to place the system above ground is in an area of the City where cables, wires, and other like facilities of all other public utilities are placed underground; and
 5. Whether requiring the system to be placed underground will limit the ability to provide services to certain areas within the City.
- C. *City use of pole and conduits in Rights-of-Way.* Subject to any applicable state or federal regulations or tariffs, the City shall, after giving written notice, have the right, without cost, to make use of any poles or conduits controlled or maintained by or for use of the Provider that are located in any Right-of-Way. Such use by the City shall not interfere with current or future use by the Provider.
- D. *Use by others of poles.* In cases where access to a Provider's poles are not regulated by the Public Service Commission or by the Federal Communications Commission:

1. If another public utility is denied the privilege of utilizing poles or wire holding structures constructed and installed by the Provider within a Right-of-Way; and
2. The City finds that such use would enhance the public convenience and would not unduly interfere with the Provider's operations.

The City may require the parties to enter into a mutually agreeable joint pole use agreement with respect to the then unused capacity until such time as the poles and wire holding structures are needed by the owner thereof, so as to avoid proliferation of poles and wire holding structures, and may set the terms and conditions for access if the parties cannot agree, in a manner consistent with the manner in which rates are set for poles under 47 USC section 224, or under state law.

- E. With respect to any portion of the system constructed and installed aboveground, the Provider shall, at its sole expense, reconstruct and reinstall such system underground pursuant to any project under which like facilities of similar systems are placed underground or wherever the owner of a pole on which the Provider is located moves its equipment underground.
- F. Electronic equipment may be placed aboveground in appropriate structures where existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. The installation of Small Cell Infrastructure shall comply with the provisions of this chapter.

Sec. 7-12-14. Pole Attachment and Loading Analysis Requirements.

- A. *Applicability.* This section applies to any Provider-installed or Provider-owned equipment or infrastructure placed on any Eligible Support Structure, whether City-owned or Provider-owned, including any Related Accessory Equipment.
- B. *Requirements.*
 1. *General.*
 - a. All pole attachments shall be properly engineered and assure the ongoing safety and reliability of the City's systems.
 - b. All attachments shall be reviewed and approved by the Hurricane City Power Department in conformance with the City's design and specification standards and policies.
 - c. Pole agreements are required before the placement of any attachment onto a City-owned pole.
 - d. A complete pole loading analysis (PLA) shall be submitted for all pole types and locations indicated requiring a PLA. Other locations or structure types may also require a PLA to be completed as determined by the City.
 - e. The PLA must be completed by a professional engineer licensed in the state and approved by the City. The PLA shall be signed and sealed by the engineer completing the analysis.
 - f. Attachments without proper analysis and approval shall be promptly removed.
 2. *Pole types and conditions requiring a PLA.*
 - a. A PLA is required for the following structure types:
 - i. Poles with angles greater than ten degrees (guyed or un-guyed);
 - ii. Poles with spans larger than 200 feet;
 - iii. Poles with circuit taps (power or communication);

- iv. All poles where the City conductors are dead ended;
 - v. Poles with transformers, capacitors or other equipment installed;
 - vi. Poles that are less than Class 3; or
 - vii. Poles that are over 20 years old. Poles with more than two attachments in addition to the City's electrical primary, secondary and neutral attachments; and
 - b. Other locations not addressed above identified by the City that pole strength or clearance concerns are identified.
3. *Pole loading analysis submittal requirements.*
- a. The attaching entity is responsible for all required field and engineering work required to perform the PLA.
 - b. Submittal documents required:
 - i. Detailed map showing the location(s) of the proposed attachments and project scope.
 - ii. Structure details showing existing framing as well as new attachments and/or proposed modifications to the structures. Identification of the owners of existing wires, cables and equipment shall be shown.
 - iii. The structure drawings shall identify existing attachments that will be or are no longer in use. All unused cables, wires, equipment shall be removed from the pole(s) as part of the proposed attachment project.
 - iv. Complete loading and strength calculations meeting the requirements outlined in this section.
 - v. For wireline attachments, plan and profile drawings shall be included with the analysis.
 - a. The pole loading analysis shall use the following criteria and standards:
 - i. Pole loading shall meet the requirements of the latest version of the National Electric Safety Code (NESC).
 - ii. Loading zone: NESC medium.
 - iii. Construction grade: Grade B.
 - iv. Design wire/cable ground clearances shall exceed the NESC requirements by at least one foot to account for variations in the field. All clearances shall be based on the worst-case temperatures or wire/cable loading which cause the highest amount of sag.
 - v. An analysis including but not limited to the poles, guys, anchors, support arms and other components shall be included in the PLA.
 - vi. Supply, communication, support and work safety zone spaces are to be indicated in the drawings.
 - b. Proposed pole configurations shall meet current City construction standards details.
 - c. All new or replaced poles shall have a minimum reserved capacity of:
 - i. Five percent for poles supporting single circuit lines.
 - ii. Fifteen percent for poles supporting double circuit lines.
 - d. The PLA will be valid for a time period of no longer than six months from the time of the application submission. After this six-month period a new PLA will be required.

Sec. 7-12-15. Small Cell Infrastructure.

This section applies to and governs Small Wireless Facilities (SWF) and related equipment and facilities.

A. General standards.

SMALL CELL EQUIPMENT STANDARDS

Aesthetics	Equipment should match the aesthetics of surrounding poles.
Cables	All cables should be clearly labeled for future identification.
Cantennas	Cantenna must be mounted directly on top of the pole, unless a side arm installation is required by a pole owner. A tapered transition between the upper pole and cantenna is required.
Color	All equipment should be painted to match pole aesthetics. Paint should be powder coated over zinc paint. If a wood pole, the visible attachments and hardware shall be colored gray.
Conduits	All cables shall be in conduits made of a material approved by the Hurricane City Power Department and shall be flush with the pole unless required to be installed inside the pole.
Design wind velocity	All structural components of small cell pole, standard, base, equipment cabinet, couplers, anchor bolts, luminaires, cantenna and other attachments to be used shall be designed for a minimum of 115 miles per hour wind velocity in accordance with Applicable Standards. Snow loading and other local conditions shall also be included in the pole design.
Equipment access doors	Lockable access door sized to install, maintain, and remove all small cell equipment as needed shall meet Provider's requirements. The City may require access, but Provider must grant permission.
External shrouding	The antenna shall be contained in a cantenna and any other equipment shall be contained in an equipment cabinet, unless the visual impact can otherwise be reduced by its location on the pole.
Ground mounted equipment box	Must meet and follow existing City ordinances for ground mounted utility boxes and be attached to a concrete foundation.
Hardware attachment	All hardware attachments should be hidden. Welding onto existing equipment is not permitted.
Height of equipment on pole	The lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.
Internal installs	Equipment shall be installed within an existing pole when technologically feasible and always on a new pole. Any equipment installed within a pole may not protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.
Lights	There shall be no lights on the equipment unless required by federal law.

Pole height	No pole for small cell equipment shall exceed 50 feet in height. Attached antenna may be up to 10 additional feet for a total of 60 feet.
Power meter and service disconnect	Required by the City and in a location that: 1) minimizes its interference with other users of the City's right-of-way including, but not limited to, pedestrians, motorists, and other entities with equipment in the Right-of-Way, and 2) minimizes its aesthetic impact.
Sidearm installs	If permitted, may not allow the furthest point of the enclosure to extend more than 18 inches from the pole.
Stickers	Any on-pole cabinet and ground mounted utility box should be labeled: 1) a RF warning sticker, background to match pole color, no larger than 4 x 6 inches, facing to the street near the elevation of the antenna; 2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number; and 3) no advertising, logos or decals.
Width	May not exceed in width the diameter of the pole by more than 3 inches on either side.

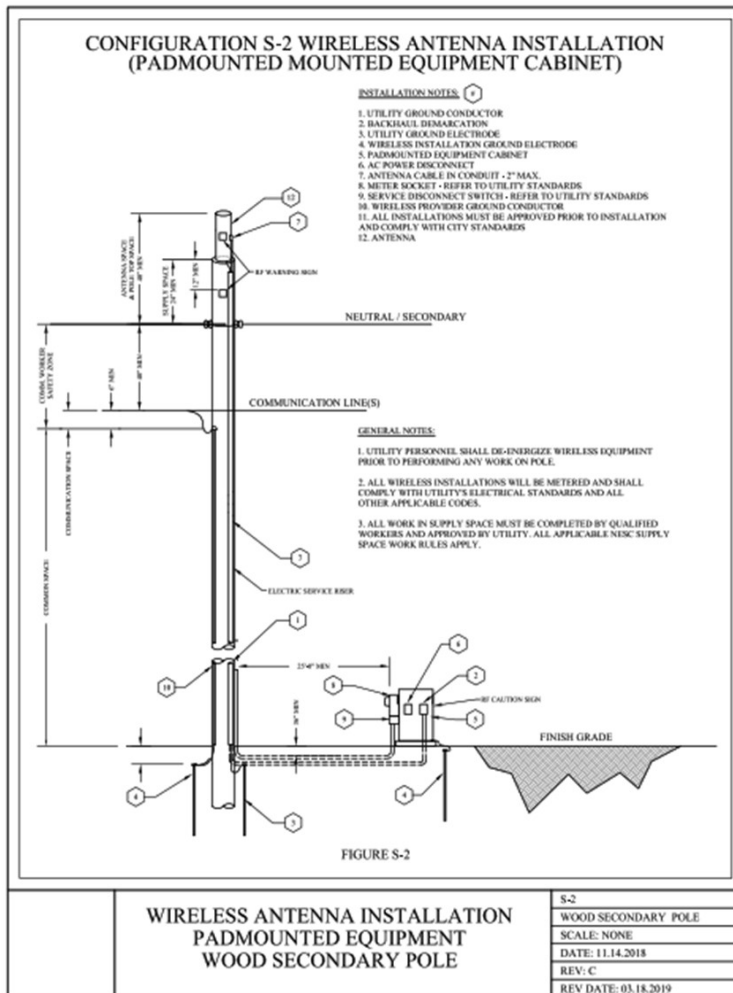
C. *General requirements.*

1. *Noise limitation.* System must meet the City-required noise limitation for ambient sound.
2. *Pole aesthetics.* Provider should provide detailed proposed pole aesthetics as part of their application.
3. *Position.* Poles shall not significantly obstruct property sight lines at the intersection of property lines and shall provide clearance for existing utilities. It is preferred that new poles be located in park strips.
4. *Right-of-Way position.* All equipment located within the public Right-of-Way shall be located such that it meets ADA requirements and does not obstruct, impede, or hinder usual pedestrian or vehicular travel or interferes with the operation and maintenance of signal lights, signage, street lights, street furniture, fire hydrants, or business district maintenance.
5. *Power and ground utility box.* Shall comply with all City and local code requirements. Backup batteries are not allowed.
6. *Permit and review.* All installations are subject to the City permit application and review process.

D. *Attachments to utility poles.*

1. *General requirements.*
 - a. All attachments to existing utility poles within the City Right-of-Way require an encroachment permit, prior to installation.
 - b. For a given pole location either pole mount or ground mount equipment shall be utilized; Both are not allowed at the same structure. Backup power devices are not allowed.

- c. A maximum of two enclosures including the disconnect and antenna shall be installed at each utility pole location. If ground-mounted enclosures are used pole mounted enclosures are not allowed.
 - d. If the City elects to move the utility lines underground after the Small Cell Infrastructure is installed, all carrier equipment shall be removed and relocated by Provider at not cost to the City.
 - e. Strand-mounted small cell devices are not allowed.
 - f. Provider shall submit evidence that the existing poles are appropriately sized and have sufficient strength to accommodate the additional small cell equipment loads. Provider shall also obtain and submit a letter of approval from the Hurricane City Power Department for the small cell equipment to be installed on the specific pole. The provider must comply with the City's pole attachment and loading requirements of this section.
 - g. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - h. Provider shall provide a disconnect so that the City has the ability to easily shut off radio signals and power while working on the pole.
2. *Equipment color.* Equipment should be colored to match pole.
 3. *Equipment shroud.*
 - a. The maximum dimensions for pole-mounted equipment shrouding shall be 38" H x 16" W x 12" D.
 - b. All hardware attachments shall be hidden to the maximum extent possible.
 - c. A maximum of two equipment shrouds, containing all required small cell equipment, shall be installed per pole. Provided, however, that one additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud.
 4. *Cantenna.*
 - a. If a cantenna is located on top of the pole the outer diameter shall be a maximum of 14 inches and the cantenna shall be no more than five feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
 - b. If the cantenna is mounted to the side of the pole it shall be located inside a shroud of 5.5 cubic feet maximum. The width, depth, or diameter of the shroud size shall not be greater than 16 inches (maximum).
 5. *Exhibit.* The following image exhibits some of the requirements of this section for attachments to utility poles:



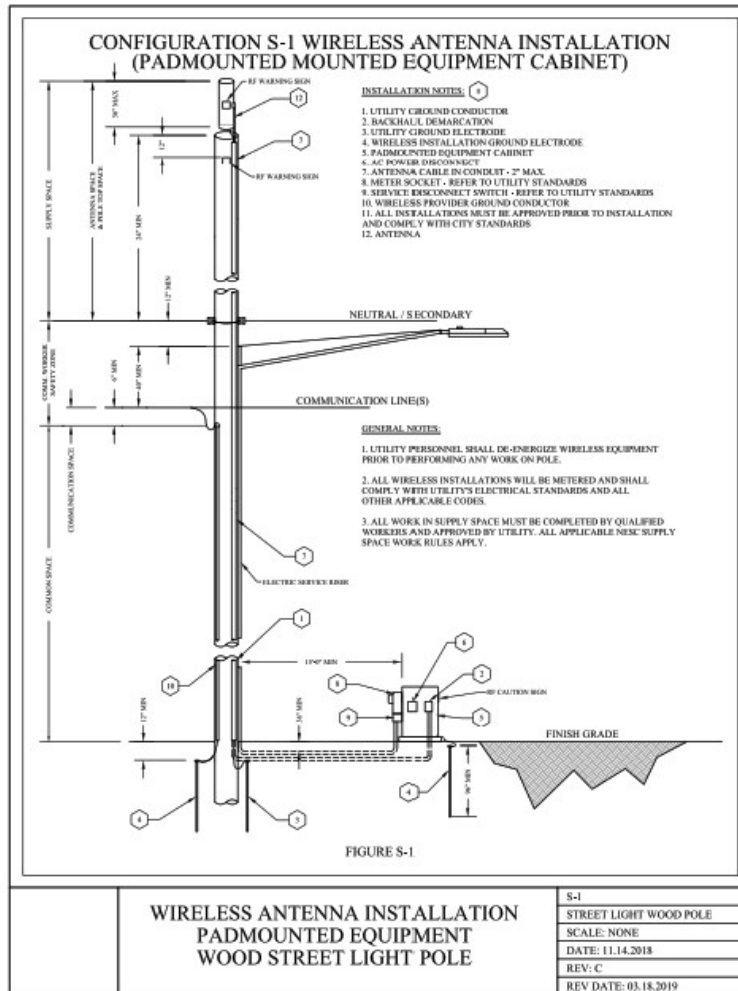
E. *Attachments to street lights.*

1. *General requirements.*

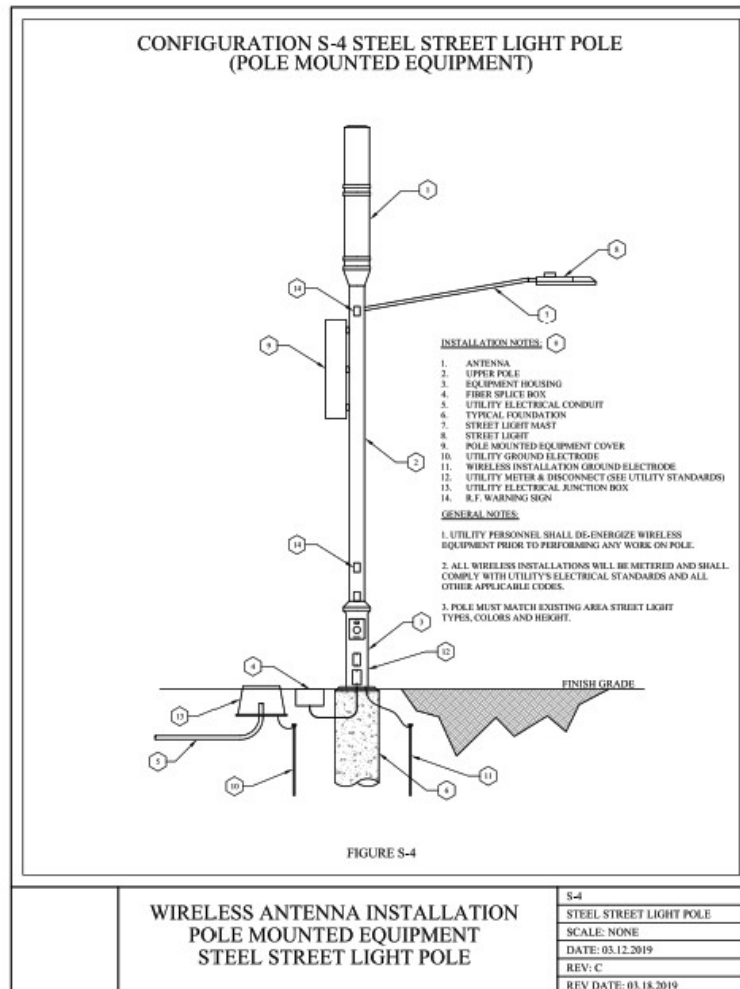
- a. The same small cell pole aesthetic is to be used to match existing streetlights in the area and maintain a cohesive appearance. The Provider shall perform a visual inspection (online street images are acceptable) prior to submitting a permitting application to determine existing aesthetics.
- b. Unless otherwise unfeasible the preferred installation configuration is to utilize poles that conceal all system components (i.e. meter, disconnect, radio, etc.).
- c. All small cell carrier equipment shall be housed internal to the pole or hidden behind an exterior shroud.
- d. The small cell components shall be sized to be visually pleasing. For a combination pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size.

- e. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
 - f. All pole mounted enclosures shall be securely attached with hardware (not strapped).
 - g. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - h. The City reserves the right to disconnect power to the radio when working on the pole. The provider shall provide a disconnect so the City has the ability to easily shut off radio signals and power while working on the pole.
 - i. All poles new or existing shall meet all City pole analysis requirements of this chapter.
 - j. All installations shall utilize City approved structures, arms, luminaires, and configurations and comply with all applicable City standards.
2. *Equipment color.* Equipment should be colored to match pole.
 3. *Equipment shroud.*
 - a. Equipment shrouding shall have a maximum 20-inch diameter, but a 16-inch diameter is preferred. The maximum height of the cabinet is five feet eight inches. The cabinet shall be round and installed below the pole.
 - b. If an antenna is located on the side of the pole, the antenna, radio equipment, brackets, and all other hardware required for a complete installation shall fit behind a 38" H x 16" W x 12" D maximum shroud, securely mounted (not strapped) to the pole.
 - c. The equipment cabinet and/or equipment cabinet cover shall not have a flat horizontal surface larger than 1.5 inches.
 - d. All hardware attachments shall be hidden to the maximum extent possible.
 4. *Cantenna.*
 - a. The antenna and antenna pole attachment shall be shrouded to meet the City's aesthetics. A tapered transition between the upper pole and cantenna shall be included.
 - b. The outer diameter shall be a maximum of fourteen inches and a maximum of five feet eight inches in length. The antenna shroud shall be colored to match pole.
 5. *Luminaire/luminaire mast arm.*
 - a. Luminaire shall meet the City's construction standards and specifications and shall match existing luminaires adjacent to permit location.
 - b. Luminaire mast arms shall match on adjacent streetlights or match aesthetics of adjacent streetlights. In any case, mast arms will be decorative.
 6. *Pole size, type and foundation.*

- a. Poles shall be round, straight, galvanized steel. Pole shall be architecturally compatible with the equipment cabinet. At least 15 percent of the pole design structural capacity shall be reserved for future City IOT installations.
 - b. The upper pole shall be scaled to 0.5 to 0.75 times the size of the equipment cabinet with ten inch minimum outer diameter. The pole diameter shall be scaled such that no flat, horizontal surface larger than 1.5 inches exists between the equipment cabinet and upper pole.
 - c. Precast concrete or cast-in-place pole foundations shall be designed per the City standards and to meet the building code requirements of ACI 318. While the City accepts cast-in-place foundations, precast concrete foundations are preferred and should be installed whenever possible.
 - d. Bolt circles shall be a 19.5-inch bolt circle when installing a 16-inch equipment cabinet and a 23.5-inch bolt circle when installing a 20-inch equipment cabinet.
7. *Access doors.*
- a. Lockable doors shall be installed in the equipment cabinet.
 - b. A hand hole shall be provided at the top and bottom of the pole to maintain electrical service for streetlights and future IOT attachments.
8. *Exhibit.* The following image exhibits some of the requirements of this section for attachments to wood street light poles:



9. *Exhibit.* The following image demonstrates some of the requirements of this section for attachments to steel street light poles:



F. Attachments to monopoles.

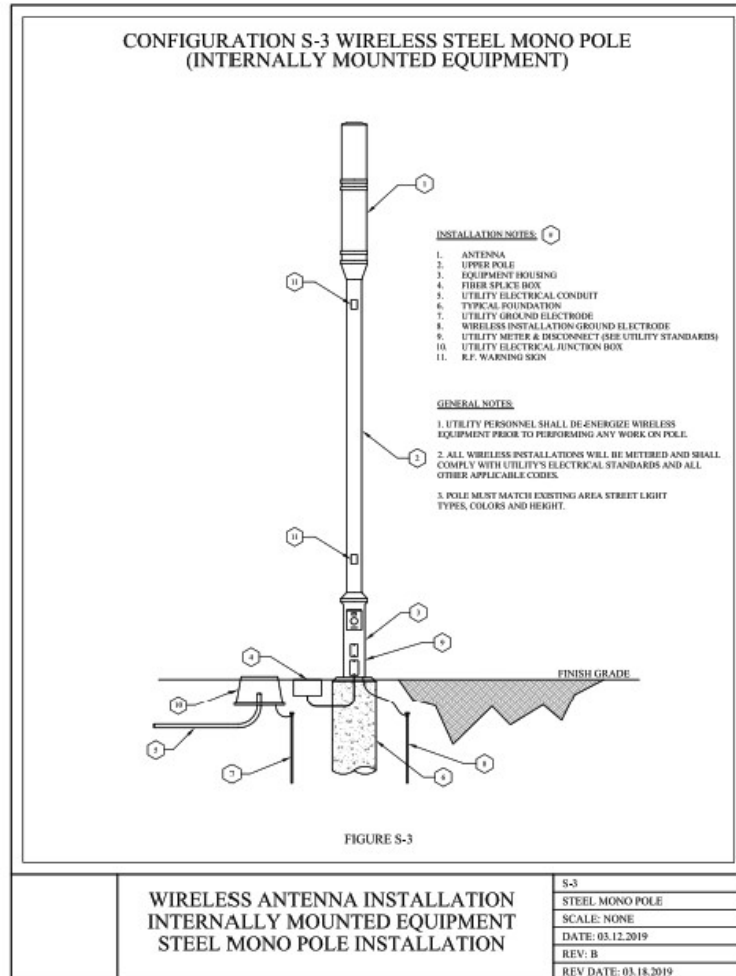
1. General requirements.

- a. The same small cell pole aesthetic is to be used to match existing streetlights in the area and maintain a cohesive appearance. The provider shall perform a visual inspection (online street images are acceptable) prior to submitting a permitting application to determine existing aesthetics.
- b. All small cell carrier equipment shall be housed internal to the pole or hidden behind an exterior shroud.
- c. The small cell components shall be sized to be visually pleasing. For a combination pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size.
- d. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
- e. All pole mounted enclosures shall be securely attached with hardware (not strapped).

- f. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - g. The City reserves the right to disconnect power to the radio when working on the pole. Provider shall provide a disconnect so City has the ability to easily shut off radio signals and power while working on the pole.
 - h. All poles new or existing shall meet all City pole analysis requirements of this chapter.
 - i. All installations shall utilize City approved structures, arms, luminaires, and configurations and comply with all applicable City standards. Ownership of monopoles will remain with the provider.
- 2. *Equipment color.* Equipment should be colored to match pole.
- 3. *Equipment shroud.*
 - a. Equipment shrouding shall have a maximum 20-inch diameter, but a 16-inch diameter is preferred. The maximum height of the cabinet is five feet eight inches. The cabinet shall be round and installed below the pole.
 - b. If an antenna is located on the side of the pole, the antenna, radio equipment, brackets, and all other hardware required for a complete installation shall fit behind a 38" H x 16" W x 12" D maximum shroud, securely mounted (not strapped) to the pole.
 - c. The equipment cabinet and/or equipment cabinet cover shall not have a flat horizontal surface larger than 1.5 inches.
 - d. All hardware attachments shall be hidden to the maximum extent possible.
- 4. *Cantenna.*
 - a. The antenna and antenna pole attachment shall be shrouded to meet the City's aesthetics. A tapered transition between the upper pole and cantenna shall be included.
 - b. The outer diameter shall be a maximum of fourteen inches and a maximum of five feet eight inches in length. The antenna shroud shall be colored to match pole.
- 5. *Pole size, type and foundation.*
 - a. Poles shall be round, straight, galvanized steel. Pole shall be architecturally compatible with the equipment cabinet. At least 15 percent of the pole design structural capacity shall be reserved for future City IOT installations.
 - b. The upper pole shall be scaled to 0.5 to 0.75 times the size of the equipment cabinet with ten-inch minimum outer diameter. The pole diameter shall be scaled such that no flat, horizontal surface larger than 1.5 inches exists between the equipment cabinet and upper pole.
 - c. Precast concrete or cast-in-place pole foundations shall be designed per the City standards and to meet the building code requirements of ACI 318. While the

City accepts cast-in-place foundations, precast concrete foundations are preferred and should be installed whenever possible.

- d. Bolt circles shall be a 19.5-inch bolt circle when installing a 16-inch equipment cabinet and a 23.5-inch bolt circle when installing a 20-inch equipment cabinet.
6. *Pole attachment and loading analysis requirements.* Any attachments to poles made pursuant to this section shall comply with Sec. 7-12-XX. -- Pole Attachment and Loading Analysis Requirements.
7. *Exhibit.* The following image demonstrates some of the requirements of this section for attachments to steel monopoles:



Sec. 7-12-16. Letter of Credit; Insurance; Bonding.

Each Franchise Agreement shall require, and each Provider shall supply, a letter of credit or similar surety and proof of adequate insurance. The City Council shall establish the specific surety and insurance requirements, taking into account the nature of the facilities being placed in the Rights-of-Way and the risks to the City and the public associated with the use of the Rights-of-Way. The City Council may require Provider to, as a condition of a Franchise Agreement

post a bond or other surety approved by the Council to ensure the maintenance of public Rights-of-Way pursuant to this chapter.

Sec. 7-12-17. System Records Requirements.

A Provider shall at all times maintain on file with the City, a full and complete set of plans, records and as-built hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all installations and the types of equipment and systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks. Maps shall be updated annually, or after a significant modification to the provider's plant. As-built maps are not required of providers for facilities already in the Rights-of-Way, where the maps do not exist; however, as those facilities are expanded, replaced or modified, maps shall be provided.

Sec. 7-12-18. Private Property; Obligation to Notify.

Providers shall not violate the private property rights of landowners. Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance and describe the work to be performed.

Sec. 7-12-19. Applicable Codes.

Nothing in this chapter shall excuse a Provider from complying with Applicable Codes.

Sec. 7-12-20. Removal of System; Abandonment of Systems.

- A. *Effect of revocation, expiration or abandonment.* If a Franchise Agreement expires, is validly revoked, or the facilities installed pursuant to the Franchise Agreement are abandoned, the City may:
 - 1. Require the Provider to stop providing the franchised services; and
 - 2. Require the Provider to remove all or portions of the system that are not in the Rights-of-Way by virtue of another, valid franchise, within a reasonable time specified by the City; and
 - 3. Require the Provider to convey title to facilities that are not removed and that are not in the Rights-of-Way by virtue of another, valid Franchise Agreement, in a form satisfactory to the City and free and clear of all liens and encumbrances to the City.
- B. *Abandonment presumption.* In the event that the use of any portion of a franchised system is discontinued for a continuous period of 12 months, and 30 days after no response to written notice from the City to the last known address of Provider, the Provider shall be deemed to have abandoned such system. In addition to all other rights and remedies available to the City upon revocation, expiration or abandonment, the City may elect to assume control and ownership of abandoned facilities or infrastructure.
- C. *Dispute; No loss of City rights.* If there is a dispute as to whether a Franchise Agreement has expired, the facilities abandoned, or the franchise validly revoked; or if an order of the public service commission is required; the Provider may continue to provide the

service, or to occupy the Rights-of-Way pending resolution of the dispute, or issuance of the necessary orders, subject to reasonable conditions including payments for continued use and occupancy of the Rights-of-Way, established by the City. Any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

- D. *Procedures for removal of franchised property.* A Provider shall comply with all applicable laws in removing facilities and restore any affected Rights-of-Way to their former state at the time such system was installed. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. Applicable liability, indemnity, and insurance provisions of this Code and of the franchise shall continue to apply as if the franchise was in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this section. If a provider fails to remove or restore, the City may do so and charge the provider for all costs incurred in doing so.
- E. *Leaving underground system.* Subject to the City's rights under this section, a Provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other person.

Sec. 7-12-21. Unlawful Use; Repair After Unlawful Use; Acts Exempted.

- A. *Unlawful use.* Unless authorized by a Franchise Agreement, permit, or other written authorization issued by the City, or unless authority is granted by provisions of this Code or other ordinance of the City now or hereafter enacted, it shall be a class B misdemeanor, subject to penalty as provided in section 1-4-1 of this Code, for any person to:
 - 1. *Property controlled by City.* Construct, lay, excavate, erect, operate or maintain over, under, across, in or through any Right-of-Way or other property owned or controlled by the City, any infrastructure, system, utility, canal, ditch, construction, facility, or building.
 - 2. *Restricted areas.* Enter upon any property of the City contrary to any posting or marking restricting or prohibiting use of the area.
 - 3. *Damage to property.* Intentionally use or perform acts upon property of the City which materially impairs, alters or damages the property or improvements thereon.
- B. *Repair after unlawful use.* The City Council, in addition to any other penalty which may be imposed, may order any person who has damaged, altered or changed any property of the City to repair or restore the property to its original condition prior to the damage, alteration or change.

- C. *Acts exempted.* It shall not be a violation of this chapter where any person uses the public property of the City in the manner or for the purpose for which such property has been made available for public use, or to the extent the use is authorized by state law and state law prevents the City from requiring a franchise, easement or other written authorization for that particular use.

Sec. 7-12-22. Revocation of Franchise; Fines and Penalties.

- A. *Process.* A Franchise Agreement may be terminated, or penalties imposed as provided by other provisions of this Code, for a material failure to comply with the conditions of the Franchise Agreement, this chapter, or any other provisions of applicable law that the City is permitted to enforce. The City may only terminate the Franchise Agreement or impose penalties after providing a Provider notice of the alleged defect in performance and its intent to consider termination, and an opportunity to cure (except no opportunity to cure would be required for criminal acts, fraud, or where the violation by its nature cannot be cured). If the cure is not effected to the City's satisfaction within 30 days of such notice, the City may schedule a public hearing before the City Council to consider and determine whether or not to terminate the Franchise Agreement or impose penalties. A Provider must be provided an opportunity to present written materials to the City Council prior to the franchise termination hearing.
- B. *Effect of termination.* If a franchise is terminated, and the Provider holds no other franchise authorizing it to occupy the Rights-of-Way, the City may either acquire the franchised system in the City, free and clear of all liens and encumbrances at depreciated book value price or exercise any of the rights provided for under other provisions of this Code.
- C. *Remedies cumulative.* Nothing in this section prevents the City or a Provider from taking any other action or exercising any other remedy available at law or equity.

Sec. 7-12-23. Indemnification and Defense.

- A. Each Provider shall, as a condition of access to the Rights-of-Way, indemnify, defend, and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees, from and against any liability for damages, costs, expenses, claims, suits, actions, judgments and liabilities, including, but not limited to, expenses for legal fees, whether suit be brought or not, disbursements and liabilities incurred or assumed by the City in connection with:
1. *Persons or property.* Damage to persons or property, in any way arising out of or through the acts or omissions of the Provider, its servants, officials, agents, attorneys, representatives or employees;
 2. *Failure to comply.* Any and all claims arising out of the Provider's failure to comply with the provisions of applicable law, or of any franchise or other authorization to use or occupy Rights-of-Way or its enjoyment of the same, or any and all claims arising out of its use of the Rights-of-Way;
 3. *Claims from use of Rights-of-Way.* Any and all claims which the Provider may now or hereafter have or claim to have against the City, its servants, agents, attorneys, representatives, employees or officials, due to or arising out of damage

to any of the Provider's property or equipment in the Rights-of-Way, including, without limitation, resulting or consequential loss of income, injury to reputation, or any other resulting or consequential damages of any kind, caused by or resulting from acts or omissions of the City or any of its servants, agents, attorneys, representatives, employees or officials except to the extent that such indemnity is prohibited by law; and

4. *Other disputes.* Any and all disputes arising out of a claim wherein damages or other relief is sought as a result of the City's procedure in connection with the issuance of a franchise, easement or other authorization to use the Rights-of-Way to the Provider.
- B. *Procedure for indemnity.* If any suit, claim, notice or other demand seeking regarding any of the above-indemnified claims is brought or threatened against the City, either independently or jointly with the Provider, or with any other person or municipality, Provider, upon notice given by the City, shall defend the City. If final judgment is obtained against the City, either independently or jointly with the Provider or any other defendants, Provider shall indemnify the City and pay such judgment with all costs and satisfy and discharge the same. In the event of litigation between Provider and the City, indemnification shall apply only upon the City's successful defense or prosecution of the litigation. This provision will not apply to damages that are not subject to indemnity under state law.
 - C. *Rights additional to other rights.* All rights of the City pursuant to this provision are in addition to any other rights the City may have under any other ordinance, rule or regulation of law, or under any Franchise Agreement, easement or other authorization to use the Rights-of-Way.
 - D. *Indemnity required.* No franchise, easement or other authorization to use the Rights-of-Way shall issue unless it contains an indemnity provision substantially similar to the requirements of this section.
 - E. *Procedure for taxes erroneously recovered from customers.* The provisions of Utah Code 10-1-408, as amended, are hereby incorporated by reference.

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 7, CHAPTERS 4, 8, 10, 11; AMENDING TITLE 13, AND CREATING TITLE 7,
CHAPTER 12 OF THE HURRICANE CITY CODE REGARDING UTILITY
FRANCHISES**

WHEREAS, the City Council of Hurricane, Utah desires to amend Title 7, Chapters 4, 8, 10, 11; amend Title 13, and create Title 7, Chapter 12 of the Hurricane City Code regarding utility franchises;

WHEREAS, the City Council deems this amendment necessary and desirable for the preservation of the general health, safety, and welfare of the residents of Hurricane,

BE IT HEREBY ORDAINED that Title 7, Chapters 4, 8, 10, and 11 are all reserved, that Title 13 is reserved, and that Title 7, Chapter 12 is created as follows:

**TITLE 7, CHAPTER 4 – RESERVED
TITLE 7, CHAPTER 8 – RESERVED
TITLE 7, CHAPTER 10 – RESERVED
TITLE 7, CHAPTER 11 – RESERVED
TITLE 13 – RESERVED**

**TITLE 7 – PUBLIC WAYS AND PROPERTY
CHAPTER 12 – UTILITY FRANCHISES**

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Sec. 7-12-20. Removal of System; Abandonment of Systems.

Sec. 7-12-21. Unlawful Use; Repair After Unlawful Use; Acts Exempted.

Sec. 7-12-22. Revocation of Franchise; Fines and Penalties.

Sec. 7-12-23. Indemnification and Defense.

Sec. 7-12-1. Findings; Authority.

A. *Findings.* The City finds as follows:

1. Franchise Standards. It is in the interests of the public to allow certain franchises within the City and to establish standards for Providers in a manner that:
 - a. Establishes minimum standards and criteria for franchising Providers utilizing public Rights-of-Way;
 - b. Fairly and reasonably compensates the City on a competitively neutral and nondiscriminatory basis as provided herein;
 - c. Encourages competition by establishing terms and conditions under which Providers may use the rights-of-way to serve the public;
 - d. Protects the public interests and the City from any harm that may flow from such commercial use of Rights-of-Way;
 - e. Protects City police powers and the City's Rights-of-Way management authority in a manner consistent with federal and state law;
 - f. Protects the public interests in the development and use of the City infrastructure;
 - g. Protects the public's investment in improvements in the Rights-of-Way; and
 - h. Appropriately limits barriers to entry of franchising Providers.
2. Public Rights-of-Way. It is necessary and appropriate to develop uniform minimum standards for use of the public Rights-of-Way and to simplify City management of the rights-of-way. Public Rights-of-Way within the City:
 - a. Are critical to the travel and transport of persons and property in the business and social life of the City;
 - b. Are intended for public uses and must be managed and controlled consistent with that intent;
 - c. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well-being of the City and its citizens; and
 - d. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the Rights-of-Way.
3. Compensation. The City should receive fair and reasonable compensation for use of the public Rights-of-Way in conjunction with franchises.
4. Local Concern. The regulation of utilities and services within the Rights-of-Way is of local concern.

5. Development of Services. It is in the best interests of the City's taxpayers and citizens to promote the rapid development of services, including into areas of the City previously developed, on a nondiscriminatory basis, to assure the availability of services to the entire community.
- B. *Authority*. The City adopts this chapter pursuant to its power to manage public Rights-of-Way; to ensure that those rights-of-way are used for public purposes; and to receive fair and reasonable compensation for the use of rights-of-way by Providers pursuant to common law, the Utah Constitution, and statutory authority.

Sec. 7-12-2. Definitions.

For purposes of this chapter, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this section. The words "shall" and "will" are mandatory, and "may" is permissive. Undefined words shall have their common and ordinary meaning.

Antenna means communication equipment that transmits or receives an electromagnetic radio frequency signal used in the provision of wireless service.

Applicable Codes means the Utah State Code, Hurricane City Code, International Building Code (IBC), the International Fire Code, the National Electrical Code (NEC), National Electric Safety Code (NESC), as adopted and amended under Utah Code Annotated title 15A, State Construction and Fire Codes Act.

Applicable Standards means the structural standards for antenna supporting structures and antenna, known as ANSI/TIA-222, from the American National Standards Institute and the Telecommunications Industry Association.

Applicant means a Provider or their authorized agent who submits an application for an agreement or other authorizations that may be granted under this chapter.

City means Hurricane City, Utah, a Utah municipal corporation.

Eligible Support Structure means any monopole, utility pole, wireless support structure or related accessory equipment, as defined in this chapter, provided that it is existing at the time the relevant Application is filed with the City.

Franchise Agreement means a contract entered into in accordance with the provisions of this chapter between the City and a franchisee that sets forth the terms and conditions under which a Provider is authorized to place facilities in Rights-of-Way to provide utility, communications, video, telecommunication, or similar services.

Gross Revenue means all revenue or receipts derived by a Provider, or an affiliate of a Provider, in connection with its provision of services in the City governed by a Franchise Agreement. For purposes of revenue generated in relation to telecommunication services provided within the City, the definition of 'gross receipts' found in Utah Code Title 10, Chapter 1, Part 4, as amended, governs and applies. Gross Revenue includes all revenues of a provider

that may be included as gross revenue within the meaning of Utah Code Title 11, Chapter 26, as amended.

Monopole means a structure in the right-of-way erected by an applicant or provider specifically to support SWFs.

Nondiscriminatory describes the equal treatment of similar situated entities unless there is a reasonable, competitively neutral basis for different treatment.

PSC means the Public Service Commission or any successor thereto.

Person includes any individual, corporation, partnership, association, joint stock company, trust or any other legal entity, but not the City.

Provider means a provider of utility, wireless, communication, or similar services that utilizes Rights-of-Way or other City-owned or City-controlled property to provide the service. A Provider includes, but is not necessarily limited to, a person or entity that has entered into a Franchise Agreement with the City.

RF means radio frequency.

Related Accessory Equipment refers to equipment used in conjunction with an Antenna or other component of SWFs which may be attached to a wireless support structure or located on the ground at or near the base of a wireless support structure.

Rights-of-Way or *Right-of-Way* refers to any area within, on, above and below alleys, public roads, highways, streets, easements, and other similar public property, and may include sidewalks, park-strips and other areas associated with them and controlled by the City, primarily dedicated to, designed for or actually and customarily used for vehicular or pedestrian travel, and which, by their nature, may properly be used for installation of a utility or communication system, or any dedicated general public utility easement that the City may authorize a Provider to use.

Service Area means the geographic area in which a Provider is authorized and required to provide services.

Subscriber means any person or entity lawfully receiving service(s) from Provider or an affiliate of Provider.

Small Wireless Facility (SWF) means a wireless facility on which each provider's Antenna could fit within an enclosure of no more than six cubic feet in volume and for which all related accessory equipment, whether mounted on the pole or the ground, is cumulatively no more than 28 cubic feet in volume.

Sec. 7-12-3. General Provisions; Scope and Application.

- A. *Franchise Required.* Every Provider shall apply for and obtain a Franchise Agreement, easement, or other authorization approved by the City Council prior to placing any infrastructure or facilities in a Right-of-Way.
- B. *Operations on City-Controlled Property.* Subject to the requirements and considerations of this chapter, the City Council may grant to any person a franchise, easement, or other appropriate authorization on such terms and conditions as it deems reasonable, for the purpose of entering upon, constructing, building, operating, and maintaining any business or for other use of the property owned or controlled by the City. Franchises, easements, and authorizations shall be construed narrowly; no rights shall pass by implication.
- C. *In writing.* Any franchise, easement, or other authorization granted by the City shall be in writing and any franchise, easement, or other authorization not in writing shall be void.
- D. *Nature of franchise.* A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right and consent to install, repair, maintain, remove, or replace facilities on, over and under the rights-of-way for the limited purposes and for the limited period as stated in a Franchise Agreement. Except as provided in this chapter, the right may not be subdivided, assigned or subleased. A Franchise Agreement does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the City's property. This subsection shall not be construed to prohibit a Provider from leasing conduit to another Provider, so long as the lessee has obtained a franchise.
- E. *Authorizations nonexclusive.* Franchises, easements, or other authorizations granted by the City shall be nonexclusive.
- F. *Applicability; Conflicts.* This chapter shall be construed and applied in a manner consistent with all applicable federal and state statutes. To the extent the provisions of this chapter conflict with applicable federal or state statutes, the federal or state statutes shall govern and this chapter shall be applied accordingly. This chapter shall apply to all franchises granted or renewed after the effective date hereof. This chapter shall further apply, to the maximum extent permitted by applicable federal or state law, to all existing franchises granted prior to the effective date hereof and to a provider providing services, without a franchise, prior to the effective date hereof. The revisions to this chapter adopted by ordinance and codified herein do not relieve a franchisee of any obligations that are included in an existing Franchise Agreement or that were relied on in the City's approval of an existing franchise.
- G. *Enforcement conditions.* In addition to containing such terms as the City may lawfully require, any Franchise Agreement granted pursuant to this chapter shall contain appropriate provisions for enforcement, compensation and protection of the public, consistent with the other provisions of this chapter, including, but not limited to, defining events of default, liquidated damages, as appropriate, and rights of termination or revocation.
- H. *City failure to enforce.* A provider shall not be relieved of its obligation to comply with any of the provisions of this chapter or any Franchise Agreement granted pursuant to this chapter by reason of any failure of the City to enforce prompt compliance.

- I. *Exercise of police power.* To the full extent permitted by applicable law either now or in the future, the City reserves the right to adopt or issue such rules, regulations, orders or other directives that it finds necessary or appropriate in the lawful exercise of its police powers.

Sec. 7-12-4. Application for Franchise.

- A. *Application fee.* Every application for a franchise shall be accompanied by a nonrefundable application fee as may be set by the City Council from time to time by resolution and an agreement to pay reasonable costs incurred by the City to pay the costs of studying, investigating, and otherwise processing such application. City may require payment of a deposit to ensure payment of said reasonable costs incurred.
- B. *Information required.* A Provider seeking a Franchise Agreement, easement, or other authorization shall file an application with the City Recorder. The application shall contain or be accompanied by the following information:
 1. The name, address, and telephone number of the applicant.
 2. A detailed statement of the corporate or other business entity organization of the applicant, including, but not limited to, the following:
 - a. The names, residence addresses and business addresses of all officers, directors and partners or business associates of the applicant.
 - b. The names, residence addresses and business addresses of all persons and entities having controlling, or being entitled to have or control five percent or more of the ownership of the applicant, and the respective ownership share of each such person or entity.
 - c. The names and addresses of any parent of the applicant to the ultimate parent; and the names and addresses of each entity responsible in whole or in part for management or operation of the applicant, along with a description of the nature of the responsibilities of such entity or entities.
 - d. A description of the services intended to be provided by applicant.
 - e. A description of the previous experience of the applicant in providing services and constructing systems used to provide services; and an identification of all communities in the state where applicant, or any affiliate, provides services.
 - f. Certification of the Provider's financial ability to compensate the City for Provider's intrusion, maintenance, and use of the Rights-of-Way, as well as Provider's ability to make payments owed to the City during the term of any Franchise Agreement.
 - g. Information showing that the applicant has the technical and financial resources to build and operate any infrastructure or facilities that will be placed in Rights-of-Way.
 - h. Information regarding the character qualifications of the applicant.
 - i. A copy of the order from the PSC granting a certificate of convenience or necessity, if applicable.
 3. A detailed description of the proposed plan of operation of the applicant, which shall include, but not be limited to, the following:

- a. A map or maps showing the precise geographic area for which applicant seeks a Franchise Agreement.
 - b. Plans showing any existing locations of the system that will be used to provide services.
- C. *Additional information.* The City may request such additional information as it deems necessary to determine whether or not the application should be granted. The failure to file a complete application, or to provide additional information requests, is grounds for rejecting or denying an application.
- D. *Determination by City.* The City Council shall determine whether to award any franchise, easement, or other authorization based on and taking into account considerations relevant to the use of the Rights-of-Way and the public interest, health, and safety, without competitive bidding.
- E. *Renewals.* Franchise renewals shall be according to applicable state and federal law. The City and grantee by mutual consent, may enter into renewal negotiations at any time during the term of the franchise.

Sec. 7-12-5. Standards For Granting or Denying Applications.

- A. *Standards.* The City Council may schedule such public hearings and conduct such investigations as are necessary to determine whether granting the application is in the public interest, considering the following:
 - 1. The qualifications of the applicant, including but not limited to the following:
 - a. Years in business;
 - b. Number of employees and crews;
 - c. Existing infrastructure in southern Utah;
 - d. Number of redundant carriers, if any;
 - e. Amount of equipment;
 - f. Adequate General Liability insurance;
 - g. Existing relationships with other municipalities;
 - h. References from other municipalities;
 - i. Employee certifications related to the installation and maintenance of the proposed system;
 - j. Products or services offered by Provider;
 - k. Whether customer support services are locally situated;
 - l. Availability of physical path redundancy by Provider;
 - m. Capabilities of Provider's network;
 - n. Provider's historical gross and net revenues;
 - o. Ability of Provider to timely serve brownfield or legacy areas;
 - p. Availability of local technical support.
 - 2. Whether the application for construction and extension of the system is reasonable, considering the needs of the community;
 - 3. Whether the application, if granted, is likely to result in any portion of the City being unserved or underserved by the proposed system;
 - 4. Whether the application, if granted, would limit or enhance competition in the provision of communications services in the City;

5. Whether the applicant is willing and able to comply with its obligations under applicable law, and to agree to franchise conditions to protect the City against harm and liability, and ensure the franchise is enforceable;
 6. Whether the applicant is willing to agree to conditions that ensure that entities using its system can comply with conditions imposed under other provisions of this Code, including, without limitation, obligations imposed under chapter 10 of this title and title 13, chapter 1 of this Code and franchises issued thereunder;
 7. Whether the application requires the City to agree to conditions, or viability of the system depends upon, conditions that may harm consumers;
 8. Whether similar services are already available within the City; and
 9. Any other relevant information related to the applicant's proposed franchise.
- B. *Conditions.* The City Council may deny an application under this chapter or condition the approval of an application on such conditions, terms, requirements, or restrictions as it finds necessary to protect the public interest.

Sec. 7-12-6. Extension of Service; Duty to Serve; Community Access Services.

- A. *Minimum Service Area.* Except as provided in this section, the City shall not approve any franchise that provides for a Service Area smaller than the City boundaries, as it existed as of the effective date of the Franchise Agreement. The City may grant a franchise that permits a grantee to serve areas annexed after the effective date of the franchise. The foregoing does not apply where an applicant shows that the Service Area is economically infeasible; that granting a franchise for a smaller area will not adversely affect the development of competition throughout the City; and that the proposed Service Area is such that granting a franchise for that area will not unfairly disadvantage any franchised Provider.
- B. *Time to provide service.* A Provider must complete construction of its system within a reasonable time, so that it passes by all dwelling units within its Service Area, which time shall be specified in the franchise and subject to the density requirements in subsection D of this section.
- C. *Sequence of construction.* As a condition of receiving a franchise, each Provider must submit a plan for the sequence of construction that ensures it does not discriminate against residents of the City based on income. The plan must show the timing of construction by geographic area and the schedule for completion of construction by geographic area. A schedule for completion of construction may be tied to the success of the applicant in the marketplace. In determining whether the plan is acceptable, the City may take into account:
1. The amount of time required to build out the system to serve the City;
 2. The amount of construction required to serve the Service Area; and
 3. The time required to provide the applicant reasonable opportunities to recover its investment.
- D. *Extension of Service and Density requirements.* A Provider may, but is not required to, serve any portion of its Service Area where the density is less than five dwelling units per linear quarter mile unless the potential Subscriber agrees to pay extension charges as provided in this section. In extending service, the following requirements shall be met:

1. In any portion of the Service Area where the density is five dwelling units or more per linear quarter mile, a Provider shall provide service to any person that requests it at its normal connection fee; provided that Provider is able to reasonably obtain all easements or permissions, if any, which are necessary to extend service relating thereto. Where the distance from the Right-of-Way to the demarcation point on the potential Subscriber's premises is greater than 150 feet, a Provider may charge an additional, reasonable fee to recover the actual costs of extending the system the additional distance.
 2. In areas with less than five residential units per linear quarter mile, a Provider shall offer a cost sharing arrangement with residents desiring service wherein each will bear their proportionate share of construction costs. For example, if there are four dwelling units per linear quarter mile, Provider must extend service if the potential Subscriber(s) are willing to each pay one-fifth of the cost of extending the system to pass by the dwelling unit(s), and the Provider must bear the remaining construction cost. Should additional residents actually subscribe to service in areas where Subscribers have already paid a proportionate share under the extension cost sharing formula, Subscribers who have previously paid a proportionate share shall be reimbursed pro rata for their contribution or proportional share thereof. In such case, the pro rata shares shall be recalculated and each new Subscriber shall pay the new pro rata share, and all Subscribers who previously paid a proportionate share shall receive pro rata refunds. However, one year after completion of a project, Subscribers who have paid a share of line extension costs shall no longer be eligible for refunds.
 3. The Subscriber who must pay additional amounts for extended connections or for distribution cable construction, as provided in subsection D2 of this section, shall be given a written estimate of the additional amount payable by them prior to their subscription, and they shall in no event be required to pay more than five percent over this estimate.
- E. *Extension of Service to Public Buildings and Facilities.* The density requirements of subsection D of this section do not apply to public buildings and public facilities. Upon request from the City, a Provider shall timely extend service to the public buildings and public facilities identified by the City. Franchise Agreements may contain a provision whereby the City makes certain concessions in exchange for services being provided to Public Buildings or Facilities free of charge.
- F. *Use of City-Owned Conduits or Facilities.* The City may allow or require a Provider to utilize City-owned conduits, infrastructure, or facilities to facilitate the Provider's ability to serve the Provider's service area, upon terms agreeable to the City.
- G. The City may require a Provider to provide reasonable in-kind consideration in the form of conduit, facilities, or capacity in order to promote educational and governmental uses of the system, or in connection with the City's promotion of public, educational or governmental uses of the system.
- H. In lieu of requiring a Provider to build out to service the entire City as described in this section, the City Council may require a Provider to contribute to a fund to ensure all portions of the City are served by an acceptable and equivalent system.
- I. The franchise fee and other consideration provided for under this chapter is not in lieu of any tax or assessment; any fee for the use of the Rights-of-Way payable by Provider to

provide any other service; or any fee designed to recover costs associated with managing the Rights-of-Way, including by way of example, permit fees and pole attachment fees.

Sec. 7-12-7. Reporting Requirements; Books and Records.

- A. *Reporting Requirements.* Each Provider shall prepare annual reports to monitor compliance with the terms of a Franchise Agreement. By January 31 of each year, each grantee shall provide the City with a detailed statement of revenues for the previous year derived in connection with the provision of services in the City, sworn as accurate by an officer of the Provider, which statement shall identify:
 - 1. The number of Subscribers, by category of service;
 - 2. Service revenues, by category of service;
 - 3. Equipment revenues, by category of equipment;
 - 4. Other revenues, identifying the source of the revenues;
 - 5. The amount of any deduction from gross revenues, identifying the reason for the deduction, and the manner in which it was calculated;
 - 6. If revenues are allocated among the City and other entities, the total revenues, and the manner in which the revenues were allocated.
- B. The annual report shall be in a form the City prescribes, or if there is no form, in a form consistent with the manner in which Provider maintains its books and records.
- C. *Right to access.* The City shall have the right to review and make copies of books and records relevant to its enforcement of a Franchise Agreement and applicable law, including this chapter. Upon the City's request, books and records shall be produced at a convenient location in the City, or if books and records cannot be produced there, at a mutually agreeable location. To the extent the Utah Government Records and Management Act, Utah Code Annotated title 63G, chapter 2, and other applicable law permits, the City may agree in a Franchise Agreement that information contained within the books and records of Provider provided to the City shall be kept confidential by the City, and may agree to provide Provider reasonable notice of any request received by the City for disclosure of any books and records requested by Provider to remain confidential, so that the Provider may take appropriate action to protect confidential information from disclosure.
- D. *Prompt response required.* Provider shall promptly respond to requests for information from the City related to a Franchise Agreement or Provider's compliance with applicable law.
- E. *Audit.* In addition to other rights within this section, for the purpose of verifying the correct amount of the franchise fee, the books and records of the Provider pertaining thereto shall be open to inspection or audit by duly authorized representatives of the City at all reasonable times, upon giving reasonable notice of the intention to inspect or audit the books and records; provided that the City shall not audit the books and records of the Provider more often than annually. The Provider shall be required to reimburse the City the reasonable costs of an audit if the audit discloses that the provider has paid 95 percent or less of the compensation due the City for the period of such audit. In the event the accounting rendered to the City by the Provider herein is found to be incorrect, then payment shall be made on the corrected amount within 30 calendar days of written notice. The City may accept any amount offered by the Provider to remedy the

incorrect payment, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or is later found to be incorrect.

Sec. 7-12-8. Franchise Fee.

- A. *Terms of payment.* Each Provider shall pay a franchise fee in connection with provision of services in an amount calculated as a percentage of Provider's annual Gross Revenue, as defined in this chapter. The annual payment shall be 6% of the Provider's annual Gross Revenue or the maximum amount permitted under federal or state law, whichever is less. Franchise fees shall be paid on a schedule set out in a Franchise Agreement. To the extent federal or state law requires or allows a different government entity or agency to collect the fees, the Franchise Agreement may provide for such arrangement. Acceptance of payment shall not be construed as an accord that the amount paid is correct nor shall it be construed to release any claim which the City may have for any further sums payable under this section. Any franchise fees which remain unpaid after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12.5% per annum until paid.
- B. *Exemption from rate limitations.* Nothing in this chapter prevents the City from securing an exemption from rate limitations as permitted by state law, including the exemption permitted by Utah Code 10-1-404, as amended. Upon satisfying the requirements for an exemption from rate limitations, the rates applied pursuant to this chapter shall be applied accordingly.
- C. *Costs.* A Provider shall pay to the City or to third parties, at the direction of the City, an amount equal to the reasonable costs and reasonable expenses that the City incurs for the services of third parties (including, but not limited to, attorneys and other consultants) in connection with any franchise application, renewal, or Provider-initiated renegotiation of a Franchise Agreement; or amendment of this chapter; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations.
- D. *Publication costs.* A provider shall assume any publication costs associated with its franchise that may be required by law.

Sec. 7-12-9. Term of Franchise.

A franchise granted pursuant to this Chapter shall be for a term established in a Franchise Agreement. In no event shall any franchise term exceed 15 years.

Sec. 7-12-10. Transfers of Franchise.

- A. *Consent of City required.* Unless specifically provided for in a Franchise Agreement and this chapter, a franchise or system shall not be sold, assigned, leased, subleased, mortgaged, transferred or conveyed in any manner whatsoever, either in whole or in part, voluntarily or involuntarily, nor shall any right, title or interest therein, either legal or equitable, pass to or vest in any person or entity other than the person or entity named as the Provider in the Franchise Agreement without the prior written consent of the City, obtained in accordance with the provisions of this section. Any attempt by the Provider

to sell, assign, transfer or convey any interest in the franchise without obtaining the prior written consent of the City shall constitute a default in the Franchise Agreement.

- B. *Changes of control included.* A "sale," "transfer" or "conveyance" of the franchise shall include any acquisition of the controlling interest of Provider, whether through purchase of stock, merger, consolidation or any other change of control. Without limiting the foregoing, a rebuttable presumption that a transfer of control has occurred shall arise upon the acquisition or accumulation by any person or group of persons of 20 percent of the voting interest or management control of the Provider.
- C. *Considerations of City.* At least 120 days before a proposed sale, assignment, transfer or conveyance of a Provider's franchise is scheduled to become effective, such Provider shall petition in writing for the City's written consent to the proposed sale, assignment, transfer or conveyance. The City will not unreasonably withhold its consent, but without limitation, it may consider the technical ability, financial capability, legal qualifications and general character qualifications of the purchaser, assignee or transferee, including its experience and service record in other communities. A request for consent to the sale, assignment or transfer hereunder shall be made to the City in writing and the Provider and the proposed purchaser, assignee or transferee must cooperate with the City in its investigation of the transfer. A request for consent may be denied if the Provider or proposed purchaser, assignee or transferee fail to timely provide the City information the City requests in connection with its review of the transfer.
- D. *Approval without response.* The City shall be deemed to have approved a proposed sale, transfer or assignment in the event that its response is not communicated in writing to the Provider within 120 days following receipt of the petition for consent to the proposed sale, transfer or assignment, unless the City and Provider agree to an extension of this period, subject to the following conditions:
 - 1. Transferee shall assume all obligations and liability of the former Provider, known and unknown.
 - 2. An approval without response is not a representation, express or implied, that the Provider is in compliance with the franchise.
 - 3. A sale, assignment or transfer shall not relieve the former Provider of its liabilities under this chapter until the sale, assignment or transfer actually takes place unless otherwise specifically relieved by the City.
- E. *Approval where PSC approval is required.*
 - 1. *Notification.* When a transaction requires the approval of the PSC, the Provider or its successor entity shall promptly notify the City of the nature of the transaction and provide a certification from the successor entity that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement and assumes all obligations thereunder; and the successor or entity is seeking, or has obtained, the approval of the PSC.
 - 2. *Where PSC approval is obtained.* Upon receipt of a notification and certification in accordance with subsection E1 of this section, the City shall send notice affirming the transfer of the franchise to the successor entity, the effectiveness of which shall be conditioned upon PSC approval, and compliance with any conditions established by the PSC. Provided that, if the City has good cause to believe that the successor entity may not comply with this Code or the franchise

agreement, it may require an application for the transfer. The application shall comply with, and shall be reviewed in accordance with this chapter.

F. *Assignment for creditors.* Notwithstanding any other provision of this chapter or a Franchise Agreement:

1. A franchise shall automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the grantee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding.
2. However, the franchise may be reinstated if, within the 120-day period:
 - a. The assignment, receivership or trusteeship is vacated; or
 - b. The assignee, receiver, or trustee has fully complied with the terms and conditions of this chapter and the Franchise Agreement and has executed an agreement, approved by a court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of the franchise agreement and this chapter.

G. *Foreclosure or judicial sale.* Notwithstanding any other provision of this chapter:

1. In the event of foreclosure or other judicial sale of any of the Provider's system or associated property, the City may revoke the franchise at a public hearing before the City Council, by serving notice upon the Provider and the successful bidder at the sale.
2. The franchise shall terminate 30 calendar days after serving such notice, unless:
 - a. The City approves the transfer of the franchise to the successful bidder; and
 - b. The successful bidder agrees with the City to assume and be bound by the terms and conditions of the franchise and applicable law.

Sec. 7-12-11. Continuity Upon Termination or Transfer.

In the event of a termination, revocation, or transfer of Provider's franchise for whatever reason, Provider shall ensure that all Subscribers receive continuous, uninterrupted service regardless of the circumstances. At the City's request, Provider shall cooperate with the City to operate Provider's system for a temporary period following termination or transfer of the franchise as necessary to maintain and to ensure an orderly transition from one operator to another to avoid disruption of public streets and public property, and to ensure continuity of service to Subscribers. During such period, the system shall be operated as if the terms and conditions of this chapter and Franchise Agreement continue to apply.

Sec. 7-12-12. General Conditions and Requirements for Use of Rights-of-Way.

Every Provider's system shall be subject to the following with respect to its facilities in the Rights-of-Way:

- A. *Quality and performance of work.* All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner, using materials of good and durable quality. If, at any time, it is

determined by an agency or court of competent jurisdiction, or by the City in the exercise of its lawful authority, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare then the Provider shall, at its own cost and expense, promptly correct all such conditions.

- B. *Licenses and permits.* A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade, or repair the system, including, but not limited to, any necessary approvals from persons and/or the City to use private property, easements, poles, or conduits. A Provider shall obtain any required permit, license, approval or authorization, including, but not limited to, excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval, or authorization is required.
- C. *Relocation of system.*
 - 1. *New grades or lines; excavation requirements.* If the City shall elect to alter or change the grade or location of any Right-of-Way, or if the City requires it as part of any public project, a Provider shall, at its own expense and within 30 days after written notice from the City, except as otherwise required by law, remove and relocate its system, and in each instance comply with the standards and specifications of the City, including the City's excavation ordinances. Provider's failure to comply with its obligation to remove or relocate its system pursuant to this chapter shall constitute a breach of the applicable Franchise Agreement.
 - 2. *Relocation for other entities authorized to use Rights-of-Way.* A Provider shall promptly locate and relocate facilities to permit installation of additional utilities and infrastructure. A Provider's obligation to relocate facilities includes situations where development of roadways and utilities pursuant to City standards requires that the facilities be relocated. The costs to locate and relocate facilities shall be borne by the Provider.
 - 3. *Emergency; City authority to move system.* The City may, at any time, in case of fire, disaster or other emergency, as determined by the City in its reasonable discretion, cut or move any parts of any system within the rights-of-way, in which event the City shall not be liable therefor to a Provider. The City shall notify a Provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section.
 - 4. *Temporary move for third party.* A Provider shall, upon prior reasonable written notice by the City or any person holding a permit to move any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of said structure. A Provider may impose a reasonable charge on any person other than the City for any such movement of its systems.
- D. *Protection of structures, landmarks.*
 - 1. *Protection of City property.* In connection with the construction, maintenance, repair, upgrade or removal of the system, a Provider shall, at its own cost and expense, protect any and all existing structures and property belonging to the City and all designated landmarks, as well as all other structures within any designated

landmark district. A Provider shall obtain the prior written consent of the City to alter any water main, power facility, sewerage or drainage system, or any other City structure on, over or under the Rights-of-Way of the City required because of the presence of the system. Any such alteration shall be made by the City or its designee on a reimbursable basis. A Provider shall be liable for the costs incurred by the City to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the City any City property, structure, or any other Rights-of-Way of the City involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a Provider.

2. *Restoring surfaces; fee or bond.* Without limiting the foregoing, in case of any disturbance of asphalt, pavement, sidewalk, driveway, or other surfacing, a Provider shall, at its own expense, replace and restore all asphalt, paving, sidewalk, driveway, or other surface of any Right-of-Way, street, or alley disturbed in accordance with the standards and specifications of the City. When a Provider cuts asphalt in a Right-of-Way, the Provider shall maintain the asphalt cut for perpetuity or until the roadway is completely repaved. The Provider shall fully comply with any ordinance adopted by the City requiring a road opening fee or bond to protect against the costs to the City if a Right-of-Way surface or other City infrastructure is disturbed and not properly restored.
- E. *Obstructions prohibited.* In connection with the construction, maintenance, upgrade, repair, or removal of a system, a Provider shall not unreasonably obstruct the Rights-of-Way of fixed guideway systems, railways, passenger travel or other traffic to, from or within the City without the prior consent of the appropriate authorities.
- F. *Location; minimum interference.* All structures, lines, pipes, and equipment installed by a Provider within the City shall be located and installed in accordance with City ordinances governing street excavation and use of public Rights-of-Way and shall be located so as not to obstruct or interfere with the proper use of Rights-of-Way and other public ways and places, and to cause a minimum of interference with the rights of property owners who abut any of the said Rights-of-Way alleys and other public ways and places, and not to interfere with existing public utility installations. All cables, wires, and associated equipment shall be installed, where possible, parallel with electric and telephone lines of the incumbent local exchange carrier, and shall utilize existing poles, conduits, and other facilities whenever possible. Any use of existing poles shall be conditioned on the approval of the Hurricane City Power Department as described in Section 7-12-13 of this Chapter.
- G. *Safety precautions.* A Provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A Provider shall comply with all applicable federal, state and local requirements, including, but not limited to, the National Electrical Safety Code.
- H. *Repair of Rights-of-Way.* If a Provider fails to maintain or restore public property, structures, or Rights-of-Way to the City's specifications and as set out in this chapter within a reasonable time, specified by the City, the City may after notice, or without notice if an imminent danger exists, repair the property itself, and the Provider shall

compensate the City for all costs it incurs in connection with the same. The City shall submit to such a provider an itemized statement of the cost incurred and the provider shall, within 30 days after receipt of the statement, pay to the City the invoiced amount. The City shall not be liable to Provider, and Provider shall defend and indemnify City, for any damage or loss incurred by Provider relating in any way to the City's repair or maintenance of the public property.

I. *Inspection and supervision of construction.*

1. At all reasonable times, a Provider shall permit examination by any duly authorized representative of the City of the system and its effect on the Rights-of-Way.
2. The City may require a Provider to prepare reports regarding the progress of work being performed, or that it is required to perform, in the Rights-of-Way.

J. *Trimming trees; authority.* A Provider may trim any trees upon and overhanging the streets, alleys, sidewalks, public easements, or Rights-of-Way of the City so as to prevent the branches of such trees coming in contact with the wires and cables of the Provider, provided that the Provider complies with all applicable City ordinances governing tree pruning or trimming. The Provider is responsible for harm caused to the trees by improper pruning or trimming. Prior to undertaking any tree trimming, Provider shall notify City and/or other property owner of Provider's intent.

Sec. 7-12-13. Underground installation of facilities; Pole Agreements.

- A. *Underground installation.* A Provider shall construct and install its system underground, unless a Provider secures authorization to construct its system aboveground or secures a pole agreement from the City as described in this section.
- B. *Provider's use of City's utility poles.* The Hurricane City Power Department may, in its sole discretion; (1) permit a Provider to construct and install its system aboveground or (2) enter into a pole agreement with a Provider to allow a Provider to place system components on a City's utility pole, based on the following considerations:
1. The feasibility of placing the Provider's system underground;
 2. The negative impacts on City property of placing the Provider's system underground;
 3. The negative impacts on the City's ability to manage, maintain, and utilize the City's utility poles if the Provider's system is placed aboveground or on the City's utility poles;
 4. Whether the Provider's request to place the system above ground is in an area of the City where cables, wires, and other like facilities of all other public utilities are placed underground; and
 5. Whether requiring the system to be placed underground will limit the ability to provide services to certain areas within the City.
- C. *City use of pole and conduits in Rights-of-Way.* Subject to any applicable state or federal regulations or tariffs, the City shall, after giving written notice, have the right, without cost, to make use of any poles or conduits controlled or maintained by or for use of the Provider that are located in any Right-of-Way. Such use by the City shall not interfere with current or future use by the Provider.

- D. *Use by others of poles.* In cases where access to a Provider's poles are not regulated by the Public Service Commission or by the Federal Communications Commission:
1. If another public utility is denied the privilege of utilizing poles or wire holding structures constructed and installed by the Provider within a Right-of-Way; and
 2. The City finds that such use would enhance the public convenience and would not unduly interfere with the Provider's operations.
- The City may require the parties to enter into a mutually agreeable joint pole use agreement with respect to the then unused capacity until such time as the poles and wire holding structures are needed by the owner thereof, so as to avoid proliferation of poles and wire holding structures, and may set the terms and conditions for access if the parties cannot agree, in a manner consistent with the manner in which rates are set for poles under 47 USC section 224, or under state law.
- E. With respect to any portion of the system constructed and installed aboveground, the Provider shall, at its sole expense, reconstruct and reinstall such system underground pursuant to any project under which like facilities of similar systems are placed underground or wherever the owner of a pole on which the Provider is located moves its equipment underground.
- F. Electronic equipment may be placed aboveground in appropriate structures where existing technology reasonably requires, but shall be of such size and design and shall be so located as not to be unsightly or unsafe. The installation of Small Cell Infrastructure shall comply with the provisions of this chapter.

Sec. 7-12-14. Pole Attachment and Loading Analysis Requirements.

- A. *Applicability.* This section applies to any Provider-installed or Provider-owned equipment or infrastructure placed on any Eligible Support Structure, whether City-owned or Provider-owned, including any Related Accessory Equipment.
- B. *Requirements.*
1. *General.*
 - a. All pole attachments shall be properly engineered and assure the ongoing safety and reliability of the City's systems.
 - b. All attachments shall be reviewed and approved by the Hurricane City Power Department in conformance with the City's design and specification standards and policies.
 - c. Pole agreements are required before the placement of any attachment onto a City-owned pole.
 - d. A complete pole loading analysis (PLA) shall be submitted for all pole types and locations indicated requiring a PLA. Other locations or structure types may also require a PLA to be completed as determined by the City.
 - e. The PLA must be completed by a professional engineer licensed in the state and approved by the City. The PLA shall be signed and sealed by the engineer completing the analysis.
 - f. Attachments without proper analysis and approval shall be promptly removed.
 2. *Pole types and conditions requiring a PLA.*
 - a. A PLA is required for the following structure types:
 - i. Poles with angles greater than ten degrees (guyed or un-guyed);

- ii. Poles with spans larger than 200 feet;
 - iii. Poles with circuit taps (power or communication);
 - iv. All poles where the City conductors are dead ended;
 - v. Poles with transformers, capacitors or other equipment installed;
 - vi. Poles that are less than Class 3; or
 - vii. Poles that are over 20 years old. Poles with more than two attachments in addition to the City's electrical primary, secondary and neutral attachments; and
 - b. Other locations not addressed above identified by the City that pole strength or clearance concerns are identified.
3. *Pole loading analysis submittal requirements.*
- a. The attaching entity is responsible for all required field and engineering work required to perform the PLA.
 - b. Submittal documents required:
 - i. Detailed map showing the location(s) of the proposed attachments and project scope.
 - ii. Structure details showing existing framing as well as new attachments and/or proposed modifications to the structures. Identification of the owners of existing wires, cables and equipment shall be shown.
 - iii. The structure drawings shall identify existing attachments that will be or are no longer in use. All unused cables, wires, equipment shall be removed from the pole(s) as part of the proposed attachment project.
 - iv. Complete loading and strength calculations meeting the requirements outlined in this section.
 - v. For wireline attachments, plan and profile drawings shall be included with the analysis.
 - a. The pole loading analysis shall use the following criteria and standards:
 - i. Pole loading shall meet the requirements of the latest version of the National Electric Safety Code (NESC).
 - ii. Loading zone: NESC medium.
 - iii. Construction grade: Grade B.
 - iv. Design wire/cable ground clearances shall exceed the NESC requirements by at least one foot to account for variations in the field. All clearances shall be based on the worst-case temperatures or wire/cable loading which cause the highest amount of sag.
 - v. An analysis including but not limited to the poles, guys, anchors, support arms and other components shall be included in the PLA.
 - vi. Supply, communication, support and work safety zone spaces are to be indicated in the drawings.
 - b. Proposed pole configurations shall meet current City construction standards details.
 - c. All new or replaced poles shall have a minimum reserved capacity of:
 - i. Five percent for poles supporting single circuit lines.
 - ii. Fifteen percent for poles supporting double circuit lines.

- d. The PLA will be valid for a time period of no longer than six months from the time of the application submission. After this six-month period a new PLA will be required.

Sec. 7-12-15. Small Cell Infrastructure.

This section applies to and governs Small Wireless Facilities (SWF) and related equipment and facilities.

A. General standards.

SMALL CELL EQUIPMENT STANDARDS

Aesthetics	Equipment should match the aesthetics of surrounding poles.
Cables	All cables should be clearly labeled for future identification.
Cantennas	Antenna must be mounted directly on top of the pole, unless a side arm installation is required by a pole owner. A tapered transition between the upper pole and antenna is required.
Color	All equipment should be painted to match pole aesthetics. Paint should be powder coated over zinc paint. If a wood pole, the visible attachments and hardware shall be colored gray.
Conduits	All cables shall be in conduits made of a material approved by the Hurricane City Power Department and shall be flush with the pole unless required to be installed inside the pole.
Design wind velocity	All structural components of small cell pole, standard, base, equipment cabinet, couplers, anchor bolts, luminaires, antenna and other attachments to be used shall be designed for a minimum of 115 miles per hour wind velocity in accordance with Applicable Standards. Snow loading and other local conditions shall also be included in the pole design.
Equipment access doors	Lockable access door sized to install, maintain, and remove all small cell equipment as needed shall meet Provider's requirements. The City may require access, but Provider must grant permission.
External shrouding	The antenna shall be contained in a cantenna and any other equipment shall be contained in an equipment cabinet, unless the visual impact can otherwise be reduced by its location on the pole.
Ground mounted equipment box	Must meet and follow existing City ordinances for ground mounted utility boxes and be attached to a concrete foundation.
Hardware attachment	All hardware attachments should be hidden. Welding onto existing equipment is not permitted.
Height of equipment on pole	The lowest point may not be lower than 8 feet from the grade directly below the equipment enclosure.
Internal installs	Equipment shall be installed within an existing pole when technologically feasible and always on a new pole. Any equipment installed within a pole may not protrude from the pole except to the extent reasonably necessary to connect to power or a wireline.

Lights	There shall be no lights on the equipment unless required by federal law.
Pole height	No pole for small cell equipment shall exceed 50 feet in height. Attached antenna may be up to 10 additional feet for a total of 60 feet.
Power meter and service disconnect	Required by the City and in a location that: 1) minimizes its interference with other users of the City's right-of-way including, but not limited to, pedestrians, motorists, and other entities with equipment in the Right-of-Way, and 2) minimizes its aesthetic impact.
Sidearm installs	If permitted, may not allow the furthest point of the enclosure to extend more than 18 inches from the pole.
Stickers	Any on-pole cabinet and ground mounted utility box should be labeled: 1) a RF warning sticker, background to match pole color, no larger than 4 x 6 inches, facing to the street near the elevation of the antenna; 2) 4-inch by 6-inch (maximum) plate with the provider's name, location identifying information, and 24-hour emergency telephone number; and 3) no advertising, logos or decals.
Width	May not exceed in width the diameter of the pole by more than 3 inches on either side.

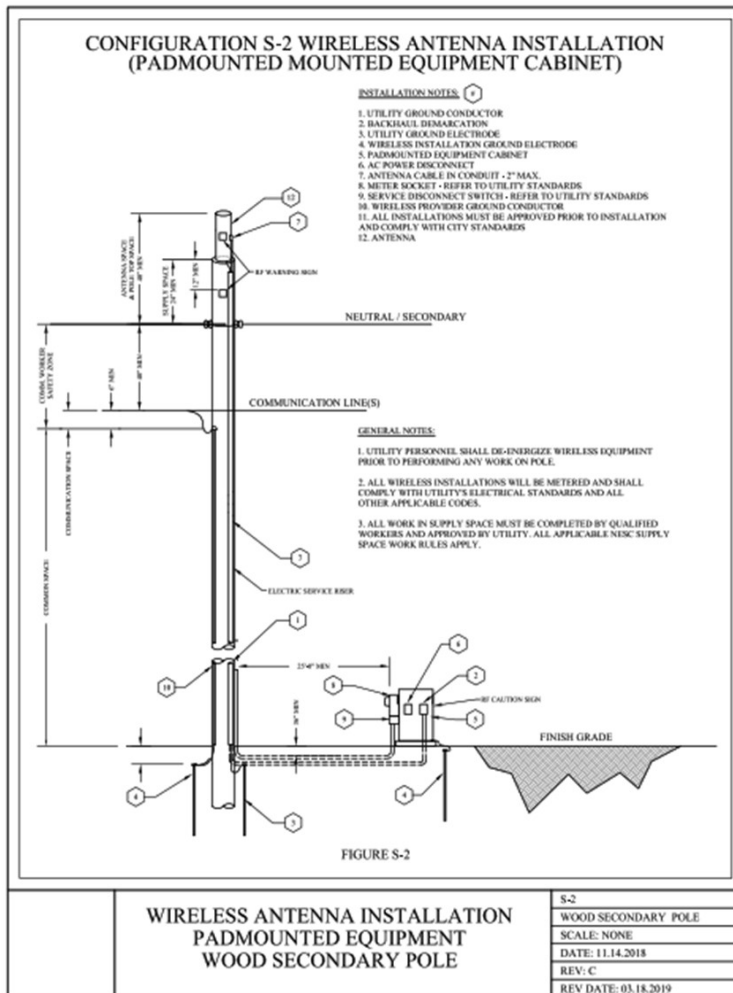
C. *General requirements.*

1. *Noise limitation.* System must meet the City-required noise limitation for ambient sound.
2. *Pole aesthetics.* Provider should provide detailed proposed pole aesthetics as part of their application.
3. *Position.* Poles shall not significantly obstruct property sight lines at the intersection of property lines and shall provide clearance for existing utilities. It is preferred that new poles be located in park strips.
4. *Right-of-Way position.* All equipment located within the public Right-of-Way shall be located such that it meets ADA requirements and does not obstruct, impede, or hinder usual pedestrian or vehicular travel or interferes with the operation and maintenance of signal lights, signage, street lights, street furniture, fire hydrants, or business district maintenance.
5. *Power and ground utility box.* Shall comply with all City and local code requirements. Backup batteries are not allowed.
6. *Permit and review.* All installations are subject to the City permit application and review process.

D. *Attachments to utility poles.*

1. *General requirements.*
 - a. All attachments to existing utility poles within the City Right-of-Way require an encroachment permit, prior to installation.
 - b. For a given pole location either pole mount or ground mount equipment shall be utilized; Both are not allowed at the same structure. Backup power devices are not allowed.

- c. A maximum of two enclosures including the disconnect and antenna shall be installed at each utility pole location. If ground-mounted enclosures are used pole mounted enclosures are not allowed.
 - d. If the City elects to move the utility lines underground after the Small Cell Infrastructure is installed, all carrier equipment shall be removed and relocated by Provider at not cost to the City.
 - e. Strand-mounted small cell devices are not allowed.
 - f. Provider shall submit evidence that the existing poles are appropriately sized and have sufficient strength to accommodate the additional small cell equipment loads. Provider shall also obtain and submit a letter of approval from the Hurricane City Power Department for the small cell equipment to be installed on the specific pole. The provider must comply with the City's pole attachment and loading requirements of this section.
 - g. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - h. Provider shall provide a disconnect so that the City has the ability to easily shut off radio signals and power while working on the pole.
2. *Equipment color.* Equipment should be colored to match pole.
 3. *Equipment shroud.*
 - a. The maximum dimensions for pole-mounted equipment shrouding shall be 38" H x 16" W x 12" D.
 - b. All hardware attachments shall be hidden to the maximum extent possible.
 - c. A maximum of two equipment shrouds, containing all required small cell equipment, shall be installed per pole. Provided, however, that one additional equipment shroud shall be allowed per pole if the antenna is located within the second equipment shroud.
 4. *Cantenna.*
 - a. If a cantenna is located on top of the pole the outer diameter shall be a maximum of 14 inches and the cantenna shall be no more than five feet tall, including antenna, radio head, mounting bracket, and all other hardware necessary for a complete installation.
 - b. If the cantenna is mounted to the side of the pole it shall be located inside a shroud of 5.5 cubic feet maximum. The width, depth, or diameter of the shroud size shall not be greater than 16 inches (maximum).
 5. *Exhibit.* The following image exhibits some of the requirements of this section for attachments to utility poles:



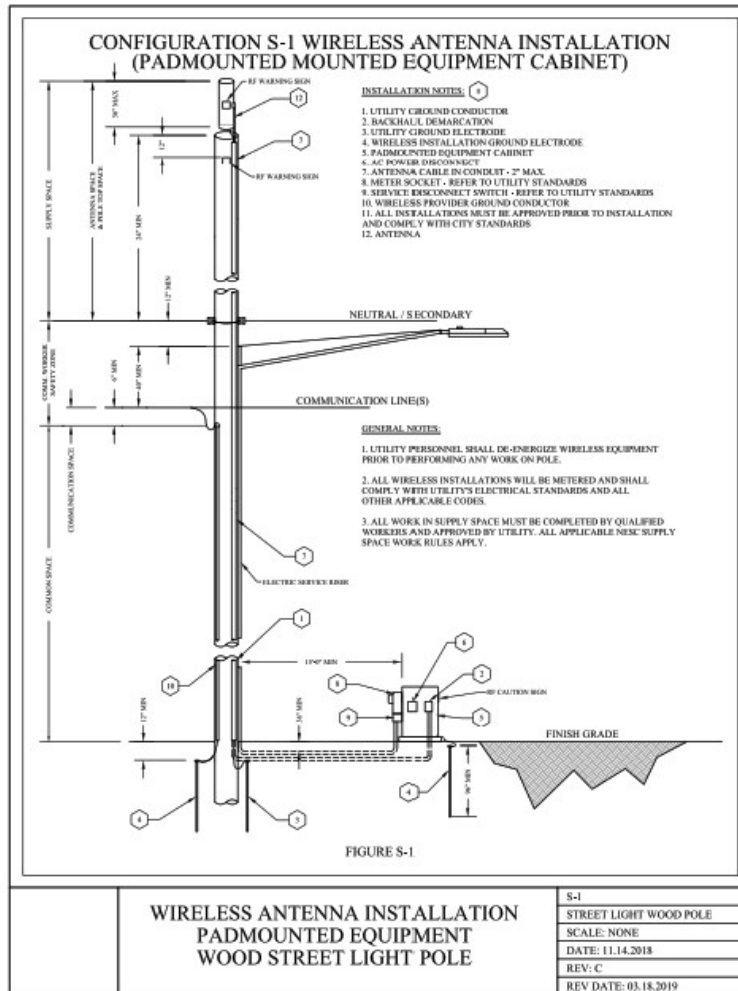
E. *Attachments to street lights.*

1. *General requirements.*

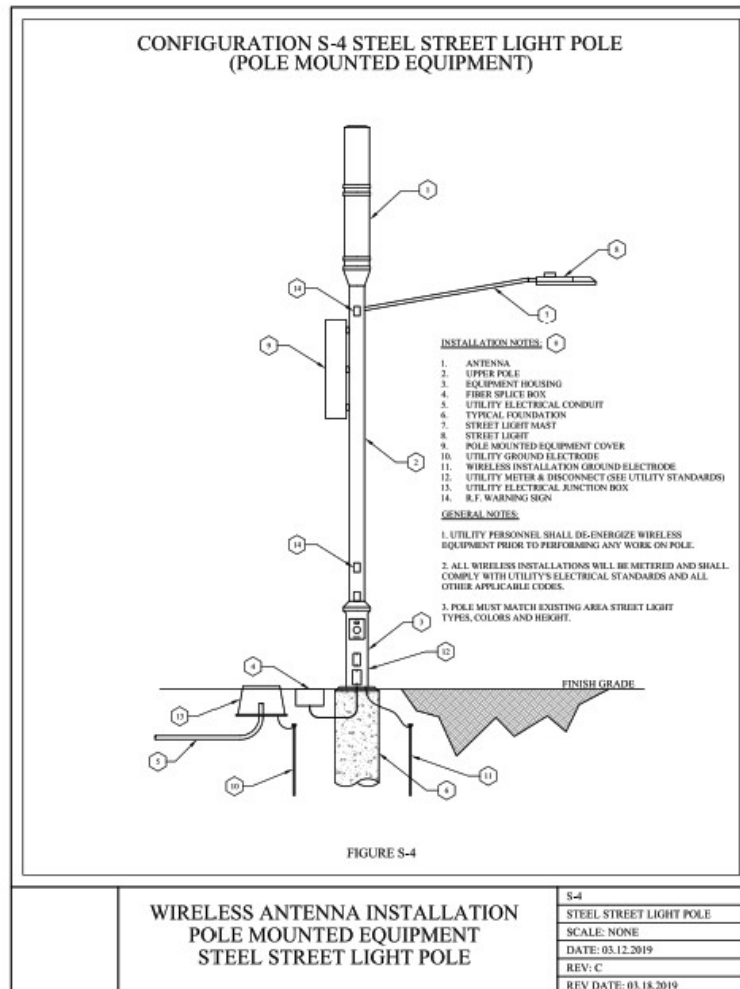
- a. The same small cell pole aesthetic is to be used to match existing streetlights in the area and maintain a cohesive appearance. The Provider shall perform a visual inspection (online street images are acceptable) prior to submitting a permitting application to determine existing aesthetics.
- b. Unless otherwise unfeasible the preferred installation configuration is to utilize poles that conceal all system components (i.e. meter, disconnect, radio, etc.).
- c. All small cell carrier equipment shall be housed internal to the pole or hidden behind an exterior shroud.
- d. The small cell components shall be sized to be visually pleasing. For a combination pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size.

- e. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
 - f. All pole mounted enclosures shall be securely attached with hardware (not strapped).
 - g. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - h. The City reserves the right to disconnect power to the radio when working on the pole. The provider shall provide a disconnect so the City has the ability to easily shut off radio signals and power while working on the pole.
 - i. All poles new or existing shall meet all City pole analysis requirements of this chapter.
 - j. All installations shall utilize City approved structures, arms, luminaires, and configurations and comply with all applicable City standards.
2. *Equipment color.* Equipment should be colored to match pole.
 3. *Equipment shroud.*
 - a. Equipment shrouding shall have a maximum 20-inch diameter, but a 16-inch diameter is preferred. The maximum height of the cabinet is five feet eight inches. The cabinet shall be round and installed below the pole.
 - b. If an antenna is located on the side of the pole, the antenna, radio equipment, brackets, and all other hardware required for a complete installation shall fit behind a 38" H x 16" W x 12" D maximum shroud, securely mounted (not strapped) to the pole.
 - c. The equipment cabinet and/or equipment cabinet cover shall not have a flat horizontal surface larger than 1.5 inches.
 - d. All hardware attachments shall be hidden to the maximum extent possible.
 4. *Cantenna.*
 - a. The antenna and antenna pole attachment shall be shrouded to meet the City's aesthetics. A tapered transition between the upper pole and cantenna shall be included.
 - b. The outer diameter shall be a maximum of fourteen inches and a maximum of five feet eight inches in length. The antenna shroud shall be colored to match pole.
 5. *Luminaire/luminaire mast arm.*
 - a. Luminaire shall meet the City's construction standards and specifications and shall match existing luminaires adjacent to permit location.
 - b. Luminaire mast arms shall match on adjacent streetlights or match aesthetics of adjacent streetlights. In any case, mast arms will be decorative.
 6. *Pole size, type and foundation.*

- a. Poles shall be round, straight, galvanized steel. Pole shall be architecturally compatible with the equipment cabinet. At least 15 percent of the pole design structural capacity shall be reserved for future City IOT installations.
 - b. The upper pole shall be scaled to 0.5 to 0.75 times the size of the equipment cabinet with ten inch minimum outer diameter. The pole diameter shall be scaled such that no flat, horizontal surface larger than 1.5 inches exists between the equipment cabinet and upper pole.
 - c. Precast concrete or cast-in-place pole foundations shall be designed per the City standards and to meet the building code requirements of ACI 318. While the City accepts cast-in-place foundations, precast concrete foundations are preferred and should be installed whenever possible.
 - d. Bolt circles shall be a 19.5-inch bolt circle when installing a 16-inch equipment cabinet and a 23.5-inch bolt circle when installing a 20-inch equipment cabinet.
7. *Access doors.*
- a. Lockable doors shall be installed in the equipment cabinet.
 - b. A hand hole shall be provided at the top and bottom of the pole to maintain electrical service for streetlights and future IOT attachments.
8. *Exhibit.* The following image exhibits some of the requirements of this section for attachments to wood street light poles:



9. *Exhibit.* The following image demonstrates some of the requirements of this section for attachments to steel street light poles:



F. Attachments to monopoles.

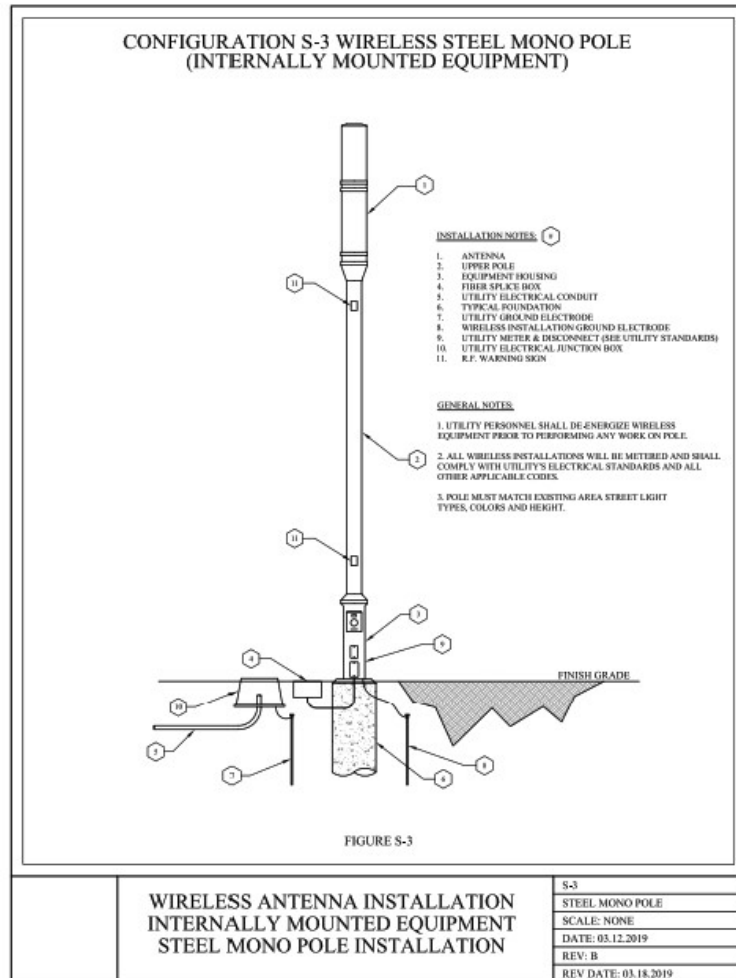
1. General requirements.

- a. The same small cell pole aesthetic is to be used to match existing streetlights in the area and maintain a cohesive appearance. The provider shall perform a visual inspection (online street images are acceptable) prior to submitting a permitting application to determine existing aesthetics.
- b. All small cell carrier equipment shall be housed internal to the pole or hidden behind an exterior shroud.
- c. The small cell components shall be sized to be visually pleasing. For a combination pole to be considered visually pleasing, the transition between the equipment cabinet and upper pole should be considered. A decorative transition shall be installed over the equipment cabinet upper bolts, or decorative base cover shall be installed to match the equipment cabinet size.
- d. Each pole component shall be architecturally compatible to create a cohesive aesthetic.
- e. All pole mounted enclosures shall be securely attached with hardware (not strapped).

- f. Provider shall certify that radiation is at safe levels by a non-ionizing radiation electromagnetic radiation report (NIER). The NIER report shall be endorsed by a qualified professional. The report shall be submitted to the City and the Hurricane City Power Department. It shall specify minimum approach distances to the general public as well as electrical and communication workers that are not trained for working in an RF environment (uncontrolled) when accessing the pole by climbing or bucket.
 - g. The City reserves the right to disconnect power to the radio when working on the pole. Provider shall provide a disconnect so City has the ability to easily shut off radio signals and power while working on the pole.
 - h. All poles new or existing shall meet all City pole analysis requirements of this chapter.
 - i. All installations shall utilize City approved structures, arms, luminaires, and configurations and comply with all applicable City standards. Ownership of monopoles will remain with the provider.
- 2. *Equipment color.* Equipment should be colored to match pole.
- 3. *Equipment shroud.*
 - a. Equipment shrouding shall have a maximum 20-inch diameter, but a 16-inch diameter is preferred. The maximum height of the cabinet is five feet eight inches. The cabinet shall be round and installed below the pole.
 - b. If an antenna is located on the side of the pole, the antenna, radio equipment, brackets, and all other hardware required for a complete installation shall fit behind a 38" H x 16" W x 12" D maximum shroud, securely mounted (not strapped) to the pole.
 - c. The equipment cabinet and/or equipment cabinet cover shall not have a flat horizontal surface larger than 1.5 inches.
 - d. All hardware attachments shall be hidden to the maximum extent possible.
- 4. *Cantenna.*
 - a. The antenna and antenna pole attachment shall be shrouded to meet the City's aesthetics. A tapered transition between the upper pole and cantenna shall be included.
 - b. The outer diameter shall be a maximum of fourteen inches and a maximum of five feet eight inches in length. The antenna shroud shall be colored to match pole.
- 5. *Pole size, type and foundation.*
 - a. Poles shall be round, straight, galvanized steel. Pole shall be architecturally compatible with the equipment cabinet. At least 15 percent of the pole design structural capacity shall be reserved for future City IOT installations.
 - b. The upper pole shall be scaled to 0.5 to 0.75 times the size of the equipment cabinet with ten-inch minimum outer diameter. The pole diameter shall be scaled such that no flat, horizontal surface larger than 1.5 inches exists between the equipment cabinet and upper pole.
 - c. Precast concrete or cast-in-place pole foundations shall be designed per the City standards and to meet the building code requirements of ACI 318. While the

City accepts cast-in-place foundations, precast concrete foundations are preferred and should be installed whenever possible.

- d. Bolt circles shall be a 19.5-inch bolt circle when installing a 16-inch equipment cabinet and a 23.5-inch bolt circle when installing a 20-inch equipment cabinet.
6. *Pole attachment and loading analysis requirements.* Any attachments to poles made pursuant to this section shall comply with Sec. 7-12-XX. -- Pole Attachment and Loading Analysis Requirements.
7. *Exhibit.* The following image demonstrates some of the requirements of this section for attachments to steel monopoles:



Sec. 7-12-16. Letter of Credit; Insurance; Bonding.

Each Franchise Agreement shall require, and each Provider shall supply, a letter of credit or similar surety and proof of adequate insurance. The City Council shall establish the specific surety and insurance requirements, taking into account the nature of the facilities being placed in the Rights-of-Way and the risks to the City and the public associated with the use of the Rights-of-Way. The City Council may require Provider to, as a condition of a Franchise Agreement

post a bond or other surety approved by the Council to ensure the maintenance of public Rights-of-Way pursuant to this chapter.

Sec. 7-12-17. System Records Requirements.

A Provider shall at all times maintain on file with the City, a full and complete set of plans, records and as-built hard copy maps and, to the extent the maps are placed in an electronic format, they shall be made in electronic format compatible with the City's existing GIS system, of all installations and the types of equipment and systems installed or constructed in the Rights-of-Way, properly identified and described as to the types of equipment and facility by appropriate symbols and marks. Maps shall be updated annually, or after a significant modification to the provider's plant. As-built maps are not required of providers for facilities already in the Rights-of-Way, where the maps do not exist; however, as those facilities are expanded, replaced or modified, maps shall be provided.

Sec. 7-12-18. Private Property; Obligation to Notify.

Providers shall not violate the private property rights of landowners. Before entering onto any private property, a Provider shall make a good faith attempt to contact the property owners in advance and describe the work to be performed.

Sec. 7-12-19. Applicable Codes.

Nothing in this chapter shall excuse a Provider from complying with Applicable Codes.

Sec. 7-12-20. Removal of System; Abandonment of Systems.

- A. *Effect of revocation, expiration or abandonment.* If a Franchise Agreement expires, is validly revoked, or the facilities installed pursuant to the Franchise Agreement are abandoned, the City may:
 - 1. Require the Provider to stop providing the franchised services; and
 - 2. Require the Provider to remove all or portions of the system that are not in the Rights-of-Way by virtue of another, valid franchise, within a reasonable time specified by the City; and
 - 3. Require the Provider to convey title to facilities that are not removed and that are not in the Rights-of-Way by virtue of another, valid Franchise Agreement, in a form satisfactory to the City and free and clear of all liens and encumbrances to the City.
- B. *Abandonment presumption.* In the event that the use of any portion of a franchised system is discontinued for a continuous period of 12 months, and 30 days after no response to written notice from the City to the last known address of Provider, the Provider shall be deemed to have abandoned such system. In addition to all other rights and remedies available to the City upon revocation, expiration or abandonment, the City may elect to assume control and ownership of abandoned facilities or infrastructure.
- C. *Dispute; No loss of City rights.* If there is a dispute as to whether a Franchise Agreement has expired, the facilities abandoned, or the franchise validly revoked; or if an order of the public service commission is required; the Provider may continue to provide the

service, or to occupy the Rights-of-Way pending resolution of the dispute, or issuance of the necessary orders, subject to reasonable conditions including payments for continued use and occupancy of the Rights-of-Way, established by the City. Any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution.

- D. *Procedures for removal of franchised property.* A Provider shall comply with all applicable laws in removing facilities and restore any affected Rights-of-Way to their former state at the time such system was installed. In removing its plant, structures and equipment, a Provider shall refill, at its own expense, any excavation necessarily made by it and shall leave all Rights-of-Way in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles or attachments. The City shall have the right to inspect and approve the condition of the Rights-of-Way cables, wires, attachments and poles prior to and after removal. Applicable liability, indemnity, and insurance provisions of this Code and of the franchise shall continue to apply as if the franchise was in full force and effect during the period of removal and until full compliance by a Provider with the terms and conditions of this section. If a provider fails to remove or restore, the City may do so and charge the provider for all costs incurred in doing so.
- E. *Leaving underground system.* Subject to the City's rights under this section, a Provider may abandon any underground system in place so long as it does not materially interfere with the use of the rights-of-way or with the use thereof by any public utility, cable operator, or other person.

Sec. 7-12-21. Unlawful Use; Repair After Unlawful Use; Acts Exempted.

- A. *Unlawful use.* Unless authorized by a Franchise Agreement, permit, or other written authorization issued by the City, or unless authority is granted by provisions of this Code or other ordinance of the City now or hereafter enacted, it shall be a class B misdemeanor, subject to penalty as provided in section 1-4-1 of this Code, for any person to:
 - 1. *Property controlled by City.* Construct, lay, excavate, erect, operate or maintain over, under, across, in or through any Right-of-Way or other property owned or controlled by the City, any infrastructure, system, utility, canal, ditch, construction, facility, or building.
 - 2. *Restricted areas.* Enter upon any property of the City contrary to any posting or marking restricting or prohibiting use of the area.
 - 3. *Damage to property.* Intentionally use or perform acts upon property of the City which materially impairs, alters or damages the property or improvements thereon.
- B. *Repair after unlawful use.* The City Council, in addition to any other penalty which may be imposed, may order any person who has damaged, altered or changed any property of the City to repair or restore the property to its original condition prior to the damage, alteration or change.

- C. *Acts exempted.* It shall not be a violation of this chapter where any person uses the public property of the City in the manner or for the purpose for which such property has been made available for public use, or to the extent the use is authorized by state law and state law prevents the City from requiring a franchise, easement or other written authorization for that particular use.

Sec. 7-12-22. Revocation of Franchise; Fines and Penalties.

- A. *Process.* A Franchise Agreement may be terminated, or penalties imposed as provided by other provisions of this Code, for a material failure to comply with the conditions of the Franchise Agreement, this chapter, or any other provisions of applicable law that the City is permitted to enforce. The City may only terminate the Franchise Agreement or impose penalties after providing a Provider notice of the alleged defect in performance and its intent to consider termination, and an opportunity to cure (except no opportunity to cure would be required for criminal acts, fraud, or where the violation by its nature cannot be cured). If the cure is not effected to the City's satisfaction within 30 days of such notice, the City may schedule a public hearing before the City Council to consider and determine whether or not to terminate the Franchise Agreement or impose penalties. A Provider must be provided an opportunity to present written materials to the City Council prior to the franchise termination hearing.
- B. *Effect of termination.* If a franchise is terminated, and the Provider holds no other franchise authorizing it to occupy the Rights-of-Way, the City may either acquire the franchised system in the City, free and clear of all liens and encumbrances at depreciated book value price or exercise any of the rights provided for under other provisions of this Code.
- C. *Remedies cumulative.* Nothing in this section prevents the City or a Provider from taking any other action or exercising any other remedy available at law or equity.

Sec. 7-12-23. Indemnification and Defense.

- A. Each Provider shall, as a condition of access to the Rights-of-Way, indemnify, defend, and hold harmless the City, its officers, boards, commissions, elected officials, agents, attorneys, representatives, servants and employees, from and against any liability for damages, costs, expenses, claims, suits, actions, judgments and liabilities, including, but not limited to, expenses for legal fees, whether suit be brought or not, disbursements and liabilities incurred or assumed by the City in connection with:
1. *Persons or property.* Damage to persons or property, in any way arising out of or through the acts or omissions of the Provider, its servants, officials, agents, attorneys, representatives or employees;
 2. *Failure to comply.* Any and all claims arising out of the Provider's failure to comply with the provisions of applicable law, or of any franchise or other authorization to use or occupy Rights-of-Way or its enjoyment of the same, or any and all claims arising out of its use of the Rights-of-Way;
 3. *Claims from use of Rights-of-Way.* Any and all claims which the Provider may now or hereafter have or claim to have against the City, its servants, agents, attorneys, representatives, employees or officials, due to or arising out of damage

to any of the Provider's property or equipment in the Rights-of-Way, including, without limitation, resulting or consequential loss of income, injury to reputation, or any other resulting or consequential damages of any kind, caused by or resulting from acts or omissions of the City or any of its servants, agents, attorneys, representatives, employees or officials except to the extent that such indemnity is prohibited by law; and

4. *Other disputes.* Any and all disputes arising out of a claim wherein damages or other relief is sought as a result of the City's procedure in connection with the issuance of a franchise, easement or other authorization to use the Rights-of-Way to the Provider.
- B. *Procedure for indemnity.* If any suit, claim, notice or other demand seeking regarding any of the above-indemnified claims is brought or threatened against the City, either independently or jointly with the Provider, or with any other person or municipality, Provider, upon notice given by the City, shall defend the City. If final judgment is obtained against the City, either independently or jointly with the Provider or any other defendants, Provider shall indemnify the City and pay such judgment with all costs and satisfy and discharge the same. In the event of litigation between Provider and the City, indemnification shall apply only upon the City's successful defense or prosecution of the litigation. This provision will not apply to damages that are not subject to indemnity under state law.
- C. *Rights additional to other rights.* All rights of the City pursuant to this provision are in addition to any other rights the City may have under any other ordinance, rule or regulation of law, or under any Franchise Agreement, easement or other authorization to use the Rights-of-Way.
- D. *Indemnity required.* No franchise, easement or other authorization to use the Rights-of-Way shall issue unless it contains an indemnity provision substantially similar to the requirements of this section.
- E. *Procedure for taxes erroneously recovered from customers.* The provisions of Utah Code 10-1-408, as amended, are hereby incorporated by reference.

BE IT FURTHER ORDAINED that this Ordinance shall, after adoption and approval, take effect immediately upon publication or posting as required by law.

PASSED AND APPROVED this 3rd day of October 2022.

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October 2022. 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



AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: September 28, 2022
RE: Amendments to the City Cemetery Ordinance

This proposed ordinance amendment started with Mayor Billing's request to increase the height limitations of monuments to 42 inches to be in line with the National Veterans Memorial standards regarding headstone height. Because we were looking at amending the ordinance anyway, Cemetery Superintendent Darren Barney asked that we also clean up some other issues with the ordinance at the same time.

In your packet for this agenda item you will find two documents. The first document is a redlined document showing all the proposed revisions to the current ordinance. The second document is the proposed ordinance that includes the revisions.

The redlined revisions are self-explanatory, but here are a few of the key changes:

1. Clarifying the restrictions on the sizes of monuments and increasing the maximum height to 42 inches.
2. Updating the ordinance prohibiting burials on holidays to match the rules and regulations previously approved by the Council through resolution.
3. Clarifying that unused lots will be sold back to the City at the original purchase price to avoid speculation on burial lots.

CHAPTER 5. - CEMETERIES

Sec. 7-5-1. - City cemetery.

The burial ground of this City shall be known and designated by the name of Hurricane City Cemetery.
(1998 Code § 8-202)

Sec. 7-5-2. - Definitions.

The following words or phrases shall have the following meanings, unless the context otherwise clearly requires:

~~*Burials per grave means one burial per space. Special arrangements can be made for the interment of infants and cremains. More than one can be accommodated per full grave space. A special area of the cemetery is set aside for infant and cremation burials.*~~

Lot means the partial lots or single graves in the City cemetery.

Lot Owner or Lot Purchaser and Grave Owner or Grave Purchaser means the owner or purchaser of burial privileges or the collateral right of use of any burial lot evidenced by a deed or burial right for a described lot or by proved and recognized descent or devise from the original owner.

Rules and Regulations means the rules and regulations that are included in this chapter or that are otherwise adopted by the City Council to govern the City cemetery.

~~*Orientation of graves. By convention, burial spaces are laid out in rows with the head of the grave to the west and the foot to the east. Individual grave tracts usually measure four feet wide by ten feet long. Traditional burial custom had the wife placed to the left side of the husband, however, placement is a matter of choice. The Cemetery Superintendent will assist in the decision as needed.*~~

(1998 Code § 8-201; Ord. 2005-20, 9-1-2005)

Sec. 7-5-3. - Applicability.

All cemeteries owned and/or maintained by the City, wherever situated, are hereby declared subject to the provisions of this chapter.
(1998 Code § 8-203)

Sec. 7-5-4. - Cemetery Superintendent.

- A. *Created.* There is hereby created the position of Cemetery Superintendent, as designated by the City Council.
- B. *Duties.* The Cemetery Superintendent shall have the general supervision and administration of the City cemetery, including, but not limited to:
1. Recommending to the City Council such additional rules and regulations as may be necessary for the operation, maintenance, use and protection of the cemetery.
 2. Subdividing the cemetery into lots and grave sites.
 3. Maintaining-Overseeing the maintenance of a record of the location of the graves and preventing any lot from being used beyond its capacity.
 4. Keeping in proper repair the enclosure around the cemetery and preventing its being entered by animals and, so far as practical, preventing the destruction or defacing of any tablet or marker placed or erected therein.

5. ~~Keeping a~~Overseeing the keeping of a duplicate plat of the cemetery and, at the request of any person wishing to purchase any of the lots or parts of lots, pointing out any of the lots or parts of lots for sale; and upon disposal of any lots or parts thereof, notifying the City Recorder or Cemetery Clerk of such fact. The Cemetery Clerk shall, after payment of the lot price has been received in the treasury, issue a certificate of burial rights which shall describe the lot or grave to which the right to burial is granted. The certificate shall be signed by the Mayor, ~~the City Recorder,~~ and the City Treasurer, and shall be attested by the City Recorder.
 6. Opening any graves in the cemetery upon application to him being made by the Cemetery Clerk or by any person having the right to make such application and being responsible for closing all graves.
 7. Removing floral pieces or displays left on any grave that are in violation of the Rules and Regulations or as deemed necessary to the appearance of the cemetery, but such floral pieces or displays shall not be removed sooner than five days after original placement, except in emergencies.
 8. Keeping the streets, alleys, walks and avenues in the cemetery in good order and unobstructed.
 - ~~9. Erecting a suitable marker firmly set upon the northwest corner of each lot with the number of the lot inscribed thereon and which location shall be shown on the cemetery records.~~
 109. All work in the cemetery, including, but not limited to, interments, disinterments, planting, landscaping, grading, record keeping, placement of grave markers, groundskeeping, construction, and all maintenance, improvement and beautifying of the grounds, shall be done under the supervision of the Cemetery Superintendent.
- (1998 Code §§ 8-211, 8-212; Ord. 2005-20, 9-1-2005)

Sec. 7-5-5. - Burials.

- A. *Registration.* Before any deceased person may be buried in the City cemetery, the relatives or person having charge of the deceased shall provide the City Recorder/Clerk with a written statement which shall be filed by the City Recorder/Clerk, which statement shall contain, if known, information about the deceased regarding his or her name, when and where born, the date and cause of death, the name of the attending physician, date of burial, name of cemetery and the description of the location of the grave.
- B. *Burials and disinterment; unlawful acts.*
 1. It is an infraction, subject to penalty as provided in section 1-4-1 of this Code, for any person to:
 - a. Disinter any body buried in any cemetery, except under the direction of the cemetery superintendent who shall, before disinterment, require written permission from both the health officer and the owner of the lot or his or her heirs, which written authorization shall be filed and preserved in a record kept for such purposes. Payment of fees in advance. No grave shall be opened for interment or disinterment in the City cemetery until: 1) the applicable fee or charge as specified by resolution set from time to time by the City Council shall have first been paid to the City Recorder/Clerk or such other person as the City Council may from time to time designate; and 2) evidence, in the form of a receipt issued by the City Recorder/Clerk or such other person as the City Council may from time to time designate, of payment of the

applicable fees and charges shall have been first presented to the Cemetery Superintendent.

- b. Disinter or remove the body of a person who has died from a contagious disease within two years after the date of burial, unless the body was buried in a hermetically sealed casket or vault and is found to be so encased at the time of disinterment.
 - 2. It is an infraction, subject to penalty as provided in section 1-4-1 of this Code, to inter anything other than the remains of human bodies in City cemeteries.
 - 3. It is an infraction, subject to penalty as provided in section 1-4-1 of this Code, to bury the body of any person within the City, except in the City cemetery or a private cemetery, unless by special permission of the City Council under such rules and regulations that it may prescribe.
- C. *Vaults required.*
- 1. It shall be unlawful for any person to be buried in the cemetery unless the casket shall be placed in a vault made of concrete, fiberglass, steel or brick lined or of such other material approved by the City Council, substantially constructed and covered with a similar durable material.
 - 2. No wood shall be used as a permanent part of the construction of any part of the vault.
- (Ord. 2005-20, 9-1-2005)

Sec. 7-5-6. - Fees and charges.

- A. *Established; authority.* The City Council shall, from time to time by resolution, fix the size of lots, the price at which burial rights shall be sold and the fees which shall be charged for the various cemetery services to be provided.
- B. *Opening grave.*
- 1. *Fee payment required.* No grave shall be opened in the City cemetery until payment of a fee as set from time to time by resolution of the City Council shall be paid.
 - 2. *Receipt authority to open.* The presentation of a receipt from the city recorder or person designated by the City Council when presented to the cemetery superintendent, shall be authority to open a grave for the burial of a deceased person. However, upon a contract being entered into between any mortician and the City wherein the mortician agrees to be responsible and liable for fees for the opening of a grave, and wherein that mortician will be personally liable for such fees and for perpetual care payments, the City Recorder or authorized person may give the Cemetery Superintendent authority to open graves without the presentation of a receipt from the City Recorder or authorized person.
 - 3. *Ordering grave opening.* Arrangements for a grave opening can be made by the funeral director or a responsible party. The required permits need to be filled out and fees paid. The information required is the name of the deceased, the place of interment (obtained from the cemetery master file, unless new purchase), the location, date and time of the funeral services, and the name of the funeral director or mortician. It shall be unlawful for any person to bury the body of a deceased person in the cemetery without first obtaining a certificate of burial right for the lot used or producing satisfactory evidence of a right to burial based on a properly acquired certificate of burial right. Information received by telephone concerning burial location will be the responsibility of the caller.
 - 4. *Amount of fees and charges.* The fees for the opening and closing of graves and other services in connection therewith, including, but not limited to, proper interment or

disinterment of bodies, proper restoration of the earth and cemetery grounds and recordation of burial information, shall be set from time to time by resolution.

5. *Hours for burials.* ~~Burials-Requests for burials~~ are accepted ~~from 8:00 a.m. to 5:00 p.m. during normal business hours~~ at the City offices. ~~No internment or graveside service will be held in the City cemetery on Sunday, on any holiday recognized by the City, or on any day that a holiday is observed by the City.~~ An overtime fee ~~in an amount determined by the City Council~~ is assessed for burials after 4:00 p.m. ~~and for burials on Saturdays. Time and a half rates are assessed for Saturday and holiday burials as established by City Council. No burials will be accepted on Sunday or on the holidays of Thanksgiving Day, Christmas Day and Memorial Day.~~
- C. *Collection.* The City Recorder, and such other persons as the City Council may designate, are hereby authorized to collect in advance, prices and fees for the opening and closing of graves or other services which shall include, but not be limited to, properly disinterring bodies and properly restoring the earth and grounds, recording each burial, disinterment or removal and raised monument privileges. The fees shall be such amounts as are determined by the City Council from time to time by resolution.
(1998 Code § 8-243; Ord. 2005-20, 9-1-2005)

Sec. 7-5-7. - Lot sales.

- A. *Authority; records.* The City Recorder, and such other person as the City Council may designate, are hereby authorized to sell the use of lots in the City cemetery for burial purposes only and to collect all sums arising from the sale. The City Recorder shall keep a complete record of all sales, which record shall describe the location of the lot purchased and the price paid therefor.
- B. *Burial rights.* The City cemetery is a public park and will remain so as long as the City exists. Only permissive burial rights are sold. The City retains title to the cemetery property. A certificate of burial rights will be issued to each purchaser after fees are paid in full. The City Recorder/Clerk or designated person shall deliver to each purchaser a certificate of burial rights for each lot purchased, which certificate shall, among other things, describe the location of the lot, the purchase price and the type of maintenance services which are to be provided, e.g. perpetual care, prepaid continued maintenance or currently paid services. The cemetery master file is considered to be the correct record. Any discrepancy between the master file and the certificate of burial rights will be considered a clerical error. The City reserves the right to recall, correct and reissue the correct certificate.
- C. *Fee schedule.* The fee schedule in connection with the purchase and perpetual care of cemetery lots shall be set from time to time by resolution.
- D. *Purchase price, scope of.* A certificate and rights to burial shall be exempt from execution, taxation or assessment for care and maintenance from and after full payment of the purchase price. Payments made pursuant to this section shall not be construed to be in payment for cemetery services other than perpetual care.
- E. *Unused lots.* Lots that have been unused for or have no written notice of claim or interest on for over 60 years can be reclaimed by the cemetery. Every effort, practically and legally, will be made to find the owner or legal heirs before the lots, by lawful means, will be reverted. Should a certificate of title or right to a lot that has been reverted to the City be presented, the legal holder is entitled to be compensated ~~at the buy back price established by resolution of~~

~~the City Council~~ in the amount of the original purchase price. All proceeds of the resale of the reverted property shall be placed in the perpetual care fund.

- F. *Improvements, changes and services.* No other improvements, changes or services, except perpetual care or prepaid continued maintenance, shall be made on any lot without the certificate holder or his heirs first submitting to and receiving from the cemetery superintendent written approval for such improvements, changes or services, which improvements, changes or services shall be subject to the rules and regulations promulgated by the City Council.
- G. *Resale restrictions.*
1. From and after January 1, 1978, the lots sold by the City shall not be further sold, transferred, conveyed or assigned to any person except the City. The City hereby agrees to buy back any City cemetery grave lot which it may hereafter sell. The repurchase price of such lots shall be ~~set from time to time by resolution of the City Council~~ the same as the original purchase price.
 2. Whenever a certificate to burial rights or lots reverts to the City, as provided for in this subsection, or becomes vested in the City for any reason, before new certificates are issued, the original certificate shall be canceled or an assignment given and the record shall be so changed.
 3. The certificates shall be issued and signed by the Mayor and City Treasurer and shall be attested by the City Recorder. All lots or parts of lots, as provided in this subsection, together with all improvements, shall be exempt from execution and from taxation and assessment for care and maintenance charges from and after said payment.

(1998 Code § 8-251; Ord. 2005-20, 9-1-2005)

Sec. 7-5-8. - Perpetual care lots.

- A. *Scope of care.* The essential perpetual care that the City agrees to give shall consist of care of the cemetery generally, and shall include, but is not limited to, mowing of all lots and graves at reasonable intervals, resodding, seeding and filling in sunken graves, resurfacing the surface of the graves to lot level, removing dead flowers and trimming trees and shrubbery when necessary, raking and cleaning the lots and straightening of tilting stones or markers, but shall not include repairing or replacing markers or memorial structures of any nature, except when the need for repair or replacement is directly caused by the City.
- B. *Contracting for care.*
1. No grave shall be hereafter opened in the cemetery of this City until perpetual care upon the lot where the grave is to be opened shall have been contracted for with the City, or perpetual care thereon paid. Should it be the desire of any person to have a grave opened and the body interred therein and perpetual care shall not have been previously contracted for or paid in full for the lot therein, the person may either pay the full purchase price for perpetual care or enter into a contract wherein payment shall be agreed upon.
 2. Perpetual care or prepaid continued maintenance shall be deemed to include the filling of the grave, the placing of topsoil upon the grave, seeding the grave with grass, and watering and cutting the grass. This fee is collected and kept in a special endowment fund, the interest of which may be used for the general care, maintenance and improvement of the cemetery. This fund aids in the maintenance of the cemetery after it is sold out or finally filled up. Perpetual care fees are included in the charges for certificates of burial rights. Voluntary contributions for the perpetual care fund will be graciously accepted.

C. *Perpetual care fund.*

1. *Created.*

- a. There hereby is established a perpetual care fund according to the laws of the state and this chapter. All funds received from the sale of perpetual care services shall be placed in a special perpetual care fund, invested in compliance with the laws of the state and used for the purposes herein provided.
- b. The income from the perpetual care fund shall be used to pay the upkeep and development of the cemetery. The City may borrow from the fund from time to time, but any funds borrowed shall be repaid to the fund with interest thereon at the prevailing rate paid by the City to borrow funds from commercial lenders.
- c. If the City borrows from the fund, it shall pay into a fund for the operation of the cemetery the interest accrued upon money annually. Should it be found that the interest returned upon the perpetual care fund shall be more than is required to pay for the operation and upkeep of the City cemetery, then the surplus shall be added to the principal amount of the perpetual care fund herein created, and shall be handled until changed by resolution to provide for the use of such accumulated interest.

2. *Duties of Treasurer.* It shall be the duty of the City Treasurer to keep an accurate record of the perpetual care trust fund account, including investments, to see that the principal portion thereof is properly invested in accordance with resolutions of the City Council and the laws of the state, and to advise the mayor when funds are available for investment in the amount of \$1,000.00 or more. The Mayor shall advise the City Council of the availability of such funds.

3. *Duty of City Council.* It shall be the duty of the City Council when funds are available for investment to direct by resolution all purchases of securities for the perpetual care fund or to name a suitable trustee for such investment.

4. *Income.* All income from investments held in the perpetual care fund shall be quarterly credited to the cemetery maintenance fund for use in providing the perpetual care as required herein.

(1998 Code §§ 8-261, 8-271—8-274; Ord. 2005-20, 9-1-2005)

Sec. 7-5-9. - Indigents.

A. The City Council may by resolution designate a portion of the City cemetery to the burial of indigents. Whenever it is made to appear to the City manager by proof submitted to him by the Cemetery Clerk that any person who has died does not have an estate sufficient to pay the purchase price of a lot in the cemetery, and that the nearest relative or representative of such deceased person desires to have the body of such deceased interred in the cemetery, the City Manager may grant burial space for such deceased person at the request made to him by the Cemetery Clerk.

B. The City Manager shall communicate his decision to both the Cemetery Clerk and the Cemetery Superintendent. The City Manager shall give report of his decision, whether affirmative or negative, to the City Council at its next regular meeting. All strangers without funds or other persons who may die in the City may be granted the privilege granted herein.

(Ord. 2005-20, 9-1-2005)

Sec. 7-5-10. - Rules and regulations.

A. *Authority to regulate; procedure.*

1. The City Council may promulgate by resolution such additional rules and regulations concerning the care, use, operation and maintenance of the cemetery as it shall deem necessary.
 2. The Cemetery Superintendent may, from time to time as the City Council deems necessary, direct and publish the rules and regulations for the convenience of the purchasers of lots in the City cemetery. Such rules and regulations shall constitute a part of the terms and conditions under which owners and users may utilize the cemetery and shall form a supplement to this chapter after they have been adopted as official by resolution of the City Council.
 3. Any changes in the rules and regulations shall be adopted by the City Council before such changes shall be official.
- B. *Lots sold.* Every lot or single grave sold is subject to rules and regulations that have been or may be adopted. The rules and regulations shall be subject to such changes as are found necessary for the protection of lot and/or burial right owners, the remains of the dead and the preservation of the cemetery.
- C. *Traffic control.*
1. The provisions of the City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall be in effect in the cemetery, except as herein otherwise modified by this chapter.
 2. It shall be unlawful for any person to ride or drive within the City cemetery at a speed greater than five miles per hour.
- D. *Children.* Children under the age of 16 years shall not be allowed in cemeteries unless accompanied by their parents or other adults, except for the purposes of attending authorized funerals or, in the company of adults, placing flowers on the grave of a deceased relative or friend, or performing any other customary evidence of respect in accordance with their religious principles.
- E. *Animals.* No animal shall be allowed in any cemetery, except in the confines of a vehicle and must be at all times retained within the confines of said vehicle while the vehicle remains in the cemetery.
- F. *Decorum.* Cemetery grounds are sacredly devoted to the interment and repose of the dead. Strict observance of decorum due such a place shall be required of all persons.
- G. *Errors in opening graves.* Under no circumstances will the City assume responsibilities for errors in opening graves when orders are given by telephone.
- H. *Religious and fraternal organizations.* The City may contract with religious and fraternal organizations to designate a reasonable portion of the cemetery in which burials may be restricted to members of such religious and fraternal organizations and their families.
- I. *Records research.* Copies of cemetery records for research, historical or genealogical purposes will be made available upon payment of copy fees, which are set by resolution of the City Council.
- J. *Glass containers.* ~~Glass~~ Except for Memorial Day Weekend, glass containers of any kind are not permitted in the City cemetery.
- K. *Decorations; flowers.*
1. *Flowers on new graves.* Decorations or flowers on new graves will be removed by the cemetery crew after five days. Special flower mementos should be removed at the conclusion of services by those interested. After the grave is closed, the casket spray is placed at the center of the grave, other flower containers and wreaths are laid down in an

orderly fashion around the spray with the containers extending outward. Only the last row of containers is visible, the other being covered by each succeeding row of flowers. Flowers are laid down to prevent them from being blown around the cemetery by the local winds.

2. *Flower policy.* Flowers properly displayed add to the beauty and character of the cemetery. Flowers are allowed throughout the year. The City and the cemetery staff will not be responsible for flowers or other personal property left in the cemetery.
3. *General cleanup.* All flowers and decorations not in permanent containers and those that are wilted or damaged in permanent containers will be removed from the cemetery during spring cleanup. All flowers and decorations picked up are taken to the county landfill for disposal. Those who bring in decoration intended for use during the entire year are encouraged to wait until after the spring cleanup, from April 1 to following the Memorial Day weekend,~~is completed before freshening up their displays.~~
- L. *Memorial Day.* Cemetery crews begin preparation for Memorial Day the Monday prior to the holiday. Preparations, including mowing, trimming and weeding, take the whole week to accomplish. The sprinkling of the grass is stopped on Friday afternoon through the end of Memorial Day to allow for the placement of decorations. Flower regulations as listed above will be strictly enforced. The cleanup of the cemetery will begin the Monday morning following Memorial Day. Anyone desirous of picking up the wreaths or decorations should do so prior to Monday. All decorations are disposed of at the county landfill.
- M. *Burials Per Grave.* One burial is permitted per lot. If desired, specific areas of the cemetery are designated for infant and cremation burials.
- N. *Orientation of graves.* By convention, burial spaces are laid out in rows with the head of the grave to the west and the foot to the east. Individual grave tracts usually measure four feet wide by ten feet long. Traditional burial custom had the wife placed to the left side of the husband; however, placement is a matter of choice. The Cemetery Superintendent will assist in the decision as needed.
- O. *Items of Monetary Value.* Those placing decorations or other items in the cemetery are encouraged not to leave items of monetary value in the cemetery. The City is not responsible for loss, damage, or theft that may occur in relation to items placed in the cemetery.

(1998 Code §§ 8-226, 8-229, 8-230, 8-232, 8-233, 8-300; Ord. 2005-20, 9-1-2005)

Sec. 7-5-11. — Care and maintenance; right to enter.

The City reserves the right to enter upon any grave and to perform all work necessary for the care and upkeep of all lots and graves in its cemeteries.

(1998 Code § 8-228)

Sec. 7-5-12. — Unlawful acts.

A. *Injury to property.*

1. It is a class B misdemeanor, subject to penalty as provided in section 1-4-1 of this Code, for any person to tie or attempt to tie any horse, animal or motor vehicle to any monument, gravestone, tablet, marker, tree, shrub, fence or enclosure on the premises of the cemetery for the purpose of injuring, defacing or attempting the removal of same.
2. It shall be an infraction, subject to penalty as provided in section 1-4-1 of this Code, for any person to injure, deface, break, destroy or remove any headstone, tombstone, monument, tree, shrub or any other property in the cemetery.

- B. *Landscaping by private persons.* Except as provided by the rules and regulations of the City Council, it shall be unlawful for any person to erect or maintain any fence, corner post, coping or boundary of any kind, to plant any vegetation upon any lot or lots, street, alley or walk in the cemetery or to grade the ground or land thereof. The Cemetery Superintendent shall, whenever required, furnish the true lines of any lots according to official survey, shall prevent and prohibit any markings of the same except by official landmarks, and shall prevent and prohibit any grading thereof that might destroy or interfere with the general slope of the land. (1998 Code §§ 8-234, 8-235; 2000 Code)

Sec. 7-5-13. — Placement of markers.

It shall be unlawful for any person to erect, place or cause to be placed any marker or monument on any lot in the cemetery in violation of the rules and regulations promulgated by the City Council regarding the placement, construction and design of all such markers.

- A. *Ownership and responsibility.* Headstones are personal property. All monuments within the cemetery are the property of lot owners, their heirs or the responsible party that ordered and placed them. All care and upkeep of the monuments is the responsibility of the owner. The cemetery is maintained by City crews who exercise great care in keeping the grounds groomed. The City will not be responsible for inadvertent scratches and chips that occur from routine maintenance. Such happenings are a condition that go with the privilege of placing markers in the cemetery.
- B. *Size Limitations and Requirements.* All headstones or markers must be placed on a concrete pad or footing that provides a six-inch border around the base of the headstone or marker. The top of the concrete pad or footing must be have a concrete border six inches wide installed flush with the surface of the lawn. Monuments and concrete borders must be placed within the boundary of the grave or graves of the owner in conformity with established rows. Monuments for single graves may not exceed 36 inches in width, not counting the concrete border. Monuments for double graves sharing a monument may not exceed 72 inches in width, not counting the concrete border. No monument may exceed a depth of 26 inches, including the concrete border. No raised monument may exceed a height of 42 inches above the concrete border. Monuments in the specific areas of the cemetery designated for infant and cremation burials shall be flat monuments with the top of monuments flush with the surface of the lawn and shall have maximum widths of 28 inches and maximum depths of 16 inches. Bench monuments are permitted, but benches with backs are not allowed. All permanent vases must be attached to the monument, stone, base or cast into the concrete border. No vases separate from the memorial will be permitted. Memorials will be placed in an orderly manner in predesignated rows as directed by the ~~cemetery~~ Cemetery superintendent ~~Superintendent~~. Flat markers, level with the ground, with approval of the cemetery superintendent may be installed between established rows. No flower vases or containers, permanent or otherwise, will be permitted on the markers. Only one raised marker is permitted per grave. Family monuments must comply with this section. If a monument is determined by the Cemetery Superintendent to be oversized, and interferes with the sprinkler irrigation system, or is otherwise in violation of this chapter, the owner will shall pay for the necessary modifications.
- C. ~~Size of monuments. A monument must be placed within the boundary of the grave or graves of the owner in conformity with established rows. Raised markers in the same row~~

~~must be a minimum of 20 inches apart. Raised monuments in adjacent rows must be a minimum of six and one-half feet apart unless special arrangements are made with the Cemetery Superintendent. If a monument is determined by the Cemetery Superintendent to be oversized and interferes with the sprinkler irrigation system, the owner will pay for the necessary modifications. No monument will be more than three feet high without written permission from the Cemetery Superintendent.~~

DC. *Interference with excavation.* The owner or responsible party is responsible for the removal and replacement of a marker that must be moved for the excavation of a grave, or for the expenses of such service if contracted. If the owner or responsible party wishes, the City will make arrangements for the service with a local monument dealer at the owner's expense.

ED. *Recommendations.* Consult with a monument manufacturer on monument materials suitable to handle conditions at the cemetery. Markers are subject to temperature extremes, snow, ice, sprinkler irrigation water and occasional nicks and chips from mowing equipment. It is recommended that raised markers have a rough nosed base or edge rather than a polished smooth surface.

FE. *Obstructions.* No fences, foot markers or other obstructions or installations except a headstone or monument will be permitted in the cemetery.

(1998 Code § 8-236; 2000 Code; Ord. 2005-20, 9-1-2005)

**AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING
TITLE 7, CHAPTER 5 OF THE HURRICANE CITY CODE GOVERNING THE CITY
CEMETERY**

WHEREAS, the City Council of Hurricane, Utah desires to amend Title 7, Chapter 5 of the Hurricane City Code governing the City Cemetery; and

WHEREAS, the City Council deems this amendment necessary and desirable for the preservation of the general health, safety, and welfare of the residents of Hurricane,

BE IT HEREBY ORDAINED that Title 7, Chapter 5 of the Hurricane City Code shall be, and is hereby, amended in its entirety as follows:

CHAPTER 5. - CEMETERIES

Sec. 7-5-1. - City cemetery.

The burial ground of this City shall be known and designated by the name of Hurricane City Cemetery.
(1998 Code § 8-202)

Sec. 7-5-2. - Definitions.

The following words or phrases shall have the following meanings, unless the context otherwise clearly requires:

Lot means the partial lots or single graves in the City cemetery.

Lot Owner or Lot Purchaser and *Grave Owner or Grave Purchaser* means the owner or purchaser of burial privileges or the collateral right of use of any burial lot evidenced by a deed or burial right for a described lot or by proved and recognized descent or devise from the original owner.

Rules and Regulations means the rules and regulations that are included in this chapter or that are otherwise adopted by the City Council to govern the City cemetery.
(1998 Code § 8-201; Ord. 2005-20, 9-1-2005)

Sec. 7-5-3. - Applicability.

All cemeteries owned and/or maintained by the City, wherever situated, are hereby declared subject to the provisions of this chapter.
(1998 Code § 8-203)

Sec. 7-5-4. - Cemetery Superintendent.

- A. *Created*. There is hereby created the position of Cemetery Superintendent, as designated by the City Council.
- B. *Duties*. The Cemetery Superintendent shall have the general supervision and administration of the City cemetery, including, but not limited to:
 - 1. Recommending to the City Council such additional rules and regulations as may be necessary for the operation, maintenance, use and protection of the cemetery.

2. Subdividing the cemetery into lots and grave sites.
 3. Overseeing the maintenance of a record of the location of the graves and preventing any lot from being used beyond its capacity.
 4. Keeping in proper repair the enclosure around the cemetery and preventing its being entered by animals and, so far as practical, preventing the destruction or defacing of any tablet or marker placed or erected therein.
 5. Overseeing the keeping of a duplicate plat of the cemetery and, at the request of any person wishing to purchase any of the lots or parts of lots, pointing out any of the lots or parts of lots for sale; and upon disposal of any lots or parts thereof, notifying the City Recorder or Cemetery Clerk of such fact. The Cemetery Clerk shall, after payment of the lot price has been received in the treasury, issue a certificate of burial rights which shall describe the lot or grave to which the right to burial is granted. The certificate shall be signed by the Mayor and the City Treasurer, and shall be attested by the City Recorder.
 6. Opening any graves in the cemetery upon application to him being made by the Cemetery Clerk or by any person having the right to make such application and being responsible for closing all graves.
 7. Removing floral pieces or displays left on any grave that are in violation of the Rules and Regulations or as deemed necessary to the appearance of the cemetery, but such floral pieces or displays shall not be removed sooner than five days after original placement, except in emergencies.
 8. Keeping the streets, alleys, walks and avenues in the cemetery in good order and unobstructed.
 9. All work in the cemetery, including, but not limited to, interments, disinterments, planting, landscaping, grading, record keeping, placement of grave markers, groundskeeping, construction, and all maintenance, improvement and beautifying of the grounds, shall be done under the supervision of the Cemetery Superintendent.
- (1998 Code §§ 8-211, 8-212; Ord. 2005-20, 9-1-2005)

Sec. 7-5-5. - Burials.

- A. *Registration.* Before any deceased person may be buried in the City cemetery, the relatives or person having charge of the deceased shall provide the City Recorder/Clerk with a written statement which shall be filed by the City Recorder/Clerk, which statement shall contain, if known, information about the deceased regarding his or her name, when and where born, the date and cause of death, the name of the attending physician, date of burial, name of cemetery and the description of the location of the grave.
- B. *Burials and disinterment; unlawful acts.*
 1. It is an infraction, subject to penalty as provided in section 1-4-1 of this Code, for any person to:
 - a. Disinter any body buried in any cemetery, except under the direction of the cemetery superintendent who shall, before disinterment, require written permission from both the health officer and the owner of the lot or his or her heirs, which written authorization shall be filed and preserved in a record kept for such purposes. Payment of fees in advance. No grave shall be opened for interment or disinterment in the City cemetery until: 1) the applicable fee or charge as specified by resolution set from time to time by the City Council shall have first been paid to the City Recorder/Clerk or such other person as the City Council may from time to time designate; and 2)

evidence, in the form of a receipt issued by the City Recorder/Clerk or such other person as the City Council may from time to time designate, of payment of the applicable fees and charges shall have been first presented to the Cemetery Superintendent.

- b. Disinter or remove the body of a person who has died from a contagious disease within two years after the date of burial, unless the body was buried in a hermetically sealed casket or vault and is found to be so encased at the time of disinterment.
 2. It is an infraction, subject to penalty as provided in section 1-4-1 of this Code, to inter anything other than the remains of human bodies in City cemeteries.
 3. It is an infraction, subject to penalty as provided in section 1-4-1 of this Code, to bury the body of any person within the City, except in the City cemetery or a private cemetery, unless by special permission of the City Council under such rules and regulations that it may prescribe.
- C. *Vaults required.*
1. It shall be unlawful for any person to be buried in the cemetery unless the casket shall be placed in a vault made of concrete, fiberglass, steel or brick lined or of such other material approved by the City Council, substantially constructed and covered with a similar durable material.
 2. No wood shall be used as a permanent part of the construction of any part of the vault.
- (Ord. 2005-20, 9-1-2005)

Sec. 7-5-6. - Fees and charges.

- A. *Established; authority.* The City Council shall, from time to time by resolution, fix the size of lots, the price at which burial rights shall be sold and the fees which shall be charged for the various cemetery services to be provided.
- B. *Opening grave.*
1. *Fee payment required.* No grave shall be opened in the City cemetery until payment of a fee as set from time to time by resolution of the City Council shall be paid.
 2. *Receipt authority to open.* The presentation of a receipt from the city recorder or person designated by the City Council when presented to the cemetery superintendent, shall be authority to open a grave for the burial of a deceased person. However, upon a contract being entered into between any mortician and the City wherein the mortician agrees to be responsible and liable for fees for the opening of a grave, and wherein that mortician will be personally liable for such fees and for perpetual care payments, the City Recorder or authorized person may give the Cemetery Superintendent authority to open graves without the presentation of a receipt from the City Recorder or authorized person.
 3. *Ordering grave opening.* Arrangements for a grave opening can be made by the funeral director or a responsible party. The required permits need to be filled out and fees paid. The information required is the name of the deceased, the place of interment (obtained from the cemetery master file, unless new purchase), the location, date and time of the funeral services, and the name of the funeral director or mortician. It shall be unlawful for any person to bury the body of a deceased person in the cemetery without first obtaining a certificate of burial right for the lot used or producing satisfactory evidence of a right to burial based on a properly acquired certificate of burial right. Information received by telephone concerning burial location will be the responsibility of the caller.

4. *Amount of fees and charges.* The fees for the opening and closing of graves and other services in connection therewith, including, but not limited to, proper interment or disinterment of bodies, proper restoration of the earth and cemetery grounds and recordation of burial information, shall be set from time to time by resolution.
 5. *Hours for burials.* Requests for burials are accepted during normal business hours at the City offices. No interment or graveside service will be held in the City cemetery on Sunday, on any holiday recognized by the City, or on any day that a holiday is observed by the City. An overtime fee in an amount determined by the City Council is assessed for burials after 4:00 p.m. and for burials on Saturdays.
- C. *Collection.* The City Recorder, and such other persons as the City Council may designate, are hereby authorized to collect in advance, prices and fees for the opening and closing of graves or other services which shall include, but not be limited to, properly disinterring bodies and properly restoring the earth and grounds, recording each burial, disinterment or removal and raised monument privileges. The fees shall be such amounts as are determined by the City Council from time to time by resolution.
- (1998 Code § 8-243; Ord. 2005-20, 9-1-2005)

Sec. 7-5-7. - Lot sales.

- A. *Authority; records.* The City Recorder, and such other person as the City Council may designate, are hereby authorized to sell the use of lots in the City cemetery for burial purposes only and to collect all sums arising from the sale. The City Recorder shall keep a complete record of all sales, which record shall describe the location of the lot purchased and the price paid therefor.
- B. *Burial rights.* The City cemetery is a public park and will remain so as long as the City exists. Only permissive burial rights are sold. The City retains title to the cemetery property. A certificate of burial rights will be issued to each purchaser after fees are paid in full. The City Recorder/Clerk or designated person shall deliver to each purchaser a certificate of burial rights for each lot purchased, which certificate shall, among other things, describe the location of the lot, the purchase price and the type of maintenance services which are to be provided, e.g. perpetual care, prepaid continued maintenance or currently paid services. The cemetery master file is considered to be the correct record. Any discrepancy between the master file and the certificate of burial rights will be considered a clerical error. The City reserves the right to recall, correct and reissue the correct certificate.
- C. *Fee schedule.* The fee schedule in connection with the purchase and perpetual care of cemetery lots shall be set from time to time by resolution.
- D. *Purchase price, scope of.* A certificate and rights to burial shall be exempt from execution, taxation or assessment for care and maintenance from and after full payment of the purchase price. Payments made pursuant to this section shall not be construed to be in payment for cemetery services other than perpetual care.
- E. *Unused lots.* Lots that have been unused for or have no written notice of claim or interest on for over 60 years can be reclaimed by the cemetery. Every effort, practically and legally, will be made to find the owner or legal heirs before the lots, by lawful means, will be reverted. Should a certificate of title or right to a lot that has been reverted to the City be presented, the legal holder is entitled to be compensated in the amount of the original purchase price. All proceeds of the resale of the reverted property shall be placed in the perpetual care fund.

- F. *Improvements, changes and services.* No other improvements, changes or services, except perpetual care or prepaid continued maintenance, shall be made on any lot without the certificate holder or his heirs first submitting to and receiving from the cemetery superintendent written approval for such improvements, changes or services, which improvements, changes or services shall be subject to the rules and regulations promulgated by the City Council.
- G. *Resale restrictions.*
1. From and after January 1, 1978, the lots sold by the City shall not be further sold, transferred, conveyed or assigned to any person except the City. The City hereby agrees to buy back any City cemetery grave lot which it may hereafter sell. The repurchase price of such lots shall be the same as the original purchase price.
 2. Whenever a certificate to burial rights or lots reverts to the City, as provided for in this subsection, or becomes vested in the City for any reason, before new certificates are issued, the original certificate shall be canceled or an assignment given and the record shall be so changed.
 3. The certificates shall be issued and signed by the Mayor and City Treasurer and shall be attested by the City Recorder. All lots or parts of lots, as provided in this subsection, together with all improvements, shall be exempt from execution and from taxation and assessment for care and maintenance charges from and after said payment.
- (1998 Code § 8-251; Ord. 2005-20, 9-1-2005)

Sec. 7-5-8. - Perpetual care lots.

- A. *Scope of care.* The essential perpetual care that the City agrees to give shall consist of care of the cemetery generally, and shall include, but is not limited to, mowing of all lots and graves at reasonable intervals, resodding, seeding and filling in sunken graves, resurfacing the surface of the graves to lot level, removing dead flowers and trimming trees and shrubbery when necessary, raking and cleaning the lots and straightening of tilting stones or markers, but shall not include repairing or replacing markers or memorial structures of any nature, except when the need for repair or replacement is directly caused by the City.
- B. *Contracting for care.*
1. No grave shall be hereafter opened in the cemetery of this City until perpetual care upon the lot where the grave is to be opened shall have been contracted for with the City, or perpetual care thereon paid. Should it be the desire of any person to have a grave opened and the body interred therein and perpetual care shall not have been previously contracted for or paid in full for the lot therein, the person may either pay the full purchase price for perpetual care or enter into a contract wherein payment shall be agreed upon.
 2. Perpetual care or prepaid continued maintenance shall be deemed to include the filling of the grave, the placing of topsoil upon the grave, seeding the grave with grass, and watering and cutting the grass. This fee is collected and kept in a special endowment fund, the interest of which may be used for the general care, maintenance and improvement of the cemetery. This fund aids in the maintenance of the cemetery after it is sold out or finally filled up. Perpetual care fees are included in the charges for certificates of burial rights. Voluntary contributions for the perpetual care fund will be graciously accepted.
- C. *Perpetual care fund.*
1. *Created.*

- a. There hereby is established a perpetual care fund according to the laws of the state and this chapter. All funds received from the sale of perpetual care services shall be placed in a special perpetual care fund, invested in compliance with the laws of the state and used for the purposes herein provided.
 - b. The income from the perpetual care fund shall be used to pay the upkeep and development of the cemetery. The City may borrow from the fund from time to time, but any funds borrowed shall be repaid to the fund with interest thereon at the prevailing rate paid by the City to borrow funds from commercial lenders.
 - c. If the City borrows from the fund, it shall pay into a fund for the operation of the cemetery the interest accrued upon money annually. Should it be found that the interest returned upon the perpetual care fund shall be more than is required to pay for the operation and upkeep of the City cemetery, then the surplus shall be added to the principal amount of the perpetual care fund herein created, and shall be handled until changed by resolution to provide for the use of such accumulated interest.
2. *Duties of Treasurer.* It shall be the duty of the City Treasurer to keep an accurate record of the perpetual care trust fund account, including investments, to see that the principal portion thereof is properly invested in accordance with resolutions of the City Council and the laws of the state, and to advise the mayor when funds are available for investment in the amount of \$1,000.00 or more. The Mayor shall advise the City Council of the availability of such funds.
 3. *Duty of City Council.* It shall be the duty of the City Council when funds are available for investment to direct by resolution all purchases of securities for the perpetual care fund or to name a suitable trustee for such investment.
 4. *Income.* All income from investments held in the perpetual care fund shall be quarterly credited to the cemetery maintenance fund for use in providing the perpetual care as required herein.

(1998 Code §§ 8-261, 8-271—8-274; Ord. 2005-20, 9-1-2005)

Sec. 7-5-9. - Indigents.

- A. The City Council may by resolution designate a portion of the City cemetery to the burial of indigents. Whenever it is made to appear to the City manager by proof submitted to him by the Cemetery Clerk that any person who has died does not have an estate sufficient to pay the purchase price of a lot in the cemetery, and that the nearest relative or representative of such deceased person desires to have the body of such deceased interred in the cemetery, the City Manager may grant burial space for such deceased person at the request made to him by the Cemetery Clerk.
- B. The City Manager shall communicate his decision to both the Cemetery Clerk and the Cemetery Superintendent. The City Manager shall give report of his decision, whether affirmative or negative, to the City Council at its next regular meeting. All strangers without funds or other persons who may die in the City may be granted the privilege granted herein.

(Ord. 2005-20, 9-1-2005)

Sec. 7-5-10. - Rules and regulations.

A. *Authority to regulate; procedure.*

1. The City Council may promulgate by resolution such additional rules and regulations concerning the care, use, operation and maintenance of the cemetery as it shall deem necessary.
2. The Cemetery Superintendent may, from time to time as the City Council deems necessary, direct and publish the rules and regulations for the convenience of the purchasers of lots in the City cemetery. Such rules and regulations shall constitute a part of the terms and conditions under which owners and users may utilize the cemetery and shall form a supplement to this chapter after they have been adopted as official by resolution of the City Council.
3. Any changes in the rules and regulations shall be adopted by the City Council before such changes shall be official.

B. *Lots sold.* Every lot or single grave sold is subject to rules and regulations that have been or may be adopted. The rules and regulations shall be subject to such changes as are found necessary for the protection of lot and/or burial right owners, the remains of the dead and the preservation of the cemetery.

C. *Traffic control.*

1. The provisions of the City traffic ordinances relative to the operation of vehicles and conduct of pedestrians shall be in effect in the cemetery, except as herein otherwise modified by this chapter.
2. It shall be unlawful for any person to ride or drive within the City cemetery at a speed greater than five miles per hour.

D. *Children.* Children under the age of 16 years shall not be allowed in cemeteries unless accompanied by their parents or other adults, except for the purposes of attending authorized funerals or, in the company of adults, placing flowers on the grave of a deceased relative or friend, or performing any other customary evidence of respect in accordance with their religious principles.

E. *Animals.* No animal shall be allowed in any cemetery, except in the confines of a vehicle and must be at all times retained within the confines of said vehicle while the vehicle remains in the cemetery.

F. *Decorum.* Cemetery grounds are sacredly devoted to the interment and repose of the dead. Strict observance of decorum due such a place shall be required of all persons.

G. *Errors in opening graves.* Under no circumstances will the City assume responsibilities for errors in opening graves when orders are given by telephone.

H. *Religious and fraternal organizations.* The City may contract with religious and fraternal organizations to designate a reasonable portion of the cemetery in which burials may be restricted to members of such religious and fraternal organizations and their families.

I. *Records research.* Copies of cemetery records for research, historical or genealogical purposes will be made available upon payment of copy fees, which are set by resolution of the City Council.

J. *Glass containers.* Except for Memorial Day Weekend, glass containers of any kind are not permitted in the City cemetery.

K. *Decorations; flowers.*

1. *Flowers on new graves.* Decorations or flowers on new graves will be removed by the cemetery crew after five days. Special flower mementos should be removed at the

conclusion of services by those interested. After the grave is closed, the casket spray is placed at the center of the grave, other flower containers and wreaths are laid down in an orderly fashion around the spray with the containers extending outward. Only the last row of containers is visible, the other being covered by each succeeding row of flowers. Flowers are laid down to prevent them from being blown around the cemetery by the local winds.

2. *Flower policy.* Flowers properly displayed add to the beauty and character of the cemetery. Flowers are allowed throughout the year. The City and the cemetery staff will not be responsible for flowers or other personal property left in the cemetery.
 3. *General cleanup.* All flowers and decorations not in permanent containers and those that are wilted or damaged in permanent containers will be removed from the cemetery during spring cleanup. All flowers and decorations picked up are taken to the county landfill for disposal. Those who bring in decoration intended for use during the entire year are encouraged to wait until after the cleanup following the Memorial Day weekend.
 - L. *Memorial Day.* Cemetery crews begin preparation for Memorial Day the Monday prior to the holiday. Preparations, including mowing, trimming and weeding, take the whole week to accomplish. The sprinkling of the grass is stopped on Friday afternoon through the end of Memorial Day to allow for the placement of decorations. Flower regulations as listed above will be strictly enforced. The cleanup of the cemetery will begin the Monday morning following Memorial Day. Anyone desirous of picking up the wreaths or decorations should do so prior to Monday. All decorations are disposed of at the county landfill.
 - M. *Burials Per Grave.* One burial is permitted per lot. If desired, specific areas of the cemetery are designated for infant and cremation burials.
 - N. *Orientation of graves.* By convention, burial spaces are laid out in rows with the head of the grave to the west and the foot to the east. Individual grave tracts usually measure four feet wide by ten feet long. Traditional burial custom had the wife placed to the left side of the husband; however, placement is a matter of choice. The Cemetery Superintendent will assist in the decision as needed.
 - O. *Items of Monetary Value.* Those placing decorations or other items in the cemetery are encouraged not to leave items of monetary value in the cemetery. The City is not responsible for loss, damage, or theft that may occur in relation to items placed in the cemetery.
- (1998 Code §§ 8-226, 8-229, 8-230, 8-232, 8-233, 8-300; Ord. 2005-20, 9-1-2005)

Sec. 7-5-11. – Care and maintenance; right to enter.

The City reserves the right to enter upon any grave and to perform all work necessary for the care and upkeep of all lots and graves in its cemeteries.

(1998 Code § 8-228)

Sec. 7-5-12. – Unlawful acts.

A. *Injury to property.*

1. It is a class B misdemeanor, subject to penalty as provided in section 1-4-1 of this Code, for any person to tie or attempt to tie any horse, animal or motor vehicle to any monument, gravestone, tablet, marker, tree, shrub, fence or enclosure on the premises of the cemetery for the purpose of injuring, defacing or attempting the removal of same.
2. It shall be an infraction, subject to penalty as provided in section 1-4-1 of this Code, for any person to injure, deface, break, destroy or remove any headstone, tombstone, monument, tree, shrub or any other property in the cemetery.

B. *Landscaping by private persons.* Except as provided by the rules and regulations of the City Council, it shall be unlawful for any person to erect or maintain any fence, corner post, coping or boundary of any kind, to plant any vegetation upon any lot or lots, street, alley or walk in the cemetery or to grade the ground or land thereof. The Cemetery Superintendent shall, whenever required, furnish the true lines of any lots according to official survey, shall prevent and prohibit any markings of the same except by official landmarks, and shall prevent and prohibit any grading thereof that might destroy or interfere with the general slope of the land. (1998 Code §§ 8-234, 8-235; 2000 Code)

Sec. 7-5-13. – Placement of markers.

It shall be unlawful for any person to erect, place or cause to be placed any marker or monument on any lot in the cemetery in violation of the rules and regulations promulgated by the City Council regarding the placement, construction and design of all such markers.

- A. *Ownership and responsibility.* Headstones are personal property. All monuments within the cemetery are the property of lot owners, their heirs or the responsible party that ordered and placed them. All care and upkeep of the monuments is the responsibility of the owner. The cemetery is maintained by City crews who exercise great care in keeping the grounds groomed. The City will not be responsible for inadvertent scratches and chips that occur from routine maintenance. Such happenings are a condition that go with the privilege of placing markers in the cemetery.
- B. *Size Limitations and Requirements.* All headstones or markers must be placed on a concrete pad or footing that provides a six-inch border around the base of the headstone or marker. The top of the concrete pad or footing must be flush with the surface of the lawn. Monuments and concrete borders must be placed within the boundary of the grave or graves of the owner in conformity with established rows. Monuments for single graves may not exceed 36 inches in width, not counting the concrete border. Monuments for double graves sharing a monument may not exceed 72 inches in width, not counting the concrete border. No monument may exceed a depth of 26 inches, including the concrete border. No raised monument may exceed a height of 42 inches above the concrete border. Monuments in the specific areas of the cemetery designated for infant and cremation burials shall be flat monuments with the top of monuments flush with the surface of the lawn and shall have maximum widths of 28 inches and maximum depths of 16 inches. Bench monuments are permitted, but benches with backs are not allowed. All permanent vases must be attached to the monument, stone, base or cast into the concrete border. No vases separate from the memorial will be permitted. Memorials will be placed in an orderly manner in predesignated rows as directed by the Cemetery Superintendent. Flat markers, level with the ground, with approval of the cemetery superintendent may be

installed between established rows. No flower vases or containers, permanent or otherwise, will be permitted on the markers. Only one raised marker is permitted per grave. Family monuments must comply with this section. If a monument is determined by the Cemetery Superintendent to be oversized, interferes with the sprinkler irrigation system, or is otherwise in violation of this chapter, the owner shall pay for the necessary modifications.

- C. *Interference with excavation.* The owner or responsible party is responsible for the removal and replacement of a marker that must be moved for the excavation of a grave, or for the expenses of such service if contracted. If the owner or responsible party wishes, the City will make arrangements for the service with a local monument dealer at the owner's expense.
- D. *Recommendations.* Consult with a monument manufacturer on monument materials suitable to handle conditions at the cemetery. Markers are subject to temperature extremes, snow, ice, sprinkler irrigation water and occasional nicks and chips from mowing equipment. It is recommended that raised markers have a rough nosed base or edge rather than a polished smooth surface.
- E. *Obstructions.* No fences, foot markers or other obstructions or installations except a headstone or monument will be permitted in the cemetery.

(1998 Code § 8-236; 2000 Code; Ord. 2005-20, 9-1-2005)

BE IT FURTHER ORDAINED that this Ordinance shall, after adoption and approval, take effect immediately upon publication or posting as required by law.

PASSED AND APPROVED this 3rd day of October 2022.

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October 2022. 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

P R O C L A M A T I O N

WHEREAS, it is a basic human right to live a life free from violence and abuse; and

WHEREAS, domestic violence is a serious problem that occurs in all cultures and communities and does not discriminate by age, gender, social class, ethnicity, religious affiliation or sexual orientation; and

WHEREAS, one in three women and one in seven men in Utah will experience intimate partner violence in their lifetime; and that 60-75% of families with intimate partner violence have children who are also impacted by the violence; and

WHEREAS, seniors are also victims of domestic and sexual violence and are part of the most under-reported group, and

WHEREAS, domestic violence-related homicides account for over 40% of all homicides in Utah; and 80 Utah children will witness the murder or attempted murder of their mother every year; and

WHEREAS, awareness and intentional collaboration are required to find solutions to abuse and intimate partner violence; and

WHEREAS, it is the role of local government to provide for the health, safety, and welfare of its citizens,

NOW THEREFORE I, Nanette Billings, Mayor of Hurricane City, Utah, in partnership with DOVE Center and the Washington County Coordinated Community Response Team, do hereby proclaim October as:

DOMESTIC VIOLENCE AWARENESS MONTH

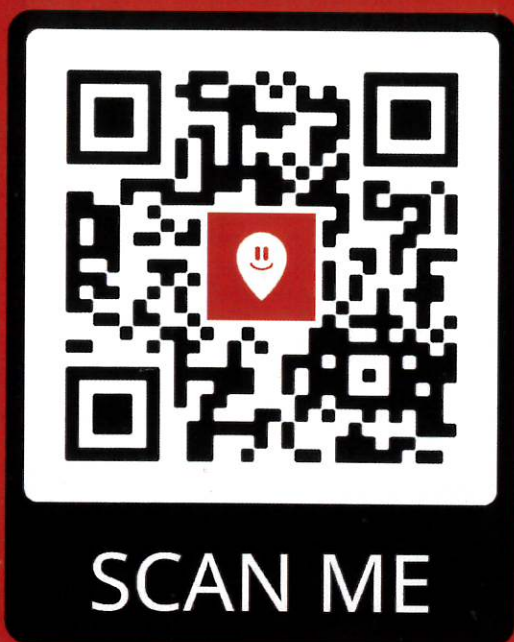
in Hurricane City, we urge all residents to use October as Domestic Violence Awareness Month to learn how they can break the silence and end domestic violence in our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of Hurricane City, Utah this 3rd day of October 2022.

Nanette Billings, Mayor

Attest: _____
Cindy Beteag, Recorder

WHAT TO DO WHILE YOU'RE IN **HURRICANE, UT**



**SCAN TO VIEW VIDEO DIRECTORY OF LOCAL
EVENTS - BUSINESSES - ATTRACTIONS**



STAFF COMMENTS

The proposed temporary road closure at the intersection of the City streets designated as 1515 West and 200 South

Discussion:

Findings:

Recommendation:

Attachments:

None

Cindy Beteag

From: Dale Grange [REDACTED]
Sent: Tuesday, September 13, 2022 5:08 PM
To: Cindy Beteag
Subject: Comments for Public Hearing October 3, 2022

Cindy,

My name is Dale Grange and I live at 224 S 1515 W in Hurricane. I would like to submit the following comments pertaining to the public hearing that will be held on October 3, 2022. This concerns a proposed temporary road closure that the intersection of 1515 W and 200 S.

As I have stated in two prior public meetings and in an email to all of the members of the City Council, I am vitally concerned about the road connection that has been initiated at the 1515 W and 200 S intersection. I would hope that everyone involved with this decision would understand that this road connection has negatively impacted, and will exponentially degrade the peace, solitude, livability, and desirability of this whole neighborhood in the future. Many members of our neighborhood have taken the hours involved to relay this to the leaders of the City. I write here for myself, but know that many others have expressed the same concerns.

I am happy that the City Council is considering a "temporary" road closure. This demonstrates an understanding that there is a problem that needs to be addressed. My desire here is not to point out the positions, legalities and restraints associated with this decision, but to ask that the "temporary" closure be pursued with the end result being a "permanent" closure of this connection. I feel that anything only temporary does not adequately address our concerns and serves to "kick the can down the road". I hope it is not too much to ask for something that has a permanent result as the end product be planned.

I hope you would consider something along the following:

1. Install the "temporary" gate at present with an agreed upon plan to implement a permanent closure when further access is developed.
2. Going forward, there are (master) plans to construct a new road North-South from 400 S to Highway 9 as approximately 1350 (or so) W. When constructed, this new road will open up new properties for development and actually be beneficial to the current or subsequent property owners. This would allow for new East-West segments off this new road to accommodate the development and public transportation.
3. One of these new road segments would naturally approximate 200 S going West.
4. This new road segment could then be used for future development, a secondary egress from the property currently being considered by Ace Hardware (directly East of the new RV Park), and the secondary egress from the RV Park via the current half-road.
5. At this point, the connection to 1515 W would no longer be needed and the closure would become "permanent". A physical barrier (ie. block wall) would be constructed along the termination of 1515 S and could extend East or West along the existing property boundary of the current owners such as Granges and Bishops if desired.

Something along these lines may take some time but would be beneficial, in my opinion, for everyone involved. It would address the concerns of the residents along 1515 W, it would represent minimal expense to the City, it would address the City's concern for secondary exits from commercial developments for public safety vehicles, it would allow for logical

expansion of the public transportation system, and provide for orderly development of the lands to the East so that property owners could benefit from future development if they choose to do so.

I appreciate those who have listened to these concerns previously and hope these additional comments will be considered also.

Thank You,
Dale Grange

**AN ORDINANCE OF HURRICANE CITY, UTAH TEMPORARILY CLOSING THE
ROAD AT THE INTERSECTION OF 1515 W AND 200 SOUTH**

WHEREAS the City Council of Hurricane, Utah, has authority under Utah Code Section 72-5-105 to temporarily close a class C road; and

WHEREAS the roads within Hurricane City designated as 200 South and 1515 West constitute class C roads under the Utah Code; and

WHEREAS the City Council of Hurricane, Utah has determined that the connection between 200 South and 1515 West is not necessary at this time, provided that emergency vehicles will continue to have access through an approved gate; and

WHEREAS this portion of 200 South is only partially constructed and provides limited access; and

WHEREAS the City Council of Hurricane, Utah has determined that temporarily closing the City road at the intersection of 200 South and 1515 West is necessary to (1) mitigate unsafe conditions and (2) mitigate injury to private and public land resources; and

WHEREAS the City Council of Hurricane, Utah has determined it will not be detrimental to the preservation of the general health, safety, and welfare of the residents of Hurricane City to temporarily close the City road at the intersection of 200 South and 1515 West; and

WHEREAS proper notice of this action has been duly provided and a public hearing has been duly held,

BE IT HEREBY ORDAINED by the City Council of Hurricane, Utah that the City road at the intersection of 200 South and 1515 West shall be temporarily closed by placing in the roadway a gate that is approved for emergency vehicle access. This temporary road closure shall continue until such time as the City Council of Hurricane, Utah determines that the gate shall be removed and the roadway opened to the public.

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

PASSED AND APPROVED on this 3rd day of October 2022.

Hurricane City

Nanette Billings, Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October 2022. Whereupon a motion to adopt and approve said Ordinance 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



AGENDA ITEM SUMMARY

TO: Hurricane City Council
FROM: Dayton Hall, City Attorney
DATE: September 28, 2022
RE: New Templates for Airport Leases

The City Council must approve any new lease of a hangar space at the City Airport, after a recommendation from the Airport Board. At my request, the Airport Board has been working for several months on a new template for airport leases that will be the standard moving forward, but which may be modified as needed on a case-by-case basis. The ordinance will still require every lease to come to the Council for approval, but adopting a template as a starting point will help make the process more uniform and streamlined. The Airport Board has recommended two versions for airport leases: one for private use (with no commercial use) and one for SASO leases. SASO stands for Single Aeronautical Service Operator. SASO leases are intended for lessees that will operate an aeronautical-related business at the airport. The two versions are mostly identical, but with the SASO lease including additional verbiage addressing the commercial nature of the lease. I approve of the legal form of both leases, but there are a few provisions and issues that I recommend the Council consider before adopting these templates.

First, the term of the leases is twenty years, with an option to renew for an additional five years. This is the same term as the City's prior, historical leases that I have reviewed. On the one hand, lessees are investing a substantial amount of money to build hangars, so a longer term provides lessees some assurance of longevity when improving the property. On the other hand, twenty-five years is a very long lease period for the City to commit to a lease, and no one can be sure what the City and the Airport will look like 10, 15, or 20 years from now.

Second, the annual rent is 15 cents per square foot, which will increase 3 cents every five years. To provide an example, a lessee renting 3,000 square feet for a hangar would pay \$37.50 per month, or \$450 per year. Airport Manager David Houston gathered rental rates from other airports in the area, which he summarized in an email that is in your packet.

Third, the Airport Board recommended that the rent for private hangars and SASO hangars be the same.

Fourth, the lease templates authorize the City to relocate lessees to a different location within the Airport, or to a new airport if the City decides to move the Airport. However, in either case, the City would be required to bear the cost of relocating the tenant improvements.

Dayton Hall

From: David Houston <contact@hurricaneairport.com>
Sent: Wednesday, August 10, 2022 2:33 PM
To: Dayton Hall
Subject: Lease rates

Dayton, I called four airports near Hurricane to get their lease rates:

Kanab: 25 cents per square foot
Cedar City: 30 cents per square foot for lot with utilities
 20 cents per square foot for unimproved ground
St. George: 25.5 cents per square foot at present
Mesquite: 40 cents per square foot - improved lot

Some tie their rates to the CP Index and others adjust them periodically. Only St George has a table that shows automatic increases every few years.

I guess we can review this with the airport board and see what everyone thinks.



HURRICANE CITY
UTAH

PRIVATE HANGAR LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

Effective Date: _____

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 _____ day of _____, _____, by and between Hurricane City, Utah, a Utah municipal corporation, (the "City") and _____, a _____, (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 _____ square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as _____ 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 including an aircraft hangar and fixtures as may be necessary for the Tenant's aviation related activities. Such 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 _____, (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
2058 – 2063	.33

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 on the Airport property, or to a new location at a new airport if the City elects to relocate the Airport, which would be comparable to Tenant's current leased Premises. City will pay the reasonable costs that Tenant actually incurs to relocate Tenant's Improvements and any movable property associated with Tenant's permitted uses under this Agreement, to this 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 or for a new 20 year term.

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.

G. Condemnation. In the event that the demised Premises are condemned by any proper authority, the term of this lease will end on the date that Tenant is required to surrender possession of the Premises. Tenant shall be entitled to that portion of the condemnation proceeds attributable to the fair market value of any Tenant Improvements placed on the Premises by Tenant.

6. Indemnification

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.

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

8. Assignment and Subleasing

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

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

9. Damage and Destruction. 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. Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary.

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. Disposition of Tenant Improvements. If this Agreement terminates before the expiration date or it expires at the expiration date, Tenant may either: (i) transfer its interests in the Tenant Improvements to a party who, prior to such expiration, has been accepted by City, and has entered an agreement for the Premises that is acceptable to City; (ii) surrender the Tenant Improvements to City if City has determined to accept the Tenant Improvements, with Tenant's rights, title, and interests in the Tenant's Improvements being deemed transferred to the City upon the City accepting the same; (iii) 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 this subsection (iii), City may do so in any manner acceptable to City pursuant to Section 10.B.

B. 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 with 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.

C. 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.

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

HURRICANE CITY

TENANT

Nanette Billings, Mayor

By: _____
Its: _____

Attest:

Cindy Beteag, City Recorder

Approved as to form:

Dayton Hall, City Attorney



HURRICANE CITY
UTAH

SASO OPERATING AND LEASE AGREEMENT

BETWEEN

HURRICANE CITY, UTAH

AND

Effective Date: _____

SASO OPERATING AND LEASE AGREEMENT

THIS SASO OPERATING AND LEASE AGREEMENT (which, as amended from time to time, is defined herein as the ("Agreement") is entered into as of the _____ day of _____, _____, by and between the Hurricane City, Utah, a Utah municipal corporation, (the "City") and _____, a _____, (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 is qualified to provide services as a single aeronautical service operator ("SASO") as set forth herein and desires to lease certain real property at the Airport for the purpose of operating a SASO concession on the terms 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 _____ square feet in size including five feet beyond the hangar pad on three sides excluding the front and located at the property identified as _____ 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 including an aircraft hangar and fixtures as may be necessary for the Tenant's aviation related activities. Such improvements must meet the Airport's Minimum Standards for Commercial Aeronautical Activities and Building Development Standards 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 non-exclusive operation of a SASO concession providing at a minimum the following services (as they may be more specifically required under the Airport's Minimum Standards for Commercial Aeronautical Activities): _____.

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 ("Aircraft").

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 (and grant of concession) 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 _____, (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 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	2058 – 2063	.33
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 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 the 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 except those activities authorized herein, 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 any 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 at a minimum during normal scheduled business hours. Tenant 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; Tenant shall promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport; Tenant shall not divert business to off-Airport locations or engage in discriminatory business practices; 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.

(ii) Concession Service Standard. Tenant's concession shall provide high quality services and facilities in a good and proper manner to effectively meet the needs of the public and City. The privilege to operate this concession shall exist only so long as the character of Tenant's facilities and services are consistent with such standard.

(iii) Complaints. Tenant shall respond in a prompt manner to questions and complaints regarding Tenant's operations when raised by Airport users or by City, and Tenant shall provide a timely resolution of such questions and complaints.

(iv) Emergencies. 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.

(v) Safety. Tenant shall maintain appropriate safety items at the Premises as may be required by the City, Local Fire Authority, or other governmental agency, and shall ensure that Tenant's personnel are properly trained in the use of such safety items.

(vi) 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.

(vii) 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 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 on the Airport property, or 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. City will pay the reasonable costs that Tenant actually incurs to relocate Tenant's Improvements and any movable property associated with Tenant's permitted uses under this Agreement, to this new location. City agrees to provide the Tenant with a new SASO Operating and 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.

G. Condemnation. In the event that the demised Premises are condemned by any proper authority, the term of this lease will end on the date that Tenant is required to surrender possession of the Premises. Tenant shall be entitled to that portion of the condemnation proceeds attributable to the fair market value of any Tenant Improvements placed on the Premises by Tenant.

6. Indemnification

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.

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 and Destruction. 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. Tenant shall follow City's policies and procedures regarding obtaining building permits as necessary.

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. Disposition of Tenant Improvements. If this Agreement terminates before the expiration date or it expires at the expiration date, Tenant may either: (i) transfer its interests in the Tenant Improvements to a party who, prior to such expiration, has been accepted by City, and has entered an agreement for the Premises that is acceptable to City; (ii) 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 City upon the City accepting the same; (iii) 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 this subsection (iii), City may do so in any manner acceptable to City pursuant to Section 10.B.

B. 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.

C. 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.

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

HURRICANE CITY

TENANT

Nanette Billings, Mayor

By: _____
Its: _____

Attest:

Cindy Beteag, City Recorder

Approved as to form:

Dayton Hall, City Attorney

**A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH, APPOINTING A
NEW TRUSTEE TO THE BOARDS OF GATEWAY AT SAND HOLLOW PUBLIC
INFRASTRUCTURE DISTRICT NOS. 1, 2, AND 3**

WHEREAS Gateway at Sand Hollow Public Infrastructure District Nos. 1, 2, and 3 (the “Districts”) are public infrastructure districts located within the boundaries of Hurricane City, which was the creating entity of the Districts; and

WHEREAS the City Council, as the legislative body of the City, is empowered by Utah Code Title 17B Chapter 1 (the “Local District Act”), Title 17D Chapter 4 (the “PID Act”), and the Governing Document of the Districts, to appoint trustees to the Districts’ Boards of Trustees; and

WHEREAS a seat on the Board of Trustees of each of the Districts has become vacant, and the seats have not yet transitioned to elected seats pursuant to the Governing Document, therefore a new trustee must be appointed to each vacant seat; and

WHEREAS the Governing Documents of the Districts require a vacated seat be filled pursuant to the Local District Act; however, as there are no residents within the boundaries of the Districts, a resident cannot be appointed; and

WHEREAS the PID Act, at Utah Code § 17D-4-202(3)(c), states that a non-resident may only serve as a board member if the person is an owner of land within the Districts, or an agent or officer of the owner of land, and must be a registered voter at that person’s primary residence; and

WHEREAS the owners of land within the Districts have appointed David Sterling, a resident of Leeds, Utah, as their agent to fill the vacant seats on the Boards of Trustees; and

WHEREAS Mr. Sterling is a registered voter at the place of his primary residence,

BE IT HEREBY RESOLVED by the City Council of Hurricane, Utah, as follows:

1. David Sterling, of Leeds, Utah, being the only person meeting the qualifications for appointment to the Boards of Trustees of the Districts as stated in Utah Code § 17D-4-202(3)(c), is hereby appointed to fill the vacant seat on the Board of Trustees of each of the Districts.

2. The seats filled by Mr. Sterling were originally held by Jason Curtis, who was appointed to each seat for an initial four-year term. Mr. Sterling will serve the remainder of the initial four-year terms, or until such earlier time as he is unable or unwilling to serve.

3. Mr. Sterling shall be required to maintain his status as a registered voter during the time of his service on the Boards.

BE IT FURTHER RESOLVED that this Resolution shall take effect at the earliest date allowed by law.

PASSED AND APPROVED this 3rd day of October, 2022.

Nanette Billings, Mayor

Attest:

Cindy Beteag, Recorder

The foregoing Resolution was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October, 2022. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

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

Cindy Beteag

**A RESOLUTION OF THE CITY COUNCIL OF HURRICANE, UTAH, APPOINTING A
NEW TRUSTEE TO THE BOARD OF CORAL JUNCTION PUBLIC
INFRASTRUCTURE DISTRICT**

WHEREAS the Coral Junction Public Infrastructure District (the “District”) is a public infrastructure district located within the boundaries of Hurricane City, which was the creating entity of the District; and

WHEREAS the City Council, as the legislative body of the City, is empowered by Utah Code Title 17B Chapter 1 (the “Local District Act”), Title 17D Chapter 4 (the “PID Act”), and the Governing Document of the District, to appoint trustees to the District’s Board of Trustees; and

WHEREAS a seat on the Board of Trustees has become vacant, and the seat has not yet transitioned to an elected seat pursuant to the Governing Document, therefore a new trustee must be appointed; and

WHEREAS the Governing Document of the District requires a vacated seat be filled pursuant to the Local District Act; however, as there are no residents within the boundaries of the District, a resident cannot be appointed; and

WHEREAS the PID Act, at Utah Code § 17D-4-202(3)(c), states that a non-resident may only serve as a board member if the person is an owner of land within the District, or an agent or officer of the owner of land, and must be a registered voter at that person’s primary residence; and

WHEREAS the owners of land within the District have appointed Dustin Sullivan, a resident of St. George, Utah, as their agent to fill the vacant seat on the Board of Trustees; and

WHEREAS Mr. Sullivan is a registered voter at the place of his primary residence,

BE IT HEREBY RESOLVED by the City Council of Hurricane, Utah, as follows:

1. Dustin Sullivan, of St. George, Utah, being the only person meeting the qualifications for appointment to the Board of Trustees of the District as stated in the PID Act, Utah Code § 17D-4-202(3)(c), is hereby appointed to fill the vacant seat on the Board.

2. The seat filled by Mr. Sullivan was originally held by Walter Hammon, who was appointed for an initial four-year term. Mr. Sullivan will serve the remainder of the initial four-year term, or until such earlier time as he is unable or unwilling to serve.

3. Mr. Sullivan shall be required to maintain his status as a registered voter during the time of his service on the Board.

BE IT FURTHER RESOLVED that this Resolution shall take effect at the earliest date allowed by law.

PASSED AND APPROVED this 3rd day of October, 2022.

Nanette Billings, Mayor

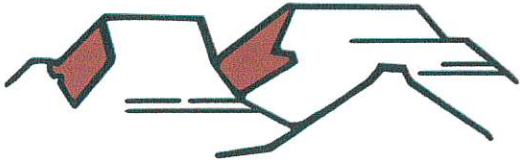
Attest:

Cindy Beteag, Recorder

The foregoing Resolution was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October, 2022. Whereupon a motion to adopt and approve said Resolution was made by _____ and seconded by _____. A roll call vote was then taken with the following results:

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

Cindy Beteag



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY PLAT APPLICATION

For office use only: \$150.00 Fee

File No. 2022-PP-19

Receipt No. 8-160720

Name: GAVIN GODFREY Telephone: (801) 671-4682

Address: 820 E CANYON BREEZE LANE 84020 Fax No. N/A

Email: GAVINGODFREY55@gmail.com Agent Email: LGODFREY7@gmail.com

Agent (If Applicable): LUKE GODFREY Telephone: (435) 229-4126

Address/Location of Subject Property: 2898 SOUTH 1100 WEST

Tax ID of Subject Property: H-3356-A, H-3356-B
H-3356-D, + H-3355-A Zone District: RA-1

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) RESIDENTIAL SUBDIVISION
WITH 20 LOTS

Submittal Requirements: The preliminary plat application shall provide the following:

- ☒ 1. Description: In a title block located in the lower right-hand corner of the sheet the following is required:
- ☒ a. The proposed name of the subdivision.
 - ☒ b. The location of the subdivision, including the address and section, township and range.
 - ☒ c. The names and addresses of the owner or subdivider, if other than the owner.
 - ☒ d. Date of preparation, and north point.
 - ☒ e. Scale shall be of sufficient size to adequately describe in legible form, all required conditions of Chapter 39, City Subdivision regulations.
- ☒ 2. Existing Conditions: The preliminary plat shall show:
- ☒ a. The location of the nearest monument.
 - ☒ b. The boundary of the proposed subdivision and the acreage included.
 - ☒ c. All property 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.)
 - ☒ d. The location, width, and names/numbers of all existing streets within two hundred (200) feet of the subdivision and of all prior streets or other public ways, utility rights of way, parks and other public open spaces, within and adjacent to the tract.
 - ☒ e. The location of all wells and springs or seeps, proposed, active and abandoned, and of all reservoir or ponds within the tract and at a distance of at least one hundred feet (100') beyond the tract boundaries.
 - ☒ f. Existing sewers, water mains, culverts, or other underground facilities within the tract, indicating the pipe sizes, grades, manholes and the exact locations.
 - ☒ g. Existing Hurricane Canal Company facilities; other ditches, canals, natural drainage channels and open waterways and any proposed realignments.
 - ☒ h. Contours at vertical intervals not greater than five (5) feet.

- ☒ i. 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 groundwater, and windblown sand) and recommendations for their mitigation.
- ☒ j. Information on whether property is located in desert tortoise take area
- ☒ 3. Proposed Plan: The subdivision plans shall show:
- ☒ a. The layout of streets, showing location, widths, and other dimensions of proposed streets, crosswalks, alleys, and easements.
- ☒ b. The layout, numbers, and typical dimensions of lots.
- ☒ c. Parcels of land intended to be dedicated or temporarily reserved for public use or set aside for use of property owners in the subdivision.
- ☒ d. Easements for water, sewers, drainage, utilities, lines and other purposes.
- ☒ e. Typical street cross sections and street grades where required by the Planning Commission. (All street grades over 5% should be noted on the preliminary plat)
- ☒ f. A tentative plan or method by which the subdivider proposes to handle the storm water drainage for the subdivision.
- ☒ g. Approximate radius of all center line curves on highways or streets.
- ☒ h. 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)
- ☒ i. In general, all remnants of lots below minimum size left over after subdividing of a larger tract must be added to adjacent lots, rather than allow to remain as unusable parcels.
- ☒ j. Where necessary, copies of any agreements with adjacent property owners relevant to the proposed subdivision shall be presented to the Planning Commission.
- ☒ k. A letter from both the local sanitary sewer provider and culinary water provider indicating availability of service.
- ☒ l. Will this subdivision be phased? If yes show possible phasing lines.
- ☒ m. A tentative plan or method for providing non-discriminatory access to the subdivision for purposes of placement of communications infrastructure, and for purposes of placement of utility infrastructure.
- ☒ 4. Required copies of plans:
- ☒ a. Three copies of all full-scale drawings
- ☒ b. One copy of each drawing on a 11 x 17-inch sheets. (8 1/2 x 11 is acceptable if the project is small and the plans are readable at that size).
- ☒ 5. Warranty deed or preliminary title report or another document (see attached Affidavit) showing evidence that the applicant has control of the property
- ☒ 6. Signed and notarized Acknowledgement Water Supply (see attached)

NOTE: It is important that all applicable information noted above is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. A deadline missed due to an incomplete application could result in a month's delay. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. The deadline to submit an application to be placed on an agenda is no later than 12:00 (noon) 20 full calendar days before the Planning Commission meeting at which you plan for your application to be heard.

(Office Use Only)

Date Received: _____ Application Complete: YES _____ NO _____

Date application deemed to be complete: _____ Completion determination made by: _____

AFFIDAVIT

Date Received: _____ Application Complete: YES ___ NO ___

Date application deemed to be complete: _____ Completion determination made by: _____

AFFIDAVIT

PROPERTY OWNER

STATE OF UTAH)
COUNTY OF Salt Lake)SS

I (we), Gavin Godfrey, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I have received written instructions regarding the process for which I am applying and the Hurricane City Planning staff have indicated they are available to assist me in making this application.

Gavin Godfrey
(Property Owner)

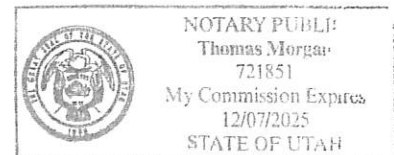
(Property Owner)

Subscribed and sworn to me this 21 day of July 2022

[Signature]
(Notary Public)

Residing in: Salt Lake

My Commission Expires: 12-07-2025



Agent Authorization

I (we), Gavin Godfrey, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Eric McFaden to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

(Property Owner)

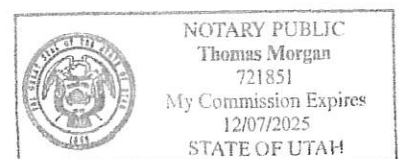
(Property Owner)

Subscribed and sworn to me this 21 day of July 2022

[Signature]
(Notary Public)

Residing in: Salt Lake

My Commission Expires: 12-07-2025



ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, Big R Investments LLC (Gavin Godfrey) am/are the applicant(s) of the application known as Fox Meadows Estates located on parcel(s) H-3356-B, H-3356-D, H-3356-A within the City of Hurricane, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

1. Neither acceptance nor approval of a development application by Hurricane City shall constitute a guarantee that sufficient water will be available to serve the zone designation, project, or permit for which this application is being submitted; and
2. Prior to receiving final approval for the application, the applicant may be required by Hurricane City to provide a guarantee of water availability which verifies that there is a sufficient water supply; and
3. For any application which may be approved without a guarantee of water availability, the applicant knowingly assumes the entire risk of water availability for the project and/or application; and
4. I/we waive any and all claims against Hurricane City that are in any way related to water availability for any project, permit, or use for which the land use application has been approved.

Dated this 21 day of July, 2022.

Applicant Name: Big R Investments

Name of Signer (if different from Applicant Name): Gavin Godfrey

Title of Signer: Owner

Signature: Gavin Godfrey

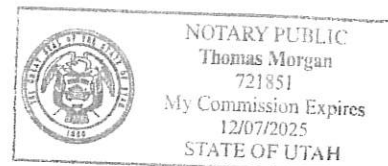
STATE OF Utah

COUNTY OF Salt Lake

On the 21st day of July, 2022, personally appeared before me _____, the signer of the above instrument, who duly acknowledged to me that he/she executed the same in the capacity indicated on behalf of the Applicant.

Notary Public: _____

My Commission Expires: 12-07-2025



AFFIDAVIT

PROPERTY OWNER

STATE OF UTAH)

COUNTY OF Washington

SS

I (we), David S. Eves, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I have received written instructions regarding the process for which I am applying and the Hurricane City Planning staff have indicated they are available to assist me in making this application.

David S. Eves

(Property Owner)

(Property Owner)

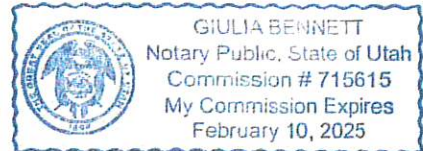
Subscribed and sworn to me this 18 day of July 2022

Giulia Bennett

(Notary Public)

Residing in: St. George, UT

My Commission Expires: 02-10-2025



Agent Authorization

I (we), David S. Eves, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Eric McFaden to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

David S. Eves

(Property Owner)

(Property Owner)

Subscribed and sworn to me this 18 day of July 2022

Giulia Bennett

(Notary Public)

Residing in: St. George, UT

My Commission Expires: 02-10-2025

ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, Hometown Holdings, LLC (David S. Eves) am/are the applicant(s) of the application known as FOX Meadows Estates PH2 located on parcel(s) H-3355-A within the City of Hurricane, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

1. Neither acceptance nor approval of a development application by Hurricane City shall constitute a guarantee that sufficient water will be available to serve the zone designation, project, or permit for which this application is being submitted; and
2. Prior to receiving final approval for the application, the applicant may be required by Hurricane City to provide a guarantee of water availability which verifies that there is a sufficient water supply; and
3. For any application which may be approved without a guarantee of water availability, the applicant knowingly assumes the entire risk of water availability for the project and/or application; and
4. I/we waive any and all claims against Hurricane City that are in any way related to water availability for any project, permit, or use for which the land use application has been approved.

Dated this 18 day of July, 2022.

Applicant Name: Hometown Holdings, LLC

Name of Signer (if different from Applicant Name): David S. Eves

Title of Signer: Owner

Signature: [Signature]

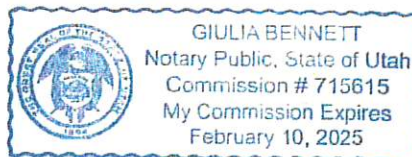
STATE OF Utah)

COUNTY OF Washington)

On the 18 day of July, 2022, personally appeared before me David S. Eves, the signer of the above instrument, who duly acknowledged to me that he/she executed the same in the capacity indicated on behalf of the Applicant.

Notary Public: [Signature]

My Commission Expires: 02-10-2025



All signatures to this Acknowledgment, other than for Applicants signing in an individual capacity, shall be accompanied by documentation acceptable to the City attesting to the fact that the signer hereof is authorized to execute the Acknowledgment on behalf of the Applicant (e.g. a copy of a corporate resolution, copy of a partnership agreement, etc.). (Ord. No. 2022-37, 6-16-2022)

PURPOSE

The preliminary plat application is the first step in land development process in those instances where land is divided for eventual sale. The process is established to ensure that all proposed divisions of land conform to the City General Plan and to adopted development standards of the Land Use Ordinance.

WHEN REQUIRED

The preliminary plat is required anytime land is to be divided, re-subdivided or proposed to be divided into two (2) or more lots, parcels, sites, units, plots or other division of land for the purpose, whether immediate or future, for offer, sale, lease or development either on installment plan or upon any and all other plans, terms and conditions. It is not required on agricultural divisions where the agricultural parcel is divided to be combined with another agricultural parcel, nor is it required when two un-subdivided properties are merged, or where the boundary between two un-subdivided properties are adjusted.

The preliminary plat must be approved before a final plat can be processed and recorded.

Subdivision approval process:

- Determine current zoning for property.
- If zoning fits desired subdivision, meet with Planning staff to discuss the proposed project.
- Obtain a preliminary plat application form and complete the application and have a plat prepared by an engineer to meet the requirements on the preliminary plat application.
- Submit completed application, preliminary plat, and required \$150 fee to Planning Department before noon on the Wednesday two weeks before desired Planning Commission meeting. (See submittal dates sheet)
- Appear at the scheduled Planning Commission meeting to discuss preliminary plat, hear comments, answer questions and receive recommendation of approval or disapproval from Planning Commission.
- Appear at the next scheduled City Council meeting that occurs after the Planning Commission meeting at which a recommendation was received. Hear City Council comments, answer questions, and receive City Council decision. City Council can approve the plat with conditions, recommend changes and send it back to the Planning Commission, or deny the plat.

If the preliminary plat is approved, have construction drawings for utilities and streets prepared by an engineer according to Hurricane City standards. Construction drawings must be approved by both the Hurricane Joint Utilities Committee and the Ash Creek Special Service District. Approval means changes are made and all required signatures are obtained.

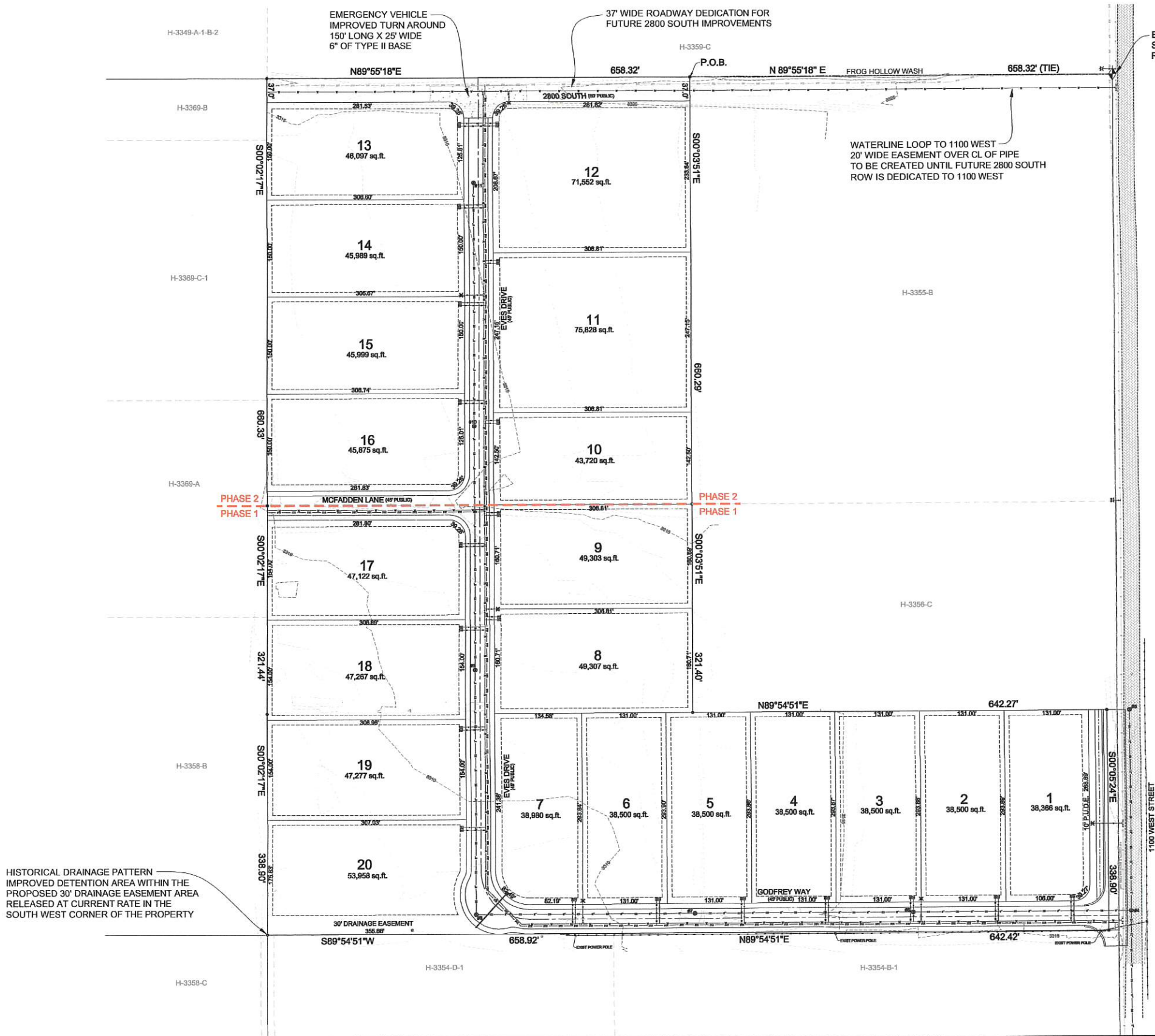
Once the preliminary plat is approved by the City Council, the applicant has one year after receiving approval of the preliminary plat to submit the final plat to the Planning Commission for action. The Planning Commission may authorize a one-year time extension, provided the extension request is made before the one-year time limit is reached. The Planning Commission will review and make recommendation to the City Council on the final plat when submitted. The City Council will typically review the Planning Commission recommendation within 1-2 weeks after the Commission action on the final plat.

APPEALS

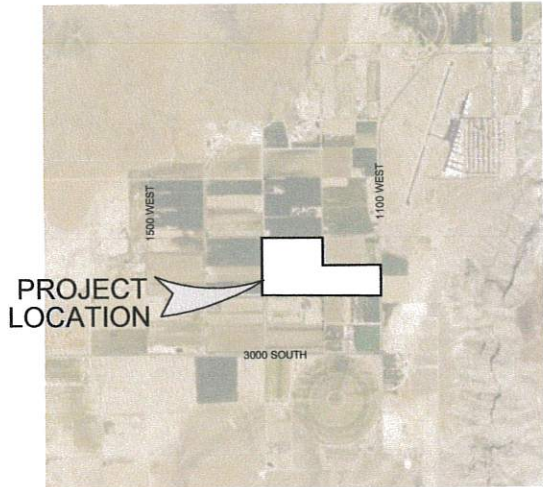
The Planning Commission makes a recommendation to the City Council, so there is no appeal. The City Council's action on a preliminary plat is final unless appealed to the appropriate court.

FOX MEADOWS ESTATES

20 LOT RESIDENTIAL SUBDIVISION
LOCATED IN SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 42, RANGE 13W SALT LAKE BASE & MERIDIAN



EAST QUARTER CORNER
SECTION 16, TOWNSHIP 42 SOUTH,
RANGE 13 WEST, SLB&M

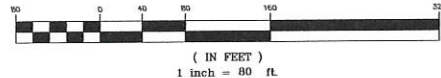


VICINITY MAP

N.T.S.



GRAPHIC SCALE



PROPERTY INFO

PROPOSED SUBDIVISION NAME = FOX MEADOWS ESTATES
PARCEL NUMBERS = H-3356-A, H-3356-B, H-3356-D & H-3355-A
APPROX 1100 W & 2800 SOUTH
HURRICANE, UTAH 84737
LOCATED IN SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 42, RANGE 13W
SALT LAKE BASE & MERIDIAN
PROPERTY ZONING = RA-1
PROPERTY AREA = 1,087,484 SQ.FT. = 24.965 ACRES

OWNER / DEVELOPER

GAVIN GODFREY
830 E CANYON BREEZE LANE
DRAPER, UTAH 84020
(801) 671-4682
GAVINGODFREY55@GMAIL.COM
DAVID EVES
683 SOUTH 990 WEST
HURRICANE, UTAH 84737
(435) 229-3401
DAVE_EVESKI@YAHOO.COM

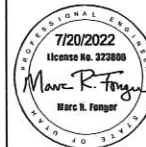
DATE: 3/14/2022
DRAWN BY: E.A.M.
CHECKED BY: M.R.F.
CLIENT: GG



SCALE: 1" = 80'

PRELIMINARY PLAT
FOX MEADOWS ESTATES
PARCELS # H-3346-A, H-3356-B, H-3356-D & H-3355-A
HURRICANE, UTAH 84737

PREMIER
Design & Engineering
75 EAST 100 NORTH WINS, UTAH 84738 (435) 393-2267

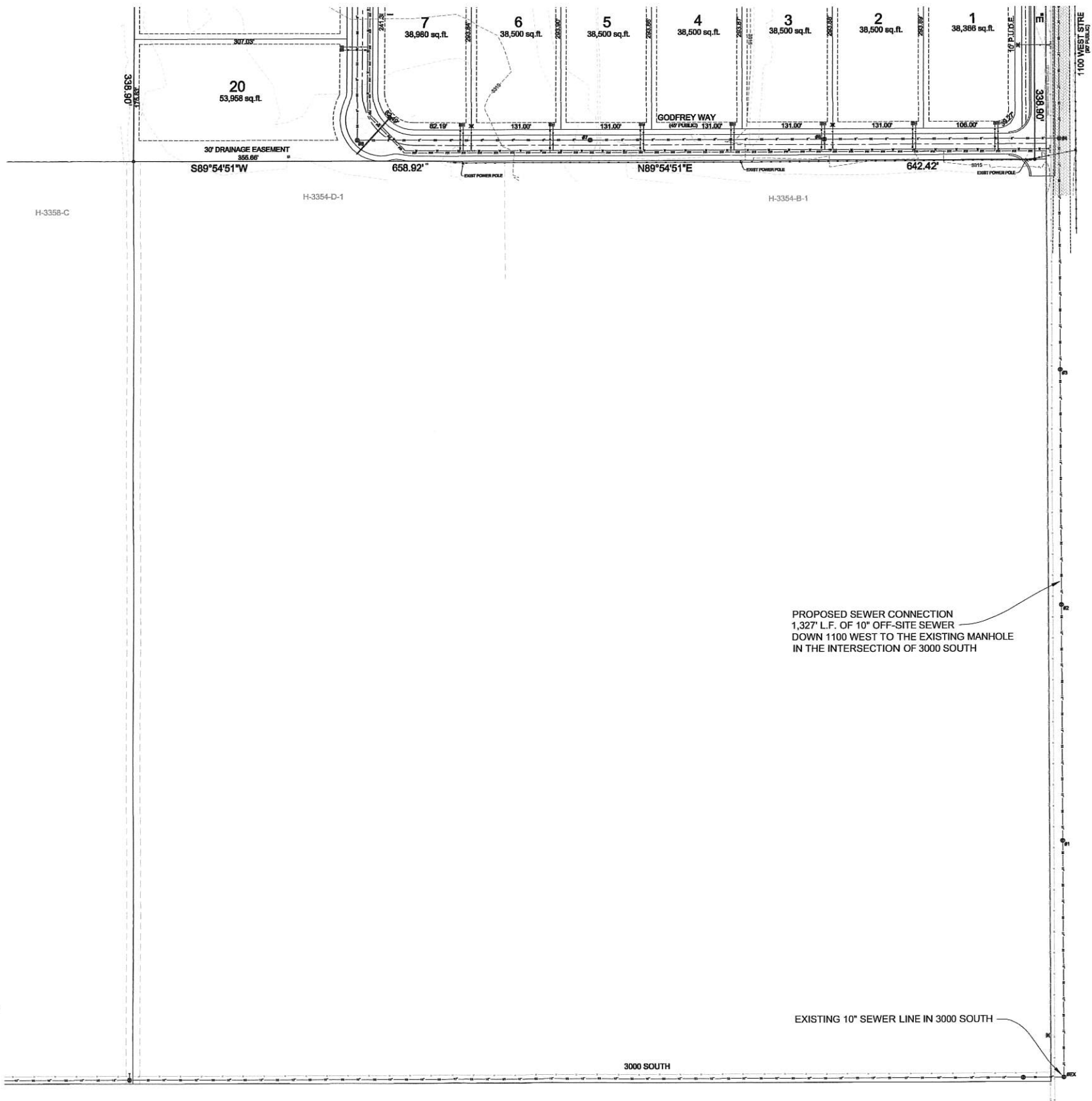


SHEET

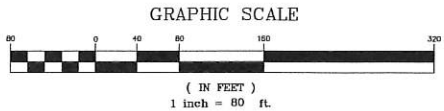
PP-1

FOX MEADOWS ESTATES

20 LOT RESIDENTIAL SUBDIVISION
LOCATED IN SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 42, RANGE 13W SALT LAKE BASE & MERIDIAN



AVOID CUTTING UNDERGROUND
UTILITY LINES. IT'S COSTLY.
Call
before you
Dig
1-800-662-4111
BLUE PRINTS LOCATION CENTER/UTAH



DATE: 3/14/2022
DRAWN BY: E.A.M.
CHECKED BY: M.R.F.
CLIENT: GG



SCALE: 1" = 80'

PRELIMINARY PLAT (OFF-SITE SEWER)
FOX MEADOWS ESTATES
PARCELS # H-3346-A, H-3356-B, H-3356-D & H-3355-A
HURRICANE, UTAH 84737

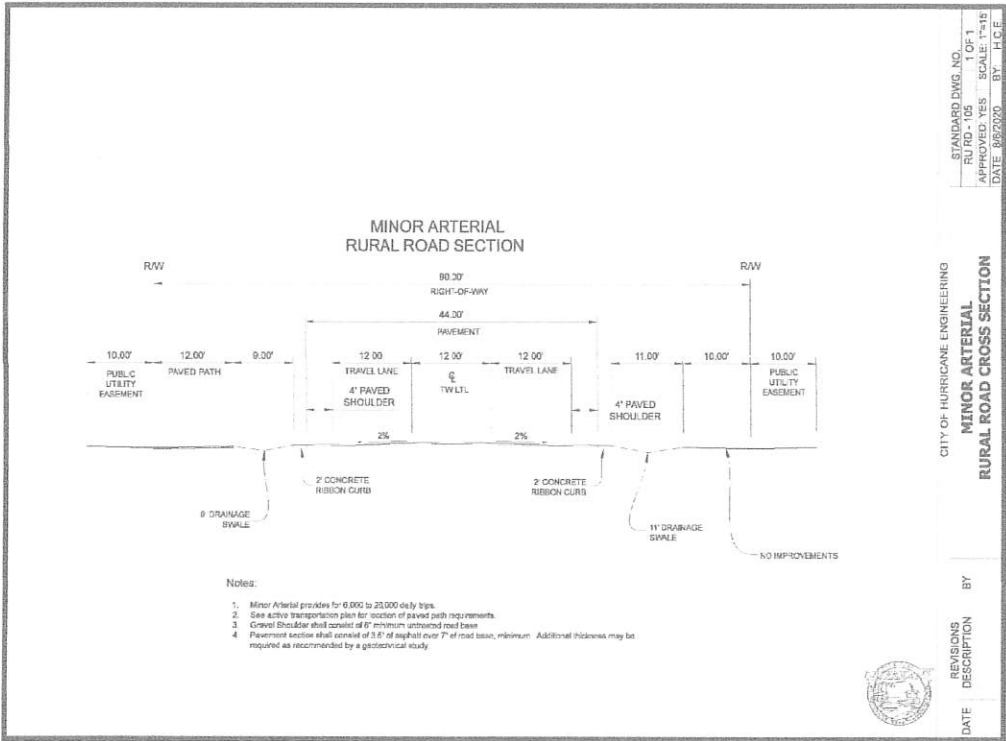
PREMIER
Design & Engineering
75 EAST 100 NORTH WINS, UTAH 84738 (435) 365-2267



SHEET
PP-2

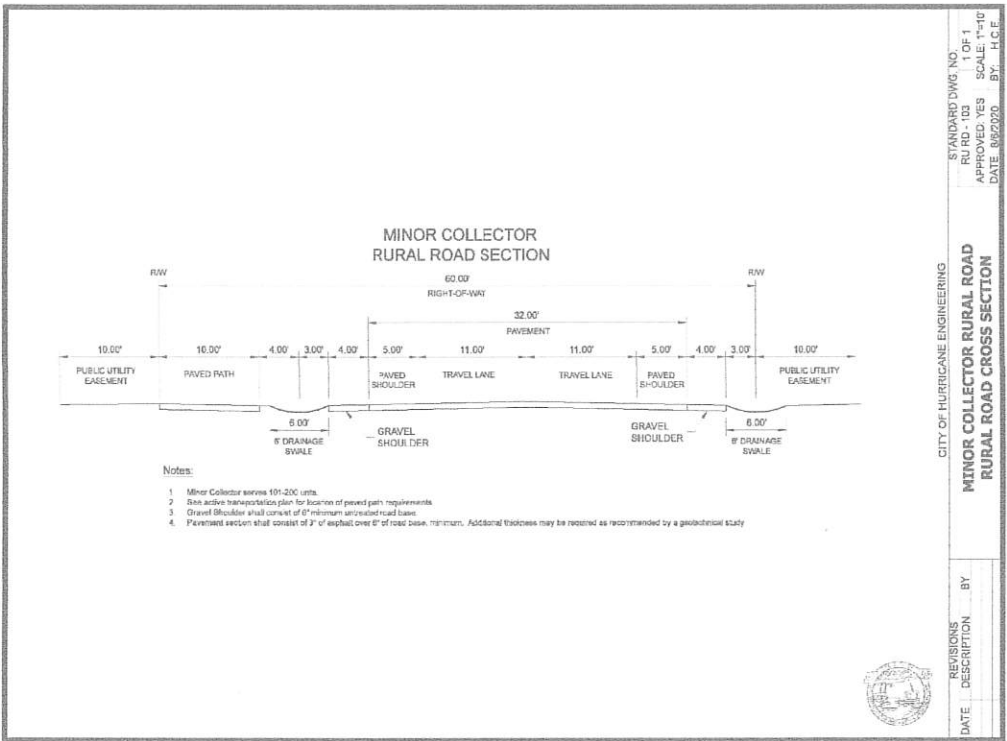
FOX MEADOWS ESTATES

20 LOT RESIDENTIAL SUBDIVISION
LOCATED IN SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 42, RANGE 13W SALT LAKE BASE & MERIDIAN



1100 WEST

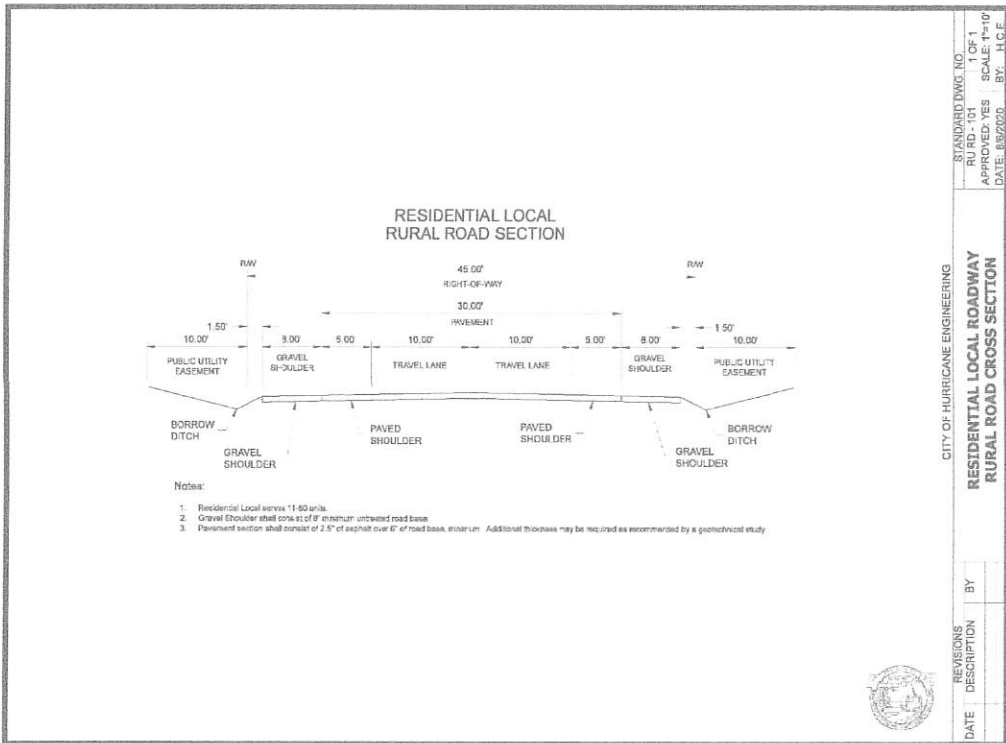
1/2 WIDTH IMPROVEMENTS ON THE WEST SIDE



2800 SOUTH

**NOTE: FUTURE MAXIMUM ROW WIDTH TO BE 67' (FEET)
TO INCLUDE MASTER PLANNED 12' WIDE TRAIL.

FOX MEADOWS ESTATES WILL DEDICATE 37' (FEET)
ALONG THE NORTH PROPERTY LINE FOR THE FUTURE
BUILDOUT OF 2800 SOUTH



ALL INTERIOR STREETS

FULL WIDTH IMPROVEMENTS ALL INTERIOR STREETS



PRELIMINARY PLAT (ROAD SECTIONS)
FOX MEADOWS ESTATES
PARCELS # H-3346-A, H-3356-B, H-3356-D & H-3355-A
HURRICANE, UTAH 84737

PREMIER
Design & Engineering
75 EAST 100 NORTH MINN. UTAH 84738 (435) 393-2267



SHEET
PP-3

Agenda Date:	10/03/2022
Application Number:	2022-PP-19
Type of Application:	Preliminary Plat Application
Action Type:	Administrative
Applicant:	Gavin Godfrey
Agent:	Luke Godfrey
Request:	Approval of a Preliminary Plat
Location:	2898 S 1100 W
Zoning:	RA-1
General Plan Map:	Agricultural

Planning Commission Recommendation

The Planning Commission recommended denial of the application based on the issues within this report, namely the proposed master plan roadway change, the wash improvements and proposed future location, the trails, wastewater handling, water looping, fencing, and issues of block lengths. All voted in favor of the motion.

It should also be noted, though not part of the Planning Commission discussion, there were some concerns expressed about the ability of providing serves to the area as reflected within the Power Department's comments.

The applicant has requested a work meeting with the City Council to review these items and come up with a plan to address them.

Update (9/16/2022): The applicant has updated the plat to help address the issues of the Frog Hollow Wash. Staff has attached an email sent to the Planning Department from the applicant that explains their motivation. Their argument is that it is very difficult and will require a large right-of-way dedication to accommodate the master plan road and the wash.

1. The new proposal does not align with the master plan roadway as shown on the transportation master plan. As staff met to discuss the new alignment there was general discussion about some real benefits about moving the roadway off the wash. However, there is also concern about moving a master plan roadway from the area, with no guarantee of future connections. Any major change of realignment would require a change in the Transportation Master Plan. Staff would recommend that an alternate master planned roadway be used in exchange for the future 2800 W.
2. The applicant is proposing to have the trail follow the wash. Planning staff generally like this idea,

because it allows the trail to be located away from roadways and still provide better connections.

3. Staff has received concerns from adjacent property owners. The wash, which currently sits within the boundary of the subdivision, is being proposed to be moved north to have the center of the wash placed on the property boundary, placing some of the improvements and impact on adjacent property owners, which at the time of this report have not consented to this plan or indicated that they will. Lacking consent from the adjacent property owners, the full wash improvements will need to fall completely within the subdivision boundary.
4. The proposal should have the road right-of-way reach to the trail, to ensure that residents within this development and others will have access to the trail.
5. City standards require water systems to be looped, which would require a water line to traverse the neighboring properties to connect to 1100 West. City standards also require that the water line be installed in a public right-of-way or designated drainage way, with adequate access for maintenance vehicles. The applicant would need to have the consent of adjacent property owners to create a water loop to meet City standards.

The comments below still apply to development, excluding the master plan roadway alignment.

Discussion: The applicant is proposing a 20 lot subdivision along 1100 W consisting of lots ranging from .88 acres to 1.74 acres. This is located north of 3000 S in the Bench Lake area near Frog Hollow Wash.

JUC Comments

Water: Need irrigation system with construction plans

Cable: Need internet fiber note attached to construction plans

Power: At this time, the City's power grid is inadequate to support all of the development planned in the area south of 2700 South Street. Although the Power Department has plans to expand and enhance its system to supply adequate power to this area, those plans are subject to funding limitations, the City's acquisition of easements and rights-of-way, the availability of materials, and other limitations.

Therefore, the Power Department cannot presently guarantee that it can provide power to all of the development planned in this area, which includes this proposed development.

Sewer: Extend sewer into future 2800 S. Stub and cap 2' stub 10" line

Public Works: Need water loop. No more than two hydrants out of water at any time

Engineering: Water loop must be constructed with phase 1 per city standards. Per standards, water lines shall be located in a dedicated road right-of-way. Construct this subdivision's portion of 2800 S and road base to 1100 W. Stub roadways to Iverson property. Remove unnecessary side and rear utility easements. Godfrey Way connection to 1100 W is too close to the existing driveway, preferring some arrangement to combine the driveways. Extend Godfrey Way to property lines. Suggest moving Mcfadden Lane northward to maximize block lengths.

Streets: Need to see drainage plan. Improvements needed on 1100 W

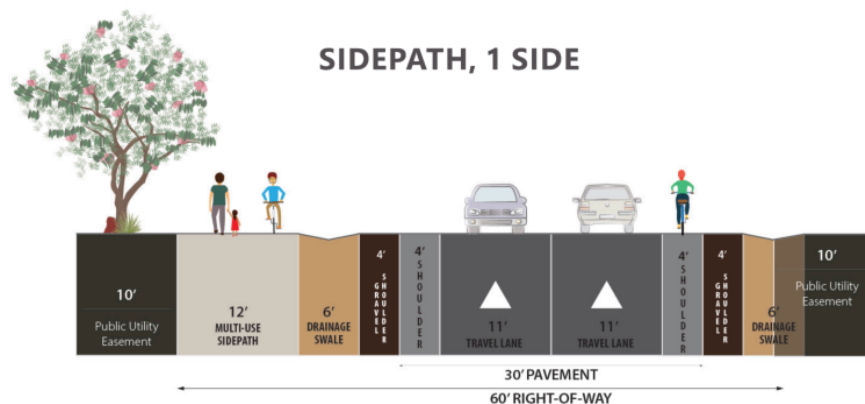
Fire: Dead end roads need turnarounds. hydrants must be spaced so no building is more than 250' from hydrant.



Staff Comments: Preliminary Plat

1. **Density:** The property is zoned RA-1 with 20 units on 25 acres for a density of .8 units per acre. All lots meet the development standards of the RA-1 zoning
2. 2800 S is a master planned 67' ROW with a side path on the south side. The applicant is

MINOR COLLECTOR // RURAL



proposing to dedicate 37' of 2800 S on their northern border.

3. The applicant is proposing Rural Road cross-sections. Staff finds that this application meets the requirements of HCC 7-2-2 (B)

4. The northern boundary of this plat is Frog Hollow Wash. Staff has met with the applicant to discuss strategies to mitigate any drainage concerns this development may have. A full drainage plan will be required with construction drawings. Per Hurricane City Code a fence or wall will be required along any supply irrigation ditch or canal.
 - a. Fencing will also be required along the property boundaries with any agricultural property owners, which is nearly all of them.
5. Block lengths: Per Hurricane Design Standards 3.2.4.2:

When designing local road networks, block lengths without an intervening connector street shall not exceed eight hundred feet (800') in length unless previous approval has been obtained from the City Engineer. Cul-de-sacs are not considered an intervening connecting street.

For the most part this proposed plat meets this standard, however it is not clear that McFadden Lane not connecting through to the property to the east does or does not count as an intervening street.
6. The plat does not show any connectivity to the property to the east and west. The southernmost roadway and the centermost roadway should continue across the property Hurricane City Code states:

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.*



Suggested connectivity roadways

7. A will serve letter from the sanitary and culinary water provider has not been provided at this time
8. A note indicating whether the plat is located in a desert tortoise take area has not been provided.
9. Adequate Public Facilities: Hurricane City Code includes the following ordinances addressing adequate public facilities:

Sec. 9-6-3. - Adequate public facilities required.

A. Land shall be developed only where public facilities are in place or will be timely provided to serve proposed development at a level of service which meets the City's adopted level of service standards. For each proposed development the City may require an analysis to be completed to determine whether adequate public facilities are available to service the development and whether the development will change existing levels of service or will create a demand which exceeds acceptable levels of service for any public facility, including roadways,

intersections, bridges, storm drainage facilities, water storage, water lines, water pressure, sewer lines, fire and emergency response times, and other similar public services.

B. A proposed development shall not be approved if demand for a public facility will exceed adopted level of service standards unless public facility improvements, reasonably calculated to raise service levels to adopted level of service standards, will be available to serve the development.

Sec. 10-37-4. - Adequate public facilities.

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.

Recommendation: Staff recommends the City Council review this application based on standards within Hurricane City Code. Staff recommends tabling or denying the preliminary plat for the reasons listed in the staff and JUC comments with the findings as listed below:

1. The applicant has not received a will serve letter.
2. The proposed preliminary plat does not include the required connectivity as explained in this report.
3. The proposal to change the Master Plan Roadway is currently not supported by the Transportation and Active Transportation Master Plan.
4. The improvements to the Frog Hollow Wash either need to be completely placed within the boundary of the development or an agreement and easement be secured allowing the wash to be placed at the proposed location.
5. The applicant has not secured a dedicated right-of-way or access through a designated drainage way, which are required to meet City standards for water looping.
6. The Power Department has indicated that, when factoring in the construction drawings already approved for development in this area of the City, the City's power grid is presently inadequate to support the proposed additional units. Although the City is working on a plan to increase power capacity in this area, adequate power is outside the control of the applicant. Staff would recommend the City Council discuss if they believe if "existing infrastructure is in place or will be timely provided to service proposed development".

Stephen Nelson

From: Eric Mcfadden <premier.design_eric@yahoo.com>
Sent: Tuesday, August 30, 2022 3:17 PM
To: Stephen Nelson; FRED HURRICANE CITY; Luke Godfrey; David Eves
Subject: Fox Meadows Estates Revised Layout
Attachments: FOX MEADOWS REVISED 8-30-22.pdf

Stephen,

Please see the attached updated layout for Fox Meadows Estates, we believe that this layout is the best solution for this unique situation we have out there.

This Layout would require the city to abandon the idea of 2800 South as the east west connection between 1100 & 1500 and instead use the east west road within this layout as the connection. (Labeled on this plan as "Godfrey Way"). This allows Frog Hollow wash & the master planned trail to be constructed properly & without significant impact to all the adjacent property owners. We also believe this would make a nicer trail without the traffic next to it.

We are willing to dedicate 37' for these improvements, which leaves only 17' required from the North property owner (Half of the Frog Hollow wash improvements, 5' of the wash bottom and 12' of slope area for the wash to tie back at 3:1 slope)

We are showing the dedication of 45' of Right of Way for "Godfrey Way" running from 1100 West to the West property line. This 45' will be constructed to full improvements as part of this subdivision, and if the property owner to the south decides to develop or the city deems necessary to make the right of way wider in the future the additional 15' can be acquired from them. Future roadway connections from the south property can be made along "Godfrey Way" at any given location that works best for their development design.

There is also another 45' roadway stubbed to the west named "Mcfadden Lane" on this layout, placed at the 800' block length.

This layout will also require the same culinary water connection to the east back over to 1100 W, which we had shown on the original layout, this line can be put under the new 12' multi-use path or in the space between the path and the top of the frog hollow wash side slope whichever the city desires. Any maintenance to this portion of the waterline in the future can be accessed from the end of the cul-de-sac & or along the alignment of the path.

I would also like to re-iterate from our meeting we had a few weeks ago, that we have not shown any connections to the Iverson property at their request.

Please look this over and discuss internally on which direction city staff would like to proceed, we really need an answer back by Friday Sept 2nd so that we can prepare an updated Preliminary Plat for the Planning Commission Meeting on Sept 8th.

Please feel free to call me at 435-313-2267 with any questions or to discuss.

Sincerely,

Eric
Premier Design & Engineering Inc.



Cindy Beteag

From: Aubrey Hall [REDACTED]
Sent: Saturday, October 01, 2022 9:29 AM
To: Council
Subject: Comments on Fox Meadows Estates

Dear City Council:

We are writing to provide some information on the Fox Meadows Estates preliminary plat application, which will be on your agenda on October 3rd. We own the eight acre parcel adjacent to and north of the proposed subdivision. There are two issues related to our ownership of which you should be aware.

Frog Hollow Wash:

The wash is located on the developers' property. The proposed plat submitted by the developers shows the wash being relocated 17 feet onto our property for the entire north boundary of the proposed subdivision. We have not consented or agreed to this encroachment, and we will not permit it. It is absurd and a little bit offensive that developers would assume--without permission--that a wash could be rerouted onto an adjacent property owner just to make a subdivision easier to build and more profitable.

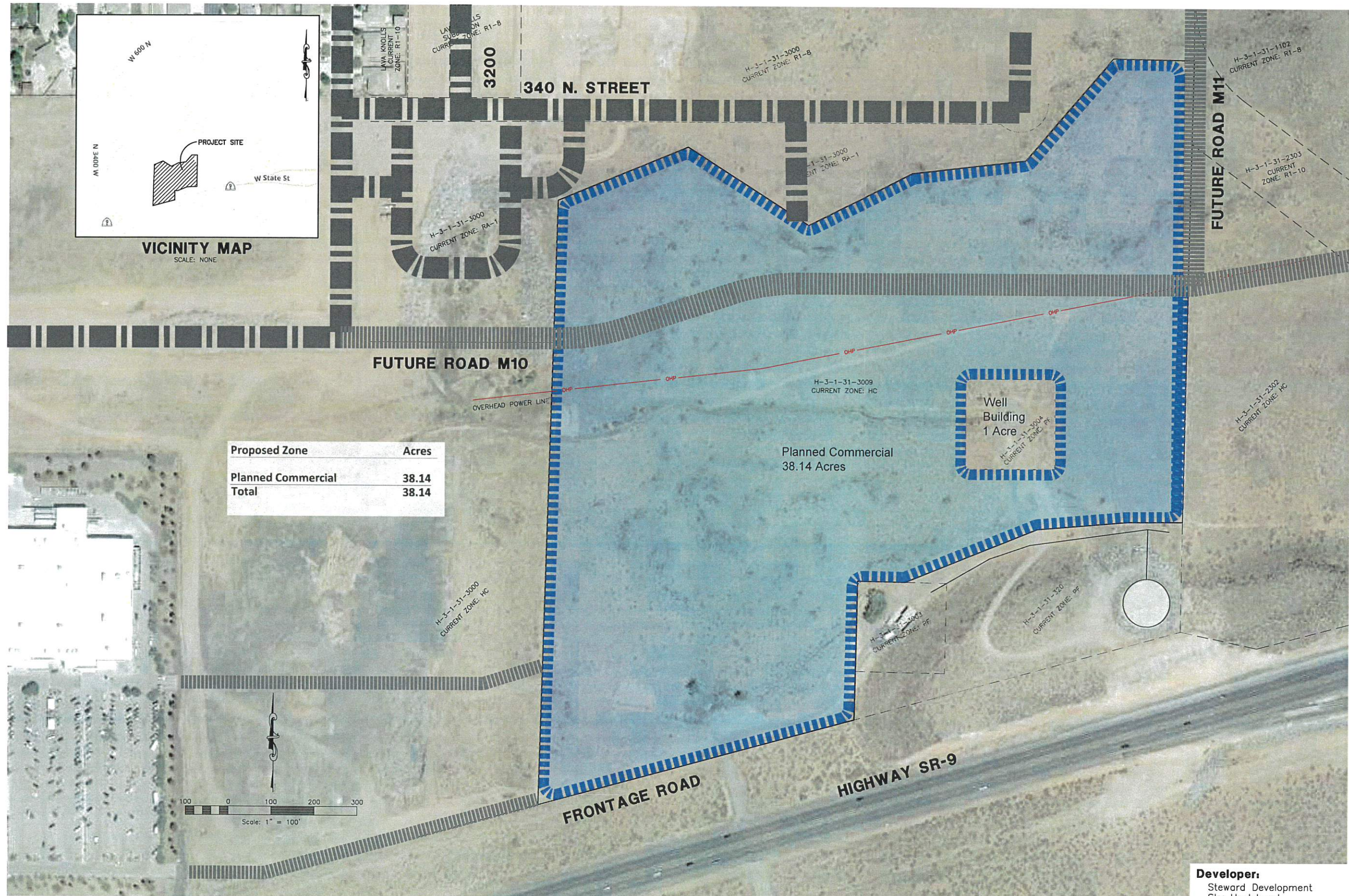
Water Line Loop:

Similarly, these developers seem to be assuming that they will run a water line through our property to complete a water loop that is required for a subdivision. There is no easement for such a water line, we have not consented or agreed to this encroachment, and we will not permit it.

Because the preliminary plat as proposed assumes these encroachments onto our property, and because we will not allow these encroachments to occur, we request that the preliminary plat be denied.

Sincerely,

Aubrey Hall & Dayton Hall



Proposed Zone	Acres
Planned Commercial	38.14
Total	38.14

Parcel H-3-1-31-3009

Washington County, Utah

REVISED
12:28 pm, Sep 09, 2022

Developer:
Steward Development
Sky Hazlehurst
1708 E. 5550 S.
South Ogden, UT. 84405
(801) 837-2020

Reeve & Associates, Inc.



REVISIONS	DESCRIPTION
DATE	

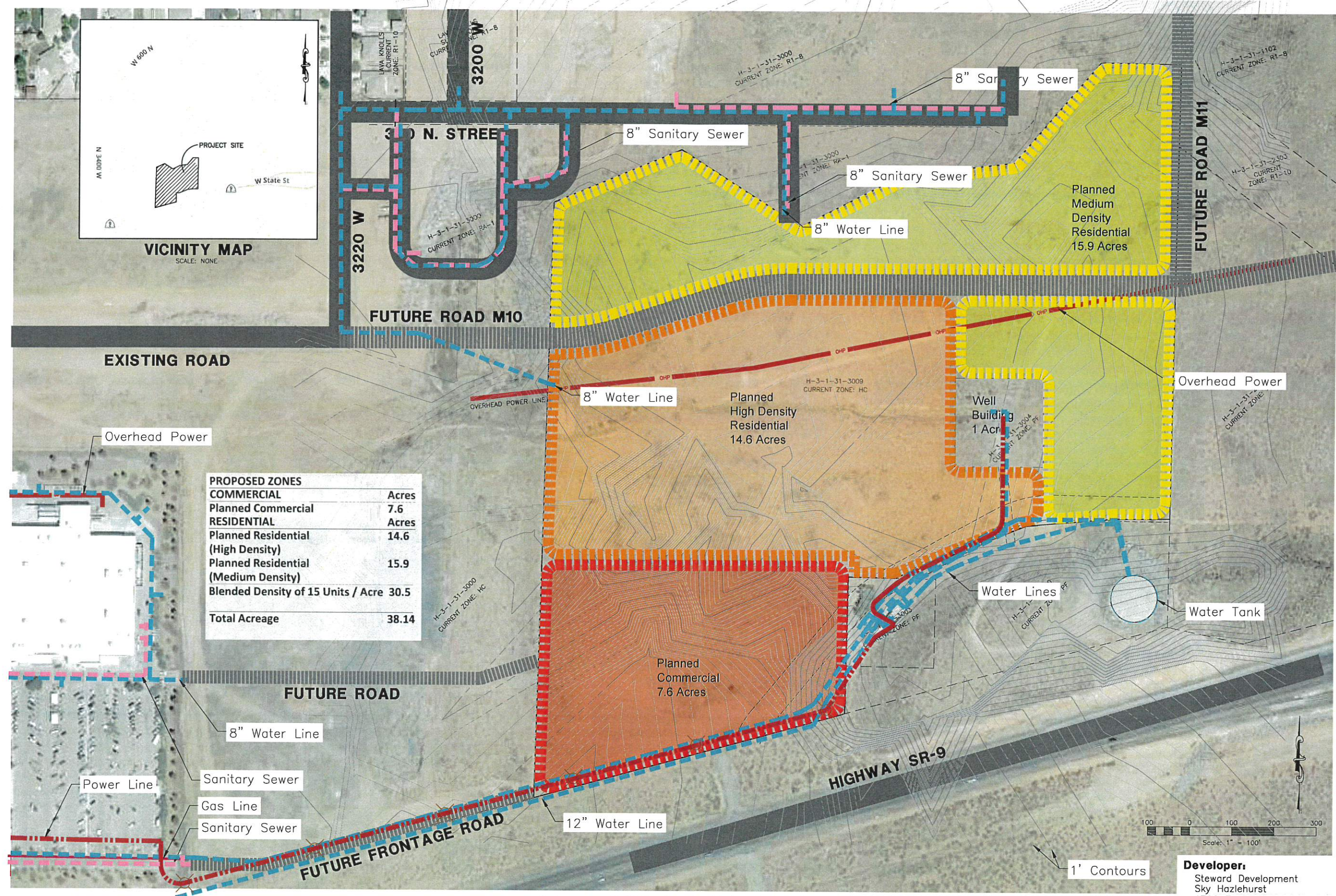
Parcel H-3-1-31-3009
PART OF THE SW 1/4 OF SECTION 31, T.41S., R.13W., S.1B & M., U.S. SURVEY
HURRICANE CITY, WASHINGTON COUNTY, UTAH

Proposed Zoning Exhibit

Project Info.	
Engineer:	N. Reeve
Planner:	C. Cave
Designer:	N. Peterson
Date:	8-25-22
Name:	
Number:	7152-26

Sheet	2
1	Sheets

Reeve & Associates, Inc. - Solutions You Can Build On



PROPOSED ZONES	
COMMERCIAL	Acres
Planned Commercial	7.6
RESIDENTIAL	Acres
Planned Residential	14.6
(High Density)	
Planned Residential	15.9
(Medium Density)	
Blended Density of 15 Units / Acre	30.5
Total Acreage	38.14

Parcel H-3-1-31-3009

Washington County, Utah

REVISED
12:28 pm, Sep 09, 2022

Developer:
Steward Development
Sky Hazlehurst
1708 E. 5550 S.
South Ogden, UT. 84405
(801) 837-2020

Reeve & Associates, Inc.

5160 SOUTH 1500 WEST, RIVERDALE, UTAH 84405
TEL: (801) 837-2100 FAX: (801) 837-2050 WWW.REEVE-ASSOCIATES.COM
TRAFFIC ENGINEERS • SURVEYORS • LAND SURVEYORS

REVISIONS	DESCRIPTION
DATE	

Parcel H-3-1-31-3009

PART OF THE SW 1/4 OF SECTION 31 T41S, R13W, S11B & M., U.S. SURVEY
HURRICANE CITY, WASHINGTON COUNTY, UTAH

Preliminary Site Plan

Project Info.	
Engineer:	N. Reeve
Planner:	C. Cove
Designer:	N. Peterson
Date:	8-25-22
Name:	
Number:	7152-26

Sheet	2
2	Sheets

THESE PLANS AND SPECIFICATIONS ARE THE PROPERTY OF REEVE & ASSOCIATES, INC., 5160 S. 1500 W., RIVERDALE, UTAH 84405, AND SHALL NOT BE PHOTOCOPIED, RE-DRAWN, OR USED ON ANY PROJECT OTHER THAN THE PROJECT SPECIFICALLY DESIGNED FOR, WITHOUT THEIR WRITTEN PERMISSION. THE OWNERS AND ENGINEERS OF REEVE & ASSOCIATES, INC. DISCLAIM ANY LIABILITY FOR ANY CHANGES OR MODIFICATIONS MADE TO THESE PLANS OR THE DESIGN THEREON WITHOUT THEIR CONSENT.



STAFF COMMENTS

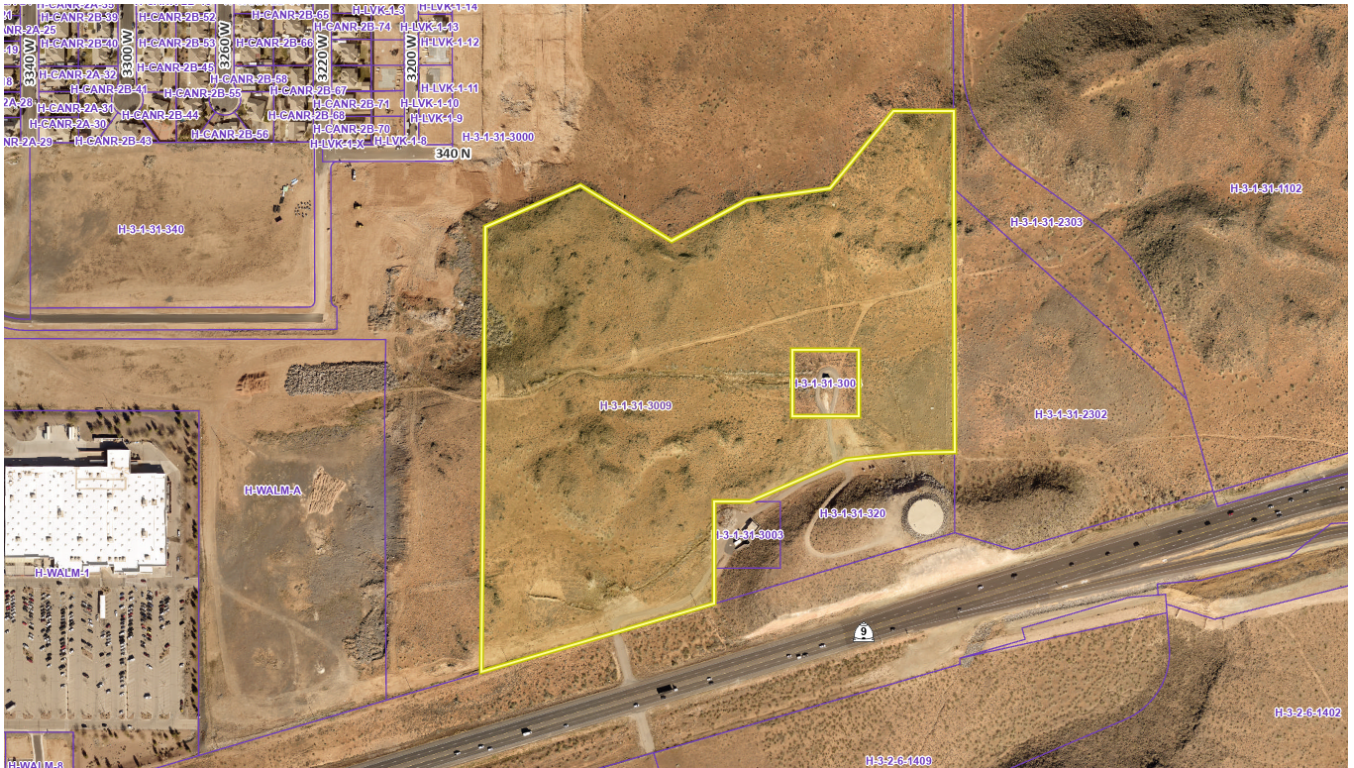
Agenda Date:	10/03/2022
Application Number:	2022-ZC-23 2022-PSP-41
Type of Application:	Zone Change and Preliminary Site Plan Application
Action Type:	Legislative
Applicant:	Steward Land Holdings
Agent:	Brad Brown
Request:	A Zone Change from Highway Commercial to Planned Commercial
Location:	3000 W State St
Zoning:	HC
General Plan Map:	Mixed Use, General Commercial and Single Family

Planning Commission Recommendation

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

Discussion: The applicant is seeking a zone change and preliminary site plan approval from Highway Commercial to Planned Commercial. The applicant is proposing a commercial center, high density residential, and medium density residential. This property is located on the north side of SR-9 to the east of Walmart. Hurricane City Water has two wells and a water tank in the vicinity of this property.

	Zoning	Adjacent Land Use
North	RM-1 PDO	Planned townhomes (Ridgeview townhomes)
East	HC, R1-10, R1-8	Undeveloped property
South	HC	SR-9 and undeveloped property
West	HC, RM-1	Planned townhomes and Walmart



Zone Change Factors:

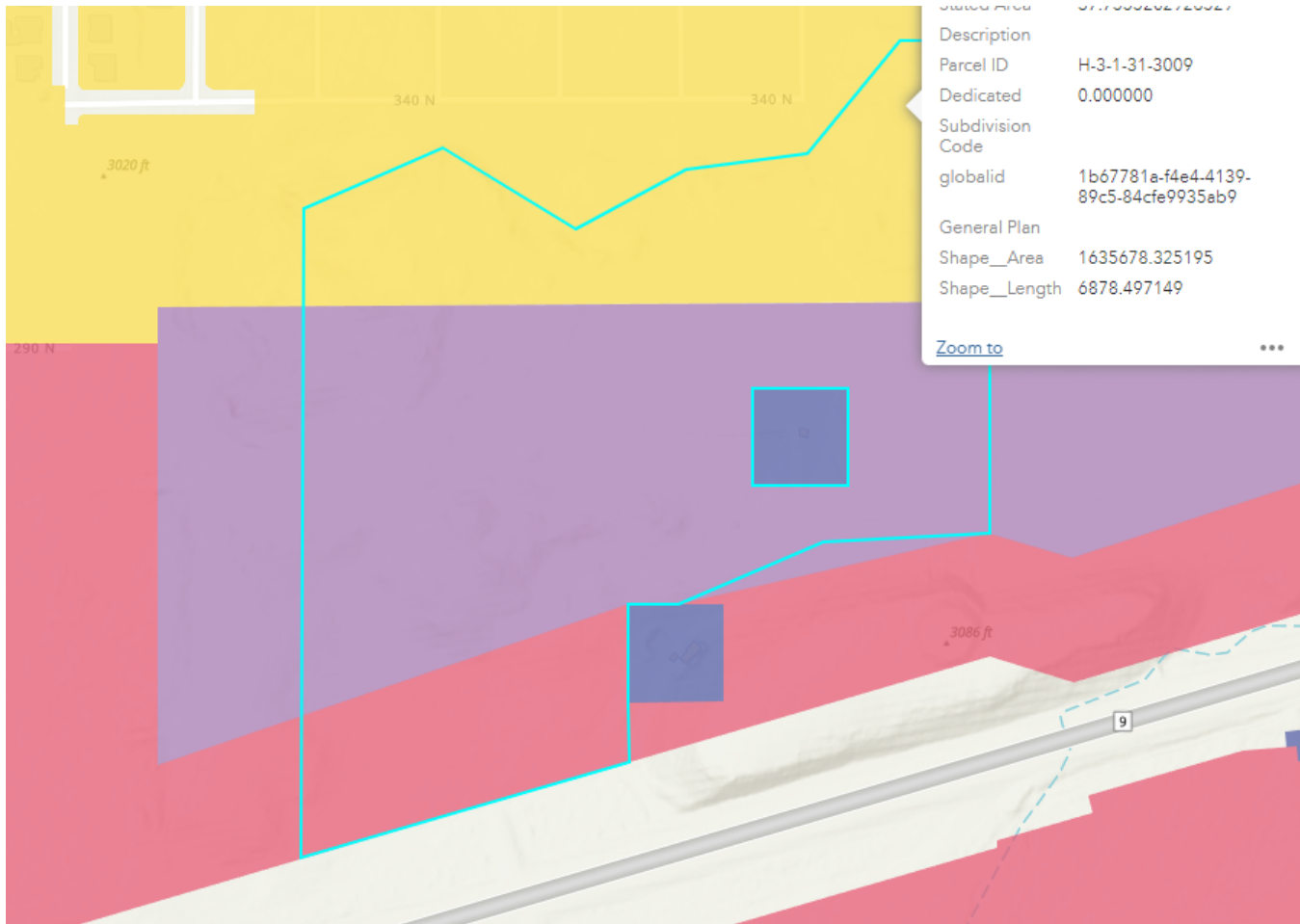
When considering a zone change the Planning Commission must consider the following:
As per Hurricane City Code 10-7-7:

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: This property has three designations on the General Plan Map



Hurricane City Future Land Use Map

GENERAL COMMERCIAL: Commercial uses that provide retail, employment and service uses for the City. These developments should be located along major corridors

MIXED USE: Mixed use areas should be developed as small districts or community centers offering a mix of retail, dining, entertainment, employment, and supporting residential. These developments should be easy and safe to navigate on foot and located in areas with access to major roads and surrounded with appropriate residential densities to support these uses.

SINGLE FAMILY: 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 applicant appears to have taken the General Plan into account in designing their plan by leaving in space a commercial area along the highway. Having more commercial and higher density residential in the middle area and medium density residential on the north end.

The General Plan also calls for “*Medium and high density residential developments should be planned near support facilities such as collector and arterial roads, schools, shopping, and employment centers. Medium and high density residential developments should be planned and designed to minimize impacts to nearby existing developments, while providing high-quality, attractive housing options*” It also calls for “*Support creating commercial spaces in population Centers in the City to provide services to those areas*” There are existing commercial uses in the area and planned schools and employment centers in the area

Overall staff believes this lines up with the spirit of the General Plan

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

Response: There are almost no developments currently in the vicinity. To the north is an approved townhome development that will provide road and utility access to this site and to further to the west is the Walmart development. This plan is largely harmonious with what is approved in the area.

3. Will the proposed amendment affect the adjacent property?

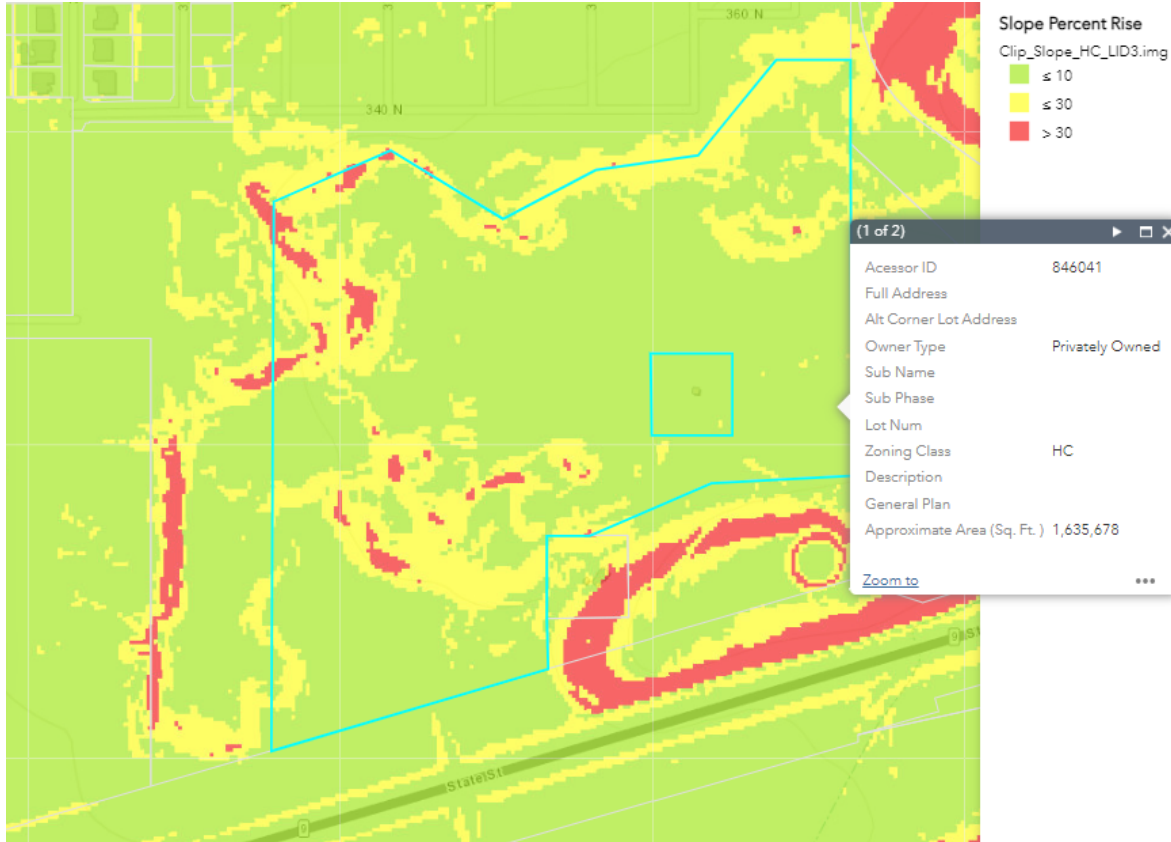
Response: Yes. Although the area is largely undeveloped currently. Commercial development in this area will be beneficial to the community.

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

Response: Public facilities and services are either planned to be brought to the property with the Villas at Lava Knolls development or are already at the property at the wells and water tanks. See JUC comments below.

Other Considerations:

This property is currently zoned Highway Commercial in an area of town where there is existing commercial development. The City in the past has expressed hesitation about commercial property being changed to residential when the City will eventually need more commercial space. However, there are several factors that may hinder commercial development on this property: the largest is poor access and visuals from SR-9. UDOT has declared that SR-9 will be a limited access corridor and no new intersections will be made west of the SR-7 interchange and all current stoplights will be turned into interchanges eventually. All access to this property will come from 290 N and eventually through the Walmart parking lot. There is also a large hill that the water tank is on that blocks visual of most of the property from SR-9 and steep topography throughout the property (shown below). Commercial developments are largely reliant on supporting residential uses. Staff believes that this plan will generate a better product on the commercial space being provided within the plan.



JUC Comments

The following items will need to be addressed:

1. **Public Works:** Account for well protection zone.
2. **Sewer:** Possible manhole connection to 10" sewer line on the southeast corner of the Walmart property.
3. **Water:** Full water model and information about streets required.
4. **Fire:** No comments
5. **Engineering:** The Villas at Lava Knolls has planned subs to this property. Contact Interstate Rock to coordinate connections to roadways and utilities. Future Road M11 is a planned 84' ROW (77' probable) 12' trail on both sides or on the east side only. connects up to 3000 W and Sky Valley. The Active Transportation Master Plan indicates the trail goes all the way through to State St, may not be feasible with the hill. It appears water has been discharged from the production well site and the pump station site. Is the practice necessary and must it continue? Coordination with Hurricane City Water needed. It appears an existing easement does not cover all existing water lines. A frontage road will need to be on private property. A 30" storm drain pipe is shown along the southern property line on sheet 35 of the Hurricane Storm Drain Master Plan. Please account for this in the drainage study. Future Road M10 is a planned 77' ROW, 12' trail on the south side. Stubs from Villas at Lava Knolls will follow a slightly different alignment than what's on the plan.
6. **Streets:** No comments
7. **Power:** Upgrade existing powerline and put power underground. Rocky Mountain power easement crosses the middle of this property

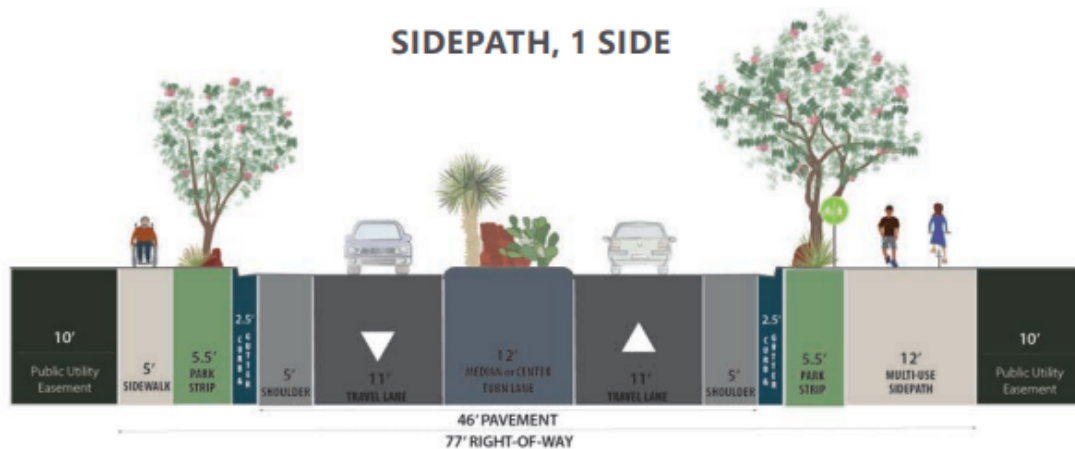
10/03/2022

2022-ZC-23
2022-PSP-41

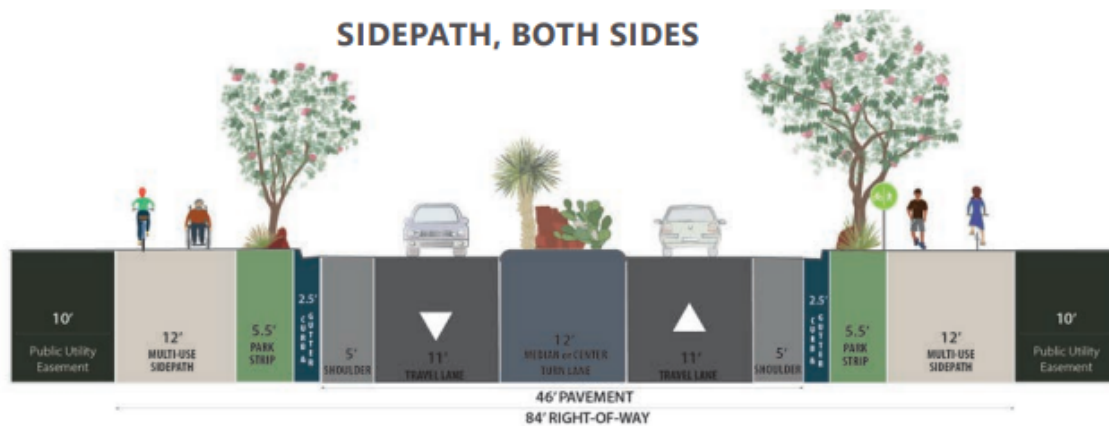
8. **Phone:** No comment

Staff Comments: Preliminary Site Plan

1. The newly passed Planned Commercial ordinance caps residential density at 15 units an acre unless 40% of the area is commercial or 10% of the units are affordable housing, in which case they can get a density bonus of up to 20 units per acre. The site plan indicates that the overall density in the residential area will not exceed 15 units an acre. The maximum number of units that could be developed in this property is 457 units. These units are proposed to clustered adjacent to the commercial use and have less density north of master plan roadway.
 - a. 20% of the property is designated for future commercial use
 - b. Staff would prefer a more detailed site plan that shows what densities are going in which area. The applicant has indicated about placing higher density south of the roadway and less density and the north side of the roadway. This clustering and movement of density can be allowed, but will need to be closely monitored to ensure the residential density does not exceed 15 units an acre total.
 - c. More detailed site plans will be required for each phase at the preliminary plat phase.
2. Appropriate well protection zones will be needed for the two wells onsite
3. Planned Commercial allows for buildings to be 55' tall. This would likely allow for four story buildings.
4. The two roads depicted connecting this site to Walmart do not currently exist and are conceptual. There are no development plans submitted on the property in between this one and Walmart. These are logical placements for roadways however.
5. Future Road M10 on the site plan (290 Nish) is a planned 77' ROW with a sidepath on the south side



6. Future Road M11 on the site plan (3000 W) is a planned 84' ROW with a sidepath on both sides



7. There are some steep slopes on the property that will need to be accounted for in the design. Sensitive lands applications will most likely be needed at the preliminary plat stage

Hurricane City slope map

Findings:

Staff makes the following findings:

1. The proposed zone change broadly meets the standards of the General Plan Map and goals
2. The proposed zone change is generally harmonious with the approved surrounding development
3. The proposed amendment will have an impact on the area, but there is no development currently in the area.
4. Services are adequate or planned to become adequate for the area.
5. A preliminary site plan has been provided that shows how this property could be developed

Recommendation: Staff recommends the City Council review this application based on standards with Hurricane City Code. Staff is generally supportive of this plan and would recommend approval subject to the four considerations and staff and JUC comments.



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

ZONE CHANGE APPLICATION

For office use only: \$500.00 Fee
File No. 2622-2C-33
Receipt No. 7.699889

Name: Steward Land Holdings, Brad Brown Telephone: (801) 590-0980

Address: 1708 E 5550 S Ogden, UT 84403 Fax No. _____

Email: Brad@StewardLand.com Agent Email: _____

Agent (If Applicable): _____ Telephone: _____

Address/Location of Subject Property: 3000 w State Street, Hurricane, UT, 84737

Tax ID of Subject Property: H-3-1-31-3004 Existing Zone District: Highway Commercial (HC)

Proposed Zoning District and reason for the request (Describe, use extra sheet if necessary) Planned Commercial (PC)

The purpose for the requested zone change is to be able to do a mixed-use development more in line with the General Plan.

Submittal Requirements: The zone change application shall provide the following:

- ____a. The name and address of every person or company the applicant represents.
- ____b. An accurate 11 x 17-inch property map showing the existing and proposed zoning classifications.
- ____c. All abutting properties showing present zoning classifications.
- ____d. An accurate legal description of the property to be rezoned.
- ____e. Stamped envelopes with the names and addresses of all property owners within 250 feet of the boundaries of the property proposed for rezoning.
- ____f. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property

Note: It is important that all applicable information noted above along with the fee is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed or an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Application Complete: YES ____ NO ____

Date application deemed to be complete: _____ Completion determination made by: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

:SS

COUNTY OF SLC

I (we), Mitchell J. Olsen being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I have received written instructions regarding the process for which I am applying and the Hurricane City Planning staff have indicated they are available to assist me in making this application.

Mitchell J. Olsen
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 31 day of August 2022

Kristal Stephensen
(Notary Public)



Residing In: Salt Lake County

My Commission Expires: 2/3/2023

Agent Authorization

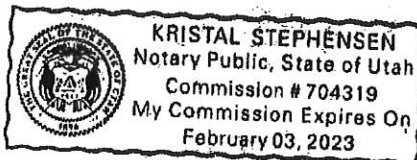
I (we), Mitchell J. Olsen the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Steward Land Holdings, LLC to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

Mitchell J. Olsen
(Property Owner)

(Property Owner)

Subscribed and sworn to me this 15 day of September 2022

Kristal Stephensen
(Notary Public)



Residing In: Salt Lake County

My Commission Expires: 2/3/2023

ZONE CHANGE APPLICATION (General Information)

PURPOSE

All lands within the City are zoned for a specific type of land use (single family residential, multi-family, commercial, industrial, etc). Zoning occurs as a means to provide for a relationship between various types of land uses which promotes the health, safety, welfare, order, economics, and aesthetics of the community. Zoning is one of the main tools used to implement the City's General Plan.

WHEN REQUIRED

A zone change request is required any time a property owner desires to make a significant change to the use of his/her land. The change may be from one zone density (say 1 acre lots) to smaller lots (10,000 square foot lots). Or, it may be to an entirely different type of use, such as a change from single family zoning to multiple family or commercial zoning. Since the zone applied to your land limits what you can do, a rezoning application is typically the first step toward a change.

REQUIRED CONSIDERATIONS TO APPROVE A ZONE CHANGE

When approving a zone change the following factors should be considered by the Planning Commission and City Council:

1. Whether the proposed amendment is consistent with the 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, storm water drainage systems, water supplies, and wastewater and refuse collection.

PROCESS

Contact the Planning Department for when the deadline for submission is. After it is deemed complete, staff will review the request, and prepare a report and recommendation for the Planning Commission. This will be reviewed at a public hearing where the applicant should attend, present the project, and respond to questions from the Planning Commission. Since it is a public hearing, members of the public may also have questions or comments. At the public hearing the Planning Commission will review the application and staff's report and forward a recommendation to the City Council of approval, approval with modifications, or denial the zone change application.

Upon receipt of the Planning Commission recommendation, typically 1-2 weeks after the Planning Commission action, the City Council will consider and act on the Commission's recommendation. The action of the City Council is final. If denied, a similar application generally cannot be heard for a year.

Hurricane City Utah Zone Change Application

Approx. 3000 w State Street, Hurricane, UT, 84737

Tax ID: H-3-1-31-3004

Rezone from Highway Commercial (HC) to Planned Commercial (PC)

The name and address of every person or company the applicant represents:

Property Owner:

Mitchell J. Olsen

8142 South State Street

Salt Lake City, UT 84047

Applicant/Agent:

Steward Land Holdings LLC, Brad Brown

1708 E 5550 S Ste 18

Ogden, UT 84403

From: [Fred Resch](#)
To: [Kris Attento](#)
Cc: [Brienna Spencer](#)
Subject: RE: Zone Change application question
Date: Wednesday, August 24, 2022 1:55:44 PM
Attachments: [image001.png](#)

Kris,

Since the mailing list for this zone change is so small the City is willing to accept the application without the envelopes. We will send the letters ourselves. Once we get the application our planning technician will contact you for payment options

Fred Resch III
Assistant City Planner/Code Enforcement
Hurricane City
P: (435) 635-2811 x 110
E: fred@cityofhurricane.com



PLANNING & ZONING
HURRICANE CITY
UTAH

From: Kris Attento <Kris@stewardland.com>
Sent: Wednesday, August 24, 2022 1:04 PM
To: Fred Resch <fred@cityofhurricane.com>
Cc: Kris Attento <Kris@stewardland.com>
Subject: Zone Change application question

Hi. I'm working with Brad Brown on a Zone Change Application that he'll be submitting soon – I wanted to ask about requirement "E" on the application – stamped envelopes for all owners within 250 feet of the property.... I've been emailing the recorder's office and got directions to use their interactive map to get the mailing list of those property owners however, I believe we'd hoped to submit this application all via email since we are in Ogden. Obviously, I cannot send you via email a stamped envelope – is this something that your office can or will do for an additional fee?

This is in regard to parcel [H-3-1-31-3009](#) – the list of property owners within 250 feet is very small. I just want to make sure we're prepared when Brad is ready to submit this.

Any help you can provide is much appreciated!
Thank you!

Kris Attento Executive Assistant

1708 E. 5550 S. STE 18 Ogden, UT 84403

P: 801.590.0980 M: 801.698.1337

StewardLand.com

HURRICANE CITY
H-3-1-31-3003
147 N 870 W
HURRICANE, UT 84737

STRATTON BROTHERS LLC
H-3-1-31-3000
42 S 850 W
HURRICANE, UT 84737

HURRICANE CITY
H-3-1-31-320
147 N 870 W
HURRICANE, UT 84737-1671

FRIENDSHIP LLC, ET AL
H-3-1-31-2303
PO BOX 460
SANTA CLARA, UT 84765

FRIENDSHIP LLC, ET AL
H-3-1-31-2302
PO BOX 460
SANTA CLARA, UT 84765

OLSON ERNEST P
H-3-1-31-1102
220 LIVE OAK HILLS CT
SAN MARCOS, TX 78666

HURRICANE CITY
H-3-1-31-3004
147 N 870 W
HURRICANE, UT 84737

OLSEN MITCHELL J
H-3-1-31-3009
2463 E BARCELONA DR
SANDY, UT 84093-1148



Legend
Land Parcels

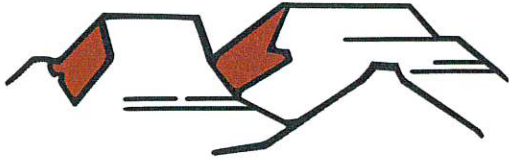
Ownership
U.S. Forest Service
U.S. Forest Service Wilderness
Bureau of Land Management
Bureau of Land Management Wild
National Park Service
Shoshone Reservation
Utah Division of Wildlife Resources
Utah Division of Transportation
State Park
State of Utah
Washington County
Municipality Owned
School District
Privately Owned
Water
Water Conservancy District
State Assessed Oil and Gas
Mining Claim

Notes

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.

1,504.7	0	752.33	1,504.7 Feet
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WGS_1984_Web_Mercator_Auxiliary_Sphere



PLANNING & ZONING
HURRICANE CITY
UTAH

147 N 870 W Hurricane UT
PHONE: 435.635.2811 FAX: 435.635.2184

PRELIMINARY SITE PLAN APPLICATION

For office use only: \$200.00 Fee

File No. 2022-PSP-41

Receipt No. 8-161797

Name: Steward Land Holdings, Brad Brown Telephone: 801-590-0980

Address: 1708 E. 5550 S., Ste 18, Ogden, UT 84403 Fax No. _____

Email: brad@StewardLand.com Agent Email: _____

Agent (If Applicable): _____ Telephone: _____

Address/Location of Subject Property: 3000 W State Street, Hurricane, UT 84737

Tax ID of Subject Property: H-3-1-31-3004 Zone District: _____

Proposed Use: (Describe, use extra sheet if necessary. Include total number of lots) _____

This application shall be accompanied by the following:

- ☐ 1. A vicinity map showing the general location of the project.
- ☐ 2. Three (3) copies of a site plan showing:
 - ☐ Topography showing 2' contours, identification of 30% or greater slopes;
 - ☐ The layout of proposed uses.
 - ☐ Location of open space when applicable.
 - ☐ Proposed access to the property and traffic circulation patterns.
 - ☐ Adjoining properties and uses;
 - ☐ Proposed reservations for parks, playgrounds, school, and any other public facility sites, if any.
- ☐ 3. Preliminary utility plan, including water, sewer, and storm drainage plans, and including access points to utilities.
- ☐ 4. Tables showing the number of acres in the proposed development and a land use summary; and
- ☐ 5. A phased development plan if applicable.
- ☒ 6. Warranty deed or preliminary title report or other document (see attached Affidavit) showing evidence that the applicant has control of the property
- ☒ 7. Signed and notarized Acknowledgment Water Supply (see attached)

NOTE: It is important that all applicable information noted above is submitted with the application. An incomplete application will not be scheduled for Planning Commission consideration. Planning Commission meetings are held on the second Thursday and the fourth Wednesday of each month at 6:00 p.m. Contact the Planning Department for the deadline date for submissions. Once your application is deemed complete, it will be put on the agenda for the next Planning Commission meeting. A deadline missed due to an incomplete application could result in a month's delay.

(Office Use Only)

Date Received: _____ Received by: _____

Date application deemed to be complete: _____ Completion determination made by: _____

AFFIDAVIT
PROPERTY OWNER

STATE OF UTAH)

:SS

COUNTY OF Salt Lake

I (we), Mitchell J Olsen, being duly sworn, depose and say that I (we) am (are) the owner(s) of the property identified in the attached application and that the statements herein contained and the information provided identified in the attached plans and other exhibits are in all respects true and correct to the best of my (our) knowledge. I (we) also acknowledge that I have received written instructions regarding the process for which I am applying and the Hurricane City Planning staff have indicated they are available to assist me in making this application.

Mitchell J. Olsen
(Property Owner)

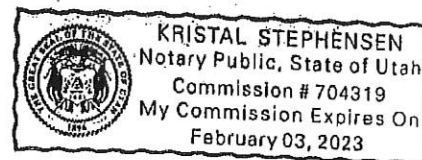
(Property Owner)

Subscribed and sworn to me this 6th day of September 2022

Kristal Stephensen
(Notary Public)

Residing in: Salt Lake County

My Commission Expires: 2/13/23



Agent Authorization

I (we), Mitchell J Olsen, the owner(s) of the real property described in the attached application, do authorize as my (our) agent(s) Steward Land Holdings, LLC to represent me (us) regarding the attached application and to appear on my (our) behalf before any administrative or legislative body in the City considering this application and to act in all respects as our agent in matters pertaining to the attached application.

Mitchell J. Olsen
(Property Owner)

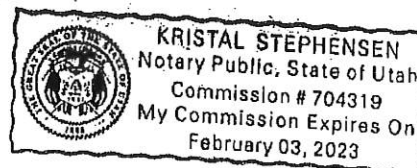
(Property Owner)

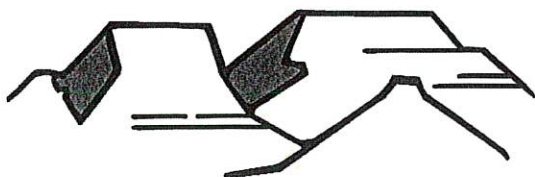
Subscribed and sworn to me this 6th day of September 2022

Kristal Stephensen
(Notary Public)

Residing in: Salt Lake County

My Commission Expires: 2/13/23





HURRICANE CITY UTAH

ACKNOWLEDGEMENT OF WATER SUPPLY

I/We, Brad Brown am/are the applicant(s) of the application known as 3000 W State Street located on parcel(s) H-3-1-31-3004 within the City of Hurricane, Washington County, Utah.

By my/our signature(s) below I/we do hereby acknowledge and agree to the following:

- 1 Neither acceptance nor approval of a development application by Hurricane City shall constitute a guarantee that sufficient water will be available to serve the zone designation, project, or permit for which this application is being submitted; and
- 2 Prior to receiving final approval for the application, the applicant may be required by Hurricane City to provide a guarantee of water availability which verifies that there is a sufficient water supply; and
- 3 For any application which may be approved without a guarantee of water availability, the applicant knowingly assumes the entire risk of water availability for the project and/or application; and
- 4 I/we waive any and all claims against Hurricane City that are in any way related to water availability for any project, permit, or use for which the land use application has been approved.

Dated this 6th day of September, 2022

Applicant Name: Brad Brown

Name of Signer (if different from Applicant Name): _____

Title of Signer: Managing Partner of Steward Land

Signature: [Signature]

STATE OF Utah)

COUNTY OF Weber)

On the 6th day of September, 2022, personally appeared before me Brad Brown, the signer of the above instrument, who duly acknowledged to me that he/she executed the same in the capacity indicated on behalf of the Applicant.

Notary Public: [Signature]

My Commission Expires: 3-15-2026



All signatures to this Acknowledgment, other than for Applicants signing in an individual capacity, shall be accompanied by documentation acceptable to the City attesting to the fact that the signer hereof is authorized to execute the Acknowledgment on behalf of the Applicant (e.g. a copy of a corporate resolution, copy of a partnership agreement, etc.). (Ord. No. 2022-37, 6-16-2022)

PRELIMINARY SITE PLAN

PURPOSE

The site plan review process is established to encourage adequate advanced planning and assure a good quality environment for the City. Such procedure is intended to provide for orderly, harmonious, safe, and functionally efficient development consistent with priorities, values, and guidelines stated in the various elements of the Hurricane City General Plan, and the Land Use Ordinance, and to protect the general welfare of the community.

WHEN REQUIRED

The preliminary site plan review is only required on the following projects when the Zoning Administrator determines the scope of the project requires both the preliminary site plan and site plan approval.

- a. Any multiple-family residential use.
- b. Any public or civic use.
- c. Any commercial use; or
- d. Any industrial use.

The preliminary site plan is also required with a submittal of zone changes to Planned Development Overlay, or changes to an approved Planned Development Overlay.

A preliminary site plan is not intended to permit actual development of property pursuant to such plan but is prepared merely to represent how the property could be developed. Submittal, review, and approval of an application for a preliminary site plan shall not create any vested rights to development.

Upon approval of a preliminary site plan, the applicant may prepare and submit the greater level of detail required for a site plan review application, which is required before construction may commence.

PROCESS

The preliminary site plan is submitted to the Planning and Building Department approximately 1 week and 1 day by no later than 12:00 p.m. prior to a regularly scheduled Planning Commission meeting. During this time prior to the meeting, staff will review the plan, and prepare a report and recommendation for the Planning Commission. The Planning Commission at the public meeting will review the application and staff's report, and approve, approve with conditions, or deny the preliminary site plan.

APPEALS

Since there are no vested rights with the approval of a preliminary site plan, the matter is generally not appealed. However, if an appeal is made, it would be filed with the Clerk of the Board of Adjustment located in the Planning and Building Department and heard by the Board of Adjustment. The decision of the Board of Adjustment is final unless appealed to a court of competent jurisdiction within thirty (30) days from the date of decision of the Board of Adjustment.

COMMITMENT FOR TITLE INSURANCE
ISSUED BY

NOTICE

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Real Advantage Title Insurance Company, a California Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within 30 days after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

REAL ADVANTAGE TITLE INSURANCE COMPANY

Countersigned By:

A handwritten signature in black ink, appearing to be "W.D. Burding, Jr.", written over a horizontal line.

BY: _____
William D. Burding, Jr.,
Executive Vice President & General Counsel

A handwritten signature in black ink, appearing to be "Ken Higley", written over a horizontal line.

BY: _____
Ken Higley, Title Officer
Real Advantage Title Insurance Company

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by Real Advantage Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; [and] Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form].

- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
- (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing [and authenticated by a person authorized by the Company].
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

[9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.]

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SCHEDULE B, PART I
Requirements

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.

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9. General Property Taxes for the year 2021 have been paid in the amount of \$5,825.18.
Tax Parcel # H-3-1-31-3009
10. Said property is within the boundaries of Hurricane and Tax District 3, and is subject to any charges and assessments levied thereunder.
11. Subject to all existing roads, streets, alleys, ditches, reservoirs, utilities, canals, pipe lines, power, telephone, sewer, gas or water lines, and right of way and easements thereof.
12. Grant of Easement and/or Right-of-Way and the terms, conditions and limitations contained therein:
In favor of: Hurricane City, a Utah Municipal Corporation
Recorded: 7/10/2019
Entry No.: 20190027165
13. Claim, right, title or interest to water or water rights, whether or not shown by the public records.
14. Any and all outstanding oil and gas, mining and mineral rights, minerals and ores situated in, upon or under the above described tract of land, together with the right of the proprietor of a vein or lode to extract his ore therefrom should the same be found to penetrate or intersect the premises and the right of ingress and egress for the use of said rights, along with any other rights in connection with or relative to the mining, removal or sale of the same (but not including the right to enter upon the surface of the premises).
15. Subject to the following matters referenced on that certain survey prepared as Job No. 5533-09, by Scott P. Woolsey, License No. 174919
16. NOTE: No existing Deed of Trust appears of record under the current owner(s). If this information is not correct, please notify the Company as soon as possible to provide information regarding the existing loan.
17. The transaction contemplated in connection with this Report is subject to the review and approval of the Company's Corporate Underwriting Department. The Company reserves the right to add additional items or make further requirements after such review.
18. The rights of parties in possession of the subject property under unrecorded leases, contracts, rental or occupancy agreements and any claims, rights or interests arising thereunder.
19. Obtain a copy of the Articles of Incorporation for Steward Land Holdings, LLC.

NOTE: A search of the Federal and State judgment records revealed no unpaid judgments, tax liens or open bankruptcies in the past eight years (except as noted) against:

Mitchell J. Olsen

Steward Land Holdings, LLC.

NOTE: According to the Official Records, there have been no documents conveying the land described herein within a period of 24 months prior to the date of this commitment,

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EXHIBIT A

The Land referred to herein below is situated in the County of Washington, State of Utah, and is described as follows:

Commencing at the South Quarter Corner of Section 31, Township 41 South, Range 13 West, Salt Lake Base and Meridian; thence North 88°52'58" West along the Section line a distance of 751.16 feet; thence North, a distance of 452.94 feet to the Point of Beginning, said point being on the Northerly right of way line of Highway SR-9; thence South 74°50'08" West, along said right of way line a distance of 765.51 feet; thence North 01°42'49" East, a distance of 1399.98 feet; thence North 67°32'27" East a distance of 327.32 feet; thence South 57°30'11" East, a distance of 335.71, feet; thence North 63°09'32" East, a distance of 269.71 feet; thence North 83°12'08" East, a distance of 265.91 feet; thence North 40°40'01" East, a distance of 312.94 feet; thence South 88°58'18" East, a distance of 189.64 feet, to a point on the Center Section line of said Section 31; thence South 01°01'42" West, along said line a distance of 1070.46 feet; thence South 89°46'38" West, a distance of 131.69 feet; thence South 85°13'16" West, a distance of 211.19 feet; thence South 68°02'47" West, a distance of 332.30 feet; thence North 88°52'58" West a distance of 111.09 feet; thence South 01°07'02" West a distance of 320.61 feet to the Point of Beginning.

LESS and EXCEPTING the following described Parcel:

Commencing at the South Quarter Corner of Section 31, Township 41 South, Range 13 West, Salt Lake Base and Meridian; thence South 89°58'47" West a distance of 511.39 feet; thence North 00°01'13" West a distance of 1040.89 feet to the Southwest Corner of an existing 1 acre well site Parcel, and the Point of Beginning; thence North 00°01'13" West a distance of 208.71 feet; thence North 89°58'47" East a distance of 208.81 feet; thence South 00°01'13" East a distance of 208.71 feet; thence South 89°58'47" West a distance of 208.71 feet to the Point of Beginning.

Tax Parcel #: H-3-1-31-3009

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ORDINANCE NO 2022-54

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE APPROVING THE REZONE
FOR PARCEL H-3-1-31-3009 FROM HIGHWAY COMMERCIAL TO PLANNED
COMMERCAIL

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

WHEREAS, the proposed amendment is generally compatible with the current General Plan's map for future use; and

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

WHEREAS, the proposed amendment will have an impact on the area, but there is little development currently and the development may lead to enhance commercial space; and

WHEREAS, the services are adequate or planned to become adequate for the area; and

WHEREAS, the Planning Commission gave a positive recommendation for the zone change subject that zone change

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

1. That be rezoned as shown in the following legal description attached in Exhibit A to Planned Commercial.
2. That the City Council approves the attached site plan.

PASSED AND APPROVED on this 3rd day of October 2022.

Hurricane City

Mayor

Attest:

Cindy Beteag, City Recorder

The foregoing Ordinance was presented at a regular meeting of the Hurricane City Council held at the Hurricane City Office Building on the 3rd day of October 2022. 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

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT B
DEVELOPMENT AGREEMENT

AN ORDINANCE OF THE CITY COUNCIL OF HURRICANE, UTAH AMENDING SECTIONS TITLE 10 CHAPTER 21: AGRICULTURE PROTECTION OVERLAY, TITLE 10 CHAPTER 14: RESIDENTIAL AGRICULTURE ZONING STANDARDS, TITLE 10 CHAPTER 7 SECTION 9: CONDITIONAL USE PERMIT STANDARDS, AND TITLE 10 CHAPTER 12: AGRICULTURE ZONING STANDARDS.OF THE HURRICANE CITY CODE.

WHEREAS the City Council of Hurricane, Utah has authority to adopt and regulate zoning within its boundaries; and

WHEREAS, Hurricane City general plan recommends that the City adopt policies that will help preserve agriculture within the City; and

WHEREAS said City Council deems it necessary to make these changes to allow for the protection of agriculture within the City,

BE IT HEREBY ORDAINED by the Hurricane City Council Hurricane City Code Sections Title 10 Chapter 21: Agriculture Protection Overlay, Title 10 Chapter 14: Residential Agriculture Zoning Standards, Title 10 Chapter 7 Section 9: Conditional Use Permit Standards, And Title 10 Chapter 12: Agriculture Zoning Standards. shall be, and is hereby, amended with the additional text as follows:

Commented [1]: Should we consider distance as a factor?

BE IT FURTHER ORDAINED that this ordinance shall be deemed to be of an urgent nature and shall take effect at the earliest possible time after publication and posting.

PASSED AND APPROVED this day of , 2022.

Nanette Billings, Mayor

[Seal]

Attest:

Cindy Beteag, City Recorder

Sec. 10-14-4. Development standards.

Development standards within residential agriculture zones shall be as set forth in table 10-14-2 of this section.

TABLE 10-14-2
DEVELOPMENT STANDARDS IN RESIDENTIAL AGRICULTURE ZONES

Development standard	Zones	
	RA-1	RA-.5
Lot standards:		
Average lot area ¹	1 acre (See Note 7)	0.5 acre (See Note 7)
Minimum lot area ²	0.8 acre (See Note 7)	0.4 acre (See Note 7)
Minimum lot width	100 feet (See Note 7)	100 feet (See Note 7)
Building standards:		
Maximum height, main building ³	35 feet	35 feet
Maximum height, accessory building	20 feet	20 feet
Maximum size, accessory building ⁴	2,000 square feet	2,000 square feet
Building coverage	50% of lot (see subsection 10-37-12I of this title)	
Distance between buildings	No requirement	No requirement
Setback standards front yard:		
Any building ⁵	25 feet	25 feet
Setback standards rear yard:		
Main building	30 feet	30 feet
Accessory building, including private garage	If located 10 feet from main building: 2 feet. If not, same as main building.	
Setback standards interior side yard:		
Main building	10 feet one side and 20 feet other side	10 feet
Accessory building	If located 10 feet from main building: 2 feet. If not, same as main building.	
Setback standards street side yard:		
Main building	20 feet	20 feet
Accessory building	If located 10 feet from main building: 10 feet. If not, same as main building. No accessory building shall be built within a public utility easement.	
Pool location and setbacks ⁶	3 feet	3 feet

Notes

1. "Average size" means the total acreage devoted to lots divided by the number of lots. Net density definition shall apply.
2. The indicated number is 80 percent of average lot area requirement.
3. Except as otherwise permitted by subsection 10-14-7C of this chapter.
4. Except as otherwise permitted by subsection 10-14-7B of this chapter.
5. Except as modified by the provisions of subsection 10-37-12F, setback measurement, of this title.

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(Supp. 1, Update 3)

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6. Pools must be located behind front yard setbacks. Setback is measured from rear and side property lines. Pools may require special engineering. A closer property line setback may be approved by the Building Official if engineering ensures structural integrity for any adjoining buildings or walls as well as the pool.
7. Subdivisions containing three lots or less may be approved with smaller lot sizes and smaller frontages than otherwise required with the following conditions:
- a. The development required dedication of a portion of a Master Planned Roadway.
 - b. The number of units does not exceed the overall gross density of the underlying zoning for the size of the parcel; provided, however, that when the City or other government entity acquires a portion of the property for a roadway, the area of roadway shall be accounted for in the gross density limitations of the development, if the applicant was the owner at the time of acquisition.
 - c. The subject property is zoned as RA-1 or RA-0.5.
 - d. Lots zoned as RA-1 shall have a minimum lot size of .6 acres.
 - e. Lots zoned as RA-0.5 shall have a minimum lot size of .35 acres.
 - f. The minimum frontage of each lot shall be no smaller than 80'.

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

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

B. *Authority.*

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

Agricultural industry.

Agritourism activities.

Animal specialties.

Assisted living facility.

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

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

Metal building in commercial and residential zones.

Multi family in commercial zones.

Public stable.

Reception center.

Recreation and entertainment, outdoor.

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

Animals and fowl for recreation and family food production.

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

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

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

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

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

1. A complete application shall be submitted to the office of the Zoning Administrator in a form established by the administrator along with any fee established by the City's schedule of fees. The application shall include at least the following information:

- a. The name, address and telephone number of the applicant and the applicant's agent, if any;
- b. The address and parcel identification of the subject property;
- c. The zone, zone boundaries and present use of the subject property;
- d. A description of the proposed conditional use;
- e. A plot plan showing the following:
 - (1) Applicant's name;
 - (2) Site address;
 - (3) Property boundaries and dimensions;
 - (4) Layout of existing and proposed buildings, parking, landscaping, and utilities; and
 - (5) Adjoining property lines and uses within 100 feet of the subject property;
- f. Traffic impact analysis, if required by the City Engineer or the Planning Commission;
- g. A statement by the applicant demonstrating how the conditional use permit request meets the approval standards for the conditional use desired; and
- h. Such other and further information or documentation as the Zoning Administrator may deem necessary for proper consideration and disposition of a particular application.

2. After the application is determined to be complete, the Zoning Administrator shall schedule a public meeting before the Planning Commission as provided in section 10-7-4 of this chapter or shall review the application to determine if it meets the standards for an administrative conditional use permit.

3. A staff report evaluating the application shall be prepared by the Zoning Administrator for a conditional use permit that will be reviewed by the Planning Commission.

4. The Planning Commission shall hold a public meeting and shall thereafter approve, approve with conditions, or deny the application pursuant to the standards set forth in subsection E of this section. A conditional use shall be approved if reasonable conditions are proposed or can be imposed to mitigate the reasonably anticipated detrimental effects of the proposed use in accordance with applicable standards. If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve compliance with the applicable standards, the conditional use may be denied.

5. After the Planning Commission or Zoning Administrator makes a decision, the Zoning Administrator shall give the applicant written notice of the decision.

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

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

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

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

a. *Standards for a reception center.*

(1) Hours of operation must be compatible with adjoining uses and comply with City noise regulations.

(2) Parking must be provided.

(3) The use of on-street parking to provide up to 40 percent of the required parking may be permitted if adjoining uses are not residential uses and the street is fully improved.

(4) The center must have an approved site plan.

(5) If beer, wine, or other alcoholic beverages are served, the center must be licensed by the state alcohol control board.

(6) Reception Center use must be secondary to any agricultural use on the property.

Sec. 10-12-3. Uses allowed.

A. *Permitted and conditional uses.* Permitted and conditional uses allowed within agricultural zones shall be as set forth in table 10-12-1 of this section. Permitted and conditional uses are indicated by a "P" or "C," respectively, in the appropriate column. Uses not permitted are indicated by "N." Any use not shown on table 10-12-1 of this section shall be prohibited unless the Zoning Administrator determines the use is substantially the same as a permitted or conditional use as provided in subsection 10-7-18E4 of this title.

TABLE 10-12-1

PERMITTED AND CONDITIONAL USES ALLOWED IN AGRICULTURAL ZONES

Use	Zones				
	A-40	A-20	A-10	A-5	A-1
Agricultural uses:					
Accessory building	P	P	P	P	P
Agricultural business	P	P	P	P	P
Agricultural industry	P	P	P	P	C
Agriculture	P	P	P	P	P
Agritourism	P	P	P	P	C
Animal specialties	P	P	P	P	C
Animals and fowl for recreation and family food production	P	P	P	P	P
Stable, private	P	P	P	P	P
Residential uses:					
Assisted living facility	P	P	P	P	N

Building, accessory	P	P	P	P	P
Dwelling, earth sheltered	P	P	P	P	P
Dwelling, single-family	P	P	P	P	P
Dwelling, single-family with single accessory dwelling unit	P	P	P	P	P
Dwelling, temporary	P	P	P	P	P
Guesthouse for family members and non-paying guests	P	P	P	P	P
Home base business	P	P	P	P	P
Manufactured home	P	P	P	P	P
Residential facility for elderly persons ¹	P	P	P	P	N
Residential facility for persons with a disability ¹	P	P	P	P	P
Residential facility for troubled youth	N	N	N	N	N
Short term rental	N	N	N	N	P
Public and civic uses:					
Auditorium or stadium	N	N	N	N	N
Cemetery	P	P	P	P	P
Church or place of worship	P	P	P	P	P
Club or service organization	P	P	P	P	P

Convalescent care facility	N	N	N	N	N
Cultural service	P	P	P	P	P
Golf course	N	N	N	N	N
Hospital	N	N	N	N	N
Park	P	P	P	P	P
Protective service	P	P	P	P	P
Reception center	<u>CN</u>	<u>CN</u>	<u>CN</u>	<u>CN</u>	<u>CN</u>
Stable, public	P	P	P	P	C
Utility, minor	P	P	P	P	P
Utility substation	P	P	P	P	P
Commercial uses:					
Agricultural sales and service	P	P	C	C	N
Agritourism activities	P	P	P	P	C
Animal hospital	P	P	P	P	P
Bed and breakfast, home	P	P	P	P	P
Garden center	P	P	P	P	P
Kennel, residential	P	P	P	P	P
Licensed family child care ²	P	P	P	P	P

Media service	N	N	N	N	N
Personal care service, home based ²	P	P	P	P	P
Personal instruction service, home based ²	P	P	P	P	P
Produce stand	P	P	P	P	P
Recreation and entertainment, outdoor	C	C	C	C	N
Residential certificate child care facility ²	P	P	P	P	N
Vehicle repair, limited	N	N	N	N	N
Veterinary service	P	P	P	P	P
Wireless telecommunication facility	See section 10-50-5, table 10-50-1 of this title				

Notes

1. See chapter 46 of this title.

2. See chapter 42 of this title.

B. *Accessory uses.* Permitted and conditional uses set forth in table 10-12-1 of this section shall be deemed to include accessory uses and activities that are necessarily and customarily associated with and incidental and subordinate to such uses.

1. Accessory uses shall be subject to the same regulations that apply to permitted and conditional uses in the same zone except as otherwise expressly provided in this title.

2. No accessory use, building, or structure shall be allowed on a lot unless a permitted or conditional use has been established.

3. Accessory uses in agricultural zones shall include, but are not limited to, the following:

Garage sales, subject to applicable standards of chapter 48, temporary uses, of this title.

Garages, carports, and off street parking areas, subject to applicable standards of chapter 34, off street parking and loading, of this title.

Hobby activities when conducted by an occupant of the premises solely for personal enjoyment, amusement, or recreation and which does not conflict with any applicable provision of this Code.

Home based businesses, subject to applicable standards of chapter 42, home based businesses, of this title.

Household pets.

Keeping of machinery, livestock, and farming equipment as needed for agricultural use.

Nurseries and greenhouses.

Playhouses, patios, porches, gazebos, and incidental storage buildings.

Produce stands.

Swimming pools and hot tubs for use by residents and their guests.

Temporary real estate offices, subject to applicable standards of chapter 48, temporary uses, of this title.

Sec. 10-14-3. Uses allowed.

A. *Permitted and conditional uses.* Permitted and conditional uses allowed within residential agriculture zones shall be as set forth in table 10-14-1 of this section. Permitted and conditional uses are indicated by a "P" or "C," respectively, in the appropriate column. Uses not permitted are indicated by "N." Any use not shown on table 10-14-1 of this section shall be prohibited unless the Zoning Administrator determines the use is substantially the same as a permitted or conditional use as provided in subsection 10-7-18E4 of this title.

TABLE 10-14-1

PERMITTED AND CONDITIONAL USES ALLOWED IN

RESIDENTIAL AGRICULTURE ZONES

Use	Zones	
	RA-1	RA-.5

Agricultural uses:		
Agricultural business	P	N
Agricultural industry	N	N
Agriculture	P	P
Animal specialties	P	P
Animals and fowl for recreation and family food production	P	P ³
Stable, private	P	P
Residential uses:		
Assisted living facility	P	P
Boarding house	N	N
Building, accessory	P	P
Dwelling, earth sheltered	P	P
Dwelling, multiple-family	N	N
Dwelling, single-family	P	P
Dwelling, single-family with single accessory dwelling unit	P	P
Dwelling, temporary	P	P
Dwelling, two-family	N	N
Guesthouse	P	P

Manufactured home	P	P
Manufactured/mobile home park	N	N
Manufactured/mobile home subdivision	N	N
Protective housing facility	P	P
Residential facility for elderly persons ¹	P	P
Residential facility for persons with a disability ¹	P	P
Residential facility for troubled youth	C	C
Short term rental ⁴	P	P
Public and civic uses:		
Auditorium or stadium	N	N
Cemetery	P	P
Church or place of worship	P	P
Club or service organization	N	N
Convalescent care facility	N	N
Cultural service	P	P
Golf course	P	P
Hospital	N	N
Park	P	P

Protective service	P	P
Reception center	<u>CN</u>	<u>CN</u>
Stable, public	P	N
Utility, minor	P	P
Utility substation	P	P
Commercial uses:		
Agricultural sales and service	N	N
Animal hospital	P	P
Bed and breakfast, home	P	P
Bed and breakfast inn	N	N
Garden center	N	N
Kennel, residential	P	P
Licensed family child care ²	P	P
Media service	N	N
Personal care service, home based ²	P	P
Personal instruction service, home based ²	P	P
Produce stand	P	P
Recreational vehicle park	N	N

Residential certificate child care facility ²	P	P
Residential hosting facility	P	P
Temporary trailer	P	P
Veterinary service	N	N
Warehouse, self-service storage	N	N
Wireless telecommunication facility	See section 10-50-5, table 10-50-1 of this title	

Notes

1. See chapter 46 of this title.
2. See chapter 42 of this title.
3. See section 10-37-15 of this title for permitted animals and fowl.
4. See licensing and operations requirements in title 3 of this Code.

B. Accessory uses. Permitted and conditional uses set forth in table 10-14-1 of this section shall be deemed to include accessory uses and activities that are necessarily and customarily associated with and incidental and subordinate to such uses.

1. Accessory uses shall be subject to the same regulations that apply to permitted and conditional uses in the same zone except as otherwise expressly provided in this title.
2. No accessory use, building, or structure shall be allowed on a lot unless a permitted or conditional use has been established.
3. Accessory uses in residential agriculture zones shall include, but not be limited to, the following:

Garage sales, subject to applicable standards of chapter 48, temporary uses, of this title.

Garages and off street parking areas, subject to applicable standards of chapter 34, off street parking and loading, of this title.

Hobby activities when conducted by an occupant of the premises solely for personal enjoyment, amusement, or recreation and which does not conflict with any other City ordinance.

Home based businesses, subject to applicable standards of chapter 42, home based businesses, of this title.

Household pets.

Nurseries and greenhouses.

Playhouses, patios, porches, gazebos, and incidental storage buildings.

Swimming pools and hot tubs for use by residents and their guests.

CHAPTER 21. AGRICULTURE PROTECTION OVERLAY ZONE

Sec. 10-21-1. Purpose; established.

- A. To protect and preserve the existing agricultural areas within the City from the encroachment of development, and to allow the ongoing agricultural operations to proceed without unreasonable restriction unless there is a direct relationship to public health or safety.
- B. An agriculture protection overlay zone is established which shall be an overlay zone of the zoning classification in this title.

Sec. 10-21-2. Definitions.

For the purpose of this chapter, the following terms shall have the meanings set forth below and shall apply in addition to the terms defined in chapter 3 of this title:

Advisory Board means the agriculture protection area advisory board of Washington County.

Agriculture production means production for commercial purposes of crops, livestock, and livestock products, including processing or retail marketing of any crops, livestock and livestock products when more than 50 percent of the processed or merchandised products are produced by the farm operator.

Agriculture protection areas or overlay zone means a geographic area created under the authority of this chapter that is granted the specific legal protections contained in this chapter.

Crops, livestock and livestock products means:

- A. Land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including forages and sod crops; grains and feed crops; livestock; trees and fruits; or vegetables, nursery, floral and ornamental stock; or
- B. Land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

Political subdivision means a City, school district or special district.

Proposed sponsors means the owners of land in agricultural production who are sponsoring the proposal for creating an agricultural protection area.

State agency means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel or other administrative unit of the state.

Sec. 10-21-3. Proposal for creation of agricultural protection area.

- A. *Filing.* Any owner of land in agricultural production may file a proposal for creation of an agricultural protection area with the Planning Commission.
- B. *Content.* The proposal shall identify:
 - 1. The land in agricultural production that the proposal sponsors wish to become part of an agriculture protection area;
 - 2. Any limits on the types of agriculture production to be allowed within the agriculture protection area; and

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3. For each parcel of land:
 - a. The owners of the land contained within the parcel;
 - b. The tax parcel number or account number of each parcel; and
 - c. The number or account number of acres as listed on the parcel tax records.
 - C. *Documents required.* The proposal shall include:
 1. A plat from the county recorder's office showing each parcel of land with each outlined in color to identify proposed area.
 2. Application fee as outlined on the City fee schedule, available from the City Recorder/Clerk.
 - D. Minimum acreage. A minimum area of five contiguous acres shall be included in an agriculture protection area. The City Council may approve smaller areas if the following conditions are met:
 1. At least a single contiguous area is a minimum of five acres;
 2. For noncontiguous areas less than five acres, the area supports and is used in conjunction with a qualifying area that is five acres or larger;
 3. For noncontiguous areas less than five acres, the area is a minimum of 0.5 acres; and
 4. For noncontiguous areas less than five acres, both the area less than five acres and the qualifying area that is five acres or larger are located within the Hurricane City municipal boundaries.

Commented [1]: Look at limiting the amount of areas that could be under 5 acre.

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Sec. 10-21-4. Planning commission review of proposal.

- A. *Required.* After 15 days from the date of the notice, the Planning Commission shall refer the proposal and any proposed modifications and objections to the proposal to the Advisory Board for their review, comments and recommendations.
- B. *Report; recommendation.*
 1. Within 45 days after receipt of the proposal, the Planning Commission shall submit a report to the City Council that:
 - a. Identifies the effect of the creation of the proposed area on the City's planning policies and objectives;
 - b. Analyzes and evaluates the proposal by applying the criteria contained in section 10-21-6 of this chapter;
 - c. Recommends any modifications to the proposal;
 - d. Recommends any limits on the types of agriculture production to be allowed in the agriculture protection area;
 - e. Analyzes and evaluates any objections to the proposal; and
 - f. Includes a recommendation to the City Council to either accept, accept and modify, or reject the proposal.
 2. Within 45 days after receipt of the proposal, the Advisory Board shall submit a report to the City Council that:
 - a. Recommends any modifications to the proposal;
 - b. Recommends any limits on the types of agriculture production to be allowed in the agriculture protection area;

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- c. Analyzes and evaluates the proposal by applying the criteria contained in section 10-21-6 of this chapter;
 - d. Analyzes and evaluates any objections to the proposal; and
 - e. Includes a recommendation to the City Council to either accept, accept and modify, or reject the proposal.
- C. *Failure to submit report.* If the Planning Commission or the Advisory Board fail to submit a report within 45 days, the City Council shall consider their failure to report as an approval of the proposal.

Sec. 10-21-5. City Council review and action.

- A. *Procedure.* City Council review and procedures are the same as for a zone change as set forth in section 10-7-7 of this title.
- B. *Filing executed documents.* In order to give constructive notice of the existence of an agriculture protection area to all persons who have, may acquire or may seek to acquire an interest in land in or adjacent to an agriculture protection area, within ten days of the creation of an agriculture protection area, the City Council shall file an executed document containing a legal description of the agriculture protection area with the county recorder of deeds and the Planning Commission.
- C. *Written notice.* Within ten days of the recording of an agriculture protection area, the City Council shall send written notification to the [state] commissioner of agriculture that the agriculture protection area has been created. The following shall be included in the notification:
 - 1. The number of landowners owning land within the agriculture protection area;
 - 2. The total acreage of the area;
 - 3. The date of approval of the area; and
 - 4. The date of recording.

Sec. 10-21-6. Criteria in evaluating proposals.

In evaluating a proposal and in determining whether or not to create or recommend the creation of an agriculture protection area, the Advisory Board, Planning Commission and City Council shall apply the following criteria:

- A. *Use of land.* Whether or not the land is currently being used for agriculture production;
- B. *Zoning.* Whether or not the land is zoned for agricultural use;
- C. *Viability.* Whether or not the land is viable for agricultural production;
- D. *Improvements.* The extent and nature of existing or proposed farm improvements; and
- E. *Trends anticipated.* Anticipated trends in agricultural and technological conditions.

Sec. 10-21-7. Adding, removing land from area.

- A. *Adding.*
 - 1. Any owner may add land to an existing agriculture protection area by:
 - a. Filing a proposal with the City Council; and
 - b. Obtaining approval of the City Council for the addition of the land to the area.

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2. The City Council shall comply with the provisions for creating an agriculture protection area in determining whether or not to accept the proposal.
 - B. *Removal.*
 1. Any owner may remove land from an agriculture protection area by filing a petition for removal of the land from the agriculture protection area with the City Council;
 2. The City Council shall:
 - a. Grant the petition for removal of land from an agriculture protection area even if removal of the land would result in an agriculture protection area of less than the number of acres established by this chapter as the minimum; and
 - b. In order to give constructive notice of the removal to all persons who have, may acquire or may seek to acquire an interest in land in or adjacent to the agriculture protection area and the land removed from the agriculture protection area, file a legal description of the revised agriculture protection area with the county recorder of deeds and the Planning Commission.
 - c. The remaining land in the agriculture protection area is still an agriculture protection area.

Sec. 10-21-8. Review of areas.

- A. *Required.* The City Council shall review any agriculture protection area created under the authority of this chapter in the twentieth calendar year after it is created.
- B. *Action.*
 1. In the twentieth year, the City Council shall:
 - a. Request the Planning Commission and Advisory Board to submit recommendations about whether the agriculture protection area should be continued, modified or terminated;
 - b. At least 120 days before the end of the calendar year, hold a public hearing to discuss whether the agriculture protection area should be continued, modified or terminated;
 - c. Give notice of the hearing using the same procedures required by subsection 10-21-5B of this chapter; and
 - d. After the public hearing, continue, modify or terminate the agriculture protection area.
 2. If the City Council modifies or terminates the agriculture protection area, it shall file an executed document containing the legal description of the agriculture protection area with the county recorder of deeds.
- C. *Failure to act.* If the City Council fails to affirmatively continue, modify or terminate the agriculture protection area in the twentieth calendar year, the agriculture protection area is considered to be reauthorized for another 20 years.

Sec. 10-21-9. Protection of land.

- A. *Property taxes.* Any land placed in an agriculture protection area shall be subject to the provisions of Utah Code Annotated title 59, chapter 2, part 5, Farmland Assessment Act.
- B. *Limitations on local regulations.*
 1. It shall be the policy of the City to encourage the continuity, development and viability of agriculture within the area by not enacting local laws, ordinances or regulations that would unreasonably restrict

farm structures or farm practices within the area unless those laws, ordinances or regulations bear a direct relationship to public health or safety.

2. The City Council may not change the zoning designation of land within an agriculture protection area unless it receives written approval for the change from all the landowners within the agriculture protection area.

C. *Nuisances.*

1. To the extent deemed necessary or desirable, the City Council shall ensure that any of its laws or ordinances that define or prohibit a public nuisance exclude from the definition or prohibition any agricultural activity or operation within an agriculture protection area conducted using normal farming methods unless that activity or operation bears a direct relationship to public health or safety.
2. In a civil action for nuisance involving agriculture activities, it is a complete defense if:
 - a. The agriculture activities were conducted within an agriculture protection area; and
 - b. The agriculture activities were not in violation of any federal, state or local law or regulation relating to the alleged nuisance, and were conducted according to sound agricultural practices.
3. For each new subdivision development located in whole or in part within 300 feet of the boundary of an agriculture protection area, the owner of the development shall provide notice on any plat filed with the county recorder the following notice:

Agriculture protection area

This property is located in the vicinity of an established agriculture protection area in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future be conducted on property included in the agriculture protection area. The use and enjoyment of this property is expressly conditioned on acceptance of annoyance or inconvenience which may result from such normal agricultural uses and activities.

D. *Eminent domain restrictions.*

1. *Approval required.* A political subdivision having or exercising eminent domain powers may not condemn for any purpose any land within an agriculture protection area that is being used for agriculture production unless it has obtained approval of the City Council and the Advisory Board according to the procedures and requirements of this section.
2. *Notice.* Any condemner wishing to condemn property within an agriculture protection area shall file a notice of condemnation with the City Council and the agriculture protection area's Advisory Board at least 30 days before filing an eminent domain complaint.
3. *Actions required of council and board.* The City Council and the Advisory Board shall:
 - a. Hold a joint public hearing on the proposed condemnation;
 - b. Publish notice of the time, date, place and purpose of the public hearing in a newspaper of general circulation within the City; and
 - c. Post notice of the time, date, place and purpose of the public hearing in three conspicuous public places within the City.
4. *Approval conditions.*
 - a. If the condemnation is for highway purposes or for the disposal of solid or liquid waste materials, the City Council and the Advisory Board may approve the condemnation only if there is no

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reasonable and prudent alternative to the use of the land within the agriculture protection area for the project.

- b. If the condemnation is for any other purpose, the City Council and the Advisory Board may approve the condemnation only if:
 - (1) The proposed condemnation would not have an unreasonably adverse effect upon the preservation and enhancement of agriculture within the agriculture protection area; or
 - (2) There is no reasonable and prudent alternative to the use of the land within the agriculture protection area for the project.
- 5. *Decision; failure to act.*
 - a. Within 60 days of receipt of the notice of condemnation, the City Council and the Advisory Board shall approve or reject the proposed condemnation.
 - b. If the City Council and the Advisory Board fail to act within the 60 days, the condemnation shall be considered approved.
- 6. *Violations prohibited; action to enjoin.* The City Council or the Advisory Board may request the City Attorney to bring an action to enjoin any condemner from violating any provisions of this subsection.
- E. *Restrictions on state development projects.*
 - 1. Each state agency that plans any development project that might affect land within an agriculture protection area shall submit its development plan to the state commissioner of agriculture and the agriculture protection area's Advisory Board for their review.
 - 2. The state commissioner of agriculture and the agriculture protection area's Advisory Board shall:
 - a. Review the state agency's proposed development plan; and
 - b. Recommend any modifications to the development project that would protect the integrity of the agriculture protection area or that would protect the agriculture protection area from nonfarm encroachment.

Cindy Beteag

From: Stephen Nelson
Sent: Monday, October 03, 2022 8:12 AM
To: Cindy Beteag; David Sanders; David Hirschi; Doug Heideman; Joseph Prete; Kaden DeMille; Kevin Thomas; Nanette Billings
Subject: FW: Letter to coding commission

City Council,

Please see the public comment that came in over the weekend.

Stephen Nelson, AICP

*Hurricane City
Planning Director
(435) 635-2811*



PLANNING & ZONING
HURRICANE CITY
UTAH

From: travis dickey [REDACTED]
Sent: Saturday, October 1, 2022 10:50 PM
To: Stephen Nelson <stephen@cityofhurricane.com>
Subject: Re: Letter to coding commission

Dear Hurricane City Representatives,

I write this letter in light of the RA coding on not just the size of my half acre lot, but in convenience of all Hurricane city homeowners. I have currently submitted for a permit on an addition to my primary structure and also my secondary structure. The addition I'm seeking for my primary structure surpasses the allowed distance from structure to the back side property line by 5 feet, being at 25 feet instead of the code of 30 feet. This has created hoops to jump through and extra time and money on my behalf to try and navigate the possibility of receiving permission to execute this project, and I'm certain other Hurricane residents have experienced this same process in their remodel/addition endeavors. I understand the importance of codes and being consistent with the rules in place which is why I'm hoping the City of Hurricane coding and planing committee will consider changing the allowed distance from the structure to the back side property line from 30 feet to 15 feet. I believe 15 feet is an adequate buffer for not only comfort, but privacy of one's back yard as well. I'm extremely satisfied with the coding of having 10 feet from the structure to the side yard property line, that gives at least a 20 foot minimum buffer zone of privacy and comfort from neighbor to neighbor at the side yard coding allowance. In light of those statistics, I believe the minimum possible distance of 25 feet from one's rear of their primary structure, to the potential neighbors side of their primary structure, should be strongly considered and reasoned with, especially with the fact of 2 adjoining properties that meet rear to rear will be a distance of 30 feet. Both being greater than the side yard allowance. With all do respect of the time and effort put into these decisions, I appreciate all involved. Hurricane has been an amazing place to raise my family, so thank you for that and I hope we can continue to find ways to make it better, together.

Sincerely,
A proud Hurricane City resident

Travis Dickey

[Sent from Yahoo Mail for iPhone](#)

On Friday, September 30, 2022, 11:35 AM, Stephen Nelson <stephen@cityofhurricane.com> wrote:

Travis,

Please see the attached agenda and the staff report for your variance request. Let me know if you have any questions.

Stephen Nelson, AICP

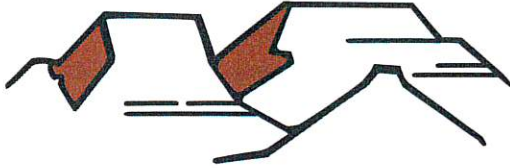
Hurricane City

Planning Director

(435) 635-2811



PLANNING & ZONING
HURRICANE CITY
UTAH



HURRICANE CITY UTAH

147 N 870 W Hurricane UT 84737

PHONE: 435.635.2811 FAX: 435.635.2184

AMENDED FINAL PLAT APPLICATION

For Office Use Only: \$150 Fee

File No. 2022-AFP-06

Receipt No. 8-161585

Name: Anish Bhatia
Hidden Rock Development Group Telephone: 240-994-3385

Address: 100 Norfolk St. Apt 6B, New York, NY 100023 Fax No. _____

Email: anish@room9.com Agent Email: gmeyers@bushandgudgell.com

Agent (If Applicable): Bush and Gudgell (Gregg Meyers) Telephone: 801-631-0742

Address/Location of Subject Property: Aprox 4500 S 1100 W

Tax ID of Subject Property: H-MOF-18 & H-MOF-19 Number of Lots: 2

Subdivision Name: Moccasin Flats Partial Amendment A Phase: N/A

Submittal Requirements: 1-large paper copy, 1-11 X 17, and 1 disk in 2004 or newer Auto-Cad format

1. The final plat shall show:

- X a. 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.
- X b. 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.
- X c. 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.
- X d. Every existing right-of-way and easement grant of record for communications infrastructure, for underground facilities as defined in Section 54-8a-2 of the Utah Code and for other utility facilities. Where the same is granted to a specific entity, that entity must be clearly identified.
- N/A e. 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.
- N/A f. All street center line data must be shown, together with its relationship to the property lines, corners, etc.
- X g. 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.
- N/A h. The dedication to the public of all streets and highways included in the proposed subdivision (except approved private streets).

- N/A j. Street monuments shall be installed by the subdivider in accordance with the requirements of City Standards. Locations of said monuments shall be approved by the City Engineer and indicated on the subdivider's plat by the appropriate symbols.
- N/A j. 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.
- N/A k. 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.

2. Required Forms & Certificates: In addition, the final plat shall contain the standard forms for the following:

- X a. A registered professional land surveyor's certificate of survey, together with a statement that: (a) the surveyor holds a license in accordance with Title 58, Chapter 22 of the Utah Code, Professional Engineers, and Professional Land Surveyor's Licensing Act; (b) the surveyor has completed a survey of the property described on the plat in accordance with Section 17-23-17 of the Utah Code and has verified all measurements; (c) has placed monuments as represented on the plat. **Plat must be signed and stamped by the licensed surveyor prior to final plat submittal.**
- X b. 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.
- X c. Mortgagee or other lien holder's Consent to Record, if applicable.
- X d. A notary public's acknowledgement space for the signature of the mortgagee and/or each owner signing the plat.
- X e. Certificate of approval of Ash Creek Special Service District.
- X f. Certificate of approval of the City Engineer.
- X g. Certificate of approval of the City Council, as evidenced by the signature of the mayor
- X h. Certificate of approval as to form executed by the City Attorney.
- X i. A one and one-half inch by five-inch (1 ½" x 5") space in the lower right-hand corner of the drawing for the use of the County Recorder.

3. Other Information Required: The following information or documentation shall be submitted:

- X a. A completed form from the Washington County Treasurer's office (see attached copy of form) for property located within the subdivision verifying that all taxes or special assessments payable on all property within the limits of the subdivision are paid in full
- b. 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 with the final plat.
- X c. Title report for the property being subdivided.
- X d. A disk of the final plat prepared in 'Auto-Cad 2004' (or newer format)

Application Process: The following steps occur:

- A completed application with all required documents and fee payment as outlined above is submitted to the Planning Department along with the paper copy of the amended plat.

- A paper copy of the amended plat is submitted to the City Engineer for review. The City Engineer will redline the plat and email the subdivision engineer of required changes that need to be made. If a plat is still not ready for the City Engineers signature after the second submittal, an additional fee must be paid before the Engineer performs another review. An approved mylar of the final plat must be signed by the City Engineer before the City Council meeting at which the amendment is to be submitted
- A plat amendment without the notarized signatures of all the owners of record on the mylar or on consent to record forms will require a public hearing. The applicant will be required to pay all notification and/or publication costs for notice of the hearing.

Requirements for recordation:

1. Amended plat approval by the City Council
4. Two disks of the final plat provided in 'Auto Cad 2004' format – one for the city, and one for the County Recorder.
5. Review of the title report by the City Attorney.
7. 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 is the last signer of the mylar just prior to recordation.
8. Someone from the City Attorney's office will accompany the developer's representative to the County Recorder's office for recordation. The developer pays recording fees.

A development with CC&Rs should submit a copy of the CC&R's to the Planning Staff and one to the City Attorney for review at the time the plat amendment is submitted.

Note: An amended plat that includes the abandonment of a dedicated road or for a subdivision that is not fully improved requires a different application and procedure

(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by:



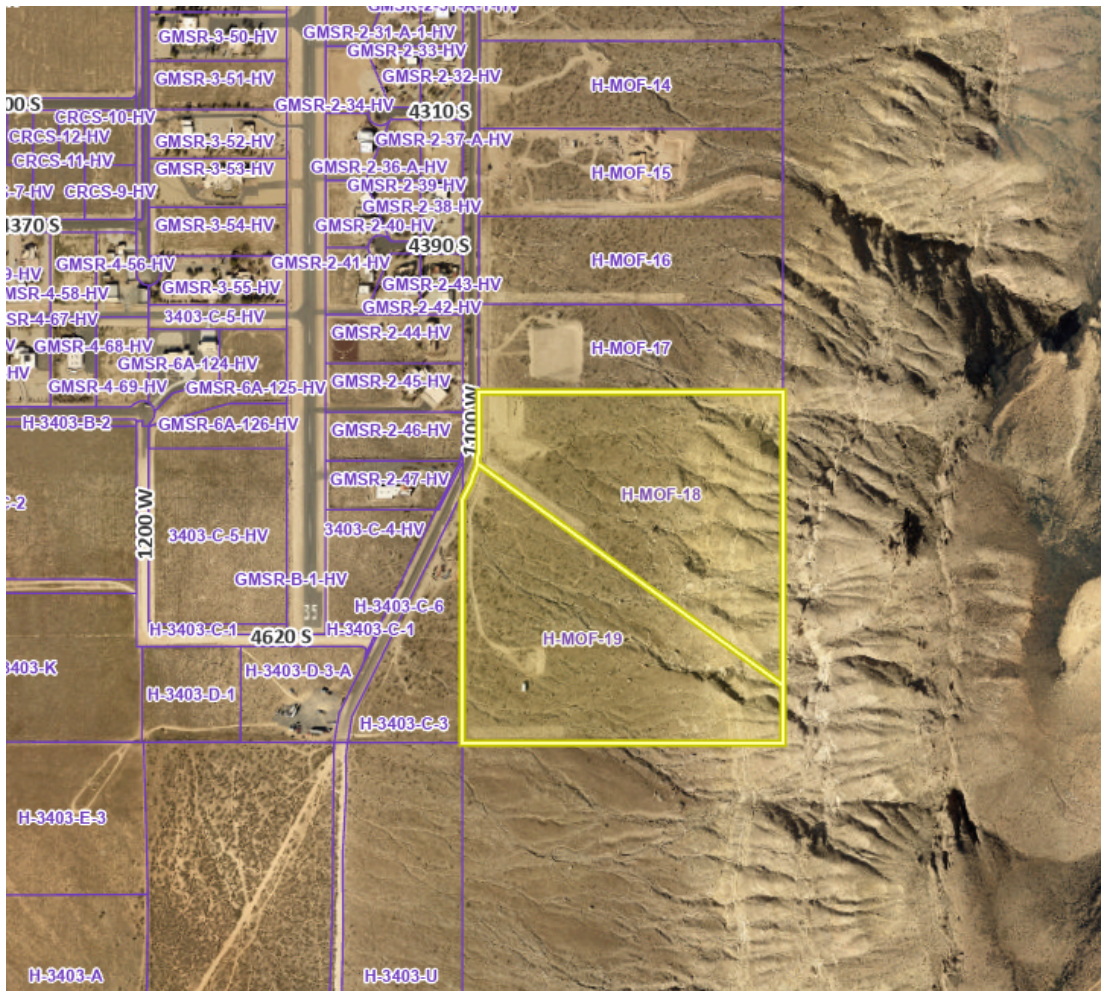
STAFF COMMENTS

Agenda Date:	10/03/2022
Application Number:	2022-AFP-06
Type of Application:	Amended Final Plat
Action Type:	Administrative
Applicant:	Anish Bhatia, Hidden Rock Development Group
Agent:	Bush & Gudgell (Gregg Meyers)
Request:	Approval of an Amended Final Plat
Location:	Approximately 4500 S 1100 W
Zoning:	RA-1
General Plan Map:	Natural Open Space

Planning Commission Recommendation

The Planning Commission gave a positive recommendation subject to staff and JUC comments

Discussion: The applicant has applied to amend the final plat for Moccasin Flats to divide Lot 18 and 19 into three separate parcels creating a new Lot 20. This property was under consideration for a zone change earlier this year but that application was withdrawn. Moccasin Flats is zoned for one acre lots so they can subdivide without having to go through a zone change process. Since the subdivision was already recorded an amended final plat is required for any further subdivisions.



JUC Comments

1. **Public Works:** Access may be insufficient. Where is the drainage going?
2. **Power:** Power is in the area but not to all the lots, may require line extensions. Capacity problems on this circuit.
3. **Water:** No comments
4. **Streets:** Will need to maintain flow of established drainage with culvert/drain pipe for new access.
5. **Sewer:** No comment
6. **Engineering:** Check survey details. Notes 6 and 8 from the original plat apply, Note 5 on this plat should be past tense, a culvert size for Lot 20 is not provided. The rock fall hazard line, 30% slope line, and the east buildable area line shown on the previous plat must be shown on this plat. Hydrants must be within 250' of a main building on Lot 20 and an easement for hydrant access and maintenance must be provided. Hurricane City Code states the max length for a staff on a flag lot shall be 500'. 1100 W is a 77 or 70' planned ROW.
7. **Fire:** Cannot have home more than 250' from a hydrant. No hydrant location shown.
8. **Cable/Phone/Gas/Water Conservancy/Parks:** No comments

Staff Comments

1. The plat does not meet amended final plat standards contained in [Utah Code 10-9a-608](#). Subdivision Amendments, updated in 2022. 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. The plat does not 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 staff of the flag lot, Lot 20, is approximately 600 feet long. HCC 10-37-10 states, "*The max length of a staff shall be 500 feet*" the staff portion of Lot 20 is approximately 600 feet long, this will need to be shortened.
 - a. The staff portion is approximately 60 feet wide which meets standards
 - b. Lot 20 will have to meet all other development standards within HCC 10-37-10

The applicant has provided an updated plat which address these concerns.

4. Lots 18 and 19 appear to meet development standards
 5. Notes from the approved plat for Moccasin Flats subdivision plat that should be added or adapted to this plat
 - a. *6. Lot owners should consult a professional geologist before constructing homes relative to the approximate Hurricane Fault Line shown hereon*
 - b. *8. A fault study was performed by AGEK (revised date of June 27, 2019) for this subdivision. The findings for the buildable area represented in this report are shown heron by its most east line.*
- These comments have been added.**
6. The plat shows the approximate Hurricane Fault Line location but should also show the buildable area line and the rock fall hazard line from the original plat
 7. In other subdivisions, where further subdivisions have occurred, additional roadway improvements have been required. On the City's Transportation Master Plan 1100 W is a 77' ROW with a sidepath on the east side. Dedicating the property and putting in the improvements for 450' of frontage on 1100 W may be outside the impact of a subdivision creating one additional lot.
 - a. The City Council approved the existing cross-section due to it matching the overall area.
 8. The property is zoned RA-1, the three lots will all be well over one acre in size.
 9. The Joint Utility Committee is required to approve flag lot creation and utility plan and will need to approve construction drawings prior to final plat approval.

Recommendation: Staff recommends that the City Council review this application based on Hurricane City and State Code standards. Staff would recommend approving the application condition on JUC approval of the construction drawings.

MOCCASIN FLATS PARTIAL AMENDMENT A
(AMENDING LOT 18 & LOT 19)

SURVEYOR'S CERTIFICATE

I, D. GREGG MEYERS, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD LICENSE NO. 312770, IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HEREON, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS TOGETHER WITH EASEMENTS, HEREFTER TO BE KNOWN AS MOCCASIN FLATS PARTIAL AMENDMENT A, AND THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND WILL BE MONUMENTED ON THE GROUND AS SHOWN ON THIS PLAT.

MOCCASIN FLATS PARTIAL AMENDMENT A

AND THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

DATE: 08/24/2022
BUSH AND GUDGELL INC.



D. Gregg Meyers
D. GREGG MEYERS
PROFESSIONAL LAND SURVEYOR
UTAH LICENSE NUMBER 312770

BOUNDARY DESCRIPTION

COMMENCING AT THE SOUTHWEST CORNER OF LOT 17, MOCCASIN FLATS SUBDIVISION, RECORD DOCUMENT NO. 20190035165 OFFICIAL RECORDS WASHINGTON COUNTY, SAID CORNER ALSO BEING THE EAST RIGHT-OF-WAY LINE OF ARIZONA STRIP ROAD, AND RUNNING THENCE SOUTH 88°54'08" EAST ALONG THE SOUTH LINE SAID LOT 17, 1251.49 FEET TO THE SOUTHEAST CORNER SAID LOT 17, THENCE ALONG SAID EAST AND SOUTH LINE SAID MOCCASIN FLATS SUBDIVISION THE FOLLOWING TWO (2) COURSES: 1) SOUTH 00°56'17" WEST 1437.83 FEET AND 2) NORTH 88°56'50" WEST 1319.59 FEET TO THE WEST QUARTER CORNER SECTION 34, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN, SAID CORNER ALSO BEING THE SOUTHWEST CORNER SAID MOCCASIN FLATS SUBDIVISION, THENCE NORTH 01°01'19" EAST ALONG THE SECTION LINE AND WEST SUBDIVISION LINE 997.71 FEET TO THE RIGHT-OF-WAY LINE OF SAID ARIZONA STRIP ROAD, THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING THREE (3) COURSES: 1) NORTH 25°12'35" EAST 81.78 FEET; 2) NORTHERLY ALONG A 335.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 13°59'15" EAST A DISTANCE OF 144.82 FEET), CENTER POINT LIES NORTH 63°31'47" WEST THROUGH A CENTRAL ANGLE OF 24°57'55" A DISTANCE OF 145.97 FEET AND 3) NORTH 01°01'19" EAST 225.34 FEET TO THE POINT OF BEGINNING.
CONTAINING 1,872,457 SQUARE FEET OR 42.99 ACRES.

OWNER'S DEDICATION

KNOW ALL BY THESE PRESENTS THAT WE THE UNDERSIGNED OWNERS OF THE DESCRIBED TRACT OF LAND ABOVE, HAVING CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS AND EASEMENTS TO HEREFTER BE KNOWN AS MOCCASIN FLATS PARTIAL AMENDMENT A, DO HEREBY DEDICATE FOR PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE, AND DO WARRANT, DEFEND AND SAVE THE MUNICIPALITY HARMLESS AGAINST ANY EASEMENTS OR OTHER ENCUMBRANCES WHICH WILL INTERFERE WITH THE MUNICIPALITY'S USE, OPERATION AND MAINTENANCE OF THE EASEMENTS AS SHOWN.

LOT 19 MOCCASIN FLATS, LLC
(A UTAH LIMITED LIABILITY COMPANY)

BY: ANISH BHATIA
ITS: MANAGER

ACKNOWLEDGMENT

STATE OF _____ } S.S.
COUNTY OF _____ }

ON THIS _____ DAY OF _____ IN THE YEAR 20____ BEFORE ME _____ A NOTARY PUBLIC, PERSONALLY APPEARED ANISH BHATIA PROVED ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO IN THIS DOCUMENT, AND ACKNOWLEDGED HE EXECUTED THE SAME.

NOTARY PUBLIC

COMMISSION OR NUMBER: _____

NOTES

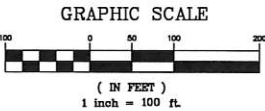
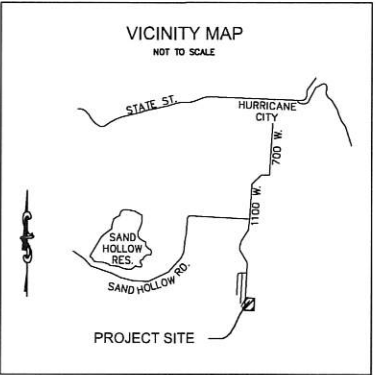
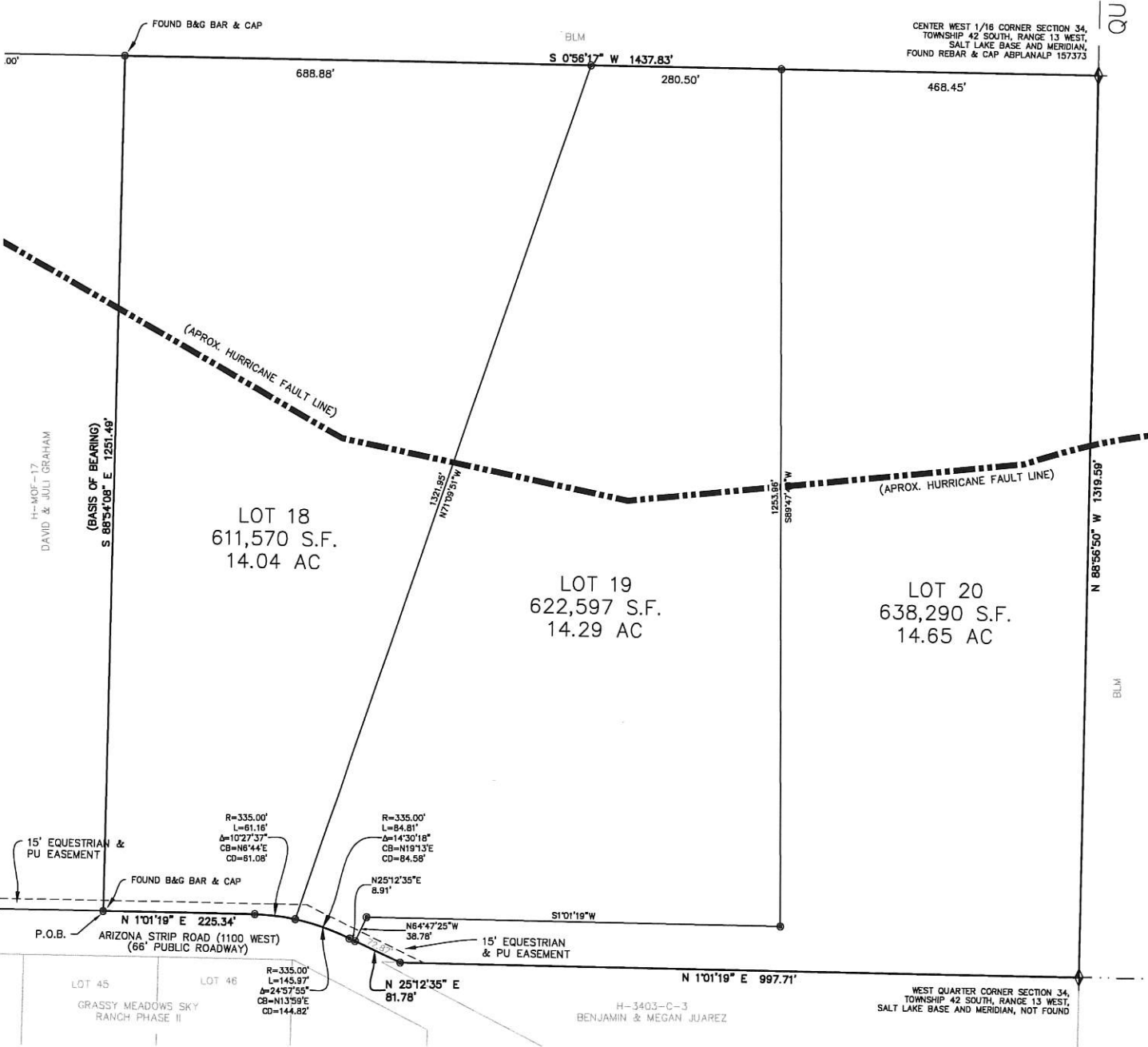
- FOR EVERY 1,000 SQ. FT. OF IMPROVED LOT, THE PURCHASER WILL PROVIDE 45.5 CUBIC FOOT OF DETENTION POND.
- PLANS FOR GRADING WILL BE SUBMITTED TO THE HURRICANE CITY ENGINEER FOR APPROVAL.
- AT THE TIME OF CONSTRUCTION A CULVERT SHALL BE INSTALLED BY THE PURCHASER WHERE THE DRIVEWAY CROSSES THE DRAINAGE DITCH AT 1100 WEST STREET. SIZING OF SAID CULVERT FOR EACH LOT IS SPECIFIED IN THE TABLE SHOWN ON ORIGINAL PLAT CALLED "CULVERT CROSSING SIZE CHART".
- ALL LOT CORNERS TO BE SET WITH 3/8" REBAR WITH CAP STAMPED BUSH AND GUDGELL.
- A 10.00 FOOT WIDE PUBLIC UTILITIES EASEMENT AND A 15.00 FOOT EQUESTRIAN EASEMENT ALONG THE PUBLIC STREET AS SHOWN HEREON TO BE CONVEYED BY THIS PLAT.

MOCCASIN FLATS PARTIAL AMENDMENT "A"

LOCATED IN
WEST 1/2 OF SECTION 27 & NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN

LEGEND

- SECTIONAL MONUMENTATION (FOUND: TYPE, DATE, AGENCY AND LOCATION ETC. AS SHOWN ON THE PLAT).
- ALL BOUNDARY AND PROPERTY (LOT) CORNERS TO BE SET WITH 5/8" REBAR AND CAP STAMPED BUSH & GUDGELL, UNLESS OTHERWISE SPECIFIED ON THE PLAT.
- BOUNDARY LINE
LOT LINE
ADJOINING LOT LINE
STREET CENTER LINE
SECTION LINE



ASH CREEK SPECIAL SERVICE DISTRICT	ENGINEER'S APPROVAL	APPROVAL AS TO FORM	APPROVAL OF THE PLANNING COMMISSION	APPROVAL AND ACCEPTANCE BY THE CITY OF HURRICANE, UTAH	TREASURER APPROVAL	RECORDED No.
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____.	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____.	APPROVED AS TO FORM, THIS THE _____ DAY OF _____, A.D. 20____.	ON THIS THE _____ DAY OF _____, A.D. 20____, THE PLANNING COMMISSION OF THE CITY OF HURRICANE, HAVING REVIEWED THE ABOVE SUBDIVISION FINAL PLAT AND HAVING FOUND THAT IT COMPLIES WITH THE REQUIREMENTS OF THE CITY'S PLANNING ORDINANCES, AND BY AUTHORITY OF SAID COMMISSION HEREBY APPROVE SAID SUBDIVISION FOR ACCEPTANCE BY THE CITY OF HURRICANE, UT.	WE, THE MAYOR AND CITY COUNCIL OF THE CITY OF HURRICANE, UT, HAVE REVIEWED THE ABOVE SUBDIVISION FINAL PLAT AND BY AUTHORIZATION OF SAID CITY COUNCIL, RECORD IN THE MINUTES OF ITS MEETING OF THE _____ DAY OF _____, A.D. 20____, HEREBY ACCEPT SAID FINAL PLAT WITH ALL COMMITMENTS AND OBLIGATIONS PERTAINING THERETO.	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.	
SUPERINTENDENT ASH CREEK S.S.D.	ENGINEER, CITY OF HURRICANE	CITY ATTORNEY, CITY OF HURRICANE	CHAIRMAN PLANNING COMMISSION CITY OF HURRICANE UTAH	ATTEST: CITY RECORDER, CITY OF HURRICANE MAYOR, CITY OF HURRICANE	WASHINGTON COUNTY TREASURER	WASHINGTON COUNTY RECORDER

BUSH & GUDGELL, INC.



Drawn: BRS/DGM
Email: _____
Checked: GM
Approved: GM
Scale: 1"=100'
Job No: 221146

MOCCASIN FLATS PARTIAL AMENDMENT A

SHEET
1
SHEETS
FILE: 221146 FP

SURVEYOR'S CERTIFICATE

I, D. GREGG MEYERS, DO HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR, AND THAT I HOLD LICENSE NO. 312770, IN ACCORDANCE WITH TITLE 58, CHAPTER 22, PROFESSIONAL ENGINEERS AND LAND SURVEYORS LICENSING ACT. I FURTHER CERTIFY THAT BY AUTHORITY OF THE OWNERS I HAVE MADE A SURVEY OF THE TRACT OF LAND SHOWN ON THIS PLAT AND DESCRIBED HEREON, AND HAVE SUBDIVIDED SAID TRACT OF LAND INTO LOTS AND STREETS, TOGETHER WITH EASEMENTS, HEREAFTER TO BE KNOWN AS:

MOCCASIN FLATS

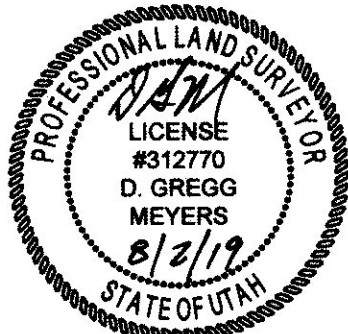
AND THAT THE SAME HAS BEEN CORRECTLY SURVEYED AND WILL BE STAKED ON THE GROUND AS SHOWN ON THIS PLAT.

BOUNDARY DESCRIPTION

ALL OF THE WEST ONE-HALF OF THE WEST ONE-HALF OF SECTION 27, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE AND MERIDIAN AND ALL OF THE WEST ONE-HALF OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 42 SOUTH, RANGE 13 WEST OF THE SALT LAKE BASE AND MERIDIAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE WEST QUARTER CORNER OF SECTION 27, SAID TOWNSHIP AND RANGE, AND RUNNING THENCE N 01°05' E ALONG THE WEST LINE OF SAID SECTION 2643.26 FEET TO THE NORTHWEST CORNER OF SAID SECTION 27; THENCE S 89°43'40" E ALONG THE NORTH LINE OF SAID SECTION 27 1310.55 FEET TO THE WEST 1/16 CORNER OF SECTION 22 AND SAID SECTION 27; THENCE S 0°06'44" W ALONG THE 1/16 LINE 2643.91 FEET TO THE CENTER WEST 1/16 CORNER OF SAID SECTION 27; THENCE S 0°06'42" W ALONG THE 1/16 LINE 2641.38 FEET TO THE WEST 1/16 CORNER OF SAID SECTION 27 AND 34; THENCE S 0°06'45" W ALONG THE 1/16 LINE 2637.56 FEET TO THE CENTER WEST 1/16 CORNER AND THE QUARTER SECTION LINE OF SAID SECTION 34; THENCE N 89°46'22" W ALONG SAID QUARTER SECTION LINE 1319.59 FEET TO THE WEST QUARTER OF SAID SECTION 34; THENCE N 01°14'7" E ALONG THE WEST LINE OF SAID SECTION 34 2637.90 FEET TO THE NORTHWEST CORNER OF SAID SECTION 34 AND SOUTHWEST CORNER OF SAID SECTION 27; THENCE N 01°05' E ALONG THE WEST LINE OF SAID SECTION 27 2642.71 FEET TO THE POINT OF BEGINNING.

CONTAINS 239.126 TOTAL ACRES, WHICH INCLUDES A PORTION OF THE ARIZONA STRIP ROAD (1100 WEST), A 66.00 FOOT WIDE ROAD. (230.7 NET ACRES)



AUGUST 2ND, 2019
DATE:
BUSH AND GUDGELL INC.

D. GREGG MEYERS
PROFESSIONAL LAND SURVEYOR
UTAH LICENSE NUMBER 312770

OWNER'S DEDICATION

KNOW ALL BY THESE PRESENTS THAT WE THE UNDERSIGNED OWNERS OF THE DESCRIBED TRACT OF LAND ABOVE, HAVING CAUSED THE SAME TO BE SUBDIVIDED INTO LOTS AND STREETS TO HEREAFTER BE KNOWN AS MOCCASIN FLATS, DO HEREBY DEDICATE FOR PERPETUAL USE OF THE PUBLIC ALL PARCELS OF LAND SHOWN ON THIS PLAT AS INTENDED FOR PUBLIC USE, AND DO WARRANT, DEFEND AND SAVE THE MUNICIPALITY HARMLESS AGAINST ANY EASEMENTS OR OTHER ENCUMBRANCES ON THE DEDICATED STREETS WHICH WILL INTERFERE WITH THE MUNICIPALITY'S USE, OPERATION AND MAINTENANCE OF THE STREETS AND DO FURTHER DEDICATE THE EASEMENTS AS SHOWN.

CIEL INVESTMENT COMPANY

(A UTAH LIMITED LIABILITY COMPANY)

Walter J. Plumb III
BY: WALTER J. PLUMB III
ITS: President

ACKNOWLEDGMENT

STATE OF UTAH
COUNTY OF SALT LAKE S.S.

ON THIS 6 DAY OF AUGUST IN THE YEAR 2019, BEFORE ME SOMIA C. PEREZ A NOTARY PUBLIC, PERSONALLY APPEARED WALTER J. PLUMB III, PROVED ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO IN THIS DOCUMENT, AND ACKNOWLEDGED HE/SHE EXECUTED THE SAME.

NOTARY PUBLIC
691238
COMMISSION OR NUMBER:

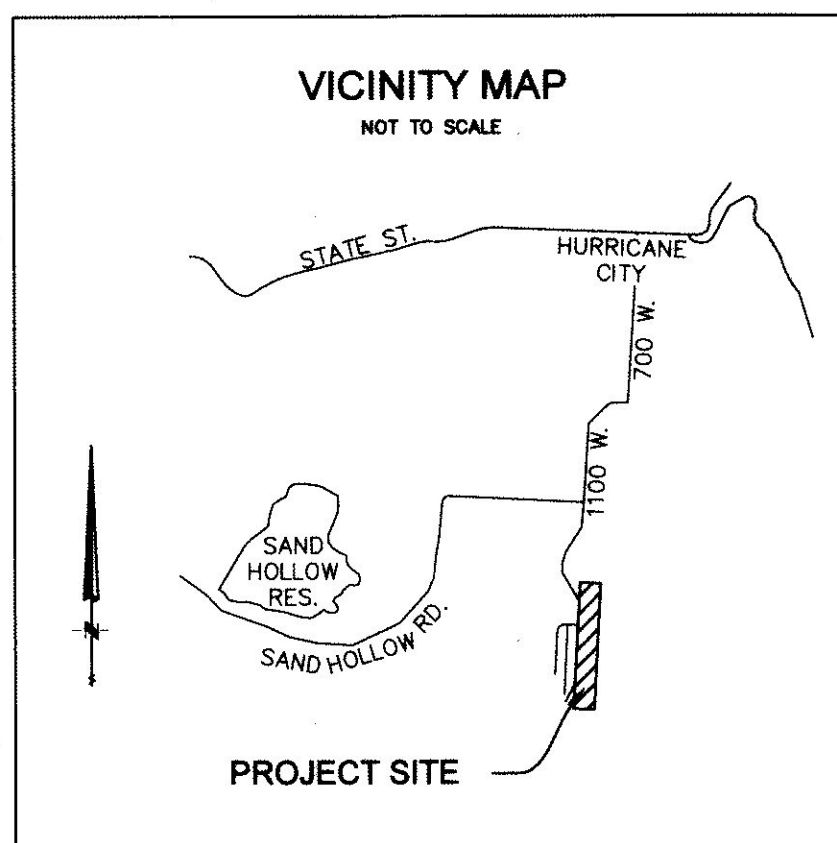
SOMIA CORTES PEREZ
NOTARY PUBLIC - STATE OF UTAH
My Comm. Exp. 10/14/2023
Commission # 691238

CULVERT SIZE CHART

LOT #	CULVERT	LOT #	CULVERT
1	24"	11	24"
2	24"	12	24"
3	24"	13	24"
4	24"	14	24"
5	36"	15	24"
6	36"	16	24"
7	36"	17	24"
8	24"	18	24"
9	24"	19	24"
10	24"		

VICINITY MAP

NOT TO SCALE



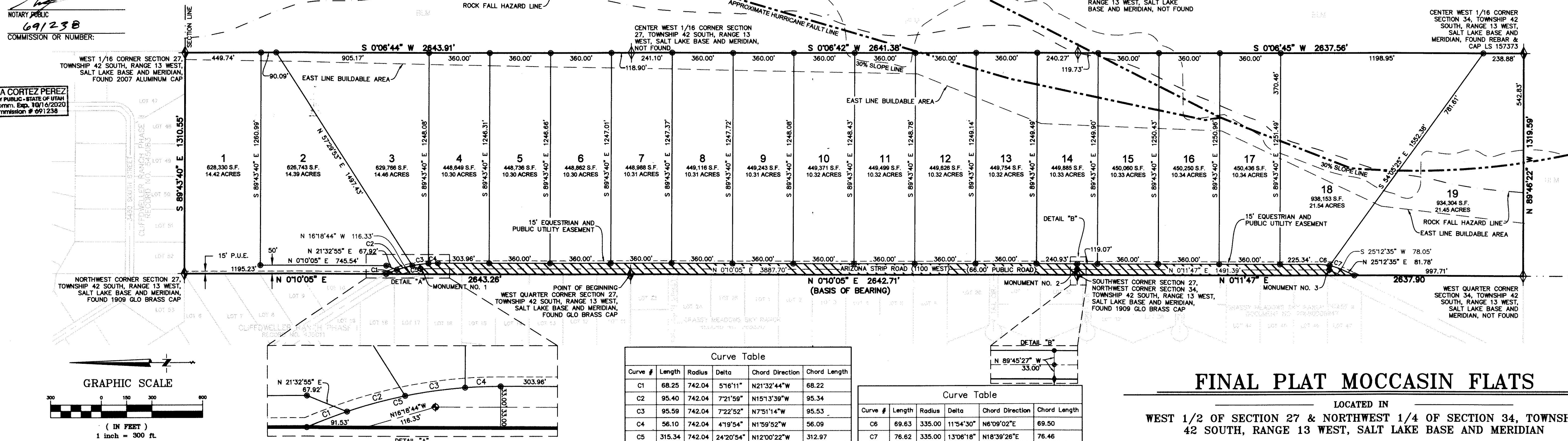
PROJECT SITE

LEGEND

- SECTIONAL MONUMENTATION (FOUND: TYPE, DATE, AGENCY AND LOCATION ETC. AS SHOWN ON THE PLAT).
- SECTIONAL MONUMENTATION (NOT FOUND).
- ALL BOUNDARY AND PROPERTY (LOT) CORNERS TO BE SET WITH 5/8" REBAR AND CAP STAMPED BUSH & GUDGELL, UNLESS OTHERWISE SPECIFIED ON THE PLAT.
- SPECIFIES SURVEY CONTROL MONUMENT TO BE SET (CLASS 1, RING & LID SET TO CITY STANDARD).
- STREET CONVEYED BY THIS PLAT.
- APPROXIMATE HURRICANE FAULT LINE
- 30% OR GREATER SLOPE BOUNDARY. NO CONSTRUCTION PERMITTED ON THE UP-HILL SIDE OF THIS LINE
- ROCK FALL HAZARD LINE
- EAST LIMITS OF BUILDABLE AREA

NOTES

- FOR EVERY 1,000 SQ. FT. OF IMPROVED LOT, THE PURCHASER WILL PROVIDE 45.5 CUBIC FEET OF DETENTION POND.
- PLANS FOR GRADING WILL BE SUBMITTED TO THE HURRICANE CITY ENGINEER FOR APPROVAL.
- ALL LOT CORNERS TO BE SET WITH 5/8" BUSH AND GUDGELL REBAR AND CAP.
- A 15.00 FOOT WIDE EQUESTRIAN AND PUBLIC UTILITY EASEMENT ALONG THE PUBLIC STREET AS SHOWN HEREON TO BE CONVEYED TO THE CITY OF HURRICANE BY THIS PLAT.
- A 15.00 FOOT WIDE PUBLIC UTILITY EASEMENT ALONG THE WEST PROPERTY LINE OF LOT 1 AS SHOWN HEREON TO BE CONVEYED TO THE CITY OF HURRICANE BY THIS PLAT.
- LOT OWNERS SHOULD CONSULT A PROFESSIONAL GEOLOGIST BEFORE CONSTRUCTING HOMES RELATIVE TO THE APPROXIMATE HURRICANE FAULT LINE SHOWN HEREON.
- THE SECTION BREAK DOWN SHOWN HEREON WAS BASED UPON RECORD OF SURVEY DOCUMENT NO. R5004424-07, RECORDED AND FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, WASHINGTON COUNTY UTAH.
- A FAULT STUDY WAS PERFORMED BY AGEC (REVISED DATE OF JUNE 27, 2019) FOR THIS SUBDIVISION. THE FINDINGS FOR THE BUILDABLE AREA REPRESENTED IN THIS REPORT ARE SHOWN HEREON BY ITS MOST EAST LINE.



FINAL PLAT MOCCASIN FLATS

LOCATED IN
WEST 1/2 OF SECTION 27 & NORTHWEST 1/4 OF SECTION 34, TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE AND MERIDIAN

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 26 DAY OF August, A.D. 2019

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 21 DAY OF August, A.D. 2019

APPROVAL AS TO FORM

APPROVED AS TO FORM, THIS THE 29 DAY OF August, A.D. 2019

APPROVAL AND ACCEPTANCE BY HURRICANE CITY, UTAH

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

TREASURER APPROVAL

I, WASHINGTON COUNTY TREASURER, CERTIFY ON THIS 30 DAY OF August, A.D. 2019, THAT ALL TAXES, SPECIAL ASSESSMENTS, AND FEES DUE AND OWING ON THIS SUBDIVISION FINAL PLAT HAVE BEEN PAID IN FULL.

RECORDED No.

DOC # 20190035165
Map (Conveying Property)
Filed in Public Records
08/30/2019 01:55:18 PM Fee \$ 98.00
By WASHINGTON COUNTY RECORDER

Michael J. Plumb III
SUPERINTENDENT ASH CREEK S.S.D.
8-26-19

David O. L. Bann
ENGINEER, CITY OF HURRICANE
8-21-19

James E. Blum
CITY ATTORNEY, CITY OF HURRICANE

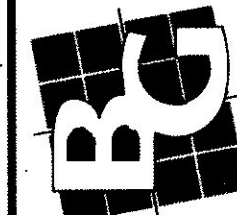
John W. Bramall
ATTTEST: CITY RECORDER, HURRICANE, UT

John W. Bramall, Mayor, Hurricane, UT

Washington County Treasurer

Russell Smith
WASHINGTON COUNTY RECORDER

BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors



Drawn: BGS/PAS Date: 07/23/2019

Checked: DGM

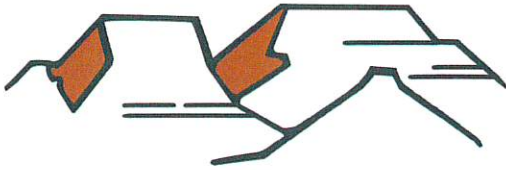
Approved: DGM

Scale: 1"=300'

Job No.: 171065

FINAL PLAT MOCCASIN FLATS
LOCATED IN
WEST 1/2 OF SECTION 27 & NORTHWEST 1/4 SECTION 34,
TOWNSHIP 42 SOUTH, RANGE 13 WEST, SALT LAKE BASE & MERIDIAN

SHEET
1
1
SHEETS
FILE: 171065



HURRICANE CITY UTAH

147 N 870 W Hurricane UT 84737
PHONE: 435.635.2811 FAX: 435.635.2184

AMENDED FINAL PLAT APPLICATION

For Office Use Only. \$150 Fee

File No. 2022-AFP-07

Receipt No. 8-161632

Name: DARRELL & CHRISTINE LEIGH Telephone: 520-678-0900

Address: 4400 W STATE STREET #26, HURRICANE Fax No. _____

Email: DLEIGH117@MSN.COM Agent Email: RYANSCHOLES@ALPHAENGINEERING.COM

Agent (If Applicable): RYAN SCHOLES/ALPHA ENGINEERING Telephone: 435-628-6500

Address/Location of Subject Property: 4400 W STATE STREET #26, HURRICANE

Tax ID of Subject Property: H-QLE-26, H-QLE-26A Number of Lots: 1

Subdivision Name: QUAIL LAKE ESTATES PUD PART. AMD. A Phase: _____

Submittal Requirements: 1-large paper copy, 1-11 X 17, and 1 disk in 2004 or newer Auto-Cad format

1. The final plat shall show:

- ☒ a. 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.
- ☒ b. 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.
- ☒ c. 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.
- ☒ d. Every existing right-of-way and easement grant of record for communications infrastructure, for underground facilities as defined in Section 54-8a-2 of the Utah Code and for other utility facilities. Where the same is granted to a specific entity, that entity must be clearly identified.
- ☒ e. 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.
- ☒ f. All street center line data must be shown, together with its relationship to the property lines, corners, etc.
- ☒ g. 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.
- ☐ h. The dedication to the public of all streets and highways included in the proposed subdivision (except approved private streets).

- N/A j. Street monuments shall be installed by the subdivider in accordance with the requirements of City Standards. Locations of said monuments shall be approved by the City Engineer and indicated on the subdivider's plat by the appropriate symbols.
- X j. 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.
- N/A k. 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.

2. Required Forms & Certificates: In addition, the final plat shall contain the standard forms for the following:

- X a. A registered professional land surveyor's certificate of survey, together with a statement that: (a) the surveyor holds a license in accordance with Title 58, Chapter 22 of the Utah Code, Professional Engineers, and Professional Land Surveyor's Licensing Act; (b) the surveyor has completed a survey of the property described on the plat in accordance with Section 17-23-17 of the Utah Code and has verified all measurements; (c) has placed monuments as represented on the plat. **Plat must be signed and stamped by the licensed surveyor prior to final plat submittal.**
- X b. 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.
- X c. Mortgagee or other lien holder's Consent to Record, if applicable.
- X d. A notary public's acknowledgement space for the signature of the mortgagee and/or each owner signing the plat.
- X e. Certificate of approval of Ash Creek Special Service District.
- X f. Certificate of approval of the City Engineer.
- X g. Certificate of approval of the City Council, as evidenced by the signature of the mayor
- X h. Certificate of approval as to form executed by the City Attorney.
- X i. A one and one-half inch by five-inch (1 ½" x 5") space in the lower right-hand corner of the drawing for the use of the County Recorder.

3. Other Information Required: The following information or documentation shall be submitted:

- a. A completed form from the Washington County Treasurer's office (see attached copy of form) for property located within the subdivision verifying that all taxes or special assessments payable on all property within the limits of the subdivision are paid in full
- N/A b. 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 with the final plat.
- c. Title report for the property being subdivided.
- d. A disk of the final plat prepared in 'Auto-Cad 2004' (or newer format)

Application Process: The following steps occur:

- A completed application with all required documents and fee payment as outlined above is submitted to the Planning Department along with the paper copy of the amended plat.

- A paper copy of the amended plat is submitted to the City Engineer for review. The City Engineer will redline the plat and email the subdivision engineer of required changes that need to be made. If a plat is still not ready for the City Engineers signature after the second submittal, an additional fee must be paid before the Engineer performs another review. An approved mylar of the final plat must be signed by the City Engineer before the City Council meeting at which the amendment is to be submitted
- A plat amendment without the notarized signatures of all the owners of record on the mylar or on consent to record forms will require a public hearing. The applicant will be required to pay all notification and/or publication costs for notice of the hearing.

Requirements for recordation:

1. Amended plat approval by the City Council
4. Two disks of the final plat provided in 'Auto Cad 2004' format – one for the city, and one for the County Recorder.
5. Review of the title report by the City Attorney.
7. 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 is the last signer of the mylar just prior to recordation.
8. Someone from the City Attorney's office will accompany the developer's representative to the County Recorder's office for recordation. The developer pays recording fees.

A development with CC&Rs should submit a copy of the CC&R's to the Planning Staff and one to the City Attorney for review at the time the plat amendment is submitted.

Note: An amended plat that includes the abandonment of a dedicated road or for a subdivision that is not fully improved requires a different application and procedure

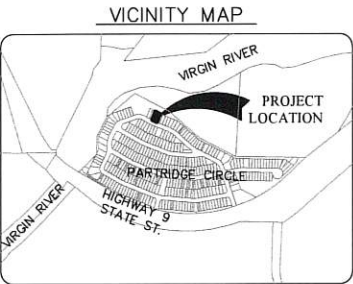
(Office Use Only)

Date Received: _____ Application Complete: YES ☐ NO ☐

Date application deemed to be complete: _____ Completion determination made by:

QUAIL LAKE ESTATES PLANNED UNIT DEVELOPMENT
PARTIAL AMENDMENT "A"
(LOT 26)

LOCATED IN THE NORTHEAST QUARTER OF SECTION 2, TOWNSHIP 42 SOUTH, RANGE 14 WEST,
SALT LAKE BASE AND MERIDIAN, HURRICANE CITY, UTAH



SURVEYOR'S CERTIFICATE

I, SCOTT P. WOOLSEY, PROFESSIONAL UTAH LAND SURVEYOR NUMBER 174919, HOLD A LICENSE IN ACCORDANCE WITH TITLE 58, 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.

QUAIL LAKE ESTATES PLANNED UNIT DEVELOPMENT PARTIAL
AMENDMENT "A" (LOT 8)

AND THAT SAID TRACT OF LAND HAS BEEN SUBDIVIDED INTO A LOT AND EASEMENTS 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

BEGINNING AT THE SOUTHWEST CORNER OF LOT 25, QUAIL LAKE ESTATES PLANNED UNIT DEVELOPMENT AMENDED #5, AS RECORDED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER AS DOCUMENT NO. 824879, SAID POINT BEING NORTH NORTH 89°52'48" EAST 568.23 FEET ALONG THE CENTER SECTION LINE AND NORTH 307.64 FEET TO THE POINT OF BEGINNING, AND RUNNING THENCE NORTH 69°42'33" WEST 4.84 FEET ALONG THE NORTHERLY RIGHT OF WAY LINE OF QUAIL CREEK DRIVE TO THE BEGINNING OF A CURVE TO THE RIGHT HAVING A RADIUS OF 525.89 FEET, THENCE NORTHWESTERLY 48.65 FEET ALONG SAID RIGHT OF WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85°24'33" TO THE SOUTHEAST CORNER OF LOT 27A; THENCE NORTH 20°17'27" EAST 80.68 FEET TO THE NORTHEAST CORNER OF SAID LOT 27A; THENCE SOUTH 61°19'39" EAST 55.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 25, THENCE SOUTH 20°17'27" WEST 85.00 FEET TO THE POINT OF BEGINNING.

CONTAINS 4.804 SQUARE FEET OR 0.11 ACRES, MORE OR LESS.



SCOTT P. WOOLSEY
P.L.S. 174919

GENERAL NOTES & RESTRICTIONS

1. THERE EXISTS A 5.00 FOOT PUBLIC UTILITY AND DRAINAGE EASEMENT ALONG ALL STREET SIDE AND BACK LOT LINES AS SHOWN HEREON.

BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS NORTH 89°52'48" EAST, BETWEEN THE CENTER 1/4 CORNER AND THE NW CORNER OF THE NE¼, SE¼, OF SECTION 2, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SLB&M.

AMENDMENT NOTE

THE PURPOSE OF THIS AMENDED PLAT IS TO COMBINE LOTS 26 AND 26A OF QUAIL LAKE ESTATES PLANNED UNIT DEVELOPMENT AMENDED #5 AS RECORDED AS DOCUMENT NO. 824879 AND CREATE A NEW OVERALL LOT 26. NO OTHER CHANGES TO THE ORIGINAL PLAT ARE INTENDED WITH THIS AMENDED PLAT.

OWNERS DEDICATION

KNOW ALL MEN BY THESE PRESENTS THAT THE UNDERSIGNED OWNERS OF THE ABOVE DESCRIBED TRACT OF LAND HAVING CAUSED SAME TO BE SUBDIVIDED INTO A LOT AND UTILITY & DRAINAGE EASEMENTS TO BE HEREINAFTER KNOWN AS:

QUAIL LAKE ESTATES PLANNED UNIT DEVELOPMENT PARTIAL
AMENDMENT "A" (LOT 8)

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

IN WITNESS I HAVE HEREUNTO SET MY HAND THIS ____ DAY OF _____, 2022.

BY: _____ BY: _____
DARRELL D. LEIGH CHRISTINE L. LEIGH

ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____)

ON THIS ____ DAY OF _____ A.D. 2022, PERSONALLY APPEARED DARRELL D. LEIGH AND CHRISTINE L. LEIGH, PROVED ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSONS WHOSE NAMES ARE SUBSCRIBED TO IN THIS DOCUMENT, AND ACKNOWLEDGED THEY EXECUTED THE SAME.

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

NO STAMP REQUIRED
(UTAH CODE 46-1-16(5))

NOTARY PUBLIC (SIGNATURE)
NO STAMP REQUIRED (UTAH CODE 46-1-16(5))

FINAL PLAT OF

QUAIL LAKE ESTATES PLANNED UNIT
DEVELOPMENT PARTIAL AMENDMENT "A"
(LOT 8)

LEGEND

⊙ SPECIFIES PROPERTY CORNER
— CENTERLINE
— EASEMENT LINE

APPROVAL OF ASH CREEK SPECIAL SERVICE DISTRICT	ENGINEER'S APPROVAL	APPROVAL AS TO FORM	APPROVAL AND ACCEPTANCE BY HURRICANE CITY, UTAH	TREASURER APPROVAL
I hereby verify that this office examined this final subdivision plat and hereby recommends approval on this ____ day of _____, 2022.	I hereby verify that this office examined this final subdivision plat and hereby recommends approval on this ____ day of _____, 2022.	Approved as to Form, this the ____ day of _____, A.D. 2022.	We, the City of Hurricane, have reviewed the above plat and hereby accept said plat with all commitments and all obligations pertaining thereto.	I, Washington County Treasurer, certify on this day of _____, A.D. 2022 that all taxes, special assessments, and fees due and owing on this subdivision Final Plat have been paid in full.
SUPERINTENDENT ASH CREEK SPECIAL SERVICE DISTRICT	City Engineer City of Hurricane Date	City Attorney City of Hurricane	Mayor City of Hurricane Attest: City Recorder City of Hurricane	Washington County Treasurer Washington County Recorder

1687-01 SVY.DWG (AUGUST 2022)

ALPHA
ENGINEERING
43 South 100 East, Suite 100 • St George, Utah 84770
T: 435.628.6500 • F: 435.628.6553 • alphaengineering.com

GRAPHIC SCALE
10 0 5 10 20
1 inch = 10 ft. (24x36 SHEET)





STAFF COMMENTS

Agenda Date:	10/03/2022
Application Number:	2022-AFP-07
Type of Application:	Amended Final Plat
Action Type:	Administrative
Applicant:	Darrell and Christine Leigh
Agent:	Ryan Scholes/Alpha Engineering
Request:	Approval of an Amended Final Plat
Location:	4400 W State St #26
Zoning:	MH/RV
General Plan Map:	Multifamily

Planning Commission Recommendation

The Planning Commission gave a positive recommendation subject to staff and JUC Comments.

Discussion: The applicant has applied to amend the final plat for Quail Lake Estates to combine Lots 26 and 26A into one lot. Combining lots within a recorded subdivision requires an amended final plat.



JUC Comments

1. **Public Works:** Make sure utilities are on the correct lot
2. **Power:** Lines may have to be terminated. Impact fees will still be accounted for. Will have to de-energize the line to the old pedestal.
3. **Water:** No comments
4. **Streets:** No issues
5. **Sewer:** Verify location of laterals. Utilize the lateral that works best for the project. Cut and cap/abandon the other existing lateral.
6. **Engineering:** Should "Amended #5" be added to the title? It appears Quail Lake Estates has been amended five times before now. The latest plat on file with the Recorder's office is Quail Lake Estates Planned Unit Development Amended #5. This is amending Lot 26 not Lot 8. The legend doesn't specify monuments will be set, check survey details.
7. **Fire:** No issues
8. **Cable/Phone/Gas/Water Conservancy/Parks:** No comments

Staff Comments

1. The plat does meet amended final plat standards contained in [Utah Code 10-9a-608](#). Subdivision Amendments, updated in 2022. The following are the key items:
 - a. Depicts only the portion of the subdivision that is proposed to be amended
 - b. Includes a plat name distinguishing the amended plat from the original plat
 - c. Describe the differences between from the original plat.
 - d. Includes references to the original plat
2. The Final Plat needs a full review by the City Engineering Department for surveying details.
3. Additional utility services will need to be shut off to the property

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