

CITY COUNCIL MEETING NOTICE AND AGENDA

Notice is given that the Farmington City Council will hold a regular meeting on **Tuesday, October 15, 2024** at City Hall 160 South Main, Farmington, Utah. A work session will be held at 6:00 pm in Conference Room 3 followed by the regular session at 7:00 pm in the Council Chambers. The link to listen to the regular meeting live and to comment electronically can be found on the Farmington City website www.farmington.utah.gov. If you wish to email a comment for any of the listed public hearings, you may do so to dcarlile@farmington.utah.gov

WORK SESSION – 6:00 p.m.

- Fire Station funding discussion
- Rock Hotel Dental and County Complex parking

REGULAR SESSION – 7:00 p.m.

CALL TO ORDER:

- Invocation – Scott Isaacson, Councilmember
- Pledge of Allegiance – Brett Anderson, Mayor

PRESENTATIONS:

- Recognition of Sarah Miller as Student of the Month [pg 3](#)
- Presentation to the Children’s Justice Center

BUSINESS:

- Consider approval of SIRQ Construction to be the Construction Manager / General Contractor for the Ivy Acres Park Project. [pg 5](#)
- RAP Tax Ballot Issue - presentation of arguments [pg 106](#)
- Public Comment on RAP Tax Ballot Issue [pg 106](#)
- Consideration of a Rezone and Development Agreement for an RV resort at approximately 650 W Lagoon Drive [pg 110](#)
- Zone Text change allowing Rear Yard Averaging on all residential lots [pg 149](#)
- Zone Text change to include a new definition for 'Live / Work Residential' [pg 155](#)
- Sale of Lupine Park, Parcel ID 08-098-0023 [pg 161](#)

SUMMARY ACTION:

1. Public Works Surplus Property [pg 170](#)
2. Monthly Financial Report [pg 171](#)
3. Correcting an ordinance vacating street right-of way commonly known as Lagoon Lane [pg 186](#)

GOVERNING BODY REPORTS:

- City Manager Report
- Mayor Anderson & City Council Reports

ADJOURN

CLOSED SESSION – Minute motion adjourning to closed session, for reasons permitted by law.

In compliance with the Americans with Disabilities Act, individuals needing special accommodations due to a disability, please contact DeAnn Carlile, City recorder at 801-939-9206 at least 24 hours in advance of the meeting.

I hereby certify that I posted a copy of the foregoing Notice and Agenda at Farmington City Hall, Farmington City website www.farmington.utah.gov and the Utah Public Notice website at www.utah.gov/pmn. Posted on October 10, 2024

CITY COUNCIL AGENDA



PRESENTATIONS

- Recognition of Sarah Miller, Student of the Month
- Presentation to the Children's Justice Center

Farmington City Student of the Month

Sarah Miller



I am honored to nominate Sarah Miller for Student of the Month. As a cherished member of the Youth City Council, Sarah has consistently demonstrated outstanding leadership and dedication in everything she undertakes. Her commitment to excellence is evident not only in her work on the council but also in her ability to lead by example. Sarah is one of the first to step forward when help is needed, consistently volunteering her time and energy to serve her community. Her regular attendance at city council meetings highlights her responsibility and dedication to civic engagement. Moreover, Sarah's kindness and respect toward everyone she encounters are qualities that set her apart as a remarkable young leader. In addition to her service with the Youth City Council, Sarah is also an active member of her high school's cross-country and track teams. Her ability to balance athletics, academics, and community service is a testament to her discipline and time management skills. I have had the privilege of working alongside Sarah at numerous service events throughout the year, and I am continually impressed by her sincerity and genuine desire to make a positive impact. Her thoughtful approach to helping others, combined with her unwavering commitment to doing what is right, makes her truly deserving of any recognition she receives. Sarah exemplifies all the qualities that a true leader should possess: integrity, compassion, dedication, and a willingness to serve. I wholeheartedly recommend her for the award, confident that she will continue to make a lasting difference in the lives of those around her.

Emme Kovacs, YCC Advisor

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Consider approval of SIRQ Construction to be the Construction Manager / General Contractor (CM/GC) For the Ivy Acres Park Project

PRESENTED BY: Chad Boshell

DEPARTMENT: City Engineer, Assistant City Manager

MEETING DATE: October 15, 2024

City Council Staff Report

To: Honorable Mayor and City Council

From: Chad Boshell, City Engineer

Date: October 15, 2024

SUBJECT: **CONSIDER APPROVAL OF SIRQ CONSTRUCTION TO BE THE CONSTRUCTION MANAGER / GENERAL CONTRACTOR (CM/GC) FOR THE IVY ACRES PARK PROJECT**

RECOMMENDATION

Approve the contract with Sirq Construction to be the construction manager and general contractor for the Ivy Acres Park subject to amendments satisfactory to the City Attorney.

BACKGROUND

Rather than re-bid the Ivy Acres Park the City has decided to unitize a construction manager / general contractor method. When utilizing a CM/GC method of construction the City hires a contractor to be the construction manager and the general contractor. The CM/GC will work with the City and our design to value engineer portions of the project and then bid out the individual trades of the project while allowing the City input and decision-making on it. This allows the City to remain within budget and involved throughout the whole process of subcontractor selection. The City received 8 proposals for the project. The proposals were reviewed and evaluated by various staff and the landscape architect for experience, project team, work plan, and cost. The selection committee narrowed the search and interviewed three companies. The project includes sidewalk, construction of the park buildings, a regional basin, pickleball courts, splash pad, the new Farmington City Tree feature, and parking. City staff recommends awarding Sirq Construction the project. Attached is the contract between the City and the Contractor to do the work.

SUPPLEMENTAL INFORMATION

1. Construction Manager Contract
2. General Conditions Contract
3. Addendum to the Contract
4. Sirq Proposal

Respectively Submitted



Chad Boshell, P.E.
Assistant City Manager

Reviewed and Concur



Brigham Mellor
City Manager



AIA[®] Document A133[®] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the Ninth day of October in the year Two Thousand Twenty-Four
(*In words, indicate day, month, and year.*)

BETWEEN the Owner:
(*Name, legal status, address, and other information*)

Farmington City
160 South Main St.
Farmington, UT 84025

and the Construction Manager:
(*Name, legal status, address, and other information*)

SIRQ Construction
3900 North Traverse Mountain Blvd STE 202
Lehi, UT 84043

for the following Project:
(*Name, location, and detailed description*)

Ivy Acres Park
1397 West Cook Lane
Farmington, UT 84025

The Architect:
(*Name, legal status, address, and other information*)

Blu Line Designs
8719 S. Sandy Parkway
Sandy, UT 84070

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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- EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**
- EXHIBIT B INSURANCE AND BONDS**

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The Owner's Program is Blu Line Design Drawings dated 3/6/2024

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

New Farmington City Ivy Acres Park. Approx 12 Acres. To include amenities such as: splashpad, playground, ninja course, hammocking & slack line poles, corn hole, restroom & pumphouse building and open areas.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

(Provide total and, if known, a line item breakdown.)

Init.

FLCC - \$14,000,000 – Fourteen Million Dollars

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

Design Phase Complete

Pre-Construction – Approximately 10/15/2024 thru 11/29/2024

.2 Construction commencement date:

12/9/2024

.3 Substantial Completion date or dates:

9/15/2025

.4 Other milestone dates:

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

N/A

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

N/A

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

N/A

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Paul Roberts
Russell Coons
160 South Main St.
Farmington, UT 84025

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:
(List name, address and other contact information.)

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

.2 Civil Engineer:

Ensign Engineering
919 North 400 West
Layton, UT 84041

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

Project Architect
Blu Line Designs
8719 S. Sandy Parkway
Sandy, UT 84070

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:
(List name, address, and other contact information.)

Bret Vargason
SIRQ Construction
3900 North Traverse Mountain Blvd STE 202
Lehi, UT 84043
801-885-2048.

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

N/A

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

N/A

Init.

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User Notes:

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§ 1.1.15 Other Initial Information on which this Agreement is based:

N/A

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing written protocols for the development, use, transmission, reliance, and exchange of digital data, including building information models for the Project.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement.

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The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The

Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Construction Manager has assumed a FLCC of \$14,000,000.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a 4.5% contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. This contingency is not intended, nor shall it be used for owner directed scope changes or additions to the Work. At the owner's discretion, an Owner's Contingency for such scope changes or additions can be added to the GMP.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

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§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner’s execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER’S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner’s objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner’s obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

§ 4.1.3 The Owner shall establish and periodically update the Owner’s budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner’s other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner’s budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project’s scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Construction Manager’s performance of the Work with reasonable promptness after receiving the Construction Manager’s written request for such information or services.

The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

Preconstruction Services – Lump Sum - \$10,763 (ten thousand seven hundred sixty-three dollars)

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

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Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 3 (Three) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

13 % Thirteen percent

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

3.25 % - (three point two five percent)

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

3.95% - (three point nine five percent)

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15% - (fifteen percent)

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

N/A

§ 6.1.7 Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

If the final actual Cost of the Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price as adjusted by approved change orders, the resulting savings, including the Contractor's Contingency, shall be shared by the Owner 60% and the Construction Manager 40%

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner. Should they be required, extended General Conditions will be billed per the attached SIRQ Labor Rates.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

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§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

Project Manager, Superintendent, Project Engineer, Field Engineer, Safety Manager, Project Executive

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

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§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall

obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 (thirty) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

5%

§ 11.1.8.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

General Conditions, Insurance, Bonds, Contractor Fee

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

Init.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Thirteen % 13%

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- Arbitration pursuant to Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a

Init.

condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and three million dollars (\$ 3,000,000) in the aggregate for bodily injury and property damage. General Liability Insurance will be charged at .0073% of the GMP Amount.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$ 2,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage	Limits
----------	--------

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

Init.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. A Payment and Performance Bond will be provided to the Owner at the rate of .0088% of the GMP Amount.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5 Building Information Modeling Exhibit, if completed:

N/A

- .6 Other Exhibits:
(Check all boxes that apply.)

[N/A] AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

[N/A] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

- .7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above.

OWNER *(Signature)*

Brett N. Anderson Mayor
(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

Bret Vargason Operations Manager
(Printed name and title)

Init.

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User Notes:

(1665553762)

Additions and Deletions Report for AIA® Document A133® – 2019

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 19:29:18 ET on 10/07/2024.

PAGE 1

AGREEMENT made as of the Ninth day of October in the year Two Thousand Twenty-Four

...

Farmington City
160 South Main St.
Farmington, UT 84025

...

SIRQ Construction
3900 North Traverse Mountain Blvd STE 202
Lehi, UT 84043

...

Ivy Acres Park
1397 West Cook Lane
Farmington, UT 84025

...

Blu Line Designs
8719 S. Sandy Parkway
Sandy, UT 84070

PAGE 2

The Owner's Program is Blu Line Design Drawings dated 3/6/2024

...

New Farmington City Ivy Acres Park. Approx 12 Acres. To include amenities such as: splashpad, playground, ninja course, hammocking & slack line poles, corn hole, restroom & pumphouse building and open areas.

PAGE 3

FLCC - \$14,000,000 – Fourteen Million Dollars

...

Design Phase Complete
Pre-Construction – Approximately 10/15/2024 thru 11/29/2024

...

12/9/2024

...

9/15/2025

...

N/A

...

N/A

...

N/A

...

Paul Roberts
Russell Coons
160 South Main St.
Farmington, UT 84025
PAGE 4

Ensign Engineering
919 North 400 West
Layton, UT 84041

...

Project Architect
Blu Line Designs
8719 S. Sandy Parkway
Sandy, UT 84070

...

Bret Vargason
SIRO Construction
3900 North Traverse Mountain Blvd STE 202
Lehi, UT 84043
801-885-2048.

...

N/A

...

N/A
PAGE 5

N/A

PAGE 7

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Construction Manager has assumed a FLCC of \$14,000,000.

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§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a 4.5% contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. This contingency is not intended, nor shall it be used for owner directed scope changes or additions to the Work. At the owner's discretion, an Owner's Contingency for such scope changes or additions can be added to the GMP.

PAGE 10

Preconstruction Services – Lump Sum - \$10,763 (ten thousand seven hundred sixty-three dollars)

PAGE 11

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within 3 (Three) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid 30 (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

13 % Thirteen percent

...

3.25 % - (three point two five percent)

...

3.95% - (three point nine five percent)

...

15% - (fifteen percent)

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rental rate paid at the place of the Project.

...

N/A

PAGE 12

If the final actual Cost of the Work plus the Construction Manager's Fee is less than the Guaranteed Maximum Price as adjusted by approved change orders, the resulting savings, including the Contractor's Contingency, shall be shared by the Owner 60% and the Construction Manager 40%

...

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner. Should they be required, extended General Conditions will be billed per the attached SIRQ Labor Rates.

PAGE 13

Project Manager, Superintendent, Project Engineer, Field Engineer, Safety Manager, Project Executive

PAGE 16

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the First day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 30 (thirty) days after the Architect receives the Application for Payment.

PAGE 18

5%

...

General Conditions, Insurance, Bonds, Contractor Fee

PAGE 19

Thirteen % 13%

PAGE 20

[] Litigation in a court of competent jurisdiction

PAGE 22

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and three million dollars (\$ 3,000,000) in the aggregate for bodily injury and property damage. General Liability Insurance will be charged at .0073% of the GMP Amount.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than (\$) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two million dollars (\$ 2,000,000) per claim and two million dollars (\$ 2,000,000) in the aggregate.

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§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents. A Payment and Performance Bond will be provided to the Owner at the rate of .0088% of the GMP Amount.

...

N/A

...

[N/A] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:

...

[N/A] Supplementary and other Conditions of the Contract:

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Brett N. Anderson Mayor

Bret Vargason Operations Manager

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Bret M. Vargason, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 19:29:18 ET on 10/07/2024 under Order No. 4104243279 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Ivy Acres Park
1397 West Cook Lane
Farmington, UT 84025

THE OWNER:

(Name, legal status and address)

Farmington City
160 South Main St.
Farmington, UT 84025

THE ARCHITECT:

(Name, legal status and address)

Blu Line Designs
8719 S. Sandy Parkway
Sandy, UT 84070

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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User Notes:

(1232694585)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

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§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional,

whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work,

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provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

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Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

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- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

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§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

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The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

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approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

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§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

Init.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

Init.

Additions and Deletions Report for **AIA® Document A201® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 19:29:03 ET on 10/07/2024.

PAGE 1

Ivy Acres Park
1397 West Cook Lane
Farmington, UT 84025

...

(Name, legal status and address)

Farmington City
160 South Main St.
Farmington, UT 84025

...

Blu Line Designs
8719 S. Sandy Parkway
Sandy, UT 84070

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Bret M. Vargason, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 19:29:03 ET on 10/07/2024 under Order No. 4104243279 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

ADDENDUM TO THE AGREEMENT
Between Farmington City and SIRQ Construction
Related to Farmington City's new Ivy Acres Park

The Parties agree to the following addendum to the Agreement between Farmington City, Utah, and SIRQ Construction, which utilized AIA standard forms A133-2019 and A201-2017.

The following provisions are added to the Agreement as follows:

ADDITIONS TO A133-2019:

§ 14.3.1.8 **Insurer Rating.** All insurance described in this Section 14.3 shall be provided by an insurer with a rating of A- or better by A.M. Best. 14.3.1.8

§ 15.3 **Immigration Status Verification.** Pursuant to Utah Code Ann. § 63G-12-302, the Construction Manger certifies that it is registered with and participates in a status verification system (such as E-Verify), as defined in the Utah Code, to verify the work eligibility status of its new employees that are employed in the state of Utah. The Construction Manager further agrees that it will require any Subcontractor or Sub-subcontractor performing work on the Project to similarly certify that it is registered with and participates in a state-approved status verification system. The Construction Manager will, within five business days of receiving a written request from the Owner, provide proof of enrollment and participation in a status verification system to the Owner.

§ 15.4 **Non-Collusion & Ethics.** The Construction Manager, by executing this Agreement, certifies that its Proposal was arrived at independently and was submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor, city official or city agent, that was designed to limit independent and fair bidding or competition. The Construction Manager further recognizes that any such collusion jeopardizes this Agreement and any payments received or owed. Pursuant to Utah Code Ann. § 10-3-1312, any transactions resulting from collusion may result in a voided or rescinded Agreement, without returning any part of consideration received by the Owner or providing compensation for work completed.

§ 15.5 **Anti-Harassment.** The Construction Manager agrees to comply with the Owner's policies related to the prevention of workplace harassment and disability access, as it relates to the Project. The Construction Manager and any subcontractors shall not engage in any behavior that is hostile toward any Owner employee, or citizen, and shall not discriminate against any individual on the basis of gender, sex, race, national origin, sexual orientation, gender identity, religion or disability.

ADDITIONS TO A201-2017:

§ 10.3.7 **Governmental Immunity.** The Owner is covered by the Governmental Immunity Act of Utah, which is codified in Sections 63G-7-101 through 63G-7-904, Utah Code Annotated. Nothing herein is intended to waive or modify any rights, defenses or provisions of the Owner provided in the Governmental Immunity Act of Utah. The Owner acknowledges that contractual obligations are subject to waiver of immunity; this section applies to any claim or injury outside of contractual obligations, whether asserted by a third-party, Construction Manager, or any subcontractor or supplier.

§ 11.2.4 **Owner participation in URMA.** The Owner does not maintain traditional insurance, but instead operates within an insurance pool with multiple governmental entities, through the Utah Risk Management Agency, which is a Utah intergovernmental entity. Claims are managed through URMA and group insurance. Construction Manager acknowledges that the Owner participates in URMA, and affirmatively acknowledges that such participation satisfies the requirements of Section 11.2 of A201-2017.

This Addendum is incorporated into the Agreement by reference and executed by the Parties on this _____ day of _____, 2024.

OWNER

Brett Anderson
Mayor
Farmington City, Utah

CONSTRUCTION MANAGER

Bret Vargason
Operations Manager
SIRQ Construction

CM/GC Services for Farmington City
IVY ACRES PARK

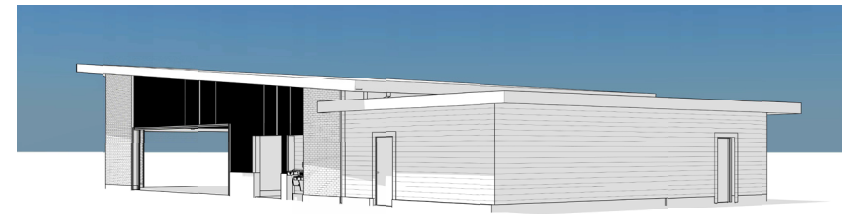
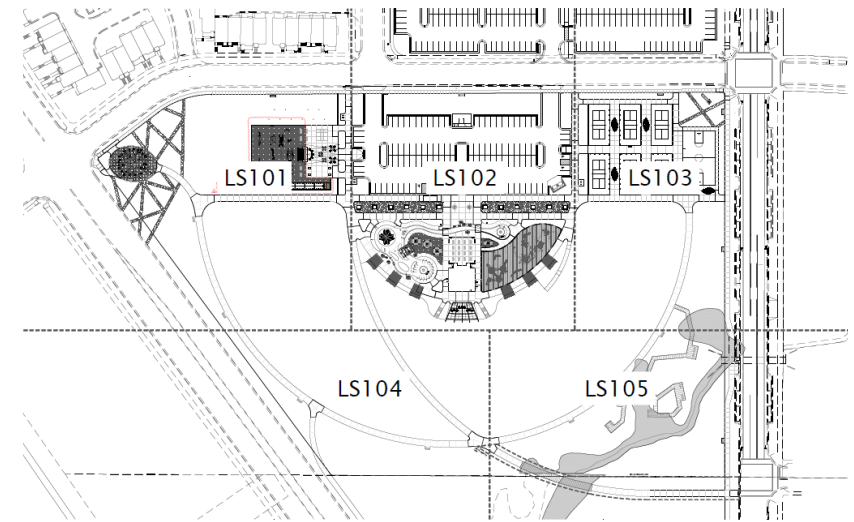




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SIRQ Construction is pleased to submit our proposal for the Ivy Acres Park in Farmington City. With our deep expertise in park and recreation facility construction, we are confident in our ability to deliver a high-quality park that meets the community's needs while adhering to both budget and timeline expectations. Our proven track record of successful project delivery, combined with our focus on sustainability, innovative design, and community engagement, positions us as an ideal partner for this project.

We are committed to delivering Ivy Acres Park as a space that enhances the well-being of Farmington residents and reflects the City's vision for an inclusive, multi-use public environment. Our team will work closely with stakeholders to ensure that the park's features, including green spaces, recreational facilities, and public amenities, are completed with excellence and in alignment with the project goals.

SIRQ values transparency, entrepreneurial mindsets and partnership. We seek this in all projects we have the honor to work on. We have a proposed team, preconstruction to construction, with vast public project experience. This team will manage your project as a true extension of your own project team, they will listen and understand your needs, have tough conversations where necessary, and manage and protect your interest in all facets. All proposed team members understand the importance of your satisfaction and SIRQ's reputation. All proposed team members have completed projects with similar scope and use. Their priority will be making this project successful for Farmington City.

SIRQ has significant experience managing publicly procured projects. In the past couple of years alone, we have worked successfully on numerous public projects for the State of Utah, Lehi City, Saratoga Springs, and American Fork, among others. We are working currently in neighboring cities of Layton and Syracuse as well on public projects. Each of these has significant public interest, awareness, and value. We take our responsibility to complete the projects as promised very seriously.

SIRQ thrives in the CM/GC format where approximately 85% of our work is procured via this delivery system. To you and to us, this is more than just "another job". We understand the value of key feedback and input during the design phase. The preconstruction efforts will be led by Rich Ainscough, a seasoned professional with over 39 years of CM/GC experience with the majority of public projects. Jesse Wentworth will offer support and assistance throughout the entire process. Tayler Ward, the Project Manager, will be involved intimately with the preconstruction feedback, as well as our Project Director, Bret Vargason. The Ivy Acres Park project will get a tremendous SIRQ team throughout the whole process.

We look forward to contributing to the success of the new Ivy Acres Park for Farmington City.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'B-Seeley'.

Bryan Seeley
Business Development
SIRQ Construction

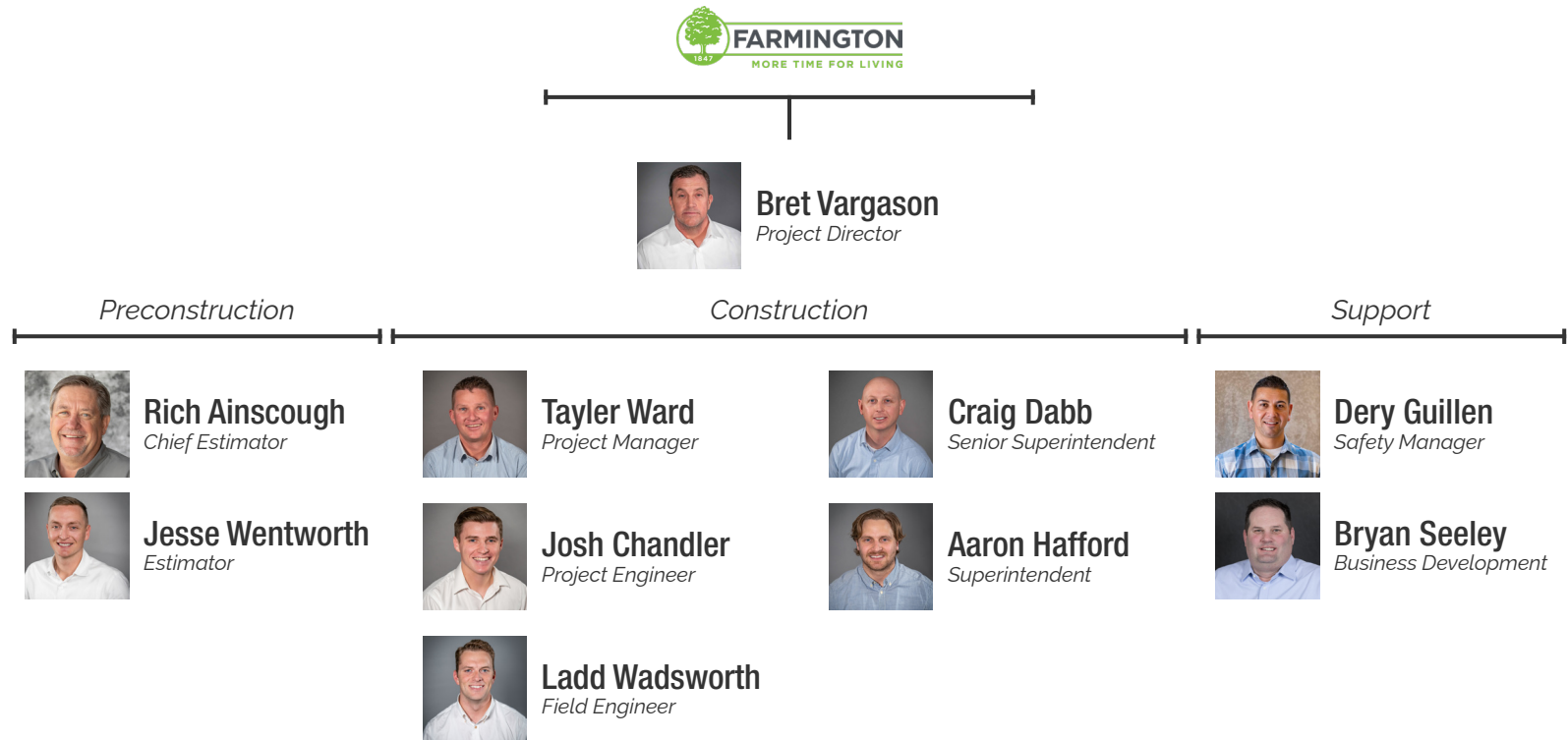
Mobile: 801.718.5963
Office: 801.253.7825
bseeley@SIRQ.com

3900 North Traverse Mountain Blvd
Suite 202
Lehi, UT 84043



PROPOSED PROJECT TEAM ORGANIZATION + QUALIFICATIONS

Team Member	Current Project(s)	Availability for Ivy Acres Park	Time Commitment to Ivy Acres Park	Location Where Work Will Be Performed
Bret Vargason, Project Director	T.P. Farm Country / Lehi Family Park	100% Available Upon Award	75%	On-Site As Needed
Rich Ainscough, Chief Estimator	San Juan Public Safety (Preconstruction)	100% Available Upon Award	100% (During Preconstruction)	On-Site As Needed
Jesse Wentworth, Estimator	Payson Fire Station (Preconstruction)	100% Available Upon Award	75% (During Preconstruction)	On-Site As Needed
Taylor Ward, Project Manager	T.P. Farm Country / W.J. Community Arts	100% Available Upon Award	100%	On-Site
Craig Dabb, Sr. Superintendent	Lehi Family Park / UVU Soccer Stadium	100% Available at Construction Start	50%	On-Site As Needed
Aaron Hafford, Superintendent	T.P. Farm Country	100% Available at Construction Start	100%	On-Site
Josh Chandler, Project Engineer	T.P. Farm Country	100% Available at Construction Start	100%	On-Site
Ladd Wadsworth, Field Engineer	Lehi Family Park	100% Available at Construction Start	100%	On-Site



PROPOSED PROJECT TEAM ORGANIZATION + QUALIFICATIONS

Rich Ainscough

Chief Estimator



40

Years of Experience

6

Years with SIRQ Construction

Relevant Experience

Lehi Family Park

Lehi Fire Station 84

American Fork Fire Station 52

Layton City Park: Commons + Ellison

Cottonwood Heights Public Works Facility

Farm Country at Thanksgiving Point

Carousel House at Thanksgiving Point

*Salt Lake Regional Athletic Complex**

*Raptors Stadium - Ogden, UT**

*US Olympic Speed Skating Oval**

Bringing over four decades of experience predominantly focused on estimating and preconstruction, Rich Ainscough is a cornerstone of our team. His extensive tenure and specialized knowledge in the construction public projects funded by public monies make him indispensable in developing preconstruction strategies, including detailed schedules and, most importantly, precise budgets. Rich has spearheaded preconstruction efforts for large-scale projects, including multiple endeavors exceeding \$100MM, underscoring his capability in managing complex and high-stakes undertakings.

Rich has led the preconstruction phase for various projects very similar to the Ivy Acres Park ranging from projects with Utah's Hogle Zoo, Thanksgiving Point, to the US Olympic Speed Skating Oval, leveraging his deep understanding of these specialized projects to inform design and planning processes effectively. His extensive experience enables him to think like an owner, focusing keenly on aligning budgets, schedules, and overall project value with the owner's goals.

Jesse Wentworth

Estimator



8

Years of Experience

4

Years with SIRQ Construction

Relevant Experience

West Jordan Community Arts

Farm Country at Thanksgiving Point

Carousel House at Thanksgiving Point

Wild Utah at Utah's Hogle Zoo

Lehi Family Park

Black Desert Resort

Union Square Park City (Sky Lodge)

Tesla Service Center - Pleasant Grove, UT

*UTA Maintenance Center**

*UTA Bus Wash Building**

Jesse Wentworth brings an extensive and diverse background in preconstruction and estimating, making him a key player in the success of every project he works on. Currently, Jesse is involved in multiple projects at Thanksgiving Point, each in varying phases of development. His recent hands-on experience with these complex, multi-phase endeavors ensures that he remains acutely attuned to the latest industry trends, cost considerations, and constructability strategies, insights that will be instrumental to the success of your project.

As a critical member of SIRQ's preconstruction team, Jesse excels in key areas including constructability assessment, cost analysis, and executing owner strategy initiatives. He takes great pride in his reputation as the team's "cost warrior," consistently delivering high-quality work while ensuring projects make the most efficient use of available budgets. His expertise in managing key trade bids during the bidding phases further strengthens the projects he's involved with, always aiming to maximize value and minimize cost without compromising quality.

Projects that are bold represent past project collaborations with proposed team members.

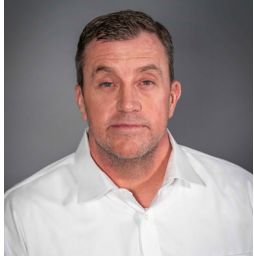
**Completed Prior to Joining SIRQ Construction*



PROPOSED PROJECT TEAM ORGANIZATION + QUALIFICATIONS

Bret Vargason

Project Director



29

Years of Experience

2

Years with SIRQ Construction

Relevant Experience

Lehi Family Park

Layton City Park: Commons + Ellison

Farm Country at Thanksgiving Point

Carousel House at Thanksgiving Point

Cottonwood Heights Public Works Facility

Lehi Fire Station 84

American Fork Fire Station 52

*Alta Wildcat Maintenance Facility**

*CHG Headquarters**

*Young Living Global Headquarters**

Bret Vargason will lead as the Project Director overseeing the Ivy Acres Park. His near thirty year career in the industry has been distinguished by his versatile roles, encompassing project management, preconstruction direction, and overall project direction. Throughout his tenure, Bret has played a pivotal role in steering the successful execution of numerous construction projects. As Project Director, his responsibilities extend to strategic project oversight, client relations management, and ensuring that all facets of the project align with SIRQ's high standards of quality and efficiency.

What sets Bret apart is his holistic understanding of project dynamics, from initial planning and preconstruction phases to final delivery. His leadership ensures that every project under his guidance benefits from meticulous planning, proactive risk management, and a commitment to achieving client objectives. Bret's dedication to excellence and his ability to foster a collaborative team environment make him an invaluable asset in delivering projects that meet and exceed client expectations.

Taylor Ward

Project Manager



30

Years of Experience

3

Years with SIRQ Construction

Relevant Experience

Farm Country at Thanksgiving Point

Carousel House at Thanksgiving Point

West Jordan Community Arts

Lincoln County Courthouse

Pando Lake

Goal Zero Corporate Headquarters + Warehouse

Church of Jesus Christ of Latter Day Saints:

- *LDS Conference Center Auditorium Remodel**
- *Joseph Smith Building TI**
- *Church History Library Office Remodel**
- *Family History Library Remodel**

Taylor Ward comes to this project with over three decades of industry experience. Throughout his career, Taylor has demonstrated his expertise in navigating complex projects with finesse, consistently delivering exceptional results. His proficiency in project management extends beyond mere logistics; he is renowned for his expertise in buyout, cost-management, and schedule coordination. His keen understanding of key elements and processes enables him to keep projects on track, ensuring they are completed on time and within budget.

Moreover, Taylor possesses a unique ability to align projects with the owner's needs, offering value propositions that enhance the overall project outcome. What truly sets Taylor apart is his unwavering commitment to integrity and his exceptional communication skills. As a high-character individual, Taylor leads by example, fostering a collaborative and supportive environment where teams thrive. His adeptness at navigating challenges and facilitating effective communication ensures that projects under his leadership achieve unparalleled success.

Projects that are bold represent past project collaborations with proposed team members.

**Completed Prior to Joining SIRQ Construction*



PROPOSED PROJECT TEAM ORGANIZATION + QUALIFICATIONS

Craig Dabb

Senior Superintendent



18

Years of Experience

2

Years with
SIRQ Construction

Relevant Experience

Lehi Family Park

Cottonwood Heights Public Works Facility

UVU Soccer Stadium

*Young Living Global Headquarters**

*Weave Office Building**

*Podium Building #2**

Traverse Heights Office Building*

Utah State Prison Men's General Population Building 3 & 4*

Utah State Prison Men's General Use Building*

Edwards Lifesciences Tenant Improvement*

Craig Dabb, one of SIRQ's most senior superintendents, with nearly 20 years of experience in the construction industry, Craig is recognized for his technical proficiency and exceptional ability to manage complex projects. Craig excels in supervising subcontractors, ensuring strict adherence to safety regulations, and upholding the highest quality standards. His deep expertise in overseeing multifaceted construction projects allows him to navigate challenges with ease and precision.

Craig's commitment to quality and safety, combined with his expert problem-solving skills, consistently sets him apart as a leader in his field. A seasoned superintendent with a strong ownership mentality, Craig Dabb brings unparalleled leadership and dedication to every project. His extensive experience, coupled with a relentless drive for excellence, makes him an invaluable asset to the team. Craig's presence ensures that the project will be executed with the utmost professionalism and efficiency.

Aaron Hafford

Superintendent



10

Years of Experience

2

Years with
SIRQ Construction

Relevant Experience

Farm Country at Thanksgiving Point

Carousel House at Thanksgiving Point

Cottonwood Heights Public Works Facility

Vobev Manufacturing Facility

Talisker Club - Park City*

Post District*

Vivint Smart Home Arena Remodel*

University of Utah Hospital*

South Valley ENT*

Garden Lofts*

Aaron Hafford is a highly skilled superintendent who will be leading the on-site efforts for the Ivy Acres Park project, working closely with Senior Superintendent, Craig Dabb. Aaron and Craig have successfully collaborated on numerous projects, with their strong teamwork and aligned vision contributing to consistently smooth project execution. Aaron's leadership on-site ensures that every phase of construction is meticulously planned and executed to meet strict timelines.

Known for his ownership of roles and responsibilities, Aaron takes a proactive approach to managing project schedules, ensuring that deadlines are met without sacrificing quality. His commitment to staying ahead of potential issues and maintaining clear communication with all team members and subcontractors makes him an indispensable figure on site. With a track record of ensuring projects stay on schedule and on budget, Aaron will be a key player in ensuring the success of the Ivy Acres Park project.

Projects that are bold represent past project collaborations with proposed team members.

**Completed Prior to Joining SIRQ Construction*



PROPOSED PROJECT TEAM ORGANIZATION + QUALIFICATIONS

Josh Chandler

Project Engineer



6

Years of Experience

2

Years with SIRQ Construction

Relevant Experience

Farm Country at Thanksgiving Point

Carousel House at Thanksgiving Point

Jordan River Nature Center at Tracy Aviary

GSL Production Facility

Tesla Service Center

4Life Warehouse Addition

GSBS Architects Tenant Improvement

Marion Medical

CC Bank - Pleasant Grove Branch

Saratoga Springs LDS Temple*

Josh Chandler is an insightful and driven Project Engineer who consistently delivers results through a combination of strong work ethic, technical proficiency, and attention to detail. Currently, Josh is collaborating with the Thanksgiving Point team, working to successfully close out multiple projects by the end of September. This hands-on experience with complex, multi-phase projects has further sharpened his project management skills, making him a valuable asset to any team.

Since graduating from BYU in 2021, Josh has been an integral part of SIRQ, quickly establishing himself as a critical contributor during the closeout phase of projects. His close coordination with subcontractors and meticulous oversight ensure the timely and smooth turnover of projects to owners. Josh's ability to manage RFIs, handle submissions, and maintain clear communication with owners ensures that project expectations are not only met but exceeded.

Ladd Wadsworth

Field Engineer



6

Years of Experience

1

Year with SIRQ Construction

Relevant Experience

Lehi City Family Park

SIRQ Office TI

Biolexus TI

SLCC Technical Arts Building

SLCC Student Center Remodel

Ladd Wadsworth has proven himself as an exceptional member of any team, making significant contributions to project success through his technical expertise and leadership abilities. Recently, Ladd played a critical role in the Lehi Family Park project, which shares many similarities with the upcoming Ivy Acres Park. His deep understanding of the intricacies involved in park development, including site coordination, utilities, landscape architecture, and recreational facilities, gives him a valuable edge in managing the unique challenges that such projects present.

In his role as Field Engineer, Ladd will be responsible for ensuring the seamless execution of project plans and specifications, while maintaining close collaboration with all involved stakeholders. Ladd's meticulous attention to detail, combined with his proactive approach to problem-solving, ensures that potential issues are identified early and addressed swiftly. Throughout the Lehi Family Park project, Ladd worked closely with several of the proposed team members, further strengthening the team dynamic and building a cohesive unit poised for success on future projects like Ivy Acres Park.

Projects that are bold represent past project collaborations with proposed team members.

**Completed Prior to Joining SIRQ Construction*



REFERENCES



Lehi Family Park

Renew the Zoo Projects



Projects with Tracy Aviary

Projects with Thanksgiving Point



Contact

Steve Marchbanks, Lehi Facilities Director

Phone

(385)201-1900

Email

smarchbanks@lehi-ut.gov



Contact

Doug Lund, President/CEO

Phone

(801)584-1709

Email

dlund@hoglezoo.com



Contact

Tim Brown, President/CEO

Phone

(801)596-5800

Email

timb@tracyaviary.org



Contact

McKay Christensen, President/CEO

Phone

(208)313-5016

Email

mchristensen@thanksgivingpoint.org





***Lehi City
Facilities***

Office 385.201-1900
2998 West 300 North
Lehi, UT 84043
smarchbanks@lehi-ut.gov

To Whom It May Concern,

I am pleased to recommend SIRQ Construction for their exceptional work on the Lehi Family Park project. This ambitious endeavor featured one of the longest stream-type splashpads, a sprawling playground with over an acre of soft fall surface and was designed to be accessible to nearly 85% of users. Notably, it included one of the tallest playground towers I have encountered, reaching over 30 feet in height, complemented by stunning airplane sculptures that accentuate the splashpad's terminal points. The project was set against the picturesque backdrop of American Fork Canyon and Utah Lake.

Despite our thorough preparation, we encountered numerous unforeseen challenges during the project. SIRQ Construction played a pivotal role in navigating these complexities. Their expertise and support were instrumental in overcoming these issues, ensuring the project's successful completion.

Working with SIRQ Construction was a pleasure. Their dedication, problem-solving skills, and professionalism were evident throughout the project. I highly recommend SIRQ Construction for their outstanding contributions and commendable work ethic.

Sincerely,

Stephen Marchbanks

Facilities Director

9/17/2024



Utah's HOGLE ZOO

Re: Letter of Reference for Sirq Construction

To Whom It May Concern:

I have had the pleasure of working with Sirq Construction for more than 15 years on numerous zoo projects. These projects varied in size, complexity, costs, and funding models. They included new homes for meerkats and porcupines; polar bears, grizzly bears, sea lions, otters, and eagles; giraffes, zebras, warthogs, and ostriches; not to mention restaurants, maintenance facilities, office space and animal hospital facilities. These projects were funded through zoo operations, private funding, grants, and Salt Lake County general obligation bonds. Sirq's talented team orchestrated these complex projects with aplomb, helping ensure an on-time, on-budget project to the delight of Hogle's resident animals, staff, guests, and donors. No easy feat, I might add, given much of the construction necessarily occurred during our challenging Northern Utah winters.

As you may recognize, zoo construction tends to be significantly more complex than typical commercial projects – considering the needs of animals, staff, and the all-important guest experience. Not only must the project look great but must function well over time. One common thread to these successful projects was the strength of our owner-architect-contractor team. Sirq played a key role during design, preconstruction, and importantly throughout the construction of these highly varied projects. Recognizing that there is never going to be a perfect set of plans, keeping the project on track requires effective communication and organizational skills and commitment from all team members. Sirq's exceptionally competent team excelled in these areas. Moreover, I admired Sirq's leadership abilities, their ability to inspire those working on the team to perform at their best. I believe Sirq's admirable success comes from their deeply engrained values including integrity, resourcefulness, resilience, positivity, good-naturedness, and helpfulness. Indeed, these traits are exemplified at the highest leadership level and consistently shine brightly in my interactions with Sirq team members.

I especially appreciate Sirq's commitment to challenging work, to excellence and to successful outcomes. Our team can always count on Sirq to deliver even during tough times. Indeed, these qualities have been on full display on our \$22 million Wild Utah exhibit currently under construction through one of the harshest SLC winters in recent memory. In the most demanding of times, they find a way to make the seemingly impossible happen. It is without hesitation that I can recommend Sirq Construction to ensure a successful construction project.

Sincerely,

Doug Lund
President & CEO

2600 SUNNYSIDE AVENUE, SLC, UT 84108
801-584-1700

ASSOCIATION
OF ZOOS &
AQUARIUMS



TEAM ROLES + RESPONSIBILITIES

TEAM ROLES + RESPONSIBILITIES OF PROJECT TEAM MEMBERS

Bret Vargason, Project Director: Bret will provide overall leadership and ensures the project aligns with client expectations, budget, and schedule. He will manage critical decisions and resolve major issues that arise beginning in preconstruction through project closeout.

Rich Ainscough, Jesse Wentworth, + Additional Members of the Estimating Team: Rich and Jesse will lead the development of the preconstruction plan, including budgeting, scheduling, and value engineering. He oversees the preparation of detailed cost estimates, ensuring accuracy and alignment with project specifications. As a whole, the team will manage the bid process, including subcontractor solicitation, evaluation, and selection to ensure competitive pricing. They will also analyze bids from subcontractors and suppliers to ensure alignment with project requirements and budget. The team will prepare detailed quantity take-offs and cost estimates for specific trades or scopes of work.

Taylor Ward, Project Manager: Taylor will manage day-to-day construction activities, coordinating between subcontractors, suppliers, and the project team. He will develop and maintain the construction schedule and monitor project costs to ensure adherence to the budget.

Craig Dabb, Senior Superintendent: As Senior Superintendent, Craig will play a strategic role in overseeing the project's overall direction and ensuring that all construction activities meet the project's goals for quality, schedule, and safety. Craig will leverage his extensive experience to guide operations, providing

expert insight, troubleshooting complex challenges, and ensuring smooth coordination between the team and subcontractors. His oversight will be instrumental in aligning field operations with the broader project objectives, ensuring issues are addressed promptly and effectively.

Aaron Hafford, Superintendent: Aaron will direct on-site construction operations, overseeing crews, ensuring compliance with plans and specifications, and resolving issues as they arise. Aaron will track construction progress and adjusts workflows as needed to stay on schedule.

Josh Chandler, Project Engineer: As Project Engineer, Josh will play a critical role in managing documentation, submittals, and project coordination. He will facilitate communication between the design team, subcontractors, and the project management team, ensuring that all parties have the necessary information to execute their work. Josh will also help track costs and schedule updates, contributing to smooth project delivery.

Ladd Wadsworth, Field Engineer: Ladd will serve as the project's Field Engineer, focusing on layout, field measurements, and ensuring that the project meets design specifications. He will coordinate with the site team to manage technical aspects such as quality control, verifying dimensions, and addressing any field changes needed to keep the project aligned with the plans.



Project Support Staff: SIRQ's Safety Manager, Dery Guillen, will implement and monitor the site specific safety program, conduct regular safety inspections, and provide training to ensure a safe work environment. Additional support staff will provide administrative and logistical support, manage documentation, assist with procurement, and ensure smooth communication between all project stakeholders.

Team Collaboration: The project team will work closely to achieve success, with each member playing a crucial role. The preconstruction team of Rich Ainscough and Jesse Wentworth will focus on cost estimation, value engineering, and developing a feasible schedule. Taylor Ward, will oversee coordination, managing timelines, budgets, and resources. Craig will provide strategic oversight, while Aaron will manage daily site activities. Bret Vargason, will ensure alignment across all stakeholders, guiding the team through the project lifecycle. Through clear communication and proactive planning, the team will ensure the project is delivered on time, within budget, and will meet and exceed the high-quality standards.

TEAM ROLES + RESPONSIBILITIES

QUALITY + COST CONTROL INTERNAL POLICIES + PROCEDURES

Quality Control: SIRQ subscribes to the idea that quality control and safety are both intertwined and is everyone's responsibility. All team members are empowered to contribute to assuring success and quality on each project. Our proposed project team will work to:

Establish Clear Quality Standards: Define clear quality standards and specifications for each aspect of the project, ensuring that we meet industry, self-imposed SIRQ, and client expectations.

Implement Comprehensive Inspection Procedures: Develop comprehensive inspection procedures for every phase of the process, including material procurement, site preparation, construction, and finishing. Responsibilities are assigned for conducting inspections and document all findings meticulously.

Regular Training and Education: SIRQ provides ongoing training and education for project personnel, subcontractors, and suppliers on quality control expectations, safety protocols, and best practices. This ensures that everyone involved in the project understands their roles in maintaining these standards. Buy in is facilitated in daily huddles and consistent job walks.

SIRQ utilizes Technology for Monitoring: Implementing technology solutions such as Procore and other digital monitoring systems ensure that each trade partner knows exactly what is outstanding and who has responsibility for corrective action.

Continuous Improvement and Feedback: SIRQ establishes relationships with the trade partners by holding pre-mobilization meetings before any scope even begins. During these meetings, among other key topics, safety and quality are both addressed. Setting expectations up front allow for the trades to also have buy in for the ultimate desired outcome. Regularly reviewing daily reports, inspection logs, addressing deficiencies, and implementing corrective action keeps projects on track.

Cost Control: SIRQ and our proposed team is committed to maintaining financial control and transparency throughout the project beginning in the design and preconstruction phases through project closeout. Our cost control plan is designed to manage and mitigate financial risks, ensuring the project is delivered within budget.



Construction Phase

Cost Monitoring and Reporting

- **Budget Tracking:** The team will implement a cost tracking system to monitor expenditures against the budget in real-time. Provide regular financial reports to stakeholders, highlighting variances and corrective actions.
- **Forecasting:** Using cost forecasting tools to predict future costs and adjust budgets as necessary to address potential financial risks.

Change Management

- **Change Order Process:** Establish a formal change order process that includes detailed documentation, cost impact analysis, and client approval. Ensure all changes are recorded and tracked meticulously.
- **Scope Control:** Work closely with the design team to manage scope changes and avoid unnecessary cost increases. Engage in proactive discussions to identify and address potential changes early.

Communication and Transparency

- **Regular Updates:** SIRQ will provide Farmington City and the design team with regular updates on cost performance, including detailed reports and forecasts.
- **Open Communication:** We are committed to maintaining open lines of communication with all project parties to address cost-related concerns promptly and transparently.

PROPOSED PROJECT APPROACH

TASKS + SPECIAL APPROACHES

In constructing Ivy Acres Park in Farmington, Utah, SIRQ Construction has adopted a series of strategic approaches to ensure smooth execution and adherence to schedule.

One of the primary considerations revolves around the splash pad, an essential feature of the park. To meet the timeline, the construction team has determined that CEM, the splash pad contractor, will not begin any work until the balancing tank has been installed. The early procurement and installation of this tank are crucial to preventing delays.

Additionally, establishing the pumphouse foundation and slab on grade early in the process is another key factor. With CEM being one of the few qualified splash pad installers in Utah and their high demand, the project must be ready for them when scheduled. This will help avoid any potential slowdowns.

Once the splash pad concrete is poured, it must undergo a special seven-day water curing process. This step requires careful planning to ensure proper water delivery without oversaturating the surrounding subgrade, which could affect the integrity of the structure.

The Health Department's requirements also play a significant role in the construction. There must be no low spots or "bird baths" in the splash pad surface, and all water must drain within ten minutes of the splash pad being turned off. The project team will pay close attention during the concrete pours to meet these specifications.

In addition to splash pad construction, the project will involve close coordination with Big T, the supplier of the playground equipment. Accurate lead times for both the

equipment delivery and the installation of the poured-in-place rubber surfacing are essential to maintaining the project timeline.

Lastly, the owner-provided Headwaters Feature Tree, a significant element of the park, requires early attention to its procurement process, as it may take considerable time to complete. Ensuring this feature is secured early will help avoid any delays toward the project's final completion.

The SIRQ team at Thanksgiving Point took our request very seriously as we started to open the newest area for a guest experience. **The team went above and beyond** down to the smallest details to ensure the active construction site remained **presentable** and **safe** for our guests to have the best experience possible. We appreciate SIRQ taking our needs seriously and **going the extra mile**.

Kendall Wimmer, COO - Thanksgiving Point

SELF-PERFORMING

At SIRQ, we do not self-perform any trade work. Our approach is to focus entirely on managing and delivering your project successfully, ensuring that every aspect aligns with your goals, rather than prioritizing any work for which we are solely at financial risk. In our experience,

self-performing work can introduce several conflicts and challenges that may not align with the best interests of a publicly funded project like yours:

Creation of Profit Centers: When a general contractor self-performs work, that portion of the project becomes a profit center. This may create a conflict of interest, where the contractor may become defensive regarding the cost of self-performed work, potentially leading to inflated prices or lack of transparency.

Quality Control Concerns: General contractors who self-perform work might resist quality corrections or improvements, as any rework or adjustments directly impact their profit margins. This resistance can lead to compromised quality standards, which is not acceptable for a project funded by public monies.

Accountability and Schedule Compliance: A contractor's self-performed work is often held to a different standard than that of subcontracted work. This can lead to less accountability and adherence to the project schedule. In cases where delays occur, the contractor may opt not to absorb overtime costs to catch up on self-performed work, which can create cascading delays and place undue pressure on other subcontractors to recover lost time.

By avoiding self-performed work, SIRQ maintains a neutral stance, allowing us to make unbiased decisions that serve the project's best interests, ensuring transparency, quality, and adherence to the schedule. This approach aligns with the expectations of a public project and ensures the responsible use of public funds.



PROPOSED PROJECT APPROACH

PRECONSTRUCTION SERVICES

SIRQ, and its team members bear the responsibility of ensuring the end result of the preconstruction phase. The end goal is to participate as a full member of the team beginning with design with the intended result:

- A Transparent and Accurate Project Cost
- A Definable and Realistic Schedule
- The Project Meets or Exceeds the Expectations of Farmington City (Including Priorities and Project Scope Required)

Preconstruction services for the Ivy Acres Park will play a key role in assisting the Farmington City team and Blu Line Designs to accomplish the desired outcome; a project that meets all goals including budget and schedule. The preconstruction services proposed by SIRQ will allow the City's team and Blu Line Designs to assess how to get the absolute most out of the project goals, while maintaining the appropriate schedule and phasing achievable.

Our overall intent is to get as much of the project construction budgeted and scheduled as possible to maximize the City's short and long term goals for the Park. With the proposed philosophy and execution SIRQ will provide constant constructability and cost feedback (including but not limited to 30%, 60% and 90% estimates) but more important, our budgets and estimates will be updated following weekly design meetings throughout the entirety of the process. These objectives will be accomplished using:



Real Time Constructability Reviews: During all phases of planning and construction it is imperative that SIRQ, as the construction manager, is fully engaged in critical constructability reviews. The preconstruction and planning phase presents opportunities where the combined effort of the design team, SIRQ as the contractor, and owner are given voice to prioritize the critical aspects of the project. SIRQ will work with the design team early on to establish the basis for design so that budgets will be accurate and can be trusted. SIRQ will be able to provide invaluable feedback to mitigate the challenges in budget, schedule, and quality. This facet of SIRQ's responsibility doesn't end with this preconstruction phase. The ongoing constructability effort will present opportunities to guide and lead in decisions that will be affected by current market conditions.

The responsibility of this effort includes not only selections in building materials and methods, but a more inclusive consideration of procurement challenges. Equipment lead times, manufacturing delays, and alternate system considerations are examined and recommendations are made to the project team.

Value Engineering: SIRQ brings to this project in particular, a team of veteran construction professionals who have decades of public project experience. Because of this, we have seen numerous creative ideas which present customers with cost-saving alternatives, all while maintaining the quality and safety required. We look at design in terms of constructability cost, but also in terms of maintenance and operational risks to the end user. This input to the design is provided by SIRQ during design, not after. Valued decisions regarding building systems are posed and evaluated by SIRQ during the design process to help owners and designers make decisions on design direction. SIRQ will work with its trade partners to research alternate materials that may cost less than the specified items. A few areas of concern we are familiar with and can be mitigated as we work together as a team include:

- Cost Escalation
- Subcontractor Availability
- Supply Chain Material Delivery

PROPOSED PROJECT APPROACH



- Daily huddles are an effective way to keep the team informed and working together cohesively
- Organizing the project into 10,000 SF work areas will allow crews to flow from area to area without interruptions.
- Input from key subcontractors and vendors is crucial in schedule development, as we involve them in defining and adjusting activities to ensure efficient construction and creates ownership of the schedule.

SCHEDULE CONTROL

SIRQ implements lean construction scheduling methods on each project. The lean scheduling process includes identifying each task, timeline, and which trade partner is assigned to the task. This process ensures efficiency and productivity on the project, by cutting down on unnecessary labor and resources. A few of lean scheduling principles SIRQ will implement on the construction of Ivy Acres Park include:

- Early pull-planning with our trade partners will be critical to having realistic schedules and total team buy-in of project timelines.
- Construction flow is everything to successful schedule management
- Eliminating roadblocks in the schedule daily will keep the flow moving. Our team will utilize a roadblock tracker throughout the project to identify potential roadblocks early on.

6 Tenets of Lean Construction Principles



MANAGING SUBCONTRACTED WORK

Choosing the Right Subcontractor: No matter how many controls are in place, if a subcontractor is not qualified for the work, they will never meet the project expectations. Our vast network in the market area includes nearly 3,000 subcontractors. Once bids are received, we carefully scrub

through all of the bids, in detail, to ensure that all of the scope in each trade has been covered. Once this has been completed, we will meet with the project team to review the overall project cost.

Enforcing the Contract: SIRQ believes in being firm but also fair. We expect all subcontractors to execute the work required of them by their contracts and our field management team will require that of them. If a subcontractor struggles to perform during the course of the work, steps are taken to supplement the subcontractor with other work forces. In some situations, it may be necessary to replace a subcontractor with a different subcontracting firm.

Subcontractor Production Tracking: The SIRQ field supervision team monitors progress of subcontractor work to identify if production is on track or slipping in any way. This allows progress delays to be identified on a daily basis.

Trade Partner Buy-In: We are firm believers that by getting buy-in from our trade partners, they will do everything possible to finish on time. Prior to the start of a specific phase of a project, we will gather all the trade contractors involved with that phase and have a scheduling / coordination meeting. SIRQ will establish the start and end dates but then allow the trade contractors to work together to come up with how they can accomplish this.

LOCAL KNOWLEDGE + PROJECT EXPERIENCE

LOCAL KNOWLEDGE

SIRQ Construction has extensive knowledge of the local area in Farmington, UT, and the surrounding counties of Davis and Weber. With years of experience working on projects across northern Utah, SIRQ understands the unique geographical and environmental conditions of these communities. This local expertise ensures that SIRQ can navigate the permitting processes, regional building codes, and local subcontractor networks efficiently, providing a seamless construction experience for clients. SIRQ's deep ties to the region help build strong relationships with local stakeholders, municipalities, and communities, which is essential for the successful execution of public projects. SIRQ has recently completed projects in Davis and Weber counties including current municipality projects with neighboring communities in Syracuse and Layton under construction. Add that to the list of public projects SIRQ has completed across the Wasatch front and it should reassure all stakeholders SIRQ is an ideal partner on the Ivy Acres Park for Farmington.

SIRQ has significant experience delivering high-quality public projects, particularly in spaces designed for community interaction, recreation, and public use. This includes expertise in park developments, themed environments, and public facilities that prioritize user engagement and accessibility. SIRQ's portfolio includes a range of successful public projects that focus on both aesthetics and functionality, ensuring these spaces serve their intended purpose while maintaining high standards of craftsmanship and sustainability.

Among SIRQ's notable achievements are their work at Hogle Zoo, Thanksgiving Point, and Lehi Family Park. These projects showcase the company's ability to deliver complex, themed environments that meet the needs of both public and private clients. At Hogle Zoo, SIRQ helped create engaging spaces that integrate seamlessly into the natural environment, while at Thanksgiving Point and Lehi Family Park, the team focused on creating vibrant, functional spaces that enhance community life and provide recreational opportunities for families. This proven track record highlights SIRQ's capability to manage public projects that balance creativity with practicality, resulting in spaces that enrich the community.



LOCAL PROJECT EXPERIENCE

SIRQ prides itself on having a business model and processes that lend themselves to highly successful public projects. We value the public space and understand projects similar to Ivy Acres Park. We realize this project will draw high public interest and demand the best use of funds considering the public money aspect to the project.

Over our two decades, SIRQ has significant experience managing publicly procured projects funded by public monies. SIRQ has completed numerous public projects for multiple public agencies and municipalities including State of Utah, American Fork City, City of Saratoga Springs, Layton City, Lehi City, South Jordan City, Springville City, Lincoln County (Wyoming), and Cottonwood Heights City, among others. This includes working alongside Blu Line Designs. Each of these has carried significant public interest, awareness, and value. We consider our responsibility to complete the projects in the way our owner partners expect, as the only acceptable level of satisfaction.

We consider ourselves well versed and sound in the CM/GC principles that lead to successful public projects and look forward to bringing that expertise and acumen to the Ivy Acres Park for Farmington City.



FEES FOR CM/GC SERVICES

Name of Proposer: SIRQ Construction (SIRQ, Inc.)

Date: 09/20/2024

The undersigned, responsive to the "Notice to General Contractors/Construction Managers" and in accordance with the "Request for Proposals" for the Ivy Acres Park, propose a preconstruction fee at the price stated below. This price is to cover all expenses incurred in performing the preconstruction services as outlined in our proposal of which this proposal is a part:

I/We acknowledge receipt of the following Addenda: There was no addenda posted, but we acknowledge the Q&A section on U3P.

COST PROPOSAL FEE FORM

A	Preconstruction Fee: For All Work During the Preconstruction Period <i>(See Preconstruction Fee Calculation Table on Following Page)</i>	\$10,763
B	Construction Management Fee (Including Overhead and Profit): For All Work During the Construction Phase of the Contract for the Management of the Project	\$455,000
C	Cost of Bonds: The Cost of Payment and Performance Bonds Based on the Amount of the FLCC	\$123,200
D	CM/GC Change Order Markup: For All Work Added to the Contract by Change Order	3.95%
E	Self-Performed Work Markup: For All Self-Performed Work	N/A
F	General Conditions: SIRQ views General Conditions as part of the direct cost of work to the owner. In alignment with our commitment to transparency, SIRQ will invoice Farmington City using an open-book approach to ensure the City receives the best value for the oversight of the jobsite and the execution of all required tasks. This method ensures clarity and accountability in managing the project, while delivering the highest level of service and cost efficiency.	\$349,081

The following cost proposal is based upon SIRQ contemplating and preparing an industry standard AIA A133 CM Contract with mutually agreed upon terms between parties (Farmington City and SIRQ).

Contractor Change Order Markup: For all work added to the contract by change order above and beyond the FLCC, I/we agree to add not more than **3.95%** to the subcontractor/supplier costs for the additional work. (For clarification, please review Section 5.2 of the CM/GC Agreement.)

I/We guarantee that the Work will be Complete, including punch list items, within the negotiated time frame after receipt of the Notice to Proceed, should I/we be the successful proposer.



PRECONSTRUCTION FEE CALCULATION FEES FOR CM/GC SERVICES

Description	Est Qty	UOM	BI Rate	Subtotal
Conceptual Estimates	0	Hr	95	0
Cost Studies	30	Hr	95	2850
Coordination Meetings	20	Hr	95	1900
SD Estimates	0	Hr	85	0
DD Estimates	0	Hr	85	0
CD Estimates / Bid Buyout	120	Hr	85	10200
Subcontractor Consult: Mechanical	10	Hr	85	850
Subcontractor Consult: Electrical	10	Hr	85	850
Subcontractor Consult: Sitework	15	Hr	70	1050
VE Discovery	45	Hr	85	3825
Subtotal	250			\$21,525
Farmington City Discount			.5	(\$10,763)
Total				\$10,763

FEES FOR CM/GC SERVICES

The FLCC for this project is **\$14,000,000**. Enclosed is a bid bond in the amount of 5% of the FLCC.

With the cooperation of Farmington City and their consultants, the undersigned will continue to work with due diligence to provide a Guaranteed Maximum Price (GMP) within the FLCC.

The Undersigned Contractor's License Number for Utah Is: 5612656-5501

This bid shall be good for 45 days after bid submission.

Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within fifteen (15) days, unless a shorter time is specified in the Contract Documents, and deliver acceptable Performance and Payment bonds in the prescribed form in the amount of 100% of the Contract Sum for faithful performance of the contract upon final agreement of the GMP. The Bid Bond attached, in the amount not less than five percent (5%) of the FLCC shall become the property of the Division of Facilities Construction and Management as liquidated damages for delay and additional expense caused thereby in the event that the contract is not executed and/or acceptable 100% Performance and Payment bonds are not delivered within the time set forth.

Type of Organization: S-Corporation
(Corporation, Partnership, Individual, Etc.)

Any Request and Information Related to Utah Preference Laws: N/A

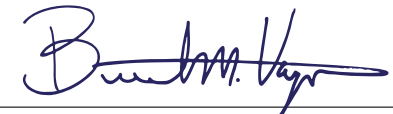
Respectfully Submitted,

Bret Vargason, Project Director

Name of Proposer

SIRQ Construction (SIRQ, Inc.)

Company



Authorized Signature

3900 N Traverse Mountain Blvd, Suite 202, Lehi, UT 84043

Address

(801)885-2048

Phone Number

bvargason@SIRQ.com

Email



**POWER OF ATTORNEY
UNITED STATES FIRE INSURANCE COMPANY
PRINCIPAL OFFICE - MORRISTOWN, NEW JERSEY**

04306

KNOW ALL MEN BY THESE PRESENTS: That United States Fire Insurance Company, a corporation duly organized and existing under the laws of the state of Delaware, has made, constituted and appointed, and does hereby make, constitute and appoint:

Terry H. Buckner, Takota K. Wainer

each, its true and lawful Attorney(s)-In-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver: Any and all bonds and undertakings of surety and other documents that the ordinary course of surety business may require, and to bind United States Fire Insurance Company thereby as fully and to the same extent as if such bonds or undertakings had been duly executed and acknowledged by the regularly elected officers of United States Fire Insurance Company at its principal office, in amounts or penalties: **Unlimited**

This Power of Attorney limits the act of those named therein to the bonds and undertakings specifically named therein, and they have no authority to bind United States Fire Insurance Company except in the manner and to the extent therein stated.

This Power of Attorney is granted pursuant to Article IV of the By-Laws of United States Fire Insurance Company as now in full force and effect, and consistent with Article III thereof, which Articles provide, in pertinent part:

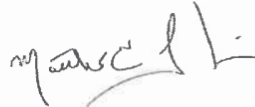
Article IV, Execution of Instruments - Except as the Board of Directors may authorize by resolution, the Chairman of the Board, President, any Vice-President, any Assistant Vice President, the Secretary, or any Assistant Secretary shall have power on behalf of the Corporation:

- (a) to execute, affix the corporate seal manually or by facsimile to, acknowledge, verify and deliver any contracts, obligations, instruments and documents whatsoever in connection with its business including, without limiting the foregoing, any bonds, guarantees, undertakings, recognizances, powers of attorney or revocations of any powers of attorney, stipulations, policies of insurance, deeds, leases, mortgages, releases, satisfactions and agency agreements;
- (b) to appoint, in writing, one or more persons for any or all of the purposes mentioned in the preceding paragraph (a), including affixing the seal of the Corporation.

Article III, Officers, Section 3.11, Facsimile Signatures. The signature of any officer authorized by the Corporation to sign any bonds, guarantees, undertakings, recognizances, stipulations, powers of attorney or revocations of any powers of attorney and policies of insurance issued by the Corporation may be printed, facsimile, lithographed or otherwise produced. In addition, if and as authorized by the Board of Directors, dividend warrants or checks, or other numerous instruments similar to one another in form, may be signed by the facsimile signature or signatures, lithographed or otherwise produced, of such officer or officers of the Corporation as from time to time may be authorized to sign such instruments on behalf of the Corporation. The Corporation may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Corporation, notwithstanding the fact that he may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, United States Fire Insurance Company has caused these presents to be signed and attested by its appropriate officer and its corporate seal hereunto affixed this 11th day of June, 2024.

UNITED STATES FIRE INSURANCE COMPANY

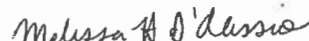


Matthew E. Lubin, President



State of New Jersey }
County of Morris }

On this 11th day of June, 2024, before me, a Notary public of the State of New Jersey, came the above named officer of United States Fire Insurance Company, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of United States Fire Insurance Company thereto by the authority of his office.

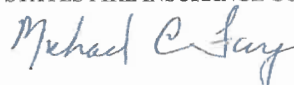


Melissa H. D'Alessio (Notary Public)

I, the undersigned officer of United States Fire Insurance Company, a Delaware corporation, do hereby certify that the original Power of Attorney of which the foregoing is a full, true and correct copy is still in force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of United States Fire Insurance Company on the 20th day of September, 2024.

UNITED STATES FIRE INSURANCE COMPANY



Michael C. Fay, Senior Vice President



CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: RAP Tax Ballot Issue - Presentation of Arguments
AND
Public Comment on Rap Tax Ballot Issue

PRESENTED BY: DeAnn Carlile, City Recorder

DEPARTMENT: Administration

MEETING DATE: October 15, 2024



160 S Main
Farmington Utah 84025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: DeAnn Carlile, City Recorder
Date: October 15, 2024
Subject: RAP Tax Ballot issue – Presentation of Arguments
AND
Public Comment on Rap Tax Ballot issue.

RECOMMENDATION(S)

Utah Code 59-1-1605 requires the governing body of a taxing entity to conduct a public meeting allowing equal time for presentation of arguments in favor and against a ballot proposition. An interested party desiring to be heard will be given opportunity to present oral testimony.

BACKGROUND

Earlier this year the Council submitted notice to Davis County of our intent to submit the RAP tax to voters this November. They have responded by indicating that the county will not be imposing a county-wide tax, clearing the way for the opinion question to appear on the ballot. The necessary steps have been taken and the Re- authorization of the recreation arts and parks tax will appear on the ballot as Proposition #4.

Notice to the public accepting arguments in favor and in opposition of Proposition #4 were posted as required by law. No arguments in opposition were received. Attached is the Voter Information Pamphlet that was mailed to all registered voters in Farmington, it contains the argument in favor of the proposed Ballot Proposition #4.

Respectfully Submitted,

DeAnn Carlile
City Recorder

Brigham Mellor
City Manager

What is the RAP Tax?

The RAP tax is collected on most purchases made within Farmington City, whether by a resident or visitor.

RAP Tax facts:

- .1% Sales and use tax, or one cent for every \$10 spent in Farmington City
- Funds may only support parks, recreation and culture
- Over \$4,000,000 in RAP tax collected by Farmington since 2015

The RAP tax may only be re-authorized by the Council if it is approved by Farmington citizens every 10 years.



Election Day:
November 5, 2024

Davis County Elections:
<https://daviscountyutah.gov/clerk/election/>

Register Online at:
<https://vote.utah.gov>

Farmington City Voter Information Pamphlet



◆————◆

**NOVEMBER 2024
BALLOT ISSUE:
RE-AUTHORIZATION
OF THE RECREATION,
ARTS & PARKS TAX**

**Ballot Proposition #4:
Farmington City has assessed
the Recreation, Arts and Parks
Sales Tax since 2014. Shall
Farmington City, Utah be
authorized to renew the
imposition of a .1% sales and
use tax for recreational, arts,
and parks facilities, programs
and organizations for ten
additional years?**



**The arguments for or against a
ballot proposition are the
opinions of the authors.**

Argument in Favor

Farmington's Recreation, Arts, and Parks Tax (colloquially known as the "RAP tax"), was first authorized in 2014 by the voters of Farmington and has been in place now for 10 years. The current RAP tax authorization will expire next year. To avoid losing this source of revenue, Farmington is proposing to re-authorize the RAP tax for another 10 years. (It is worth noting that the only cities not collecting this tax in Davis County are Fruit Heights, West Point, and Sunset. Every other city in Salt Lake County, Weber County, Summit County, and Washington County collects this tax.)

The RAP tax comes from sales tax. It amounts to 0.1% of the local option sales tax. The RAP tax is collected on sales in Farmington per the state tax code and distributed to Farmington on a monthly basis by the state tax commission.

Over the past 9 fiscal years, the RAP tax has generated approximately \$4 million for Farmington's recreation, arts, and parks. The reality in Farmington is that about 75% of the RAP tax is generated by non-residents visiting our city. When these non-residents visit Lagoon or shop at Station Park, Farmington receives RAP tax revenue. In short, these non-residents are paying money into Farmington to fund our parks, arts, and recreation programs. Every time they pay sales taxes in our community, these non-residents help to improve our recreational amenities.

Without the RAP tax Farmington residents would be responsible for the entire burden of maintaining the recreation, arts, and parks amenities. That would put more of a burden on Farmington residents. Farmington is proposing to spread those costs to the non-residents who visit our city.

Previously, Farmington used RAP tax revenue to build the Gymnasium and to service the bond payments on the Gymnasium, which bond will be fully retired by June 30, 2025. Farmington also used RAP tax money to build and maintain the mountain bike park, the "Farm." If the City is able to re-authorize the RAP tax, it may use the funds for the following purposes:

- Improvements at the recently acquired Rock Mill Park
- Pool upgrades
- Park upgrades
- New trails and trail improvements
- Museum improvements
- Subsidize recreation programs (rather than taking money from the City's general fund)
- Subsidize the Active Aging program (which now has over 650 participants)
- Dog park
- Community garden spaces
- Funding the arts (plays, murals, performances, concerts, etc.)

Farmington City Council is in favor of re-authorizing the RAP tax so that Farmington can receive additional revenue from the people visiting our city and shopping in our stores. When they do so, they will be helping to pay for Farmington's beloved recreation, arts, and parks services.

Farmington City Council

Argument in Opposition

None submitted

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Consideration of a Rezone and Development Agreement for an RV resort at approximately 650 W Lagoon Drive

PRESENTED BY: Lyle Gibson

DEPARTMENT: Community Development

MEETING DATE: October 15, 2024

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 10/15/2024
Subject: Consideration of a rezone to include the AP District overlay zone and an accompanying development agreement for an RV resort at approximately 650 West Lagoon Drive (950 North) for Harv Jeppsen.

RECOMMENDED MOTION

Move that the City Council approve the enabling ordinance for the proposed AP District overlay zone and the accompanying Development Agreement.

Findings:

1. The items allowed by the agreement are appropriate at this location and there are sufficient mitigating factors within the agreement to adequately mitigate the impact of the allowed business activity on surrounding properties.
2. The use considered by the Agreement is consistent with the Farmington City General Plan and applicable small area plan.
3. The proposed use and accompanying Development Agreement adhere to the purpose of the AP District per 11-27B-010.

UPDATE SINCE THE 9.3.24 MEETING

The city council previously met and held a public hearing to review this item. Before making a decision as to whether or not to grant the AP overlay zone and support the proposed Development Agreement, the council tabled the item in order to obtain additional information and details. More specifically, the following items:

Q: Is the fire department okay with the proposal.

A: In concept, yes. The Fire Marshall has looked over the existing proposal and believes it can be appropriately serviced. Future steps will require that the Fire Marshall verify appropriate hydrant placement, access and other relevant details.

Q: Is the police department okay with the proposal.

A: The police chief is not concerned with the proposed use.

Q: Is there sufficient access to properties to the south?

A: The development agreement includes language to ensure that the provided access is sufficient for potential future development.

Q: Include reference to purpose and standards of the AP District.

A: included within the Background section of this report.

Q: What will the park strip and landscaping along the north side of the project look like?

A: Details have been included within the DA Landscaping section where trees will be in the park strip and plantings and fencing will be behind sidewalk.

Q: What kind of fencing is anticipated.

A: The DA commits the developer to a Simtec or masonry type fence.

Q: Provide a cleaned-up DA with additional exhibits.

A: The DA language has been reviewed and updated and addition exhibits have been added.

Q: What amenities will be included?

A: The DA outlines which amenities will be provided up front and allows for additional amenities of significant value to be provided within a 3 year window.

Q: Ensure the DA addresses length of stays in the resort.

A: This has been provided for within the DA.

BACKGROUND

The subject property on the south side of Lagoon Drive (currently under construction) just east of Highway 89 sits north of Spring Creek and is currently occupied by a blue barn building.



The current zoning primarily limits the use of the property to agricultural or residential uses.

The property owner hopes to be able to develop a high-end RV resort at this location. The most similar use in Farmington is the Lagoon Campground which is within the C-H zoning district. The description of the C-H zone in FMC 11-24-010 limits the use of that district to the Lagoon Campground site. Similarly, the city code includes provisions which regulate how campgrounds are developed in Chapter 11-36. This section of code which was adopted in 1986 indicates that that “it is the intent of the city that this type of development be limited to the area currently zoned C-H.’ Rather than considering changes to the city’s ordinances, the AP district overlay is proposed for the consideration of the City to accommodate the use at precise location.

The property is part of the East Park Lane small area master plan included with this report. The current construction of Lagoon Drive is being completed by Wright Development who has approval for a townhome subdivision to the north with some commercial development towards the highway.

The use of the property south of Lagoon Drive has been envisioned to be non-residential in nature.

While some development is occurring to the north, proposals for development just south of this property have not yet been brought to the city.

The proposed use includes an office and amenity area with approximately 70 spaces for RV parking. The access to the property would be from Lagoon Drive to the north and access to the south would be accommodated on the west side

of the property. The site would be enclosed with a screening wall and would be landscaped and improved to accommodate parking of RVs for brief stays.

The consideration of the AP district is a legislative action allowing for the use of discretion by the City Council. The City Council is being provided with a recommendation from the Planning Commission and should ultimately base its decision on its opinion as to how well the terms of the Agreement work at this location and in consideration of the city's [General Plan](#) and the applicable small area plan vision.

The AP District creates unique rules for the property which it is applied to. This allows the city to be very specific about what can and can't be done on the property.

To help consider whether or not the AP District is appropriate, this chapter of code includes a purpose statement as well as standards.

11-27B-010: PURPOSES:

The purposes of the AP District are:

- A. To provide, where deemed appropriate by the City Council, non-residential and non-agriculture development compatible with and which enhances the purposes of the AA, A, and AE zones.
- B. To allow sustainable and economically viable development which will enhance the community as a whole as well as immediately surrounding neighborhoods and existing property uses.
- C. To protect environmentally sensitive areas, including, but not limited to: wetlands, open space, and areas in close proximity to the stream channels, ponds, and the marsh lands of the Great Salt Lake.
- D. To ensure for orderly preplanning and long-term development of properties; and the creation of a cohesive development plan that will be viable, sustainable, and implements the goals and objectives of the Farmington City General Plan and other plans as adopted.
- E. To give the property owner reasonable assurance that development plans prepared in accordance with an approved general development plan will be acceptable to the City.
- F. To enable the adoption of measures providing for development harmonious with surrounding areas.

11-27B-020: STANDARDS AND REQUIREMENTS:

The following provisions shall apply in an AP District, which district shall also be subject to other provisions of this title, except that where conflict in regulations occurs, the regulations specified in this chapter, or on a general development plan approved pursuant to this chapter, shall apply:

A. AP Districts may be established on parcels of land which are suitable for, and of sufficient size, to be planned and developed in a manner consistent with the purposes and objectives of this chapter, the Farmington City General Plan and/or other area plans as adopted.

B. Before detailed studies of any AP District development plans shall be undertaken by the Planning Staff or the Planning Commission, there shall be a complete development application on file with the City.

C. Applicable zoning regulations shall apply except as otherwise set forth in an AP District shall be as established by the General Development Plan and Development Agreement and may include:

1. Permitted or conditional permitted land uses, including accessory uses;
2. Minimum development area or lot size, which may not be less than allowed in the underlying zone;
3. Maximum building height;
4. Landscaping;
5. Fencing;
6. Signage;
7. Parking;
8. Required amenities, private or public;
9. Circulation: pedestrian and vehicular;
10. Building design standards;
11. Other site-specific regulations as deemed appropriate.

D. AP District regulations that are inconsistent with zoning regulations in this Title shall have precedence and shall supersede such zoning regulations with the exception of subdivision processes, standards for public improvements, and Building Codes, including but not limited to plumbing, mechanical, and electrical regulations. For those regulations not specifically addressed in the Development Agreement, previously adopted ordinances and regulations shall apply. All such exceptions shall be specified in the DA showing all such deviations from existing regulations and the existing regulation from which the deviation occurs.

E. The applicant has an affirmative duty to demonstrate that the overall development and any deviations from the underlying zone or other applicable ordinances enhances the purposes of the underlying zone.

The Development Review Committee has indicated that servicing something like the proposed concept is viable, technical analysis of detailed plans would come if the city decides to approve the AP district and concept. Should the rezone request and Development Agreement be approved, further review of a site plan and engineering details are needed. Solutions to sewer service are still to be determined while the anticipated route to the 700 East lift station are being resolved.

The Planning Commission held the public hearing for this proposal at their 7/11/24 meeting. At that meeting, the Planning Commission tabled the item to request additional information. To summarize, the Commission was interested in having a better understanding of the viability of the proposed land use wanting to ensure that the application proved to meet some of the requirement of the AP district.

In response to the requests of the Planning Commission, the applicant has provided studies and reports which were previously included with information provided to the council.

The recommended motion included with this packet reflects the vote of the Planning Commission after seeing this project over multiple meetings. The motion to recommend approval came by a split vote of 3 yes and 2 no votes at the 8/22 Planning Commission meeting. Commissioners who voted no expressed their opinion that the proposed use wasn't fully compatible with the East Park Lane small area plan and the other uses which are anticipated or under construction in the area.

The terms of the Development Agreement provided with this report would not be limited to a specific individual or entity, but rather run with the land.

Respectfully submitted,



**Lyle Gibson
Assistant Community Development Director**

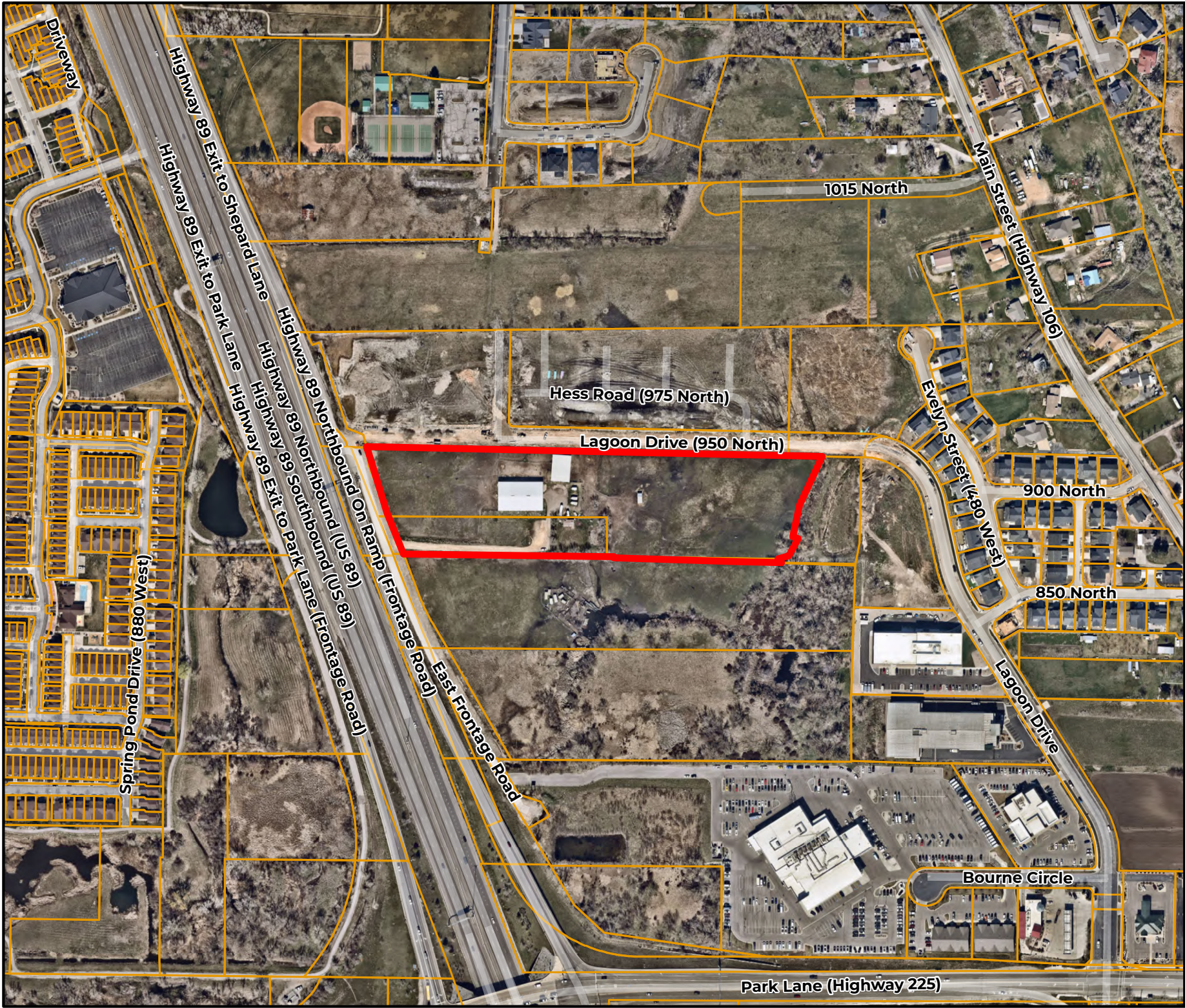
Review and concur,



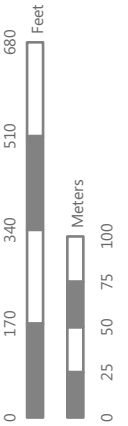
**Brigham Mellor
City Manager**

Supplemental Information

- a. Vicinity Map
- b. East Park Lane small area plan
- c. Enabling Ordinance for AP District
- d. Development Agreement and GDP
- e. Applicant presentation slides



Disclaimer: This map was produced by Farmington City GIS and is for reference only. The information contained on this map is believed to be accurate and suitable for limited uses. Farmington City makes no warranty as to the accuracy of the information contained for any other purposes.

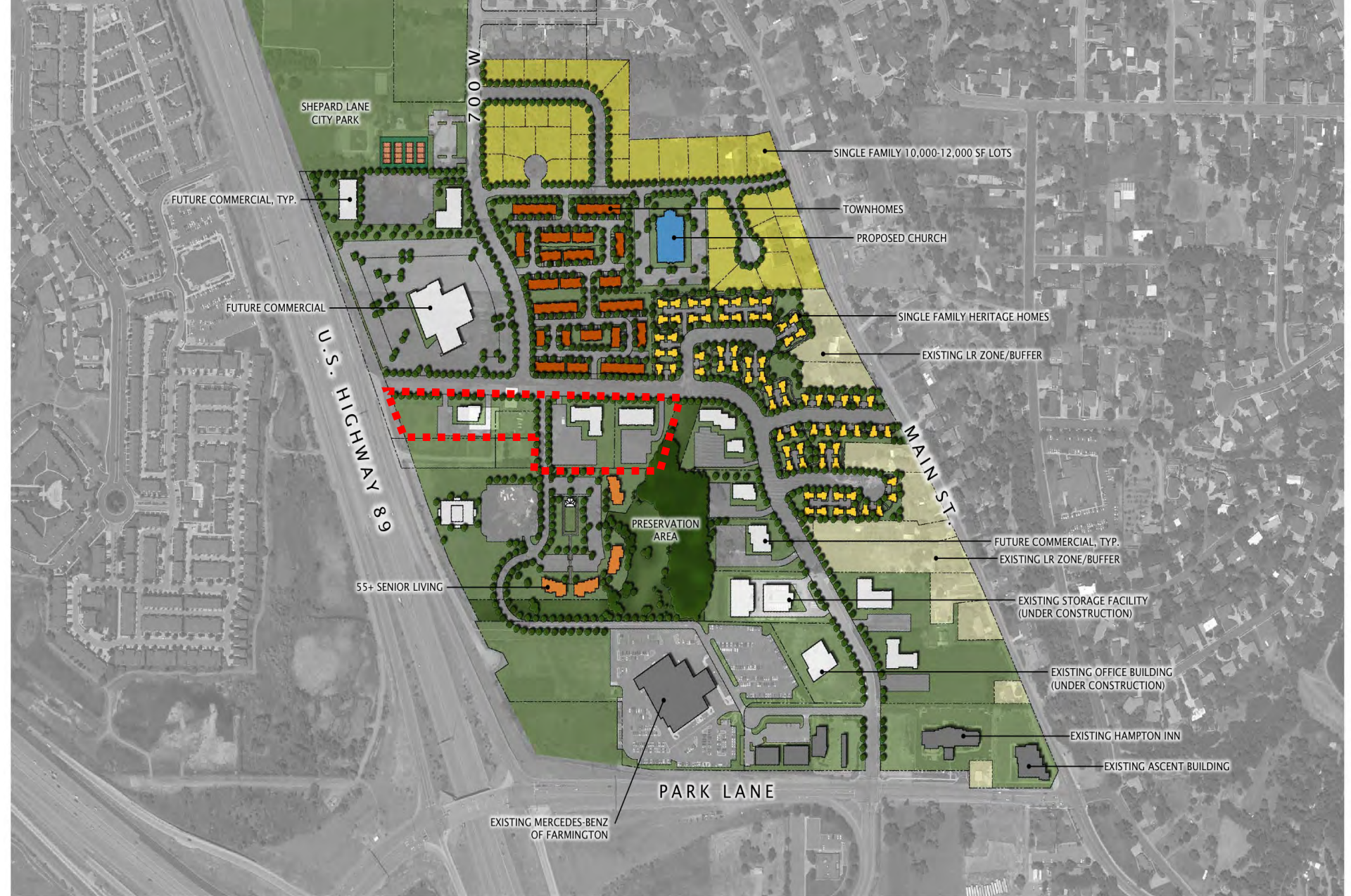


VICINITY MAP

Spring Creek RV AP District



Park Lane (Highway 225)



SHEPARD LANE CITY PARK

FUTURE COMMERCIAL, TYP.

FUTURE COMMERCIAL

U.S. HIGHWAY 89

700 W

SINGLE FAMILY 10,000-12,000 SF LOTS

TOWNHOMES

PROPOSED CHURCH

SINGLE FAMILY HERITAGE HOMES

EXISTING LR ZONE/BUFFER

MAIN ST.

PRESERVATION AREA

FUTURE COMMERCIAL, TYP.

EXISTING LR ZONE/BUFFER

55+ SENIOR LIVING

EXISTING STORAGE FACILITY (UNDER CONSTRUCTION)

EXISTING OFFICE BUILDING (UNDER CONSTRUCTION)

EXISTING HAMPTON INN

EXISTING ASCENT BUILDING

PARK LANE

EXISTING MERCEDES-BENZ OF FARMINGTON



small area master plan (uses)

FARMINGTON, UTAH

ORDINANCE NO. 2024 -

**AN ORDINANCE AMENDING THE ZONING MAP TO
SHOW A CHANGE OF ZONE FOR PROPERTY (TAX ID: 08-
051-0180) LOCATED AT 650 WEST LAGOON DRIVE TO
INCLUDE THE AP OVERLAY DISTRICT.**

WHEREAS, the Farmington City Planning Commission has reviewed and made a recommendation to the City Council concerning the proposed zoning change pursuant to the Farmington City Zoning Ordinance and has found it to be consistent with the City's General Plan; and

WHEREAS, a public hearing was held after being duly advertised as required by law; and

WHEREAS, the City Council of Farmington City finds that such zoning change should be made;

NOW, THEREFORE, BE IT ORDAINED by the City Council of Farmington City, Utah:

Section 1. Zoning Change. The property described in Application # Z-6-24, filed by Farmington City Community Development, located at 650 West Lagoon Drive, identified by parcel number: 08-051-0180 is hereby rezoned to include the AP District Overlay Zone, said property being more particularly illustrated on Exhibit "A" attached hereto.

Section 2. Zoning Map Amendment. The Farmington City Zoning Map shall be amended to show the change.

Section 3. Effective Date. This ordinance shall take effect prior to, or concurrent with, the recording of the Development Agreement For The Spring Creek RV Resort.

DATED this 15th day of October, 2024

FARMINGTON CITY

Brett Anderson
Mayor

ATTEST:

DeAnn Carlile
City Recorder

Exhibit "A"

Legal Description

BEG AT THE CENTER OF SEC 13-T3N-R1W, SLB&M; & RUN TH S 89°52'45" W 20.00 FT; TH N 0°01'47" E 110.00 FT; TH S 89°52'45" W 613.97 FT; TH N 21°22'38" W 148.90 FT; TH N'LY 1.70 FT ALG THE ARC OF A 57.41 FT RADIUS CURVE TO THE RIGHT (LC BEARS N 21°47'43" E 1.70 FT); TH NE'LY 18.04 FT ALG THE ARC OF A 57.91 FT RADIUS CURVE TO THE RIGHT (LC BEARS N 28°46'12" E 17.97 FT) TO A PT WH IS ON BNDRY LINE AGMT RECORDED 06/24/2019 AS E# 3168113 BK 7290 PG 1284 & AFFIDAVIT RECORDED 01/27/2020 AS E# 3220986 BK 7436 PG 296; TH ALG SD AGMT THE FOLLOWING COURSE: S 89°07'15" E 1263.81 FT; TH S 24°42'50" W 151.15 FT; TH S 11°31'43" W 91.02 FT; TH S 72°28' E 15.99 FT; TH S 28°10'09" W 54.56 FT; TH S 73°16'20" W 31.99 FT; TH N 89°32'27" W 461.09 FT TO THE POB. CONT. 6.482 ACRES TOGETHER WITH & SUBJECT TO A DESC R/W. ALSO, A TRACT OF LAND IN FEE SIT IN THE SE 1/4 NW 1/4 OF SEC 13-T3N-R1W, SLB&M, DESC AS FOLLOWS: BEG IN THE E'LY FRONTAGE ROAD R/W OF RECORD, UNDER PROJECT NO. 0067 AT A PT 33.280 M (109.19 FT) N 0°07'38" E ALG THE 1/4 SEC LINE 193.519 M (634.90 FT) N 89°52'22" W & 56.578 M (185.62 FT) N 17°23'25" W FR THE CENTER OF SD SEC 13 AS MONU WITH A COUNTY BRASS CAP; & RUN TH N 17°23'25" W 5.609 M (18.40 FT) TO A N'LY PPTY LINE; TH S 89°14'22" E (DEED OF RECORD S 89°07'15" E) 4.479 M (14.69 FT) ALG SD N'LY PPTY LINE; TH SW'LY 5.499 M (18.04 FT) ALG THE ARC OF A 17.651 M (57.91 FT) RADIUS CURVE TO THE LEFT, TO A PT OF COMPOUND CURVE (NOTE: CHORD TO SD CURVE BEARS S 28°46'14" W 5.477 M (17.97 FT); TH S'LY 0.520 M (1.71 FT) ALG THE ARC OF A 17.500 M (57.41 FT) RADIUS CURVE TO THE LEFT (NOTE: CHORD TO SD CURVE BEARS S 18°38'39" W 0.520 M (1.71 FT) TO THE POB. CONT. 0.003 ACRES

TOTAL ACREAGE 6.485 ACRES (NOTE: THIS REMAINING LEGAL WAS WRITTEN IN THE DAVIS COUNTY RECORDER'S OFFICE FOR I.D. PURPOSES. IT DOES NOT REFLECT A SURVEY OF THE PROPERTY)

When Recorded Mail to:
Farmington City Attorney
160 S. Main Street
Farmington, UT 84025

DEVELOPMENT AGREEMENT
FOR THE SPRING CREEK RV RESORT

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 2024, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the “City,” and **HARV JEPPSEN**, hereinafter referred to as the “Developer.”

RECITALS:

A. Developer owns approximately 6.5 acres of land located within the City, which property is more particularly described in **Exhibit “A”** attached hereto and by this reference made a part hereof (the “Property”).

B. Developer desires to develop a project on the Property to be known as the (the “Project”). Developer has submitted an application to the City seeking approval to be included in the AP District to permit alternate development standards in accordance with the City’s Laws.

C. The City finds that the “Project” meets the purposes of the AP District as it produces non-residential and non-agriculture development which enhances the purposes of the Agricultural zones and will allow for sustainable and economically viable development which will enhance the community at large while ensuring orderly planning of the Property and furthering the objectives of the Farmington City General Plan.

D. The Property is presently zoned under the City’s zoning ordinance as Agricultural (A). Unless otherwise specified within this agreement, the Property is subject to all City ordinances and regulations including the provisions of the City’s General Plan, the City’s zoning ordinances, the City’s engineering development standards and specifications and any permits issued by the City pursuant to the foregoing ordinances and regulations (collectively, the “City’s Laws”).

E. Persons and entities hereafter developing the Property or any portions of the Project thereon shall accomplish such development in accordance with the City’s Laws, and the provisions set forth in this Agreement. This Agreement contains certain requirements and conditions for design and/or development of the Property and the Project in addition to or in lieu of those contained in the City’s Laws. This Agreement is wholly contingent upon the approval of that zoning application.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Developer hereby agree as follows:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Agreement.

2. **Property Affected by this Agreement.** The legal description of the Property contained within the Project boundaries to which the Agreement applies is attached as Exhibit “A” and incorporated by reference.

3. **Compliance with Current City Ordinances.** Unless specifically addressed in this Agreement, Developer agrees that any development of the Property shall be in compliance with city ordinances in existence on the date of execution of this Agreement. If the City adopts different ordinances in the future, Developer shall have the right, but not the obligation, to elect to submit a development application under such future ordinances, in which event the development application will be governed by such future ordinances.

4. **General Development Plan.** The approved General Development Plan (the “GDP”) for the entire Project is attached hereto as Exhibit “B” and incorporated by reference. All portions of the Project must be developed in accordance with the approved GDP. No amendment or modifications to the approved GDP shall be made by the Developer without written consent of the City. The Project shall be developed by Developer in accordance with all requirements contained herein. Any changes to the GDP that require an exception from approved development standards not otherwise addressed in this Agreement shall be considered by the City Council as an amendment to this Agreement, following the process established by Utah law for approval.

5. **Alternative Development Standards.** Pursuant to Utah Code Ann. § 10-9a-532(2)(a)(iii), this Development Agreement contains terms that conflict with, or is different from, a standard set forth in the existing land use regulations that govern the Property. This Agreement, which has undergone the same procedures for enacting a land use regulation, overrides those conflicting standards as it relates to this Project, as follows:

a) **Setbacks.** Developer shall be permitted to build an office building in connection with the proposed RV Resort as close as 20 ft. to the front property line as shown in Exhibit “B”.

b) **Parking.** Developer shall provide a minimum of 5 improved parking stalls is shown in Exhibit “B”.

c) **Fencing.** Developer shall construct and maintain a wall as depicted in Exhibit “B” around the perimeter of the RV resort for the purpose of providing a visual barrier. The fencing shall be either masonry or Simtec material.

d) **Landscaping.** Landscaping shall be installed and maintained as indicated in the included Landscape Plan provided as Exhibit B. Park strip landscaping along Lagoon Lane,

specifically the planting and upkeep of trees, is required as demonstrated in Exhibit B. Planting and maintenance of vegetation between the sidewalk and perimeter fence or wall shall be designed, installed, and maintained in a manner that is comparable to the example shown in Exhibit B. Developer shall include a minimum of one water feature visible from Lagoon Drive comparable to the image shown in Exhibit B. Whether this work is performed by Developer or others, all landscaping shall be installed prior to issuing a business license. .

e) Amenities. Developer agrees to install the following amenities prior to occupancy of the development, as depicted on Exhibit B: pickleball courts, dog run, and fire ring. Developer agrees to install additional amenities within three (3) years of opening, based upon demand of park users. The additional amenities may include a swimming pool, splash pad, hot tub, playground, or similar large-scale amenities.

f) Clubhouse. Developer will construct a clubhouse as depicted on Exhibit B. Developer agrees that the following architectural features will be included on the clubhouse:

i) **Roof Form:** Pitched roof architecture shall be incorporated into the final design of the Clubhouse.

ii) **Exterior Finishes:** The exterior of the Clubhouse shall include masonry materials only. Masonry materials in this case shall mean rock or stone, brick, or fiber cement siding. Vinyl siding, stucco, or metal shall not be used on exterior walls unless proposed as an accent material covering 5% or less of any building façade.

g) Allowed Uses. In addition to the uses allowed by the underlying zoning district, the following use shall be allowed on the Property and shall be considered a Permitted Use. Uses not listed may only be considered through an addendum to this Agreement unless the Farmington City Planning Commission determines the use to be similar enough in nature and impact to the uses listed below. This consideration by the Planning Commission is an interpretation of Ordinance and this agreement, not to be confused with a Conditional Use approval.

i) **RV Resort / Campground** including supporting office and amenities

h) Trailer and Campground Areas Standards: The Project shall comply with requirements of Chapter 11-36 of Farmington City Code, Trailer and Campground Areas; however, where the project proposes to meet a current standard that may conflict with this code, the current standard adopted by the City, a utility provider, or other entity of jurisdiction, or recognized fire or building code shall apply.

6. Developer Obligations. In consideration of the exceptions to code provided by this Agreement, Developer acknowledges that certain obligations go beyond ordinary development requirements and restricts the Developer's rights to develop without undertaking these obligations. Developer agrees to the following provisions as a condition for being granted the zoning approval and exceptions under the code sought:

a) Resort Policies. Developer shall implement and enforce the policies provided to the City as included with Exhibit "C". The obligation to enforce these policies survives the

termination of this agreement and may only be amended pursuant to an amendment to this Agreement, authorized by the Farmington City Council.

b) Length of Stays. Developer agrees that patrons of the RV Resort/Campground will not be permitted to stay longer than thirty (30) days per visit. This obligation runs with the land and is applicable to all successors, assigns, and owners.

c) Access Road. The 'Access Drive' indicated in the north west corner of the Property in in place to allow access for continued or future use of properties to the south of the Project. This Access Drive shall be dedicated to the city as public right-of-way at the request of the city and shall be designed to the standard determined by the City Engineer as either a 56 ft. or 60 ft. right-of-way.

d) Public Improvements. Developer shall be responsible for construction or installation of new public improvements required to serve the Project such as the completion of Access Drive including, utilities, street, and sidewalk infrastructure. Sidewalk along the western property line from Access Drive leading to the south may be required by the City prior to granting final site plan approval and approval of construction drawings.

7. City Obligations. City agrees to maintain any public improvements dedicated to the City following satisfactory completion thereof and acceptance of the same by the City, and to provide standard municipal services to the Project. The City shall provide all public services to the Project, with the exception of secondary water and sewer service, and to maintain the public improvements, including roads, intended to be public upon dedication to the City and acceptance in writing by the City; provided, however, that the City shall not be required to maintain any areas owned by Developer or improvements that are required to be maintained by a third party in the Project.

8. Payment of Fees. The Developer shall pay to the City all required fees in a timely manner. Fees shall be paid in those amounts which are applicable at the time of payment of all such fees, pursuant to and consistent with standard City procedures and requirements, adopted by City.

9. Indemnification and Insurance. Developer hereby agrees to indemnify and hold the City and its officers, employees, representatives, agents and assigns harmless from any and all liability, loss, damage, costs or expenses, including attorneys' fees and court costs, arising from or as a result of the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to property of any person which shall occur within the Property or any portion of the Project or occur in connection with any off-site work done for or in connection with the Project or any phase thereof which shall be caused by any acts or omissions of the Developer or its assigns or of any of their agents, contractors, servants, or employees at any time. Developer shall furnish, or cause to be furnished, to the City a satisfactory certificate of insurance from a reputable insurance company evidencing general public liability coverage for the Property and the Project in a single limit of not less than One Million Dollars (\$1,000,000.00) and naming the City as an additional insured. Alternatively, Developer may provide proof of self-insurance with adequate funds to cover such a claim.

10. **Right of Access.** Representatives of the City shall have the reasonable right of access to the Project and any portions thereof during the period of construction to inspect or observe the Project and any work thereon.

11. **Assignment.** The Developer shall not assign this Agreement or any rights or interests herein without prior written approval by the City, which shall not be unreasonably withheld and which is intended to assure the financial capability of the assignee. Any future assignee shall consent in writing to be bound by the terms of this Agreement as a condition precedent to the assignment. The Developer is affirmatively permitted to assign this Agreement to a wholly owned subsidiary under the same parent company.

12. **Developer Responsible for Project Improvements.** The Developer warrants and provides assurances that all landscaping, private drives, and amenities located within the Project shall be maintained by Developer. All costs of landscaping, private drive and amenity maintenance, replacement, demolition, cleaning, snow removal, or demolition, shall be borne exclusively by Developer. City shall have no maintenance responsibility in relation to the property owned by Developer and shall only plow and maintain public roads that are designated as public on the plat. This section survives termination under Subsection 19.b) of this Agreement, unless specifically terminated in writing.

13. **Onsite Improvements.** At the time of final plat recordation for the Project, the Developer shall be responsible for the installation and dedication to the City of onsite water improvements installed within public rights-of-way sufficient for the development of the Project in accordance with City Code.

14. **Notices.** Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, by certified mail, return receipt requested, postage prepaid, to such party at its address shown below:

To Developer: _____

To the City: Farmington City
Attn: City Manager
160 South Main Street
Farmington, Utah 84025

15. **Default and Limited Remedies.** In the event any party fails to perform its obligations hereunder or to comply with the terms hereof, within sixty (60) days after giving written notice of default, the non-defaulting party shall have the following rights and remedies available at law and in equity, including injunctive relief and specific performance, but excluding the award or recovery of any damages. Any delay by a Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Article shall not operate as a

waiver of such rights. In addition, the Parties have the following rights in case of default, which are intended to be cumulative:

- a) The right to withhold all further approvals, licenses, permits or other rights associated with the Project or any development described in this Agreement until such default has been cured.
- b) The right to draw upon any security posted or provided in connection with the Project.
- c) The right to terminate this Agreement.

16. Agreement to Run with the Land. This Agreement shall be recorded against the Property as described in Exhibit A hereto and shall be deemed to run with the land and shall be binding on all successors and assigns of the Developer in the ownership and development of any portion of the Project.

17. Vested Rights. The City and Developer intend that this Agreement be construed to grant the Developer all vested rights to develop the Project in fulfillment of the terms and provisions of this Agreement and the laws and ordinances that apply to the Property as of the effective date of this Agreement. The Parties intend that the rights granted to Developer under this Agreement are contractual and in addition to those rights that exist under statute, common law and at equity. If the City adopts different ordinances in the future, Developer shall have the right, but not the obligation, to elect to submit a development application under such future ordinances, in which event the development application will be governed by such future ordinances. By electing to submit a development application under a new future ordinance, however, Developer shall not be deemed to have waived its right to submit or process other development applications under the City Code that applies as of the effective date of this Agreement.

18. Amendment. The Parties or their successors in interest, may, by written agreement, choose to amend this Agreement at any time. The amendment of the Agreement relating to any substantial rights or obligations shall require the prior approval of the City Council.

19. Termination.

a) Notwithstanding anything in this Agreement to the contrary, it is agreed by the Parties that if the Project is not completed within five (5) years from the date of this Agreement or if Developer does not comply with the City's laws and the provisions of this Agreement, the City shall have the right, but not the obligation at the sole discretion of the City, which discretion shall not be unreasonably applied, to terminate this Agreement and to not approve any additional phases for the Project. Such termination may be effected by the City giving written notice of intent to terminate to the Developer. Whereupon, the Developer shall have sixty (60) days during which the Developer shall be given the opportunity to correct any alleged deficiencies and to take appropriate steps to complete the Project. If Developer fails to satisfy the concerns of the City with regard to such matters, the City shall be released from any further obligations under this Agreement and the same shall be terminated.

b) Upon the completion of all contemplated buildings and improvements identified in this Agreement, including all applicable warranty periods for publicly dedicated infrastructure, and completion of all provisions of Sections 6 and 7 of this Agreement, the terms of this Agreement shall terminate upon thirty days' written notice to either Party, except any provisions expressly providing for survival beyond termination. The non-noticing Party shall, within thirty days of receipt of the notice, provide to the noticing Party its written objection and identify the remaining construction or obligation which has not been fulfilled. Objections to termination under this subsection must be asserted in good faith.

20. Attorneys' Fees. In the event of any lawsuit between the parties hereto arising out of or related to this Agreement, or any of the documents provided for herein, the prevailing party or parties shall be entitled, in addition to the remedies and damages, if any, awarded in such proceeding, to recover their costs and a reasonable attorneys fee.

21. General Terms and Conditions.

a) **Entire Agreement.** This Agreement together with the Exhibits attached thereto and the documents referenced herein, and all regulatory approvals given by the City for the Property and/or the Project, contain the entire agreement of the parties and supersede any prior promises, representations, warranties or understandings between the parties with respect to the subject matter hereof which are not contained in this Agreement and the regulatory approvals for the Project, including any related conditions.

b) **Headings.** The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

c) **Non-Liability of City Officials, Employees and Others.** No officer, representative, agent, or employee of the City shall be personally liable to the Developer, or any successor-in-interest or assignee of the Developer in the event of any default or breach by the City or for any amount which may become due Developer, or its successors or assigns, for any obligation arising under the terms of this Agreement unless it is established that the officer, representative, agent or employee acted or failed to act due to fraud or malice.

d) **Referendum or Challenge.** Both Parties understand that any legislative action by the City Council is subject to referral or challenge by individuals or groups of citizens, including zone changes and the approval of associated development agreements. The Developer agrees that the City shall not be found to be in breach of this Agreement if such a referendum or challenge is successful. In such case, this Agreement is void at inception.

e) **Ethical Standards.** The Developer represents that it has not: (a) provided an illegal gift or payoff to any officer or employee of the City, or former officer or employee of the City, or to any relative or business entity of an officer or employee of the City; (b) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees of bona fide commercial agencies established for the purpose of securing business; (c) breached any of the

ethical standards set forth in Utah Code Ann. § 10-3-1301 et seq. and 67-16-3 et seq.; or (d) knowingly influenced, and hereby promises that it will not knowingly influence, any officer or employee of the City or former officer or employee of the City to breach any of the ethical standards set forth in State statute or City ordinances.

f) No Officer or Employee Interest. It is understood and agreed that no officer or employee of the City has or shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds resulting from the performance of this Agreement. No officer, manager, employee or member of the Developer, or any member of any such persons' families shall serve on any City board or committee or hold any such position which either by rule, practice, or action nominates, recommends, or supervises the Developer's operations, or authorizes funding or payments to the Developer. This section does not apply to elected offices.

g) Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, representatives, officers, agents, employees, members, successors and assigns.

h) Integration. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understandings of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto.

i) No Third-Party Rights. The obligations of Developer set forth herein shall not create any rights in and/or obligations to any persons or parties other than the City. The parties hereto alone shall be entitled to enforce or waive any provisions of this Agreement.

j) Recordation. This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

k) Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture or fiduciary relationship between the parties hereto.

l) Severability. If any portion of this Agreement is held to be unenforceable or invalid for any reason by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

m) Governing Law & Venue. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah. Any action taken to enforce the provisions of this Agreement shall have exclusive venue in the District Court of the State of Utah with jurisdiction over Davis County, Farmington Division.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective, duly authorized representatives as of the day and year first herein above written.

DEVELOPER

Harv Jeppsen

Print Name & Office

Signature

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this ____ day of _____, 2024, personally appeared before me, _____, who being by me duly sworn, did say that (s)he is a _____ of _____, a limited liability company of the State of Utah, and that the foregoing instrument was signed on behalf of said company by an authorized signor, and duly acknowledgment to me that (s)he executed the same.

Notary Public

FARMINGTON CITY

By _____
Brett Anderson, Mayor

Attest:

DeAnn Carlile
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this ____ day of _____, 2024, personally appeared before me, Brett Anderson, who being by me duly sworn, did say that he is the Mayor of Farmington City, a Utah municipal corporation and political subdivision of the State of Utah, and that the foregoing instrument was signed on behalf of the City for the purposes therein stated.

Notary Public

Approved as to Form:

Paul H. Roberts
City Attorney

EXHIBIT “A”

PROPERTY DESCRIPTION

Davis County Parcel No. 08-051-0180

Legal Description: BEG AT THE CENTER OF SEC 13-T3N-R1W, SLB&M; & RUN TH S 89°52'45" W 20.00 FT; TH N 0°01'47" E 110.00 FT; TH S 89°52'45" W 613.97 FT; TH N 21°22'38" W 148.90 FT; TH N'LY 1.70 FT ALG THE ARC OF A 57.41 FT RADIUS CURVE TO THE RIGHT (LC BEARS N 21°47'43" E 1.70 FT); TH NE'LY 18.04 FT ALG THE ARC OF A 57.91 FT RADIUS CURVE TO THE RIGHT (LC BEARS N 28°46'12" E 17.97 FT) TO A PT WH IS ON BNDRY LINE AGMT RECORDED 06/24/2019 AS E# 3168113 BK 7290 PG 1284 & AFFIDAVIT RECORDED 01/27/2020 AS E# 3220986 BK 7436 PG 296; TH ALG SD AGMT THE FOLLOWING COURSE: S 89°07'15" E 1263.81 FT; TH S 24°42'50" W 151.15 FT; TH S 11°31'43" W 91.02 FT; TH S 72°28' E 15.99 FT; TH S 28°10'09" W 54.56 FT; TH S 73°16'20" W 31.99 FT; TH N 89°32'27" W 461.09 FT TO THE POB. CONT. 6.482 ACRES TOGETHER WITH & SUBJECT TO A DESC R/W. ALSO, A TRACT OF LAND IN FEE SIT IN THE SE 1/4 NW 1/4 OF SEC 13-T3N-R1W, SLB&M, DESC AS FOLLOWS: BEG IN THE E'LY FRONTAGE ROAD R/W OF RECORD, UNDER PROJECT NO. 0067 AT A PT 33.280 M (109.19 FT) N 0°07'38" E ALG THE 1/4 SEC LINE 193.519 M (634.90 FT) N 89°52'22" W & 56.578 M (185.62 FT) N 17°23'25" W FR THE CENTER OF SD SEC 13 AS MONU WITH A COUNTY BRASS CAP; & RUN TH N 17°23'25" W 5.609 M (18.40 FT) TO A N'LY PPTY LINE; TH S 89°14'22" E (DEED OF RECORD S 89°07'15" E) 4.479 M (14.69 FT) ALG SD N'LY PPTY LINE; TH SW'LY 5.499 M (18.04 FT) ALG THE ARC OF A 17.651 M (57.91 FT) RADIUS CURVE TO THE LEFT, TO A PT OF COMPOUND CURVE (NOTE: CHORD TO SD CURVE BEARS S 28°46'14" W 5.477 M (17.97 FT); TH S'LY 0.520 M (1.71 FT) ALG THE ARC OF A 17.500 M (57.41 FT) RADIUS CURVE TO THE LEFT (NOTE: CHORD TO SD CURVE BEARS S 18°38'39" W 0.520 M (1.71 FT) TO THE POB. CONT. 0.003 ACRES TOTAL ACREAGE 6.485 ACRES (NOTE: THIS REMAINING LEGAL WAS WRITTEN IN THE DAVIS COUNTY RECORDER'S OFFICE FOR I.D. PURPOSES. IT DOES NOT REFLECT A SURVEY OF THE PROPERTY)

Visual of property (subject property highlighted in yellow):

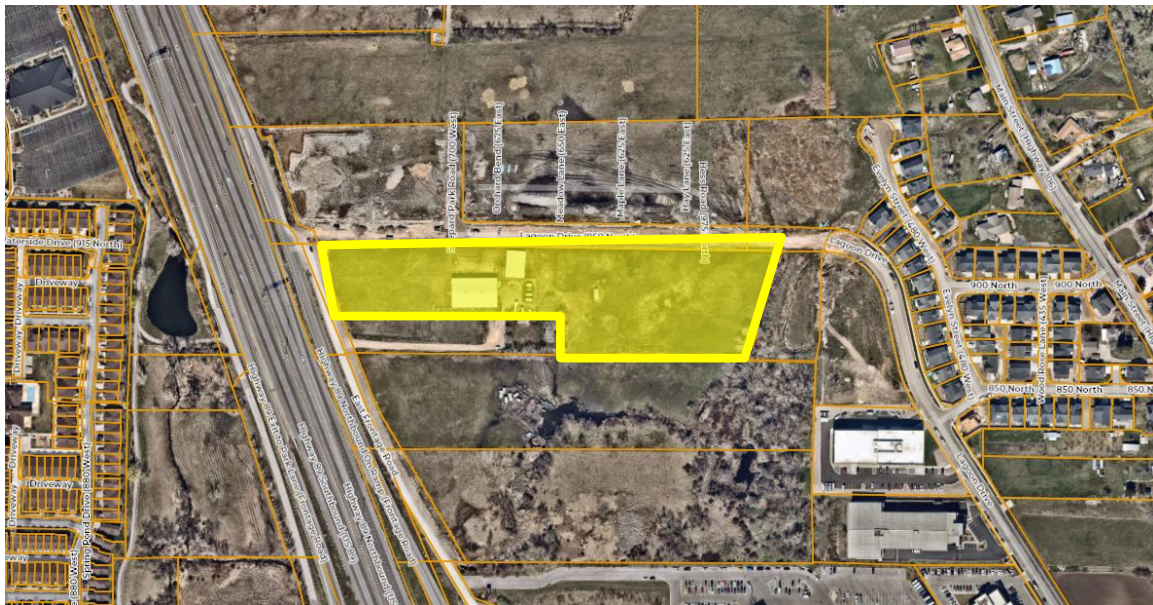


EXHIBIT "B"

GENERAL DEVELOPMENT PLAN

Artistic Rendering



Site Plan / Landscape Plan



Landscape

Fountain grasses and small shrubs

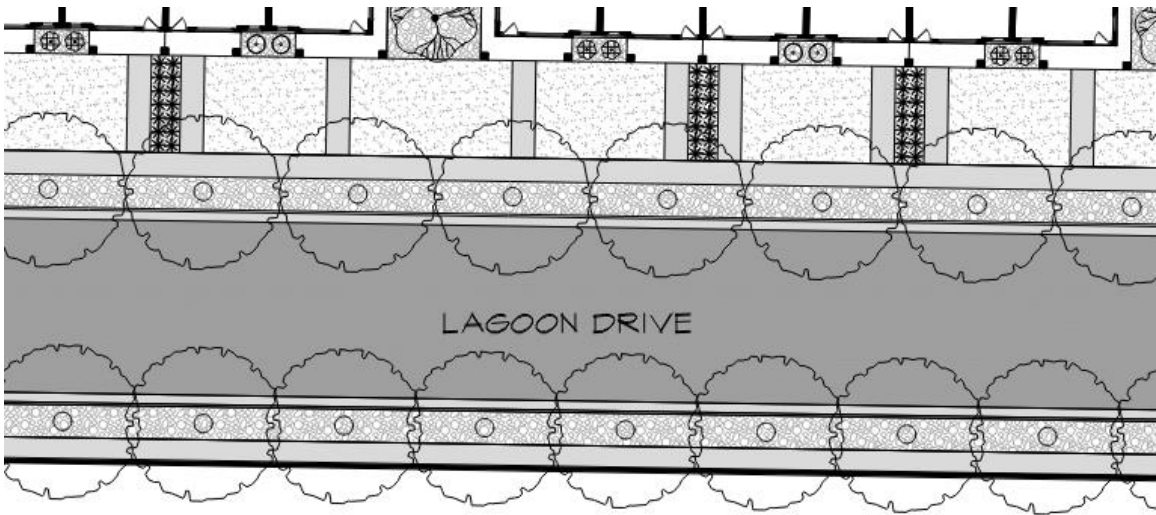
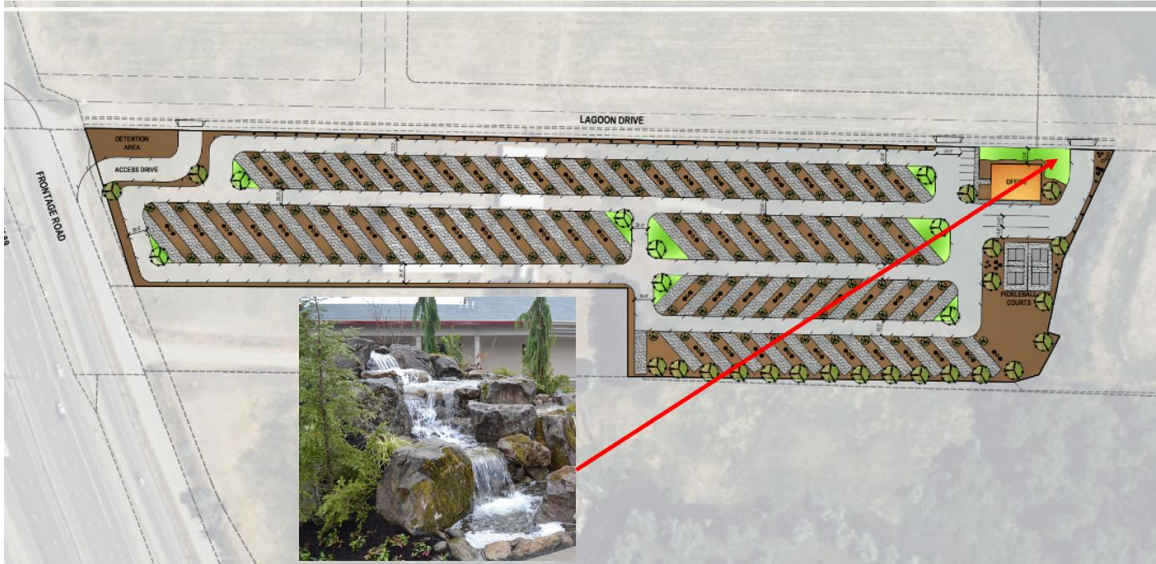


Landscape

Fountain grasses and small shrubs



Landscape Plan



Fencing

Simtek Fence

- Blocks 98% of direct sound
- Color fade-resistant
- Engineered for high winds
- Lifetime Warranty



Clubhouse

Clubhouse

Exterior Options



EXHIBIT “C”

RESORT POLICIES

SPRING CREEK RV RESORT POLICIES

We want to make your stay both pleasant and comfortable. If you need any additional information, please feel free to inquire at the office.

Our resort is non-smoking; smoking is not permitted inside any building or within 25 feet of any building. Smoking is not permitted at any RV site as it can cause a nuisance to surrounding guests. Smoking is not permitted in any outdoor common-use area such as outside of the bathhouse, bowery, pickleball courts, and park. Suspicious or illegal activity will not be tolerated.

To maintain a high standard for all campers, we only accept RVs, trailers, vans, campers, & vehicles that are in well-maintained and operable condition. Your RV cannot have missing panels or parts. Spring Creek reserves the right to cancel a stay based on the overall condition of an RV upon or before arrival. All RVs must be owner-occupied.

Please help us make your stay here more enjoyable through your cooperation with the following policies and rules:

Check-In

Check-in is after 1 p.m. on the day of arrival. If you are staying during winter months, it is required that you have a heated culinary water hose and an insulated water hydrant cover to keep your water from freezing. We have these for sale in the office if needed. Packages can be sent to our office. Personal mail should not be forwarded to our office. Please obtain a PO Box through USPS for personal mail. We do not monitor the coming and going of packages and it is completely at the risk of the guest.

All RV's must be 15 years or newer. Spring Creek RV Resort reserves the right to allow RV's older than 15 years with pictures showing their good condition. All RV's must be in good condition and in working order and are subject to an approval decision being made upon arrival regardless of a prior decision based on photos. If your RV does not meet the selection criteria upon arrival or at any time during your stay, or if you provide inaccurate or incomplete information, your reservation may be rejected and your reservation may not be refunded. RV owners must have an appropriate vehicle capable of moving their RV upon request. Tent camping is not allowed.

Check-Out

Check-out before 11:00 a.m. on the day of departure. Please make arrangements prior to 10 a.m. if extending your stay is desired. Any items at your site, at the clubhouse, or on the property that are broken or damaged by any of your family or guests during your stay will be billed to your card on file to recoup any loss or damage or to make any repairs.

Payment and Cancellation Policy for 28-day Reservations

28-day Reservations must be booked over the phone. A non-refundable deposit of \$150 will be charged for 28-day reservations. 3 days prior to the start of the reservation, 100% of the remaining balance will be automatically charged to the card on file. Once the 28-day reservation begins, no refunds will be given for early departure or late arrival. A pet fee \$25 (up to 3 pets are included in this fee) will be charged.

Payment and Cancellation Policy for less than 28-day Reservations

At the time of booking, authorization will be put on the card on file. 3 days before the start of the reservation, 100% of the reservation balance will automatically be charged. No refunds will be given for late arrivals or early departures. No refunds will be given for reservations canceled less than 3 days before the stay. A 50% refund will be given for reservations canceled less than 7 days (but more than 3 days) before the stay. Guests may choose to receive a full refund in the form of resort credit to be used on a future stay if they cancel in this timeframe. No-shows will be charged the full reservation amount.

Quiet Hours

Quiet hours are from 10 p.m. to 7:30 a.m.

Tables

Limit of one (1) picnic table per campsite.

RV Guests

Spring Creek reserves the right to limit long term stays. Maximum reservation is 28 days. Spring Creek reserves the right to allow multiple 28-day reservations for long-term stays. 28-day reservations will be charged for electric use. Meter readings will be taken at the end of every 28-day reservation and will be charged to the card on file. Large-area outdoor rugs are prohibited on campsites. A small mat (24" x 24" maximum) is allowed at the base of your stairs. Winter skirting around your RV must be authorized by the office. No porches or outdoor construction allowed. Outdoor storage is prohibited. Guests must keep the site clean and organized and picked up.

Vehicles (Two vehicles allowed per site. Certain sites allow for only 1 vehicle. Vehicles can only be parked at a site if they do not obstruct the roadway. Resort Staff reserves the right to limit additional vehicles per site). A 3rd vehicle is allowed if there are stalls available. The charge for a 3rd vehicle is \$50 per month for 28-day reservations. All other reservations will be charged \$5/per day.

Vehicles must not block the road or adjacent site(s). The speed limit is between 5-10 MPH. Failure to comply with this speed limit or roadway markings may result in a forfeiture of a reservation or future reservations.

Children

Parents are responsible at all times for their children's safety and behavior. Please supervise children at all amenities and do not allow children to play in the roadway.

Laundry

The laundry room is open from 8 a.m. to 10 p.m. Please do not hang clothes on lines or on trees at the campsite. No pet washing in bathrooms.

Animals/Pets

Animals must be always kept on a physical leash and may not be left unattended at the campsite. Animals must be non-aggressive. Animals cannot be a nuisance to your neighbors. Animals are not allowed inside the clubhouse or laundry and bathroom buildings unless they are registered disability service animals. Animals may not be tethered to utility fixtures, picnic tables, trees or fences. Animal waste must be immediately picked up by the pet owner no matter where on property it does its business. Please control excessive dog barking. Dogs may be off leash when within the Dog Playground provided their owners remain in control. Pet pens/pet fencing are not allowed on sites. Please use our dog playground. Grass at sites that are ruined by pet urine to be repaired by guests. Management reserves the right to not allow your animal on the Resort property or to compel you to remove your animal from the Resort.

Restrooms and Showers

Please clean up after yourself and leave the bathrooms clean. Animals and the washing of dishes are prohibited in the restrooms.

Fires

No open wood fires allowed. Propane fire pits are allowed and also available for rent in the office. Personal charcoal and propane grills are permitted. Do not put hot coals in garbage containers. Fireworks are prohibited on the Resort premises.

Garbage

Help us stay clean by depositing all garbage in the dumpsters and garbage cans located throughout the Resort.

After-Hours Assistance/Security

Please call (801)721-8246 for after-hours and security issues. After-hours guests shall not set up during quiet hours.

Retention Ponds

Retention ponds on property at the Resort are restricted access areas. Access or entry by Guests and/or pets is strictly prohibited.

Background Checks

Long-term stays (28-day reservations) will be subject to a criminal background check at the expense of the guest. Signing this acknowledgment indicates that you have been made aware that selection criteria for a 28-day reservation may include factors such as criminal history. If you do not meet the selection criteria, or if you provide inaccurate or incomplete information, your reservation may be rejected and your reservation may not be refunded.

Acknowledgment of Policies

THIS RESORT IS PRIVATELY OWNED. FAILURE TO COMPLY WITH THESE POLICIES AND RULES MAY RESULT IN YOU BEING ASKED BY MANAGEMENT TO LEAVE THE RESORT WITHOUT REFUND OR RECOURSE AND/OR BY FUTURE RESERVATIONS BEING CANCELED. SPRING CREEK RESERVES THE RIGHT TO ENFORCE ITS RULES AND POLICIES AND TO REFUSE, IN ITS SOLE DISCRETION, SERVICE OR ACCESS TO ANYONE.

We reserve the right to change, amend, or otherwise modify the policies at any time. The most updated version will be available on the Resort's website. We will provide the policies to be signed at the time of booking. A guest's use of the reservation/site/amenities is an acknowledgment and acceptance of the terms, regardless of whether signed policies for that reservation have been returned to the Resort.

ARRIVAL TIMES

1:00 PM - 6:00 PM

If arriving outside of check-in times, please call to make arrangements.

AUTO-COLLECT

At the time of booking, 100% of the reservation balance will be collected. Payment for all gift certificates will also be collected. Applies to: all reservations.

SCHEDULED DEPOSIT

3 days before arrival, 100% of the reservation balance will be collected. If a reservation is booked "last-minute" (within the scheduled time frame), the initial deposit will be collected in addition to the scheduled amount. Applies to: all reservations.

CHILDREN & PETS

Children are welcome with an accompanying adult. Pets are welcome. We are pet friendly. Pets must be on a physical leash at all times and cleaned up after. 3 pets per site. We do not allow permanent pet pens at the RV site.

CREDIT CARD SECURITY

Your credit card information is stored and processed securely.

AGE OF RV REQUIREMENTS

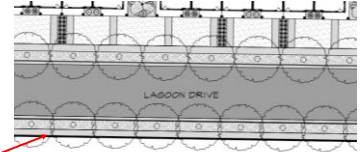
If the age of your RV is 15 years or older, please submit current pictures showing all 4 sides for final approval of your reservation.

Spring Creek at Farmington



Lagoon Drive

Approved landscape plan for Lagoon Drive



Responsibility

- Owner to install, furnish, and maintain the following:
- Wall
- Fountain grass
- Small shrubs



Simtek Fence

- Blocks 98% of direct sound
- Color fade-resistant
- Engineered for high winds
- Lifetime Warranty



Landscape

Fountain grasses and small shrubs



Landscape

Fountain grasses and small shrubs





Clubhouse

Exterior Options



Clubhouse Details

- Clubhouse shall have a minimum of 4 full baths with showers
- ADA bathroom
- Exercise room
- Laundry room
- Common area with RV office



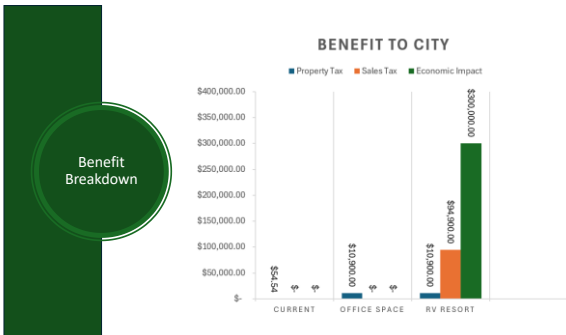
Planned Amenities

- Pickleball court
- Dog run
- Common fire ring

Future Potential Amenities

*To be completed within 2 years of opening

- Pool or splash pad
- Hot tub
- Horseshoes
- Playground



CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Zone Text change allowing rear yard averaging on all residential lots

PRESENTED BY: Lyle Gibson

DEPARTMENT: Community Development

MEETING DATE: October 15, 2024

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 10/15/2024
Subject: Amendment to Section 11-28-050, SUPPLEMENTARY YARD REGULATIONS of Title 11, ZONING REGULATIONS. The amendment is proposed to allow rear yard averaging on all residential lots. This is currently allowed only for lots which are not rectangular in shape. (ZT-14-24)

RECOMMENDED MOTION

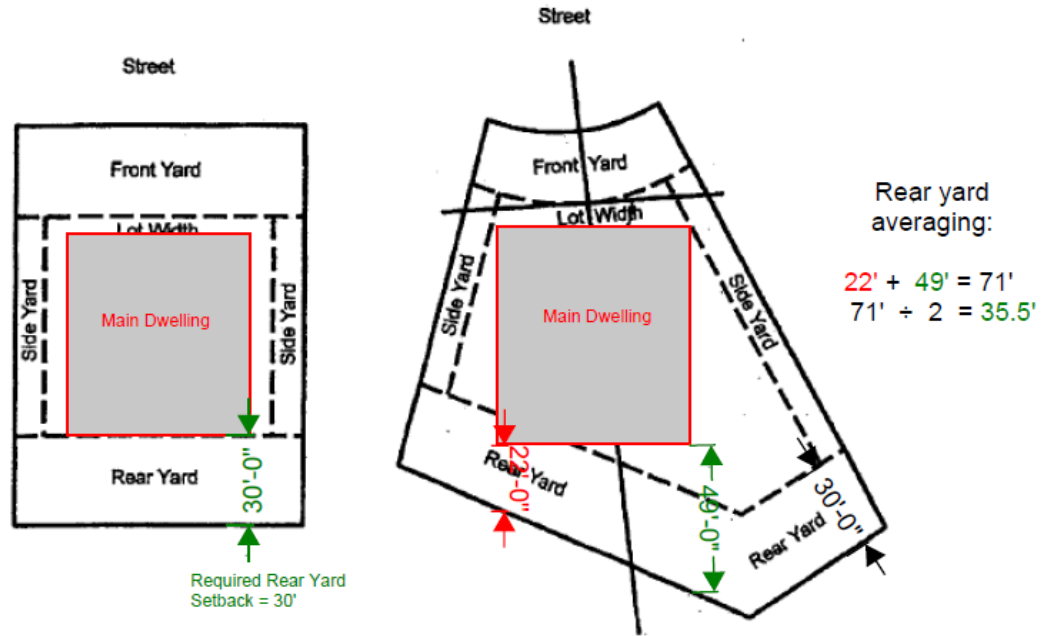
Move that the City Council approve the zone text amendment to 11-28-050(D) Rear Yard Averaging in Residential.

Findings:

1. The proposed amendment allows for a reasonable amount of flexibility already allotted to many properties within the city.

BACKGROUND

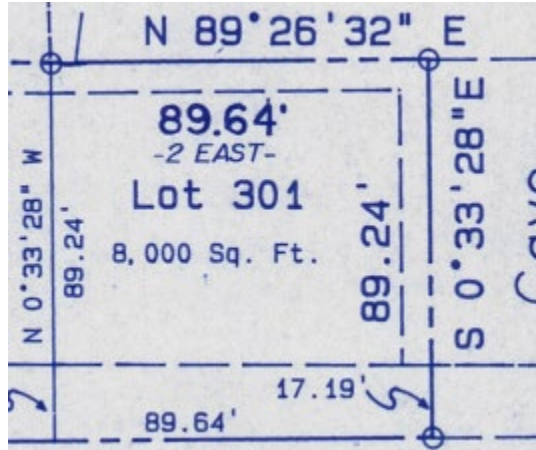
Rear yard averaging is a tool that may be used by the zoning administrator which allows the rear setback for a main building to be determined using distances of multiple points along the building measured to the rear property line. The concept is used mostly for cul-de-sac lots, or other oddly shaped lots which would otherwise have a difficult time complying with the required rear setback, the concept may be better illustrated by the following image:



The exact zone text for Rear Yard Averaging reads:

Rear Yard Averaging In Residential: The zoning administrator may approve a variation in the required rear yard on residential lots that are not rectangular as follows: The average distance between the main structure and rear property line (measured from the rear corners of the main structure) shall be equal to the required rear yard (setback) in the zone in which the main structure is located, except that the distance measured at either corner shall not be less than twenty feet (20').

The applicant has requested the consideration of the zone text amendment because they are in the process of obtaining a building permit for a deck. The proposed deck is approximately 10 feet wide and at its closest point, about 20 feet from the rear property line. This does not meet the required rear setback of 30 feet in the R (Residential) zone. One possible solution Staff looks at for such situations is rear yard averaging, however the ordinance states that it may only be used on “non-rectangular” lots. The Thompson’s lot is perfectly rectangular:



Therefore, we could not apply the average rear setback to their proposed deck site plan.

After reviewing the request, the Planning Commission’s recommendation is to amend the text to the following:

D. Rear Yard Averaging In Residential: The zoning administrator may approve a variation in the required rear yard on a residential lots as follows: The average distance between the main structure and rear property line (measured from the rear corners of the main structure) shall be equal to the required rear yard (setback) in the zone in which the main structure is located, except that the distance measured at either corner shall not be less than twenty feet (20').

Respectfully submitted,

Lyle Gibson
Assistant Community Development Director

Review and concur,

Brigham Mellor
City Manager

Supplemental Information
a. Enabling Ordinance

FARMINGTON CITY, UTAH

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 11-28-050 D OF THE FARMINGTON CITY ZONING ORDINANCE ALLOWING THE CONSIDERATION OF REAR YARD AVERAGING ON ALL RESIDENTIAL LOTS.

WHEREAS, the proposed amendment allows for a reasonable amount of flexibility already allotted to many properties within the city; and

WHEREAS, the Planning Commission has recommended the proposed changes to the City Council; and

WHEREAS, the Farmington City Council has caused all required public notices to be given, and has held all appropriate public hearing regarding such zone text amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH:

Section 1. Amendment. Section 11-28-050 (D) of the Farmington City Zoning Ordinance is amended in its entirety as set forth in Exhibit “A” attached hereto and by the reference made a part hereof.

Section 2. Severability. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

Section 3. Effective Date. This ordinance shall take effect immediately upon publication or posting or 30 days after passage by the City Council, whichever comes first.

PASSED AND ADOPTED by the City Council of Farmington City, State of Utah, on this 15th day of October, 2024.

FARMINGTON CITY

Brett Anderson, Mayor

ATTEST:

DeAnn Carlile, City Recorder

Exhibit “A”

11-28-050

D. Rear Yard Averaging In Residential: The zoning administrator may approve a variation in the required rear yard on a residential lots as follows: The average distance between the main structure and rear property line (measured from the rear corners of the main structure) shall be equal to the required rear yard (setback) in the zone in which the main structure is located, except that the distance measured at either corner shall not be less than twenty feet (20').

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Zone Text change to include a new definition for 'Live / Work Residential'

PRESENTED BY: Lyle Gibson

DEPARTMENT: Community Development

MEETING DATE: October 15, 2024

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 10/15/2024
Subject: An amendment to Chapter 11-2, DEFINITIONS of Title 11, ZONING REGULATIONS and 15-5-070, MIXED-USE ZONES of Title 15, SIGN REGULATIONS. The amendments are to include a new definition for ‘Live / Work Residential’ which is an existing use identified in certain zoning districts and to identify allowed signage. (ZT-14-24)

RECOMMENDED MOTION

Move that the City Council approve the zone text amendment to 11-28-050(D) Rear Yard Averaging in Residential.

Findings:

- 1. The proposed amendment allows for a reasonable amount of flexibility already allotted to many properties within the city.**

BACKGROUND

The city’s mixed-use zoning districts currently include an allowed use called ‘Live/Work Residential’. The city has even approved multiple projects yet to be constructed which include units with ground floor store/shop space. Buildings which include this type of space could be available for purchase or rent by early 2025.

Staff is looking to define what this means to prepare to manage and license the types of businesses that may fill these spaces.

After reviewing this with the Planning Commission over multiple meetings. The proposed language reflects their input and recommendation ensuring that appropriate signage is allowed. The Planning Commission also asked staff to further explore the possibility of the commercial space being leased to a business entity that is not the resident of the dwelling. Staff has determined that

this concept is possible in the mixed-use zones of the city, but it would not be a live/work unit, rather it would be constructed differently per building code.

Respectfully submitted,



**Lyle Gibson
Assistant Community Development Director**

Review and concur,



**Brigham Mellor
City Manager**

Supplemental Information

- a. Examples of sign types**
- b. Enabling Ordinance**

Example Unit:



Part of the Sego Townhomes at Farmington Station Subdivision on Burke Lane.

Blade Sign Example:



Wall Sign Example:



In context:



FARMINGTON CITY, UTAH

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11-2, DEFINITIONS OF TITLE 11, ZONING REGULATIONS AND 15-5-070, MIXED-USE ZONES OF TITLE 15, SIGN REGULATIONS TO INCLUDE A NEW DEFINITION FOR ‘LIVE/WORK RESIDENTIAL’ AND IDENTIFY SIGNAGE ALLOWED WITH IT.

WHEREAS, Farmington City has previously indicated that Live/Work Residential is a desired use in its Mixed-Use zoning districts; and

WHEREAS, Live/Work Residential has not previously been defined in the City’s ordinances; and

WHEREAS, the City desires to clarify what is meant by Live/Work Residential in order to manage what type of activity takes place therein, what type of signage may be permitted, and how to license the corresponding business activity; and

WHEREAS, the Farmington City Council has caused all required public notices to be given, and has held all appropriate public hearing regarding such zone text amendment;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH:

Section 1. Amendment. Section 11-2-020 of the Farmington City Zoning Ordinance is amended to include the Live / Work Residential definition where it fits alphabetically within the code as set forth in Exhibit “A” attached hereto and by the reference made a part hereof. Section 15-5-070 is also amended as set forth in Exhibit “A” attached hereto and by the reference made a part hereof.

Section 2. Severability. If any provision of this ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

Section 3. Effective Date. This ordinance shall take effect immediately upon publication or posting or 30 days after passage by the City Council, whichever comes first.

PASSED AND ADOPTED by the City Council of Farmington City, State of Utah, on this 15th day of October, 2024.

FARMINGTON CITY

Brett Anderson, Mayor

ATTEST:

DeAnn Carlile, City Recorder

Exhibit “A”

11-2-020: DEFINITIONS OF WORDS AND TERMS:

LIVE / WORK RESIDENTIAL: A dwelling unit which combines residential and non-residential uses allowed in the underlying zone where the proprietor of the business is also the resident of the same dwelling unit. The non-residential use of the dwelling unit may be licensed as either a Home Occupation which complies with the standards of Chapter 11-35 or a commercial business if the impact exceeds the standards for a home occupation including use of signs as allowed in 15-5-070 (C) with the ability to hold open office or store hours rather than accepting customers by appointment only. Non-residential use of the unit shall be limited to uses permitted in the applicable zoning district. The business operation of a live/work residential unit shall be limited to the main floor of a building. No additional off-street parking is required beyond what the ordinance requires for a residential unit.

15-5-070: MIXED-USE ZONES:

For the purpose of this section, the mixed-use districts TMU, GMU, RMU, OMU, OS, CMU, and NMU are considered to be mixed-use zones. Signs in these districts are subject to all standards set forth in this title and to the following additional standards:

A. Residential Uses, Developments: Signs for residential uses and developments in the mixed-use districts shall be limited to those types listed in section [15-5-010](#) of this chapter.

B. Office And Commercial Uses, Developments: Signs for office and commercial uses and developments in the mixed-use districts shall be limited to those types listed in section [15-5-030](#) of this chapter.

C. Live / Work Residential: Signs for live/work units shall be limited to a maximum of one of each of the following:

i. Wall Sign – A wall sign on a live/work unit shall not be placed above the finished floor of the second story of the building on which it is located where the top of the sign does not exceed 14 ft. above finish grade, whichever height is greater. No combination of signs may not exceed 15% of the ground floor façade square footage for the unit on which they are located. Window signs are included as a type of wall sign and count towards the maximum size total. A wall sign may be internally or externally illuminated. Electronic messaging, flashing lights, and animated components are prohibited.

ii. Blade Sign – One Blade sign per live/work unit is permitted. A blade sign shall not be placed above the finished floor of the second story of the building on which it is located where the top of the sign does not exceed 14 ft. above finish grade, whichever height is greater. A blade sign may extend beyond the front façade of a building by no more than 3 ft. A vertical clearance above any sidewalk or walkway of at least 8 ft. shall be maintained. A blade sign cannot exceed 9 sq. ft. in size. A blade sign may be internally or externally illuminated. Electronic messaging, flashing lights, and animated components are prohibited.

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Sale of Lupine Park, Parcel ID 08-098-0023

PRESENTED BY: Brigham Mellor, City Manager

DEPARTMENT: Administration

MEETING DATE: October 15, 2024

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Brigham Mellor- City Manager
Date: 10/15/2024
Subject: Sale of Lupine, Parcel ID 08-098-0023

RECOMMENDED MOTION

Approve the Sale of Parcel 08-098-0023 Kenneth Hager & Doreen Hagar Trustees for 30,000

BACKGROUND

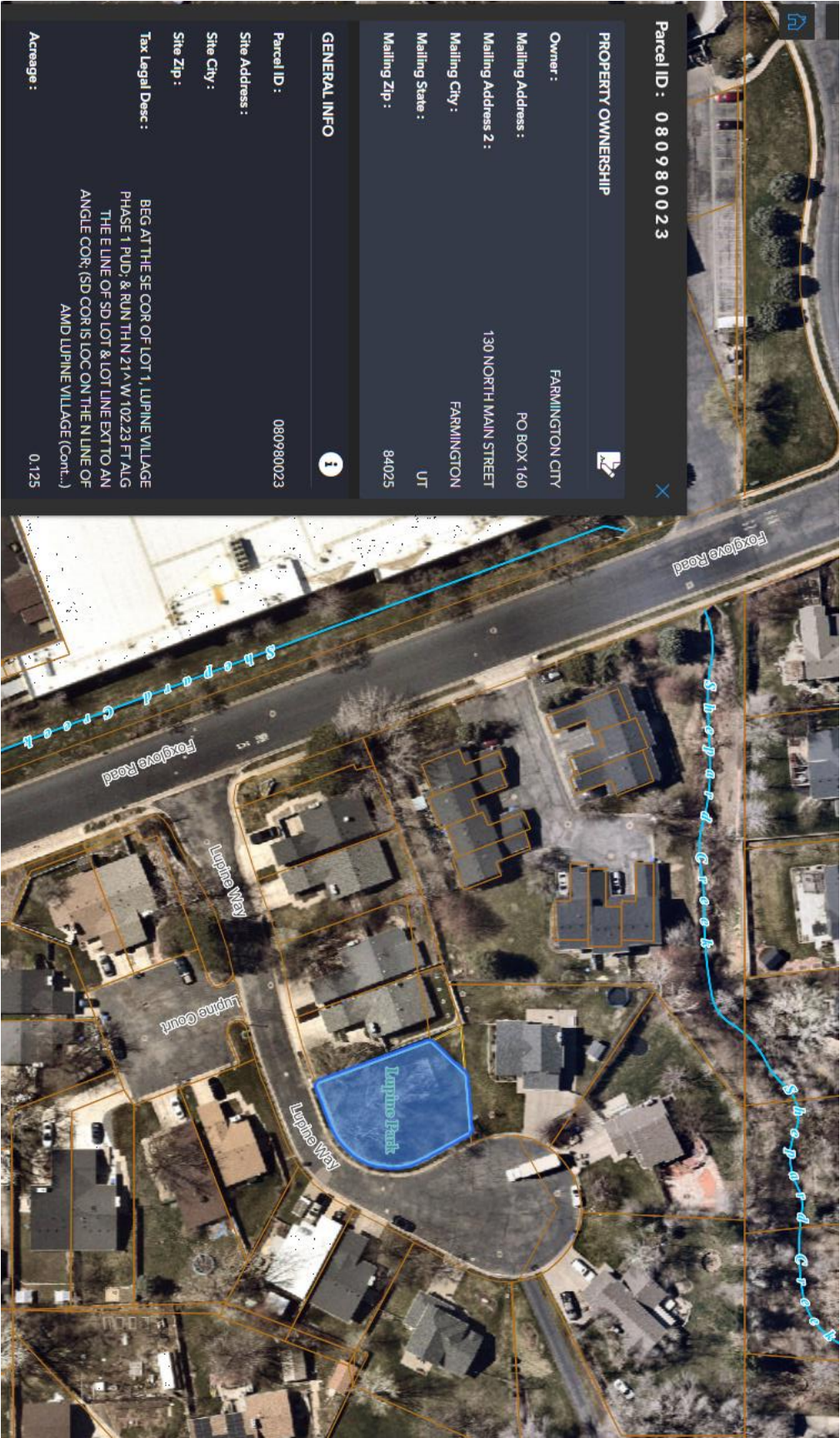
Based on our Feb. 2023 parks survey performed with Y2Analytics, this is the most underutilized park in our system. None of the survey respondents visited the park in the last 12 months (with a margin of error of 4.8%). The playground equipment was deemed too old for safety and removed two years ago. It was not replaced (estimated at \$25,000). It is a park of less than 0.13 acres—smaller than most backyards in the area, so it doesn't get used.

The primary objective of selling the property is to remove the “legacy expense” of caring for this property. The parks department estimates that caring for this space costs \$500 per year in mowing the property alone – this does not include materials and labor related to the irrigation system. Liquidating this property allows these proceeds from the sale and the cost of labor to go towards other park resources. These are benefits for the public that go much further than continuing with municipal ownership.

Respectfully submitted,



Brigham Mellor
City Manager



and delivered to each other or to the escrow/closing office all documents required by the REPC, by the Lender, by the title insurance and escrow/closing offices, by written escrow instructions (including any split closing instructions, if applicable), or by applicable law; (b) any monies required to be paid by Buyer or Seller under these documents (except for the proceeds of any Loan) have been delivered by Buyer or Seller to the other party, or to the escrow/closing office, in the form of cash, wire transfer, cashier's check, or other form acceptable to the escrow/closing office.

3.2 Closing. For purposes of the REPC, "Closing" means that: (a) Settlement has been completed; (b) the proceeds of any new Loan have been delivered by the Lender to Seller or to the escrow/closing office; and (c) the applicable Closing documents have been recorded in the office of the county recorder ("Recording"). The actions described in 3.2 (b) and (c) shall be completed no later than four calendar days after Settlement.

3.3 Possession. Except as provided in Section 6.1(a) and (b), Seller shall deliver physical possession of the Property to Buyer as follows: Upon Recording; ___ Hours after Recording; ___ Calendar Days after Recording. Any contracted rental of the Property prior to or after Closing, between Buyer and Seller, shall be by separate written agreement. Seller and Buyer shall each be responsible for any insurance coverage each party deems necessary for the Property including any personal property and belongings. The provisions of this Section 3.3 shall survive Closing.

4. PRORATIONS / ASSESSMENTS / OTHER PAYMENT OBLIGATIONS.

4.1 Prorations. All prorations, including, but not limited to, homeowner's association dues, property taxes for the current year, rents, and interest on assumed obligations, if any, shall be made as of the Settlement Deadline referenced in Section 24(d), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The provisions of this Section 4.1 shall survive Closing.

4.2 Special Assessments. Any assessments for capital improvements as approved by the homeowner's association ("HOA") (pursuant to HOA governing documents) or as assessed by a municipality or special improvement district, prior to the Settlement Deadline shall be paid for by: Seller Buyer Split Equally Between Buyer and Seller Other (explain) N/A

The provisions of this Section 4.2 shall survive Closing.

4.3 Fees/Costs/Payment Obligations.

(a) Escrow Fees. Unless otherwise agreed to in writing, Seller and Buyer shall each pay their respective fees charged by the escrow/closing office for its services in the settlement/closing process. The provisions of this Section 4.3(a) shall survive Closing.

(b) Rental Deposits/Prepaid Rents. Rental deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) for long term lease or rental agreements, as defined in Section 6.1(a), and short-term rental bookings, as defined in Section 6.1(b), not expiring prior to Closing, shall be paid or credited by Seller to Buyer at Settlement. The provisions of this Section 4.3(b) shall survive Closing.

(c) HOA/Other Entity Fees Due Upon Change of Ownership. Some HOA's, special improvement districts and/or other specially planned areas, under their governing documents charge a fee that is due to such entity as a result of the transfer of title to the Property from Seller to Buyer. Such fees are sometimes referred to as transfer fees, community enhancement fees, HOA reinvestment fees, etc. (collectively referred to in this section as "change of ownership fees"). Regardless of how the change of ownership fee is titled in the applicable governing documents, if a change of ownership fee is due upon the transfer of title to the Property from Seller to Buyer, that change of ownership fee shall, at Settlement, be paid for by: Seller Buyer Split Equally Between Buyer and Seller Other (explain) N/A

The provisions of this Section 4.3(c) shall survive Closing.

(d) Utility Services. Buyer agrees to be responsible for all utilities and other services provided to the Property after the Settlement Deadline. The provisions of this Section 4.3(d) shall survive Closing.

(e) Real Estate Brokerage Compensation.

(i) Seller's Compensation Contribution to Buyer's Brokerage. Seller and Buyer agree that Seller shall contribute ___ 0 % of the Purchase Price to Buyer's Brokerage or \$ 00.00 to Buyer's Brokerage, if applicable ("Seller's Compensation Contribution"). If no box is checked, then Seller has not agreed to compensate Buyer's Brokerage in the REPC. This payment shall be made in addition to any other compensation agreed to by the Seller's Brokerage to Buyer's Brokerage, if applicable. Buyer agrees that Seller's Compensation Contribution, combined with any other payment from Seller's Brokerage, if applicable, to Buyer's Brokerage, shall not exceed the amount agreed to between Buyer and Buyer's Brokerage in their written buyer-broker agreement. The provisions of this Section 4.3(e)(i) shall survive Closing.

(f) Sales Proceeds Withholding. Buyer and Seller authorize and direct the escrow/closing office to withhold from Seller's proceeds at Closing, sufficient funds to pay off on Seller's behalf all mortgages, trust deeds, judgments, mechanic's liens, tax liens, real estate brokerage compensation, and warrants. The provisions of this Section 4.3(f) shall survive Closing.

5. CONFIRMATION OF AGENCY DISCLOSURE. Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:

Seller's Agent(s) _____, represent(s) Seller both Buyer and Seller as Limited Agent(s);

Seller's Agent(s) Utah Real Estate License Number(s): _____

Seller's Brokerage _____, represents Seller both Buyer and Seller as Limited Agent;

Seller's Brokerage Utah Real Estate License Number: _____

Buyer's Agent(s) N/A, represent(s) Buyer both Buyer and Seller as Limited Agent(s);

Buyer's Agent(s) Utah Real Estate License Number(s): N/A

Buyer's Brokerage N/A, represents Buyer both Buyer and Seller as Limited Agent;

Buyer's Brokerage Utah Real Estate License Number: N/A

6. TITLE & TITLE INSURANCE.

6.1 Title to Property. Seller represents that Seller has fee title to the Property and will convey marketable title to the Property to Buyer at Closing by general warranty deed. Buyer does agree to accept title to the Property subject to the contents of the Commitment for Title Insurance (the "Commitment") provided by Seller under Section 7, and as reviewed and approved by Buyer under Section 8.

(a) Long-Term Lease or Rental Agreements. Buyer agrees to accept title to the Property subject to any long-term tenant lease or rental agreements (meaning for periods of thirty (30) or more consecutive days) affecting the Property not expiring prior to Closing. Buyer also agrees to accept title to the Property subject to any existing rental and property management agreements affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(a) shall survive Closing.

(b) Short-Term Rental Bookings. Buyer agrees to accept title to the Property subject to any short-term rental bookings (meaning for periods of less than thirty (30) consecutive days) affecting the Property not expiring prior to Closing. The provisions of this Section 6.1(b) shall survive Closing.

6.2 Title Insurance. At Settlement, Seller agrees to pay for and cause to be issued in favor of Buyer, through the title insurance agency that issued the Commitment (the "Issuing Agent"), the most current version of the *ALTA Homeowner's Policy of Title Insurance* (the "*Homeowner's Policy*"). If the *Homeowner's Policy* is not available through the Issuing Agent, Buyer and Seller further agree as follows: (a) Seller agrees to pay for the *Homeowner's Policy* if available through any other title insurance agency selected by Buyer; (b) if the *Homeowner's Policy* is not available either through the Issuing Agent or any other title insurance agency, then Seller agrees to pay for, and Buyer agrees to accept, the most current available version of an *ALTA Owner's Policy of Title Insurance* ("*Owner's Policy*") available through the Issuing Agent.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents in hard copy or electronic format which are collectively referred to as the "Seller Disclosures":

- (a) a written Seller property condition disclosure for the Property, completed, signed and dated by Seller as provided in Section 10.3;
- (b) a *Lead-Based Paint Disclosure & Acknowledgement* for the Property, completed, signed and dated by Seller (only if the Property was built prior to 1978);
- (c) a Commitment for Title Insurance as referenced in Section 6.1;
- (d) a copy of any restrictive covenants (CC&R's), rules and regulations affecting the Property;
- (e) a copy of the most recent minutes, budget and financial statement for the homeowners' association, if any;
- (f) a copy of any long-term tenant lease or rental agreements affecting the Property not expiring prior to Closing;
- (g) a copy of any short-term rental booking schedule (as of the Seller Disclosure Deadline) for guest use of the Property after Closing;
- (h) a copy of any existing property management agreements affecting the Property;
- (i) evidence of any water rights and/or water shares referenced in Section 1.4;
- (j) written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations;
- (k) In general, the sale or other disposition of a U.S. real property interest by a foreign person is subject to income tax withholding under the *Foreign Investment in Real Property Tax Act of 1980* (FIRPTA). A "foreign person" includes a non-resident alien individual, foreign corporation, partnership, trust or estate. If FIRPTA applies to Seller, Seller is advised that Buyer or other qualified substitute may be legally required to withhold this tax at Closing. In order to avoid closing delays, if Seller is a foreign person under FIRPTA, Seller shall advise Buyer in writing; and
- (l) Other (specify) _____

8. BUYER'S CONDITIONS OF PURCHASE.

8.1 DUE DILIGENCE CONDITION. Buyer's obligation to purchase the Property: IS IS NOT conditioned upon Buyer's Due Diligence as defined in this Section 8.1(a) below. This condition is referred to as the "Due Diligence Condition." If checked in the affirmative, Sections 8.1(a) through 8.1(c) apply; otherwise they do not.

(a) Due Diligence Items. Buyer's Due Diligence shall consist of Buyer's review and approval of the contents of the Seller Disclosures referenced in Section 7, and any other tests, evaluations and verifications of the Property deemed necessary or appropriate by Buyer, such as: the physical condition of the Property; the existence of any hazardous substances, environmental issues or geologic conditions; the square footage or acreage of the land and/or improvements; the condition of the roof, walls, and foundation; the condition of the plumbing, electrical, mechanical, heating and air conditioning systems and fixtures; the condition of all appliances; the costs and availability of homeowners' insurance and flood insurance, if applicable; water source, availability and quality; the location of property lines; regulatory use restrictions or violations; fees for services such as HOA dues, municipal services, and utility costs; convicted sex offenders residing in proximity to the Property; and any other matters deemed material to Buyer in making a decision to purchase the Property. Unless otherwise provided in the REPC, all of Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence. Buyer agrees to pay for any damage to the Property resulting from any such inspections or tests during the Due Diligence.

(b) Buyer's Right to Cancel or Resolve Objections. If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 24(b), cancel the REPC by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 24(b), resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

(c) Failure to Cancel or Resolve Objections. If Buyer fails to cancel the REPC or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 8.1(b), Buyer shall be deemed to have waived the Due Diligence Condition, and except as provided in Sections 8.2(a) and 8.3(b)(i), the Earnest Money Deposit shall become non-refundable.

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8.2 APPRAISAL CONDITION. Buyer's obligation to purchase the Property: IS IS NOT conditioned upon the Property appraising for not less than the Purchase Price. This condition is referred to as the "Appraisal Condition." If checked in the affirmative, Sections 8.2(a) and 8.2(b) apply; otherwise they do not.

(a) **Buyer's Right to Cancel.** If after completion of an appraisal by a licensed appraiser, Buyer receives written notice from the Lender or the appraiser that the Property has appraised for less than the Purchase Price (a "Notice of Appraised Value"), Buyer may cancel the REPC by providing written notice to Seller (with a copy of the Notice of Appraised Value) no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon the Earnest Money Deposit shall be released to Buyer without the requirement of further written authorization from Seller.

(b) **Failure to Cancel.** If the REPC is not cancelled as provided in this section 8.2, Buyer shall be deemed to have waived the Appraisal Condition, and except as provided in Sections 8.1(b) and 8.3(b)(i), the Earnest Money Deposit shall become non-refundable.

8.3 FINANCING CONDITION. (Check Applicable Box)

(a) **No Financing Required.** Buyer's obligation to purchase the Property IS NOT conditioned upon Buyer obtaining financing. If checked, Section 8.3(b) below does NOT apply.

(b) **Financing Required.** Buyer's obligation to purchase the Property IS conditioned upon Buyer obtaining the Loan referenced in Section 2.1(c). This Condition is referred to as the "Financing Condition." If checked, Sections 8.3(b)(i), (ii) and (iii) apply; otherwise they do not. If the REPC is not cancelled by Buyer as provided in Sections 8.1(b) or 8.2(a), then Buyer agrees to work diligently and in good faith to obtain the Loan.

(i) **Buyer's Right to Cancel Before the Financing & Appraisal Deadline.** If Buyer, in Buyer's sole discretion, is not satisfied with the terms and conditions of the Loan, Buyer may, after the Due Diligence Deadline referenced in Section 24(b), if applicable, cancel the REPC by providing written notice to Seller no later than the Financing & Appraisal Deadline referenced in Section 24(c); whereupon \$_____ of Buyer's Earnest Money Deposit shall be released to Seller without the requirement of further written authorization from Buyer, and the remainder of Buyer's Earnest Money Deposit shall be released to Buyer without further written authorization from Seller.

(ii) **Buyer's Right to Cancel After the Financing & Appraisal Deadline.** If after expiration of the Financing & Appraisal Deadline referenced in Section 24(c), Buyer fails to obtain the Loan, meaning that the proceeds of the Loan have not been delivered by the Lender to the escrow/closing office as required under Section 3.2, then Buyer shall not be obligated to purchase the Property and Buyer or Seller may cancel the REPC by providing written notice to the other party.

(iii) **Earnest Money Deposit(s) Released to Seller.** If the REPC is cancelled as provided in Section 8.3(b)(ii), Buyer agrees that all of Buyer's Earnest Money Deposit, or Deposits, if applicable (see Section 8.4 below), shall be released to Seller without the requirement of further written authorization from Buyer. Seller agrees to accept, as Seller's exclusive remedy, the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages. Buyer and Seller agree that liquidated damages would be difficult and impractical to calculate, and the Earnest Money Deposit, or Deposits, if applicable, is a fair and reasonable estimate of Seller's damages in the event Buyer fails to obtain the Loan.

8.4 ADDITIONAL EARNEST MONEY DEPOSIT. If the REPC has not been previously canceled by Buyer as provided in Sections 8.1, 8.2 or 8.3, as applicable, then no later than the Due Diligence Deadline, or the Financing & Appraisal Deadline, whichever is later, Buyer: WILL WILL NOT deliver to the Buyer's Brokerage, an Additional Earnest Money Deposit in the amount of \$ 00.00 _____. The Earnest Money Deposit and the Additional Earnest Money Deposit, if applicable, are sometimes referred to herein as the "Deposits". The Earnest Money Deposit, or Deposits, if applicable, shall be credited toward the Purchase Price at Closing.

9. ADDENDA. There ARE ARE NOT addenda to the REPC containing additional terms. If there are, the terms of the following addenda are incorporated into the REPC by this reference: Addendum No. _____ Seller Financing Addendum FHAVA Loan Addendum Other (specify) _____.

10. HOME WARRANTY PLAN / AS-IS CONDITION OF PROPERTY.

10.1 Home Warranty Plan. A one-year Home Warranty Plan WILL WILL NOT be included in this transaction. If included, the Home Warranty Plan shall be ordered by Buyer Seller and shall be issued by a company selected by Buyer Seller. The cost of the Home Warranty Plan shall not exceed \$ _____ and shall be paid for at Settlement by Buyer Seller.

10.2 Condition of Property/Buyer Acknowledgements. Buyer acknowledges and agrees that in reference to the physical condition of the Property: (a) Buyer is purchasing the Property in its "As-Is" condition without expressed or implied warranties of any kind; (b) Buyer shall have, during Buyer's Due Diligence as referenced in Section 8.1, an opportunity to completely inspect and evaluate the condition of the Property; and (c) if based on the Buyer's Due Diligence, Buyer elects to proceed with the purchase of the Property, Buyer is relying wholly on Buyer's own judgment and that of any contractors or inspectors engaged by Buyer to review, evaluate and inspect the Property. The provisions of Section 10.2 shall survive Closing.

10.3 Condition of Property/Seller Acknowledgements. Seller acknowledges and agrees that in reference to the physical condition of the Property, Seller agrees to: (a) disclose in writing to Buyer defects in the Property known to Seller that materially affect the value of the Property that cannot be discovered by a reasonable inspection by an ordinary prudent Buyer; (b) carefully review, complete, and provide to Buyer a written Seller property condition disclosure as stated in Section 7(a); (c) deliver the Property to Buyer in substantially the same general condition as it was on the date of Acceptance, as defined in Section 23, ordinary wear and tear excepted; (d) deliver the Property to Buyer in broom-clean condition and free of debris and personal belongings; and (e) repair any Seller or tenant moving-related damage to the Property at Seller's expense. The provisions of Section 10.3 shall survive Closing.

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11 FINAL PRE-SETTLEMENT WALK-THROUGH INSPECTION. No earlier than seven (7) calendar days prior to Settlement, and upon reasonable notice and at a reasonable time, Buyer may conduct a final pre-Settlement walk-through inspection of the Property to determine only that the Property is "as represented," meaning that the items referenced in Sections 1.1, 1.2 and 8.1(b)(ii) ("the items") are respectively present, repaired or corrected as agreed. The failure to conduct a walk-through inspection or to claim that an item is not as represented shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that except as provided in Section 12.5 below, from the date of Acceptance until the date of Closing the following additional items apply:

12.1 Alterations/Improvements to the Property. No substantial alterations or improvements to the Property shall be made or undertaken without prior written consent of Buyer.

12.2 Financial Encumbrances/Changes to Legal Title. No further financial encumbrances to the Property shall be made, and no changes in the legal title to the Property shall be made without the prior written consent of Buyer.

12.3 Property Management Agreements. No changes to any existing property management agreements shall be made and no new property management agreements may be entered into without the prior written consent of Buyer.

12.4 Long-Term Lease or Rental Agreements. No changes to any existing tenant lease or rental agreements shall be made and no new long-term lease or rental agreements, as defined in Section 6.1(a), may be entered into without the prior written consent of Buyer.

12.5 Short-Term Rental Bookings. If the Property is made available for short-term rental bookings as defined in Section 6.1(b), Seller **MAY NOT** after the Seller Disclosure Deadline continue to accept short-term rental bookings for guest use of the property without the prior written consent of Buyer.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person signing the REPC on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. The REPC together with its addenda, any attached exhibits, and Seller Disclosures (collectively referred to as the "REPC"), constitutes the entire contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties whether verbal or otherwise. The REPC cannot be changed except by written agreement of the parties.

15. MEDIATION. Any dispute relating to the REPC arising prior to or after Closing: **SHALL** **MAY AT THE OPTION OF THE PARTIES** first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and share equally in the cost of such mediation. If mediation fails, the other procedures and remedies available under the REPC shall apply. Nothing in this Section 15 prohibits any party from seeking emergency legal or equitable relief, pending mediation. The provisions of this Section 15 shall survive Closing.

16. DEFAULT.

16.1 Buyer Default. If Buyer defaults, Seller may elect one of the following remedies: (a) cancel the REPC and retain the Earnest Money Deposit, or Deposits, if applicable, as liquidated damages; (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Buyer to specifically enforce the REPC; or (c) return the Earnest Money Deposit, or Deposits, if applicable, to Buyer and pursue any other remedies available at law.

16.2 Seller Default. If Seller defaults, Buyer may elect one of the following remedies: (a) cancel the REPC, and in addition to the return of the Earnest Money Deposit, or Deposits, if applicable, Buyer may elect to accept from Seller, as liquidated damages, a sum equal to the Earnest Money Deposit, or Deposits, if applicable; or (b) maintain the Earnest Money Deposit, or Deposits, if applicable, in trust and sue Seller to specifically enforce the REPC; or (c) accept a return of the Earnest Money Deposit, or Deposits, if applicable, and pursue any other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

17. ATTORNEY FEES AND COSTS/GOVERNING LAW. In the event of litigation or binding arbitration arising out of the transaction contemplated by the REPC, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15. This contract shall be governed by and construed in accordance with the laws of the State of Utah. The provisions of this Section 17 shall survive Closing.

18. NOTICES. Except as provided in Section 23, all notices required under the REPC must be: (a) in writing; (b) signed by the Buyer or Seller giving notice; and (c) received by the Buyer or the Seller, or their respective agent, or by the brokerage firm representing the Buyer or Seller, no later than the applicable date referenced in the REPC.

19. NO ASSIGNMENT. The REPC and the rights and obligations of Buyer hereunder, are personal to Buyer. The REPC may not be assigned by Buyer without the prior written consent of Seller. Provided, however, the transfer of Buyer's interest in the REPC to any business entity in which Buyer holds a legal interest, including, but not limited to, a family partnership, family trust, limited liability company, partnership, or corporation (collectively referred to as a "Permissible Transfer"), shall not be treated as an assignment by Buyer that requires Seller's prior written consent. Furthermore, the inclusion of "and/or assigns" or similar language on the line identifying Buyer on the first page of the REPC shall constitute Seller's written consent only to a Permissible Transfer.



20 INSURANCE & RISK OF LOSS.

20.1 Insurance Coverage. As of Closing, Buyer shall be responsible to obtain casualty and liability insurance coverage on the Property in amounts acceptable to Buyer and Buyer's Lender, if applicable.

20.2 Risk of Loss. If prior to Closing, any part of the Property is damaged or destroyed by fire, vandalism, flood, earthquake, or act of God, the risk of such loss or damage shall be borne by Seller; provided however, that if the cost of repairing such loss or damage would exceed ten percent (10%) of the Purchase Price referenced in Section 2, either Seller or Buyer may elect to cancel the REPC by providing written notice to the other party, in which instance the Earnest Money Deposit, or Deposits, if applicable, shall be returned to Buyer.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in the REPC. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in the REPC: (a) performance under each Section of the REPC which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" and "calendar days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (e.g. Acceptance). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to the REPC, except as otherwise agreed to in writing by such non-party.



22. ELECTRONIC TRANSMISSION AND COUNTERPARTS. The REPC may be executed in counterparts. Signatures on any of the Documents, whether executed physically or by use of electronic signatures, shall be deemed original signatures and shall have the same legal effect as original signatures.

23. ACCEPTANCE. "Acceptance" occurs **only** when **all** of the following have occurred: (a) Seller or Buyer has signed the offer or counteroffer where noted to indicate acceptance; and (b) Seller or Buyer or their agent has communicated to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to the REPC:

- (a) **Seller Disclosure Deadline** _____ (Date)
- (b) **Due Diligence Deadline** 18 October 2024 (Date)
- (c) **Financing & Appraisal Deadline** _____ (Date)
- (d) **Settlement Deadline** 23 October 2024 (Date)

25. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by: 2:00 AM PM Mountain Time on 16 October 2024 (Date), this offer shall lapse; and the Brokerage shall return any Earnest Money Deposit to Buyer.

	9 Oct 2024		9 Oct 2024
(Buyer's Signature)	(Date)	(Buyer's Signature)	(Date)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

- ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.
- COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified by the attached ADDENDUM No
- REJECTION:** Seller rejects the foregoing offer.

_____ (Seller's Signature)	_____ (Date)	_____ (Time)	_____ (Seller's Signature)	_____ (Date)	_____ (Time)
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THIS FORM APPROVED BY THE UTAH REAL ESTATE COMMISSION AND THE OFFICE OF THE UTAH ATTORNEY GENERAL,
EFFECTIVE AUGUST 16, 2024.



CITY COUNCIL AGENDA



SUMMARY ACTION

1. Public Works Surplus Property
2. Monthly Financial Report
3. Correcting an ordinance vacating street right-of way commonly known as Lagoon Lane



160 S Main
Farmington Utah 84025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Larry Famuliner, Public Works Director
Date: October 15, 2024
Subject: Surplus Property

RECOMMENDATION(S)

Request that the City Council declare the following vehicle(s) as surplus and allow us to sell them.

BACKGROUND

'12 Toro	30078 - 48" Mower	VIN # 312000223
Olath	P220G - Lawn Sweeper	VIN # B903682285
'09 Toro	30098 - 48" Mower	VIN # 290000114
'03 Toro	30627 - 72" Riding Mower	VIN # 230000167
'06 Toro	30627 - 72" Riding Mower	VIN # 260000302
'09 Kubota	RTV1100 - Utility Vehicle	VIN # 16444
'16 Toro	31599n - 15' Mower	VIN # 315000501
Erskine	Snow Blower Attachment	Serial # 1024152
	Cozy Cab	
	Stainless Steel Half Fenders	
King Kutter 500	Fertilizer Spreader	

These vehicle(s) have been replaced. We recommend that these vehicle(s) be sold. These vehicle(s) will go to JJ Kane Auctions at 2353 N. Redwood Road, Salt Lake City.

Respectfully submitted,

Review and concur,

Larry Famuliner
Public Works Director

Brigham Mellor
City Manager

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Levi Ball
Date: October 9, 2024
Subject: **Monthly Financial Report**

RECOMMENDATION

Review the following narrative and attached schedule. This report is for informational purposes only. A monthly report will be provided generally the second council meeting of each month. Since we are still early in the fiscal year, it highlights significant differences from budgets in various areas, largely due to timing of transactions (delayed revenue collections, advance payments of expenditures, seasonality, expenses that will require carryover budgets from prior-year projects, etc.). Many categories will even out over the fiscal year.

NARRATIVE

- Taxes Received
 - Sales Tax - There is a two-month delay in distributions from the State of Utah. Only the month of July is included in this report. That one month has had a 6.2% increase over the prior year. Overall for FY25 we budgeted 2.1% growth over last fiscal year's actuals.
 - Property Tax – There is a one-month delay on tax distributions from Davis County. This report includes revenue for July and August. The majority of the annual property tax is distributed in November.
- Interest earnings and fair value investment adjustments have been initially recorded in the General Fund and will be distributed to the various funds at a later date.
- Payroll – There have been 6 of 26 pay periods recorded so far in FY25. Annual HSA contributions by the city were provided to employees in July.
- Budgeted transfers will be recorded mid-year.

Respectfully submitted,



Levi Ball

Review and concur,



Brigham Mellor

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
GENERAL FUND			
General Fund Revenues			
REVENUE	2,175,275	16,861,325	12.9%
Taxes Received	1,067,432	14,925,000	7.2%
Charges for Services Revenue	30,334	273,930	11.1%
Cost Sharing, Contributions Received	39,594	177,000	22.4%
Intergovernmental	10	433,830	0.0%
Licenses, Permits, Fees Received	192,908	819,325	23.5%
Misc Revenue	10,703	82,500	13.0%
Interest Earnings	426,258	115,700	368.4%
Investment Fair Value Adjustments	408,035	-	0.0%
Transfers In	-	34,040	0.0%
GF - Administrative Department			
EXPENDITURE	471,061	3,245,603	14.5%
Payroll	147,808	630,470	23.4%
Supplies & Services	311,123	463,278	67.2%
Capital Outlay	12,130	6,000	202.2%
Transfers Out	-	2,145,855	0.0%
Grants, Contributions by City	-	-	0.0%
GF - Buildings Department			
EXPENDITURE	141,411	731,948	19.3%
Payroll	56,333	267,396	21.1%
Supplies & Services	81,285	327,952	24.8%
Capital Outlay	3,794	136,600	2.8%
GF - City Manager & Econ. Dev.			
EXPENDITURE	92,162	485,261	19.0%
Payroll	76,082	315,971	24.1%
Supplies & Services	16,080	169,290	9.5%
Capital Outlay	-	-	0.0%
GF - Community Development Department			
EXPENDITURE	293,577	1,400,229	21.0%
Payroll	244,694	1,071,729	22.8%
Supplies & Services	48,884	328,500	14.9%
Capital Outlay	-	-	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
GF - Engineering Department			
EXPENDITURE	47,664	228,751	20.8%
Payroll	43,596	182,501	23.9%
Supplies & Services	4,068	46,250	8.8%
Capital Outlay	-	-	0.0%
GF - Fire Department			
EXPENDITURE	745,343	2,931,266	25.4%
Payroll	687,428	2,646,296	26.0%
Supplies & Services	51,743	264,970	19.5%
Capital Outlay	6,172	20,000	30.9%
GF - Legal			
EXPENDITURE	126,228	693,343	18.2%
Payroll	80,828	344,384	23.5%
Supplies & Services	45,400	348,959	13.0%
Capital Outlay	-	-	0.0%
GF - Legislative Department			
EXPENDITURE	47,197	162,024	29.1%
Payroll	19,796	83,024	23.8%
Supplies & Services	27,401	79,000	34.7%
GF - Parks & Cemetery Department			
EXPENDITURE	362,447	1,458,239	24.9%
Payroll	283,564	979,407	29.0%
Supplies & Services	78,884	450,132	17.5%
Capital Outlay	-	28,700	0.0%
GF - Police Department			
EXPENDITURE	1,155,065	5,244,005	22.0%
Payroll	1,009,873	4,513,275	22.4%
Supplies & Services	145,192	720,730	20.1%
Capital Outlay	-	10,000	0.0%
GF - Streets Department			
EXPENDITURE	258,583	993,333	26.0%
Payroll	158,333	662,833	23.9%
Supplies & Services	100,250	320,500	31.3%
Capital Outlay	-	10,000	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
SPECIAL REVENUE (RDA) FUNDS			
20 - US89 RDA			
REVENUE	-	174,600	0.0%
Taxes Received	-	171,000	0.0%
Sale of Assets	-	-	0.0%
Interest Earnings	-	3,600	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	-	0.0%
EXPENDITURE	1,186	187,003	0.6%
Payroll	-	-	0.0%
Supplies & Services	1,186	8,900	13.3%
Capital Outlay	-	-	0.0%
Debt service, lease payments	-	178,103	0.0%
Transfers Out	-	-	0.0%
22 - Station Park RDA			
REVENUE	-	392,100	0.0%
Taxes Received	-	370,000	0.0%
Interest Earnings	-	22,100	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	629,538	2,103,000	29.9%
Supplies & Services	-	-	0.0%
Capital Outlay	629,538	630,000	99.9%
Transfers Out	-	1,473,000	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
DEBT SERVICE FUNDS			
30 - RAP Tax Bond			
REVENUE	65,087	701,700	9.3%
Taxes Received	65,087	700,000	9.3%
Interest Earnings	-	1,700	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	-	836,380	0.0%
Supplies & Services	-	-	0.0%
Debt service, lease payments	-	384,380	0.0%
Transfers Out	-	452,000	0.0%
31 - Police Sales Tax Bond			
REVENUE	-	-	0.0%
Interest Earnings	-	-	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	-	0.0%
EXPENDITURE	-	4,040	0.0%
Supplies & Services	-	-	0.0%
Debt service, lease payments	-	-	0.0%
Transfers Out	-	4,040	0.0%
34 - Buildings G.O Bond			
REVENUE	-	-	0.0%
Taxes Received	-	-	0.0%
Interest Earnings	-	-	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	-	-	0.0%
Supplies & Services	-	-	0.0%
Debt service, lease payments	-	-	0.0%
Transfers Out	-	-	0.0%
35 - Park G.O. Bond			
REVENUE	-	412,300	0.0%
Taxes Received	-	410,000	0.0%
Interest Earnings	-	2,300	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	52,527	410,000	12.8%
Supplies & Services	(767)	3,000	-25.6%
Debt service, lease payments	53,294	407,000	13.1%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
CAPITAL IMPROVEMENT FUNDS			
11 - Class C Roads			
REVENUE	60,939	1,837,100	3.3%
Taxes Received	60,939	800,000	7.6%
Charges for Services Revenue	-	-	0.0%
Financing Proceeds	-	-	0.0%
Intergovernmental	-	1,000,000	0.0%
Interest Earnings	-	37,100	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	27,558	3,136,500	0.9%
Supplies & Services	5,141	1,260,500	0.4%
Capital Outlay	22,416	1,876,000	1.2%
Transfers Out	-	-	0.0%
37 - Capital Improvement - Gov Buildings			
REVENUE	63,345	3,334,066	1.9%
Charges for Services Revenue	(2)	-	0.0%
Devel/Impact Fees Received	63,347	602,766	10.5%
Financing Proceeds	-	2,700,000	0.0%
Misc Revenue	-	-	0.0%
Interest Earnings	-	31,300	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	-	0.0%
EXPENDITURE	22	2,700,000	0.0%
Supplies & Services	22	-	0.0%
Capital Outlay	-	2,700,000	0.0%
Transfers Out	-	-	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
38 - Capital Improvement - Streets			
REVENUE	102,044	1,757,200	5.8%
Charges for Services Revenue	-	-	0.0%
Cost Sharing, Contributions Received	-	-	0.0%
Devel/Impact Fees Received	102,044	1,541,000	6.6%
Financing Proceeds	-	-	0.0%
Misc Revenue	-	-	0.0%
Sale of Assets	-	-	0.0%
Interest Earnings	-	64,200	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	152,000	0.0%
EXPENDITURE	54,148	699,345	7.7%
Supplies & Services	40,233	176,000	22.9%
Capital Outlay	570	240,000	0.2%
Debt service, lease payments	13,346	13,345	100.0%
Transfers Out	-	270,000	0.0%
39 - Capital Equipment Fund			
REVENUE	-	473,500	0.0%
Financing Proceeds	-	-	0.0%
Sale of Assets	-	7,000	0.0%
Interest Earnings	-	16,500	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	450,000	0.0%
EXPENDITURE	176,664	401,000	44.1%
Capital Outlay	176,664	401,000	44.1%
Debt service, lease payments	-	-	0.0%
40 - Real Estate Fund			
REVENUE	195,640	1,400	13974.3%
Cost Sharing, Contributions Received	-	-	0.0%
Sale of Assets	195,640	-	0.0%
Interest Earnings	-	1,400	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	-	0.0%
EXPENDITURE	8,041	-	0.0%
Capital Outlay	8,041	-	0.0%
Transfers Out	-	-	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
42 - Capital Improvements - Parks			
REVENUE	172,016	6,255,588	2.7%
Charges for Services Revenue	-	-	0.0%
Cost Sharing, Contributions Received	-	244,488	0.0%
Devel/Impact Fees Received	172,016	2,545,300	6.8%
Financing Proceeds	-	1,180,000	0.0%
Intergovernmental	-	-	0.0%
Misc Revenue	-	-	0.0%
Interest Earnings	-	90,800	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	2,195,000	0.0%
EXPENDITURE	81,559	13,263,394	0.6%
Supplies & Services	658	335	196.5%
Capital Outlay	80,901	13,091,500	0.6%
Debt service, lease payments	-	171,559	0.0%
Transfers Out	-	-	0.0%
43 - Capital Fire			
REVENUE	82,338	14,117,760	0.6%
Devel/Impact Fees Received	82,338	791,960	10.4%
Financing Proceeds	-	13,300,000	0.0%
Interest Earnings	-	25,800	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	-	0.0%
EXPENDITURE	17,001	13,328,488	0.1%
Supplies & Services	17,001	-	0.0%
Capital Outlay	-	13,300,000	0.0%
Debt service, lease payments	-	28,488	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
PERMANENT FUND			
48 - Cemetery Perpetual Fund			
REVENUE	2,561	14,200	18.0%
Charges for Services Revenue	2,561	11,500	22.3%
Interest Earnings	-	2,700	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	-	-	0.0%
Capital Outlay	-	-	0.0%
Transfers Out	-	-	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
ENTERPRISE FUNDS			
51 - Water Fund			
REVENUE	1,132,950	4,882,610	23.2%
Charges for Services Revenue	861,182	3,153,510	27.3%
Devel/Impact Fees Received	155,582	1,507,000	10.3%
Developer Contributions of Infrastructure	-	-	0.0%
Financing Proceeds	-	-	0.0%
Financing Proceeds - Interest earnings	103,636	-	0.0%
Misc Revenue	12,550	5,000	251.0%
Sale of Assets	-	-	0.0%
Interest Earnings	-	217,100	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	793,499	10,418,613	7.6%
Payroll	236,949	1,302,263	18.2%
Supplies & Services	207,957	1,101,700	18.9%
Capital Outlay	341,093	7,469,000	4.6%
Debt service, lease payments	7,500	545,650	1.4%
52 - Sewer Fund			
REVENUE	909,759	3,573,700	25.5%
Charges for Services Revenue	909,759	3,573,000	25.5%
Misc Revenue	-	-	0.0%
Interest Earnings	-	700	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	302,168	3,557,768	8.5%
Payroll	10,333	46,518	22.2%
Supplies & Services	291,835	3,411,250	8.6%
Capital Outlay	-	100,000	0.0%
Transfers Out	-	-	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
53 - Garbage Fund			
REVENUE	575,683	2,217,895	26.0%
Charges for Services Revenue	575,683	2,204,395	26.1%
Misc Revenue	-	-	0.0%
Interest Earnings	-	13,500	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	247,042	2,550,002	9.7%
Payroll	39,971	190,296	21.0%
Supplies & Services	207,071	1,889,956	11.0%
Capital Outlay	-	469,750	0.0%
54 - Storm Water Fund			
REVENUE	369,995	1,968,000	18.8%
Charges for Services Revenue	281,698	1,110,500	25.4%
Cost Sharing, Contributions Received	-	-	0.0%
Devel/Impact Fees Received	83,862	836,100	10.0%
Financing Proceeds	-	-	0.0%
Licenses, Permits, Fees Received	4,435	5,000	88.7%
Misc Revenue	-	-	0.0%
Sale of Assets	-	-	0.0%
Interest Earnings	-	16,400	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	335,878	3,597,642	9.3%
Payroll	164,763	710,554	23.2%
Supplies & Services	48,941	260,388	18.8%
Capital Outlay	122,174	2,596,700	4.7%
Debt service, lease payments	-	-	0.0%
Transfers Out	-	30,000	0.0%

Monthly Financial Report - FY25

Through September 2024

	YTD	Budget as Amended	YTD % of Budget
55 - Ambulance Fund			
REVENUE	148,271	855,600	17.3%
Charges for Services Revenue	148,271	820,000	18.1%
Intergovernmental	-	-	0.0%
Misc Revenue	-	-	0.0%
Sale of Assets	-	-	0.0%
Interest Earnings	-	35,600	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	384,236	808,486	47.5%
Payroll	90,382	526,986	17.2%
Supplies & Services	29,227	271,500	10.8%
Capital Outlay	264,627	10,000	2646.3%
56 - Transportation Utility Fund			
REVENUE	199,347	775,700	25.7%
Charges for Services Revenue	199,347	765,000	26.1%
Misc Revenue	-	-	0.0%
Interest Earnings	-	10,700	0.0%
Investment Fair Value Adjustments	-	-	0.0%
EXPENDITURE	215,356	868,000	24.8%
Supplies & Services	650	23,000	2.8%
Capital Outlay	214,706	845,000	25.4%
60,67 - Recreation and Special Events			
REVENUE	318,210	2,581,444	12.3%
Charges for Services Revenue	315,915	1,004,289	31.5%
Cost Sharing, Contributions Received	1,945	-	0.0%
Misc Revenue	350	12,000	2.9%
Sale of Assets	-	-	0.0%
Interest Earnings	-	21,300	0.0%
Investment Fair Value Adjustments	-	-	0.0%
Transfers In	-	1,543,855	0.0%
EXPENDITURE	687,883	2,702,866	25.5%
Payroll	474,182	1,700,651	27.9%
Supplies & Services	213,301	958,115	22.3%
Capital Outlay	400	44,100	0.9%

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 10/15/2024
Subject: Correcting an ordinance vacating a certain portion of the 300 North Street and 200 West Street right-of-way commonly known as Lagoon Lane. (STR-3-24).

RECOMMENDED MOTION

Move that the City Council approve the proposed ordinance vacating a portion of Lagoon Lane.

Findings:

1. The City Council has previously agreed to the vacation of this section of street. The included enabling ordinance completes a long-standing agreement with Lagoon.
2. The vacation of the right-of-way as identified represents the way that the property is currently being used.
3. The corrected ordinance includes an updated legal description addressing the error identified by the county.

BACKGROUND

A recent project proposal along 300 North Street has brought to city staff's attention the need to clean up property lines or right of way as it relates to Lagoon Lane.

The city council approved this Street Vacation during its September 3, 2024 meeting. The ordinance was then recorded with the Davis County Recorder where a while after they determined that there was an error in the legal description provided by the surveyor.

The proper way to correct the error is the adoption of a new ordinance which includes the corrected description.

There has been no change to what is being pursued.

Respectfully submitted,



Lyle Gibson
Assistant Community Development Director

Review and concur,



Brigham Mellor
City Manager

Supplemental Information

- a. Corrected Ordinance

FARMINGTON CITY, UTAH

ORDINANCE NO. _____

AN ORDINANCE CORRECTING THE LEGAL DESCRIPTION FOR THE VACATION OF A CERTAIN PORTION OF THE 300 NORTH STREET AND 200 WEST STREET RIGHT-OF-WAY COMMONLY KNOWN AS LAGOON LANE WITHIN FARMINGTON CITY, STATE OF UTAH.

WHEREAS, the Farmington City Council previously approved Ordinance No. 2024-45 for the purpose of vacating a portion of the right-of-way referenced herein; and

WHEREAS, the Davis County Recorder’s office has identified an error in the legal description within the original ordinance recorded as Entry #3587638 in Book 8588, pages 314-318 on September 19, 2024; and

WHEREAS, the legal description enclosed herein has been corrected and verified to fulfill the original intent; and

WHEREAS, the governing body of Farmington City has previously determined that there is good cause for the requested vacation and it will not be detrimental to the general interest of the public to grant the same; and

WHEREAS, the Farmington City Council previously caused all required public notices to be given, and has held all appropriate public hearing regarding such vacation;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH:

Section 1. Street Vacation. The City Council of Farmington City hereby declares that a portion of the 300 North Street and 200 West Street public right-of-way as more particularly described in Exhibit “A,” attached hereto and incorporated herein, is hereby vacated and the such property shall be conveyed to the sole adjacent property owner which is Lagoon Investment Company LC.

Section 2. Rights not Affected. The action of the City Council vacating a portion of the public right-of-way provided herein shall operate as a relinquishment of the City’s fee therein, provided that nothing herein shall be construed to vacate, impair or otherwise affect any real property interest, easement, right-of-way, holding or franchise right therein of any public utility or other property owner, governmental or private.

Section 3. Recorded. A certified copy of this Ordinance shall be recorded in the office of the Davis County recorder, State of Utah, and the necessary changes made on the official plats and records of the County to accomplish the purpose thereof.

Section 4. Effective Date. This ordinance shall take effect immediately upon publication.

PASSED AND ADOPTED by the City Council of Farmington City, State of Utah, on this 15th day of October, 2024.

FARMINGTON CITY

Brett Anderson, Mayor

ATTEST:

DeAnn Carlile, City Recorder

Exhibit "A"

A portion of 200 West Street and 300 North Street (Lagoon Lane) being vacated by Farmington City

Full legal description

Beginning at the northeast corner of the Lagoon Investment Company Parcel 08-088-0083, which point lies N.00°16'50"W. along the section line 60.10 feet and S.89°49'00"W. 6.30 feet from the Northwest corner of Section 19, Township 3 North, Range 1 East, Salt Lake Base and Meridian; and running thence N.89°49'00"E. 15.21 feet; thence S.00°08'06"W. 47.50 feet to the point of curve of a 40.55 foot radius non-tangent curve to the left; thence southeasterly 62.67 feet along the arc of said curve through a central angle of 88°33'29" (Chord Bears S.47°14'42"E. 56.62 feet) to the westerly line of Lagoon Investment Company Parcel 07-021-0018; thence along the westerly and southerly lines of said parcel the following two (2) courses: 1) S.00°11'00"E. 282.79 feet; thence 2) S.84°24'00"E. 126.50 feet to the northwest corner of Lagoon Investment Company Parcel 07-021-0022; thence along the westerly and southerly lines of said parcel the following four (4) courses: 1) South 305.44 feet; thence 2) East 19.00 feet; thence 3) South 23.00 feet; thence 4) S.89°12'46"E. 280.42 feet to the point of curve of a 39.36 foot radius non-tangent curve to the left; thence southerly 16.79 feet along the arc of said curve through a central angle of 24°25'56" (Chord Bears S.03°42'06"E. 16.66 feet) to the northerly line of Lagoon Investment Company Parcel 07-021-0025; thence along the northerly and westerly lines of said Parcel the following two (2) courses: 1) N.89°40'00"W. 105.77 feet; thence 2) S.00°20'00"W. 44.82 feet to the northeast corner of Lagoon Investment Company Parcel 07-021-0035; thence along the northerly line of said Parcel and the northerly and easterly lines of said Parcel 08-088-0083 the following five (5) courses: 1) West 202.04 feet; thence 2) N.00°01'23"E. 15.04 feet; thence 3) North 323.00 feet; thence 4) West 174.48 feet; thence 5) N.00°11'00"W. 436.10 feet to the Point of Beginning.

The above described vacated portion of Lagoon Drive contains 46,253 Sq. Ft. (1.062 Acres), more or less.

Note: Bearings are based upon NAD83 State Plane North Zone (South 00°02'14" West along the section line between the Northwest corner and the West Quarter corner of Section 19, Township 3 North, Range 1 East, Salt Lake Base and Meridian).

Exhibit of area to be vacated (property outlined in yellow)

