

CITY COUNCIL MEETING NOTICE AND AGENDA

Notice is given that the Farmington City Council will hold a regular meeting on **Tuesday, January 7, 2025** 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.

- Discussion of regular session items upon request

REGULAR SESSION – 7:00 p.m.

CALL TO ORDER:

- Invocation – Brigham Mellor, City Manager
- Pledge of Allegiance – Melissa Layton, Councilmember

PRESENTATIONS:

- Recognition of Afu Fiefa as Student of the Month **3**
- Recognition of Eric Miller
- Recognition John David Mortensen for time served on Planning Commission
- Presentation of a public art installation at the new park **5**
- UTA's Five-Year Service Plan and the Davis-Salt Lake City Connector **6**

PUBLIC HEARING:

- Zone Change, Schematic Subdivision Plan and Development Agreement (DA) Farmstead Subdivision at approximately 675 South 1525 **17**

BUSINESS:

- Amendment to the agreement between Park Lane Commons, LLC and Farmington City **44**
- Quote from Big T for park equipment and install **50**
- Addendum to the Development Agreement for The Trail **64**
- SIRQ CM/GC Guaranteed Maximum Price Amendment for Park **93**
- Transfer of Development Rights Agreement with CW for the Farmstead Subdivision. **178**
- Zone Text Amendment for Parking Structure Standards **186**

SUMMARY ACTION:

1. Resolution appointing Elise Allred & Leslie Humphries to the Historic Preservation Commission **191**
2. Resolution appointing Spencer Klein to serve as a Planning Commissioner. **194**
3. Resolution appointing Scott Behunin to serve as an Alternate Member of the Planning Commission and reappointing Brian Shepard as an Alternate for an additional year.
4. Resolution appointing Council Members to various Committees and Boards **198**
5. Approval of Minutes 12.17.24 **201**

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 January 2, 2025

CITY COUNCIL AGENDA



PRESENTATIONS

- Recognition of Afu Fiefia as Student of the Month
- Recognition of Eric Miller
- Recognition of John David Mortensen for time served on Planning Commission
- Presentation of a public art installation at the new park
- UTA's Five-Year Service Plan and the Davis-Salt Lake City Connector

Farmington City Student of the Month

Afu Fiefia



I would like to nominate Afu Fiefia for Outstanding Student of the Month. Afu is an exceptional student who not only excels academically but also consistently demonstrates outstanding leadership and kindness. He has an innate ability to inspire and uplift those around him, making him a role model for his peers.

Afu's leadership skills are evident both on the football field and in the classroom. Whether he's leading our team to a region championship, or participating in school activities, he always takes the initiative and encourages others to contribute. He has a remarkable ability to bring out the best in everyone, making sure all voices are heard and valued. His positive attitude and inclusivity foster a collaborative environment where others feel supported and empowered.

Beyond his leadership, Afu is a compassionate and empathetic individual who goes out of his way to help others. He is always the first to offer assistance to a classmate struggling, and he has a unique ability to make others feel seen, heard, and cared for. His kindness and generosity of spirit create a sense of community wherever he goes.

In addition to his academic achievements and leadership qualities, Afu is a constant source of motivation and encouragement. He motivates those around him to work hard and reach their potential. His actions and words inspire everyone to strive for greatness and approach challenges with a positive and determined mindset.

Afu's impact on our school community is undeniable, and he truly embodies the values of excellence, kindness, and leadership. He is the type of student who not only excels in his own work but also lifts up everyone around him. For these reasons, I wholeheartedly believe Afu Fiefia deserves to be recognized as Outstanding Student of the Month.

Thank you,

Daniel Coats
Head Football Coach
Farmington High School

Gofundme link: <https://gofund.me/0ade02be> or search Help Afu Fiefia Overcome Cancer's Return



160 S Main
Farmington Utah 84025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Brigham Mellor, Farmington City Manager
Date: 01/07/2025
Subject: Presentation of a public art installation at the new park

RECOMMENDATION(S)

No action is required

BACKGROUND

Presentation from the design team showing the sculpture to the City Council.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'B. Mellor', written over a thin horizontal line.

Brigham Mellor
City Manager

Beth Holbrook

Trustee, Utah Transit Authority

Presentation to Farmington City Council

January 7, 2025



UTA 

2025-2029

FIVE-YEAR SERVICE PLAN

April 2025 - April 2029 Service Changes "At a Glance"

UTA Five-Year Service Plan Final Draft – At a Glance				
				<i>Modified New Discontinued</i>
April 2025	April 2026	April 2027	April 2028	April 2029
Weber/Davis/Box Elder 417 470 626 627 628 640 642 Salt Lake 39 126 201 217 218 219 703 Utah 581 823 871	Weber/Davis/Box Elder 455 562 563 601 -604 610 612 625 628 630 F638 640 645 Salt Lake 2 - 2A 2B 4 45 54 62 72 205 220 223 502 720 Utah 582 583 806 -846 850 860 862	Weber/Davis/Box Elder 604 613 F618 F620 642 Salt Lake 17 26 31 35 39 45 47 50X 203 205 208 223 227 236 240 509 513 551 F590 Utah 584 830X 833	Weber/Davis/Box Elder 400 417 455 470 473 470X 600 609 667 Salt Lake 126 200 201 217 218 219 256 F556 Utah 585 871	Salt Lake 62 72 209 213 F264 503 504



April 2025 Davis County

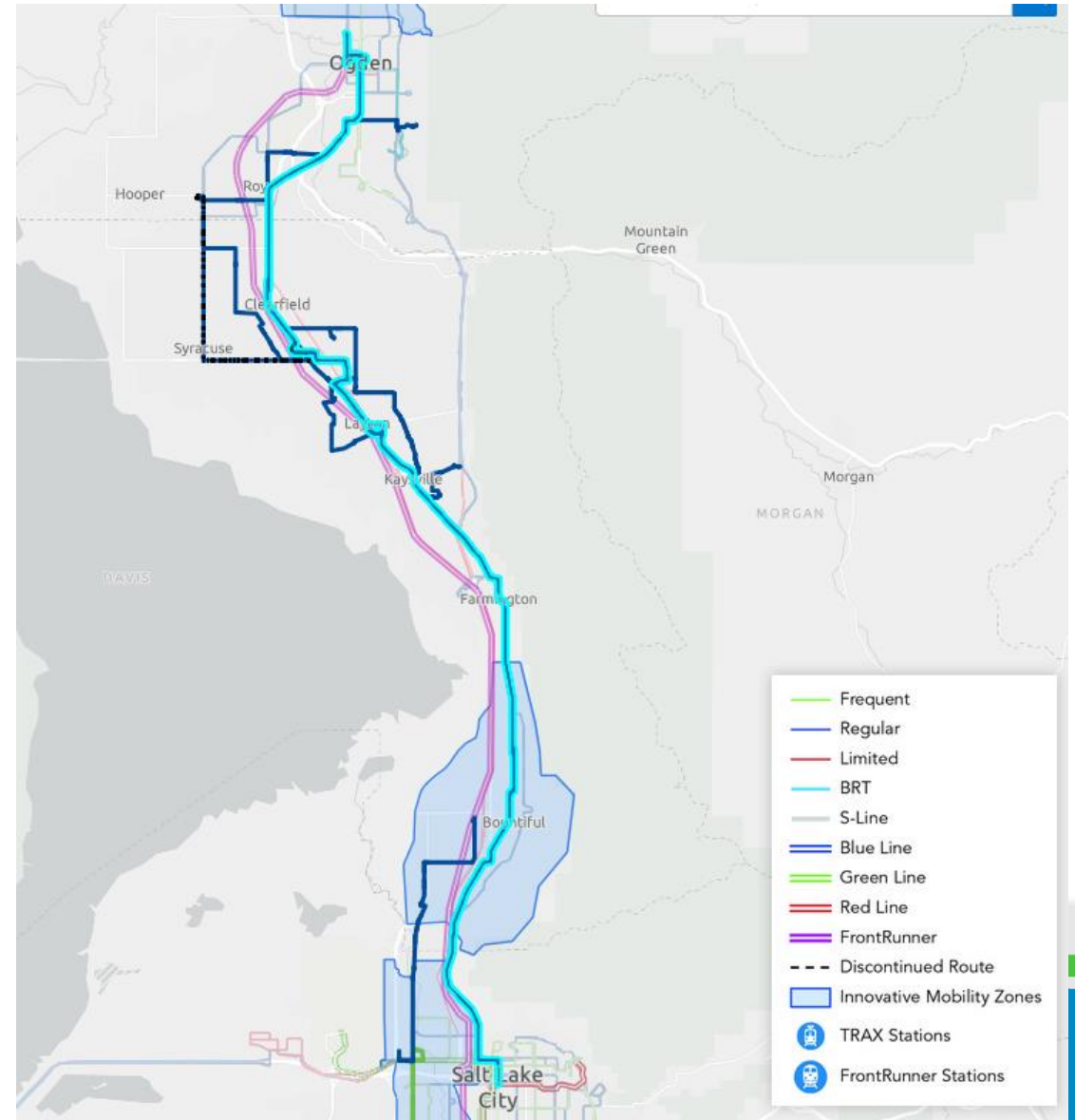
Modified Routes: 470

Proposed change:

- Route 470 will be modified to serve Layton Hills Mall via 1350/1300/1425 North, 675/700 West, Antelope Drive, 1500 East, and 1450 South. This change will service areas currently covered by route 628 and 640. Route 470 will also be modified to no longer serve DTC campus in Kaysville (replaced by increased frequency on 627).

Reason for change:

- Commercial areas near Layton Hills Mall are better served directly by route 470/future route 600 than by a combination of other routes that requires a transfer from Main St.
- Allows for replacement of Midtown Trolley with regular bus service



April 2028 Davis County

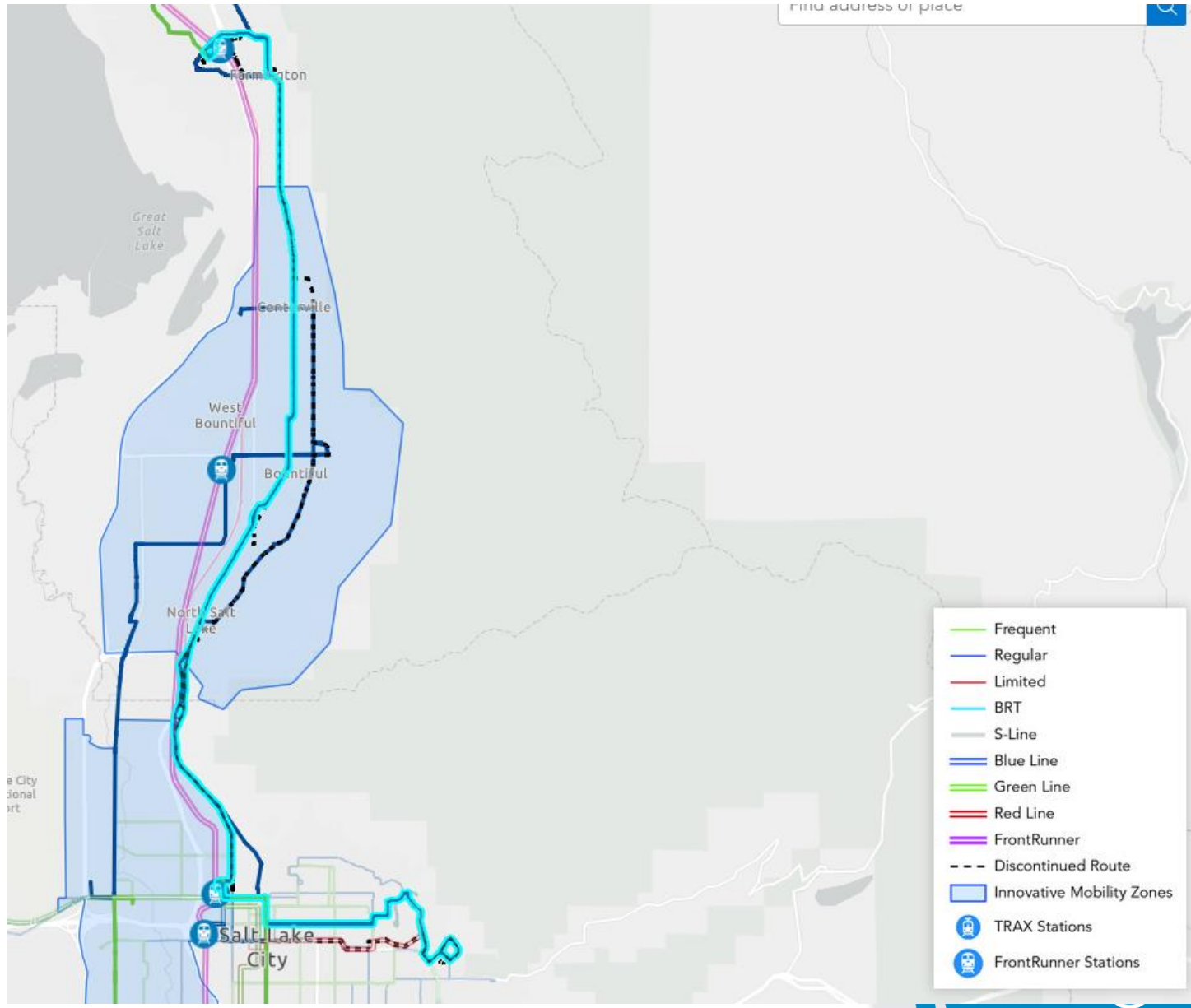
New Routes: 470X

Proposed change:

- Route 470X, Davis-SLC Community Connector, will provide all-day 15-minute service between Farmington FrontRunner Station and Research Park at the University of Utah.

Reason for change:

- This change in service has been planned as part of the Davis-Salt Lake connector project to improve connectivity between Davis and Salt Lake Counties.



	Frequent
	Regular
	Limited
	BRT
	S-Line
	Blue Line
	Green Line
	Red Line
	FrontRunner
	Discontinued Route
	Innovative Mobility Zones
	TRAX Stations
	FrontRunner Stations

April 2028 Davis County

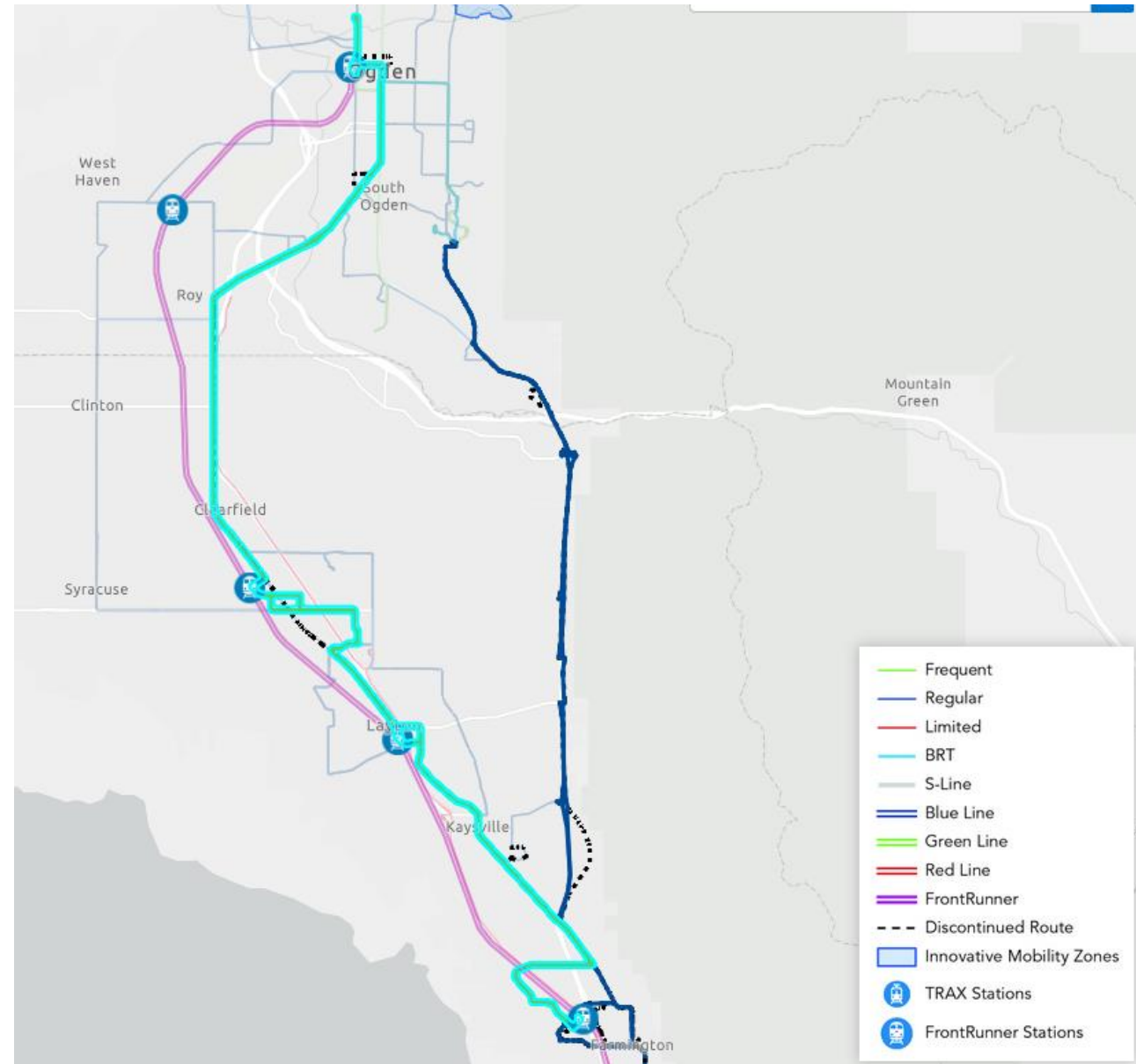
New Routes: 600

Proposed change:

- Route 600 will replace the northern part of Route 470, with high frequency service connecting Farmington to Ogden via all communities in between.

Reason for change:

- This route is part of the service reorganization which will take place as part of implementation of Davis Salt Lake community connector.
- With more resources, UTA can better serve northern Davis County with higher frequency.



- Frequent
- Regular
- Limited
- BRT
- S-Line
- Blue Line
- Green Line
- Red Line
- FrontRunner
- - - Discontinued Route
- Innovative Mobility Zones
- ⊙ TRAX Stations
- ⊙ FrontRunner Stations



April 2028 Davis County

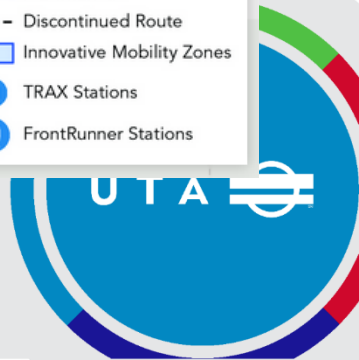
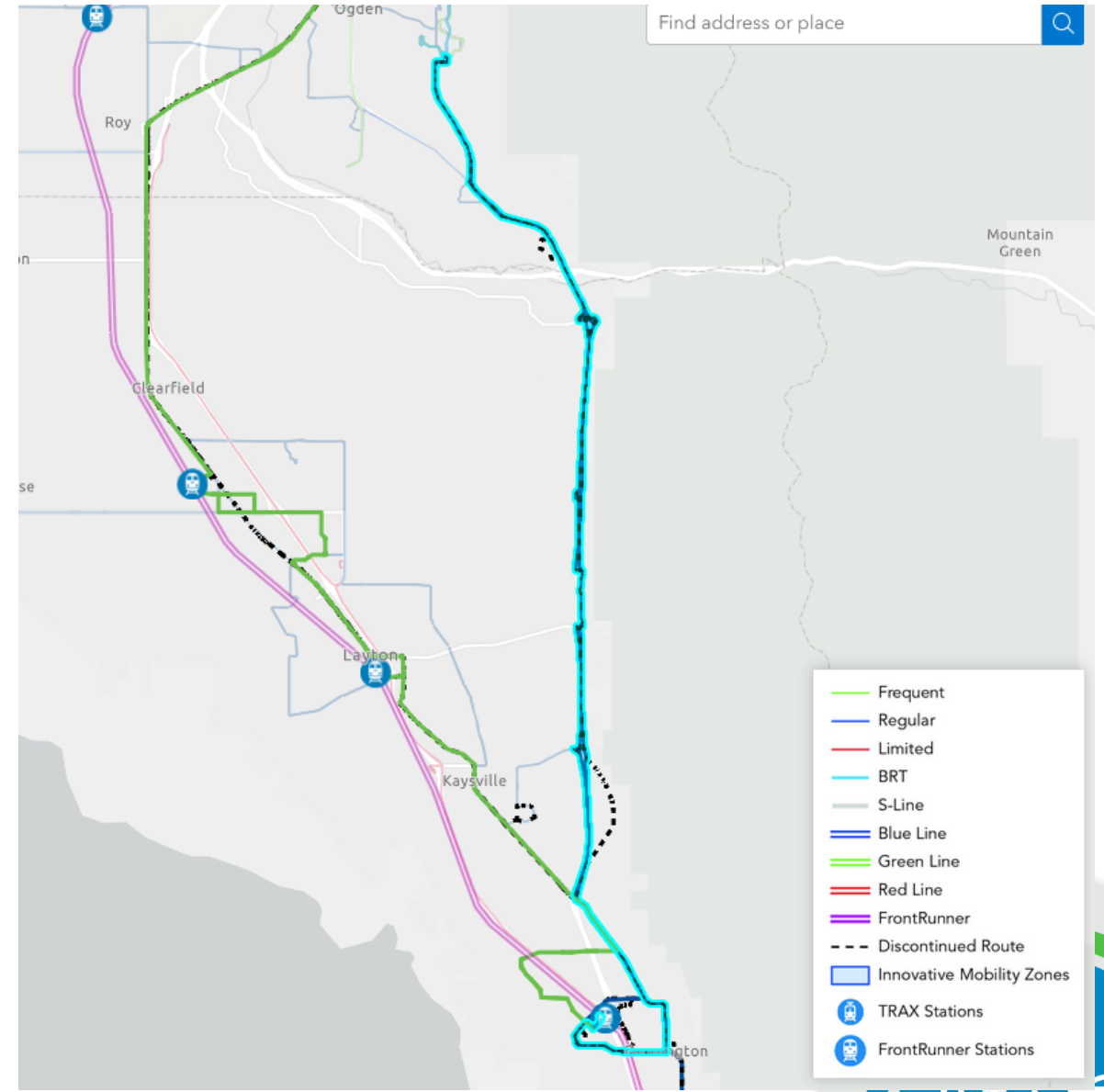
New Routes: 609

Proposed change:

- Route 609 will provide 30-minute service freeway-based service connecting the to the Park-n-rides along US-89, Dee Event Center and Farmington Station.

Reason for change:

- This route is part of the service reorganization which will take place as part of implementation of Davis Salt Lake community connector.



April 2028 Davis County

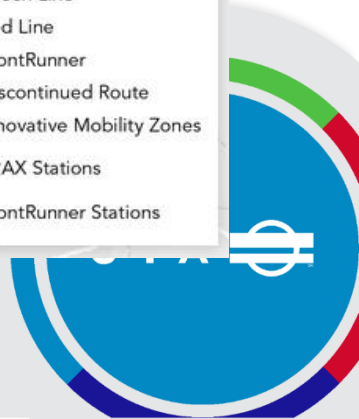
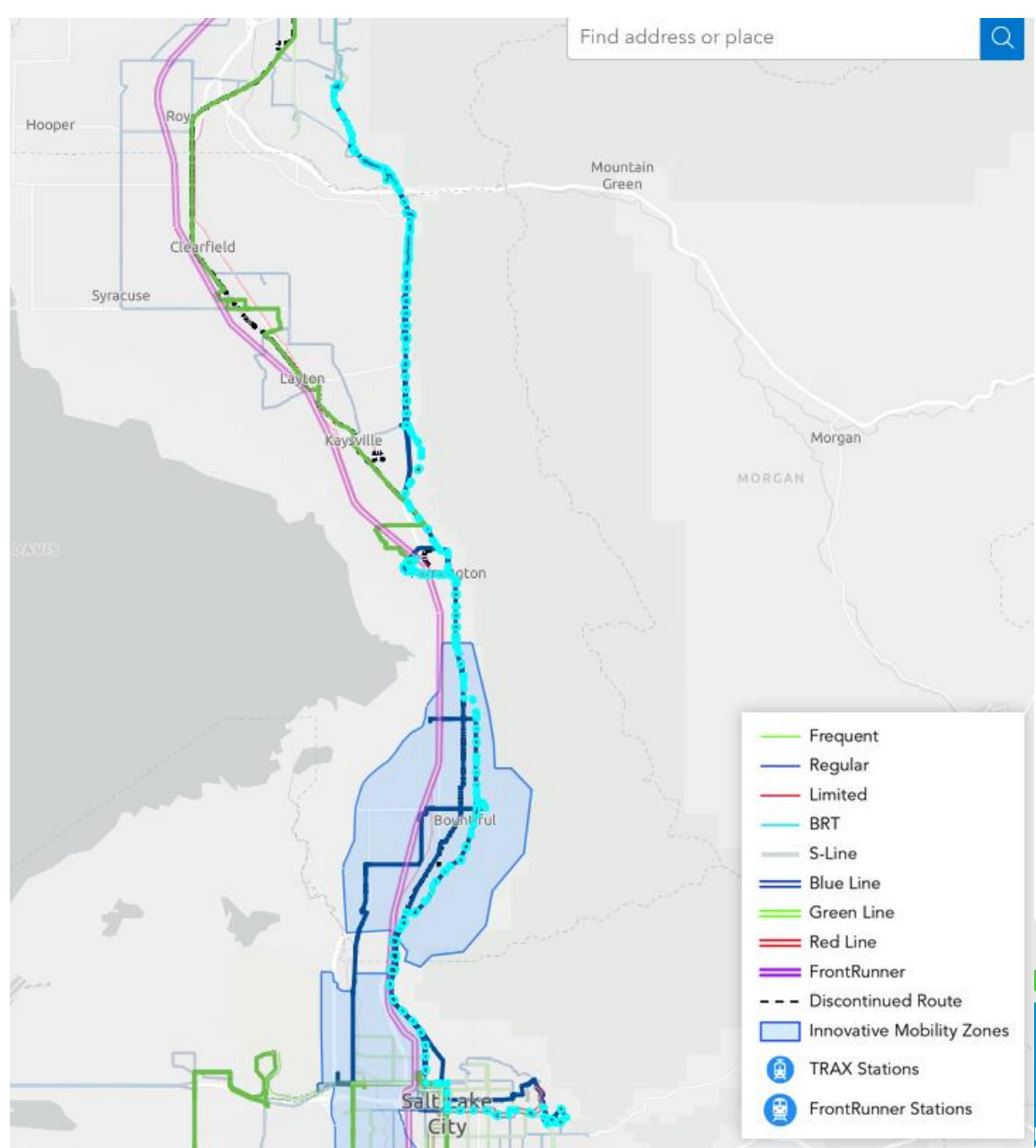
Discontinued Routes: 455

Proposed change:

- Route 455 will be discontinued with the implementation of Route 470X. Coverage of portions of the corridor will be provided by Routes 400, 417, 470X and 609.

Reason for change:

- With the implementation of Route 470X, the connection between the University of Utah and Southern Davis County will be provided by UTA Rapid Service. Thus, there is an opportunity to use the resources of Route 455 connect the East Bench of Davis County using other routes that improve local connectivity.



April 2028 Davis County

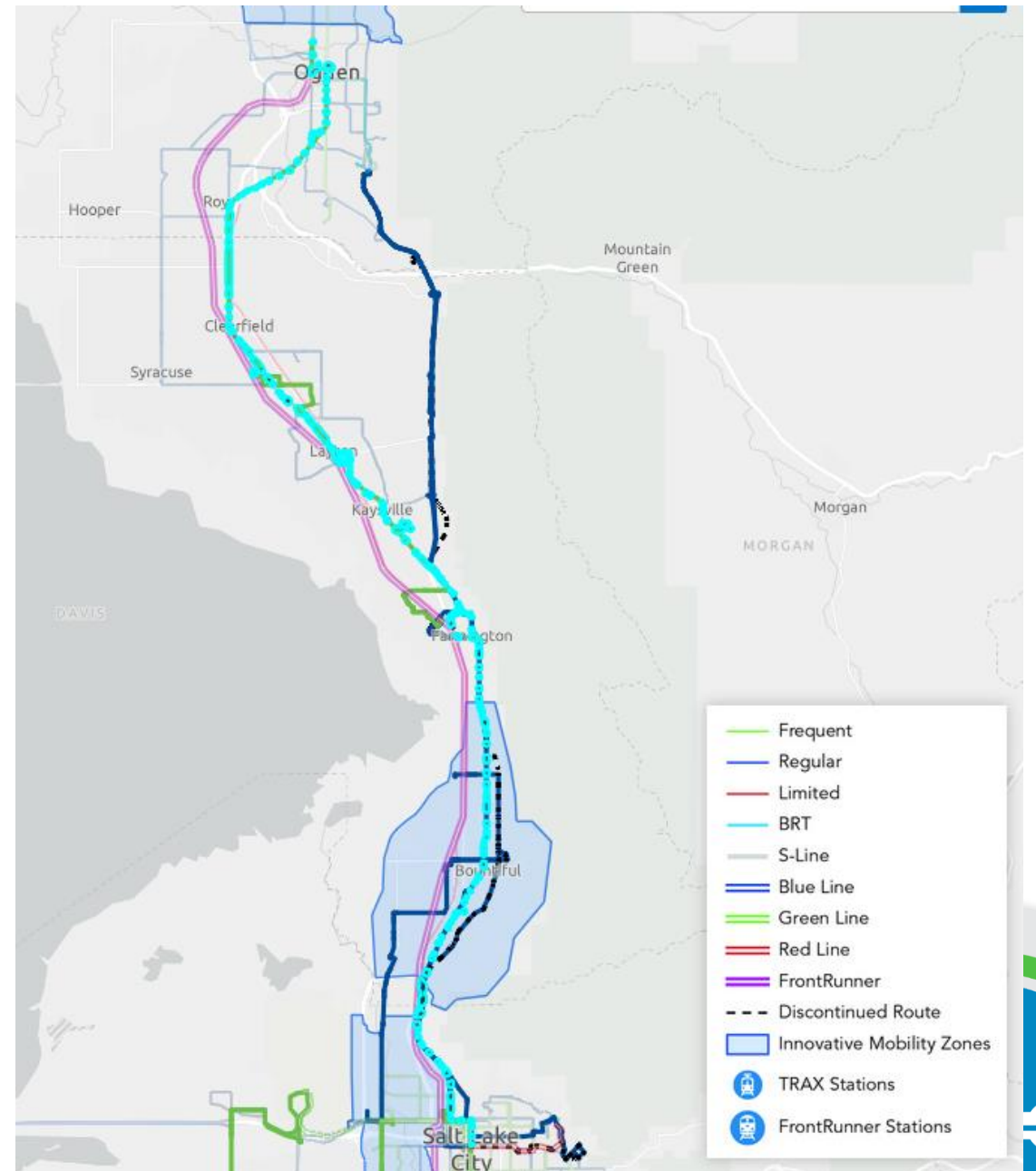
Discontinued Routes: 470 and 473

Proposed change:

- Service on regular route 470 and 473 will be discontinued and replaced with service on Route 470X and Route 600.

Reason for change:

- Implementation of Davis Salt Lake community connector.



April 2028 Davis County

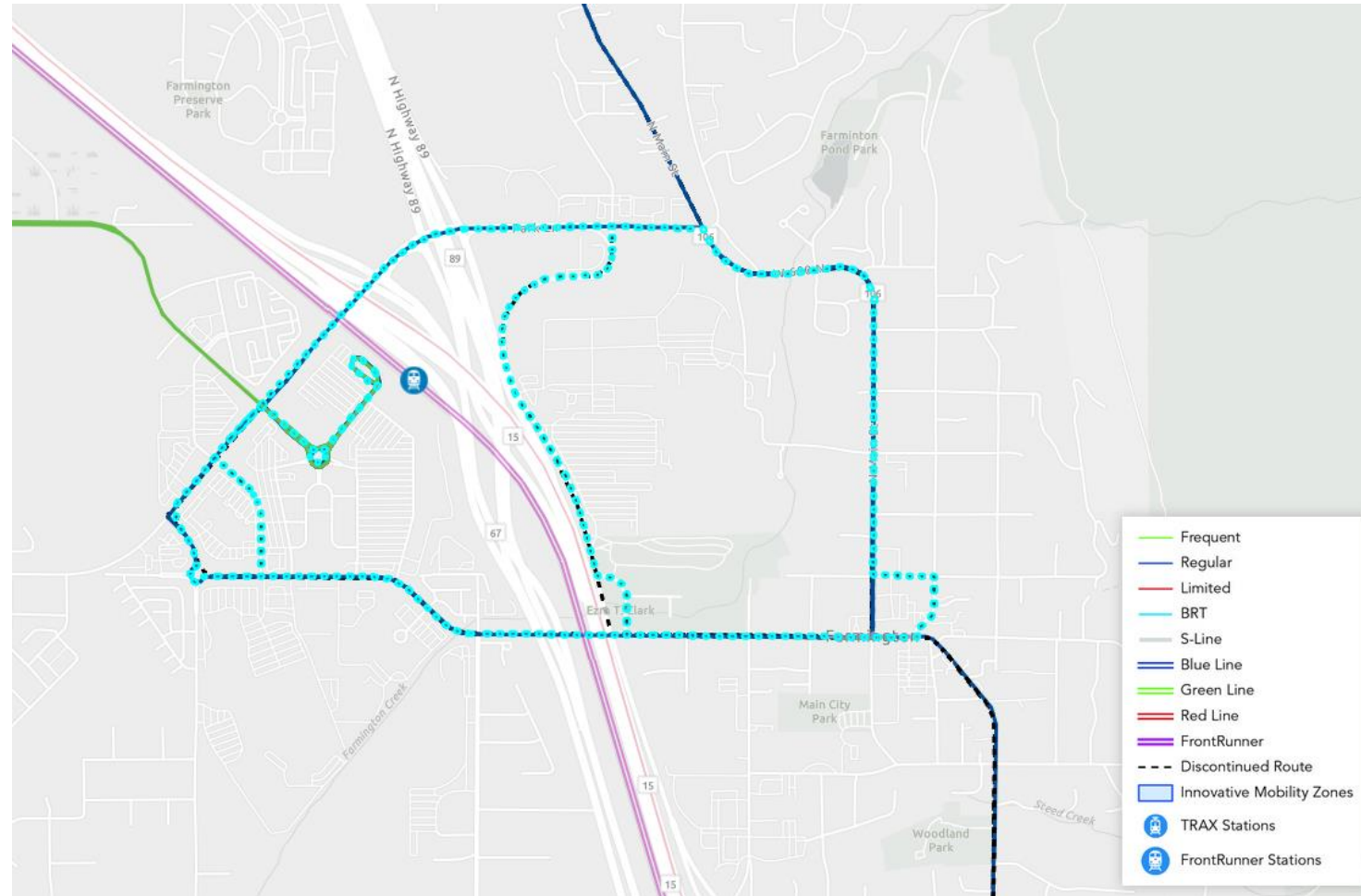
Discontinued Routes: 667

Proposed change:

- Route 667 will be discontinued. Instead Route 470X will connect to Lagoon pending pedestrian access and updated stops.

Reason for change:

- This change is part of the service reorganization which will take place as part of implementation of Davis Salt Lake community connector.



Questions & Discussion



Trustee Beth Holbrook
bholbrook@rideuta.com
Tel: 801-867-5552





DAVIS-SALT LAKE CITY COMMUNITY CONNECTOR

The Davis-Salt Lake City Community Connector is a proposed bus rapid transit system that connects communities in southern Davis County to northern Salt Lake County. UTA leads this project in collaboration with local cities, Davis and Salt Lake counties, UDOT, WFRC, and the University of Utah. The Davis-Salt Lake City Community Connector improves public transportation, and offers better access to employment, entertainment, and recreational areas. It aligns with broader transportation plans for the area, building on the success of existing routes and focusing on increased mobility and corridor revitalization.

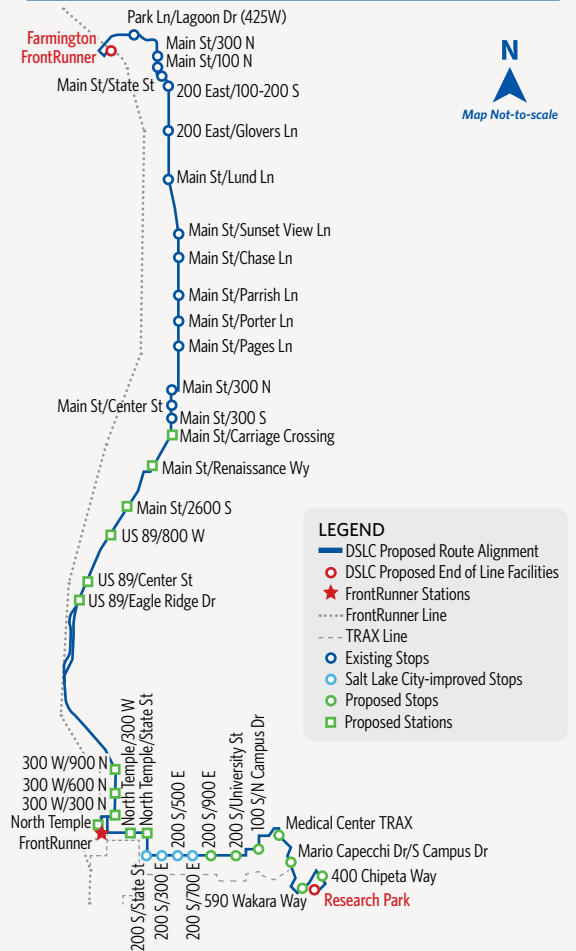
GOALS

- Reach under-served markets** and increase ridership to meet projected growth needs
- Improve speed and reliability**
- Resolve access** and mobility barriers
- Revitalize** neighborhood/corridor and improve air quality

ELEMENTS

- 26-mile route links Farmington Front-Runner Station to Research Park**
- Transit Signal Priority**
- Direct service to key destinations**
- 15-min service**
- Includes improved amenities at stops**
- Includes 18 battery electric buses**

Davis-Salt Lake City Connector Map



SCHEDULE (Subject to Change)

- Fundraising & Local Financial Support for Construction** Ongoing
- Environmental & Design Complete** Spring 2025
- FTA Small Starts Grant Submitted** Spring 2025
- Construction** 2026-2027

CITY COUNCIL AGENDA



PUBLIC HEARING

AGENDA TITLE: Zone Change, Schematic Subdivision Plan and Development Agreement (DA) Farmstead Subdivision at approximately 675 South 1525

PRESENTED BY: Lyle Gibbons

DEPARTMENT: Community Development

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council

From: Lyle Gibson – Assistant Community Development Director

Date: 1/7/2025

Subject: **Zone Change, Schematic Subdivision Plan, and Development Agreement (DA)- Farmstead Subdivision at approximately 675 South 1525 West.**

RECOMMENDED MOTION

Move that the City Council approve the rezone 15.5 acres from AA and A to AE; and approve the Schematic Subdivision Plan, Development Agreement and TDR Agreement for up to 17 TDRs, subject to all applicable Farmington City development standards and ordinances.

Findings:

1. One of the purposes of the conservation subdivisions is to provide greater design flexibility and efficiency, and diversify lot sizes as a benefit to more residents, this plan supports that purpose.
2. The plan supports open space initiatives which benefit the City as a whole, such as Ivy Acres park, Tom Owens/Rock Mill Park, and the Regional Park.

BACKGROUND

The subject property consists of 15.5 acres accessed from 1525 West just north of the West Davis Corridor. It is adjacent to Flatrock Ranch and would be connected to that subdivision by Bareback Way on the west and a new road connection on the east. The property is a remnant from the UDOT construction of the West Davis Corridor, and remains zoned AA and A, which have conventional lot sizes of 10 and 2 acres. The applicant is requesting a zone change to AE, which has a conventional lot size of 1 acre, and yield plan alternative lot size of 0.5 acre. The surrounding area is primarily residential with lot sizes averaging around 0.3 to 1 acre. The proposal currently includes 30 lots ranging in size from 0.27 to 0.7 acres.

The schematic subdivision plan is based on the requested zone of AE. Under the AE lot size of 1 acre and lot width of 100 feet, the conventional yield would roughly 12 lots, while the

alternative lot size 0.5 acre and lot width of 100' would yield 24 lots. The applicant initially proposed a PUD - which allows up to 20% bonus density - to gain flexibility regarding lot size, width, and setbacks. In exchange for the bonus, the applicant suggested improved open space and moderate-income housing within a minimum of three residential buildings and a sound wall. At the October 29, 2024 Planning Commission meeting, the project was tabled to further explore incentive options to justify the 20% bonus density of a PUD approval.

The applicant is now proposing an additional lot alternative set forth in Section 11-10-040 B of the zoning ordinance, which would allow them to purchase of up to 17 Transfer of Development Right Lots (TDRs), which would fund Parks projects, namely the Ivy Acres Park and Historic Rock Mill/Tom Owens park area. TDRs are an option that promote the consolidation of usable open space in the City, rather than smaller open spaces which are logistically and financially more difficult to maintain by private HOAs or the City. In discussion with the City, the TDR option may be more favorable than moderate income housing in this area, thus the MIH option has been removed from the proposed Development Agreement.

Please note, that under a TDR alternative all lots must meet the size, dimension, and setback standards of Chapter 11-12. The application is proposing an average lot size of 0.27 acres for this subdivision.

In discussion, with the applicant, the sound wall will remain part of the plan, but has been removed from the DA as a requirement of approval.

Public hearings for this project were held at the Planning Commission level in October and December where a split vote from the Planning Commission favored recommending this project to the City Council. The votes against a favorable recommendation noted their general support of the layout and number of units, but they expressed their hesitancy on recommending the project without the specific details of the TDR agreement.

Respectfully submitted,



Lyle Gibson
Assistant Community Development Director

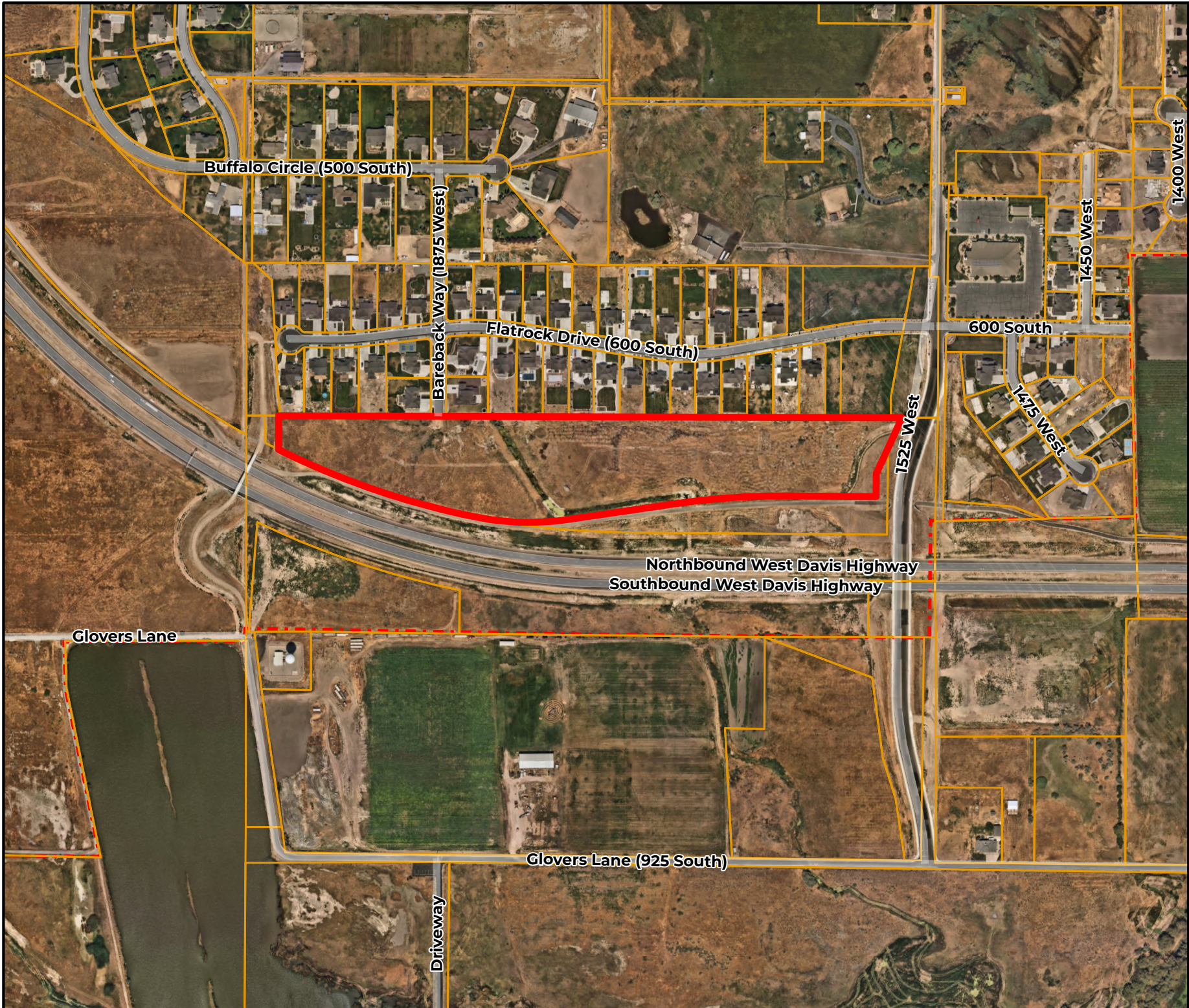
Review and concur,



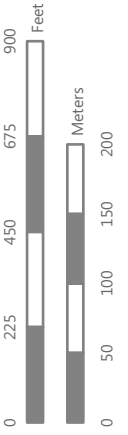
Brigham Mellor
City Manager

Supplemental Information

1. Vicinity map
2. Vicinity map with existing zoning
3. Alternative Lot Size yield plan
4. Subdivision Schematic Plan
5. Example Elevations
6. UDOT Sound Wall Options
7. Proposed Development Agreement
8. Rezone Enabling Ordinance

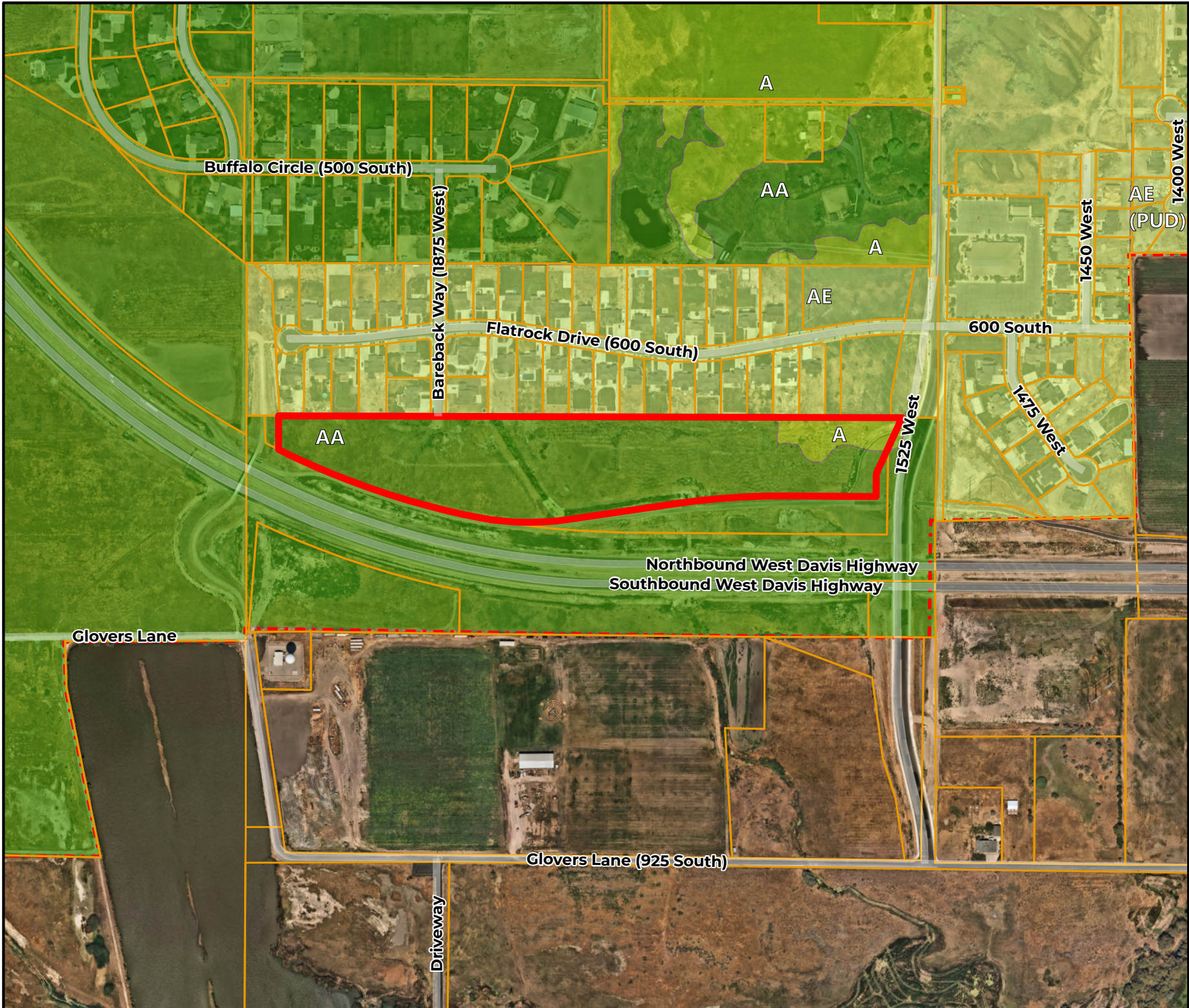


Disclaimer: This map was produced by Farmington City GIS and is for reference only. The information contained on this map is believed to be accurate and suitable for limited uses. Farmington City makes no warranty as to the accuracy of the information contained for any other purposes.

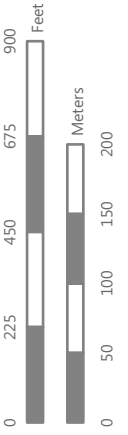


VICINITY MAP
Farmstead PUD





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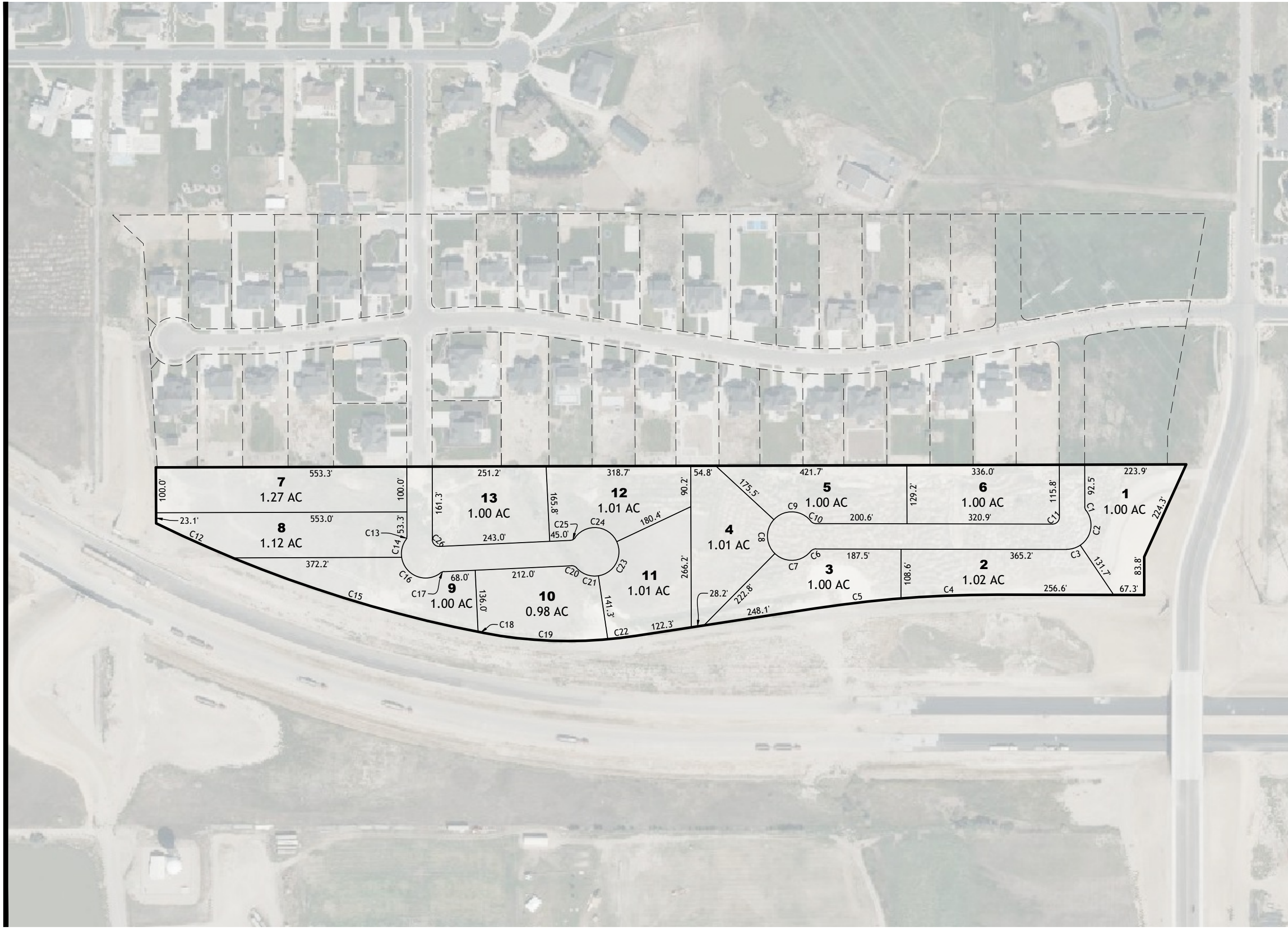


VICINITY MAP

Farmstead PUD



C:\Users\nick\EDM Partners Dropbox\Projects\Farmstead\Drawings\Yield Plan 1-AC.dwg



2815 East 3300 South
 Salt Lake City, UT 84109
 (801) 305-4670
 www.edmpartners.com



SCALE: 1" = 200'
 0 100 200

HOME
 BY C.W. URBAN

STATISTICS

TOTAL AREA	15.49 ACRES
SINGLE FAMILY LOTS	13
DENSITY	0.84 DU/AC

DISCLAIMER:
 ARTIST RENDERING ONLY. PLAN MAY BE ALTERED, OR CHANGED AT ANY TIME. IT IS FURNISHED MERELY AS A CONVENIENCE TO AID YOU IN LOCATING THE LAND INDICATED HEREON WITH REFERENCES TO STREETS AND OTHER LAND. NO LIABILITY IS ASSUMED BY REASON OF ANY RELIANCE HEREON.

INFORMATION SHOWN ON THIS PLAN IS CREATED FROM GIS DATA PROVIDED BY UTAH AGRC. IT IS NOT CREATED FROM LAND SURVEY INFORMATION AND IS USED TO IDENTIFY THE GENERAL LOCATION OF THE FEATURES SHOWN.

Farmington UDOT
Parcel
1 Acre Lot
Yield Plan
 DATE: 12/06/24
 SHEET NUMBER:
C-1



2815 East 3300 South, Salt Lake City, UT 84109
(801) 305-4670 www.edmpartners.com



SCALE: 1" = 80'
0 40 80 160 240

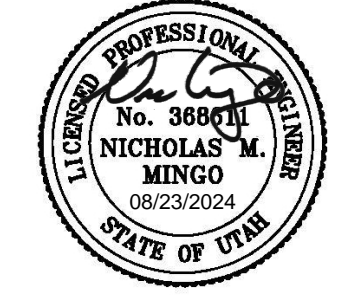
OWNER:
Cole West
610 North 800 West
Centerville, UT 84014
866-744-2489

COLE WEST

- NOTES:**
- All sanitary sewer improvements shall conform with the standards and specifications of Central Davis Sewer District.
 - All culinary water improvements shall conform with the standards and specifications of Farmington City.
 - All secondary water improvements shall conform with the standards and specifications of Weber Basin Water Conservancy District.
 - All improvements in the public right of way shall conform with the standards and specifications of Farmington City.
 - All private improvements shall conform to APWA standards and specifications.
 - Contractor to field locate and verify the horizontal and vertical location of all utilities prior to beginning work.
 - Secondary water has been allocated to parcels based on an anticipated landscape area (including park strip) of no more than 64% of the gross parcel size and that 2/3 of the landscape area is planted in turf and 1/3 of the landscaped area is planted in low water use plants. Larger total landscape areas, higher percentage turf areas, inefficient design of irrigation system, or inefficient operation of irrigation system may result in homeowner incurring additional billing charges and/or secondary water service being shut off.
 - Included with this subdivision application is a request for a zone change to AE.
 - This project is depicted on fema firm number 49011F0381F, dated September 15, 2022. The project area is located within Zone X, areas determined to be outside the 0.2% annual chance flood.

STATISTICS:
TOTAL AREA 15.50 ACRES
SINGLE FAMILY LOTS 30
DENSITY 1.94 DU/AC

APPROVED FOR CONSTRUCTION
By: _____ Date: _____
Farmington City Engineer



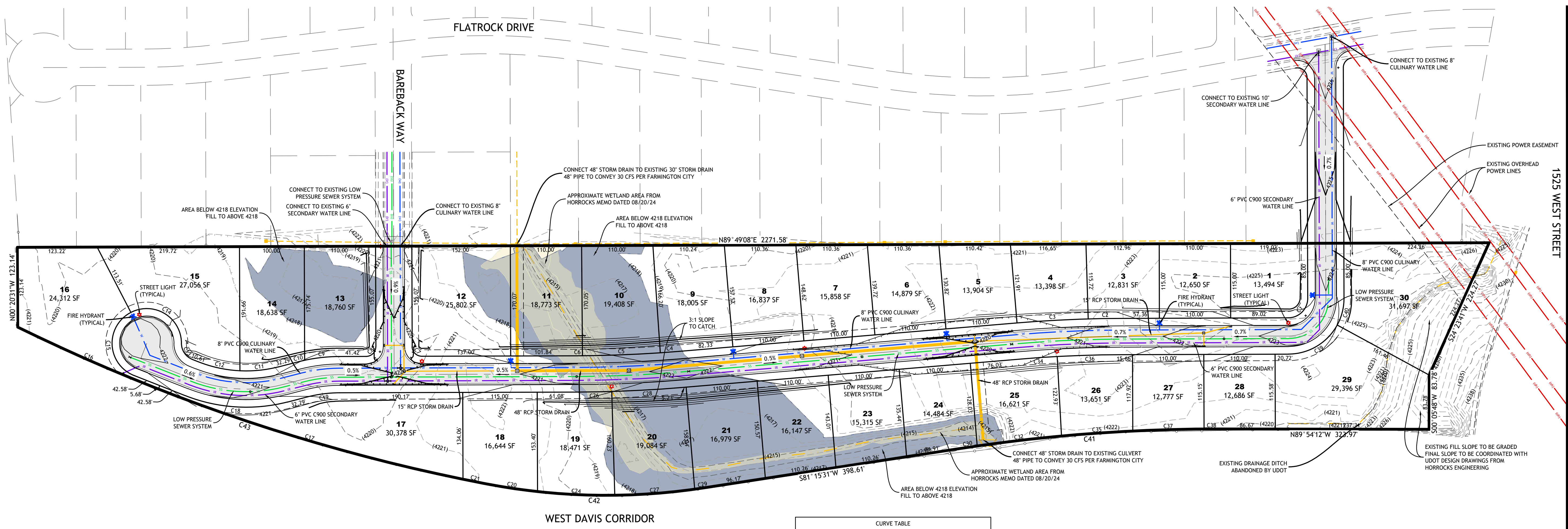
Farmstead

Schematic Plan

PROJECT:	
DRAWN BY:	NMM
REVIEWED BY:	PMD
REVISIONS:	
No. DATE	REMARKS

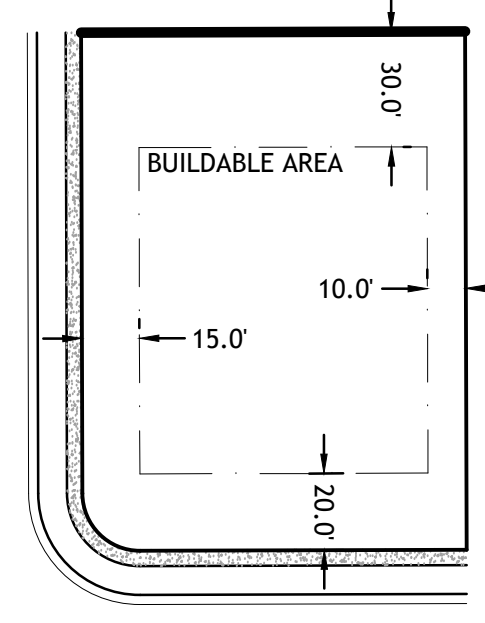
DATE: August 23, 2024

SHEET NUMBER: **O-1**

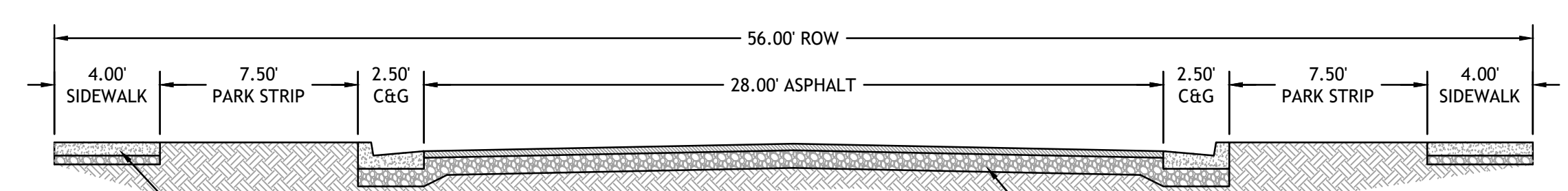


CURVE TABLE			
CURVE	ARC LENGTH	RADIUS	CHORD DIRECTION
C1	47.12	30.00	S44°49'08"W
C2	52.61	2028.00	S89°04'32"W
C3	110.05	2028.00	S86°46'40"W
C4	30.08	1972.00	S85°37'48"W
C5	120.20	1972.00	S87°48'47"W
C6	8.93	1972.00	S89°41'21"W
C7	23.56	15.00	N45°10'52"W
C8	23.56	15.00	S44°49'08"W
C9	53.98	256.00	S83°46'41"W
C10	9.48	256.00	S76°40'34"W
C11	59.98	200.00	S84°12'22"W
C12	65.29	200.00	N77°51'03"W
C13	31.80	26.50	N34°07'34"W
C14	109.77	53.50	N58°31'52"W
C15	122.50	53.50	S2°54'15"E
C16	237.22	2874.99	N66°14'29"W
C17	490.84	2874.99	N73°29'46"W
C18	160.34	256.00	S86°26'31"E
C19	49.58	200.00	N82°43'01"E
C20	81.24	987.50	N81°27'18"W
C21	35.43	2874.99	N78°44'24"W
C24	119.47	987.50	N87°16'39"W
C26	53.90	2028.00	N89°03'27"E
C27	123.77	987.50	S85°39'58"W
C28	109.83	2028.00	N86°44'40"E
C29	14.08	987.50	S81°40'02"W
C30	28.34	2612.50	S81°34'09"W
C32	131.01	2612.50	S83°19'00"W
C34	58.56	1972.00	N86°02'37"E
C35	110.26	2612.50	S85°57'45"W
C36	100.65	1972.00	N88°21'24"E
C37	110.04	2612.50	S88°22'41"W
C38	23.33	2612.50	S89°50'27"W
C39	91.96	86.00	N59°11'05"E
C40	43.13	86.00	N14°11'05"E
C41	402.98	2612.50	S85°40'40"W
C42	338.56	987.50	N88°55'11"W
C43	763.48	2874.99	N71°29'07"W

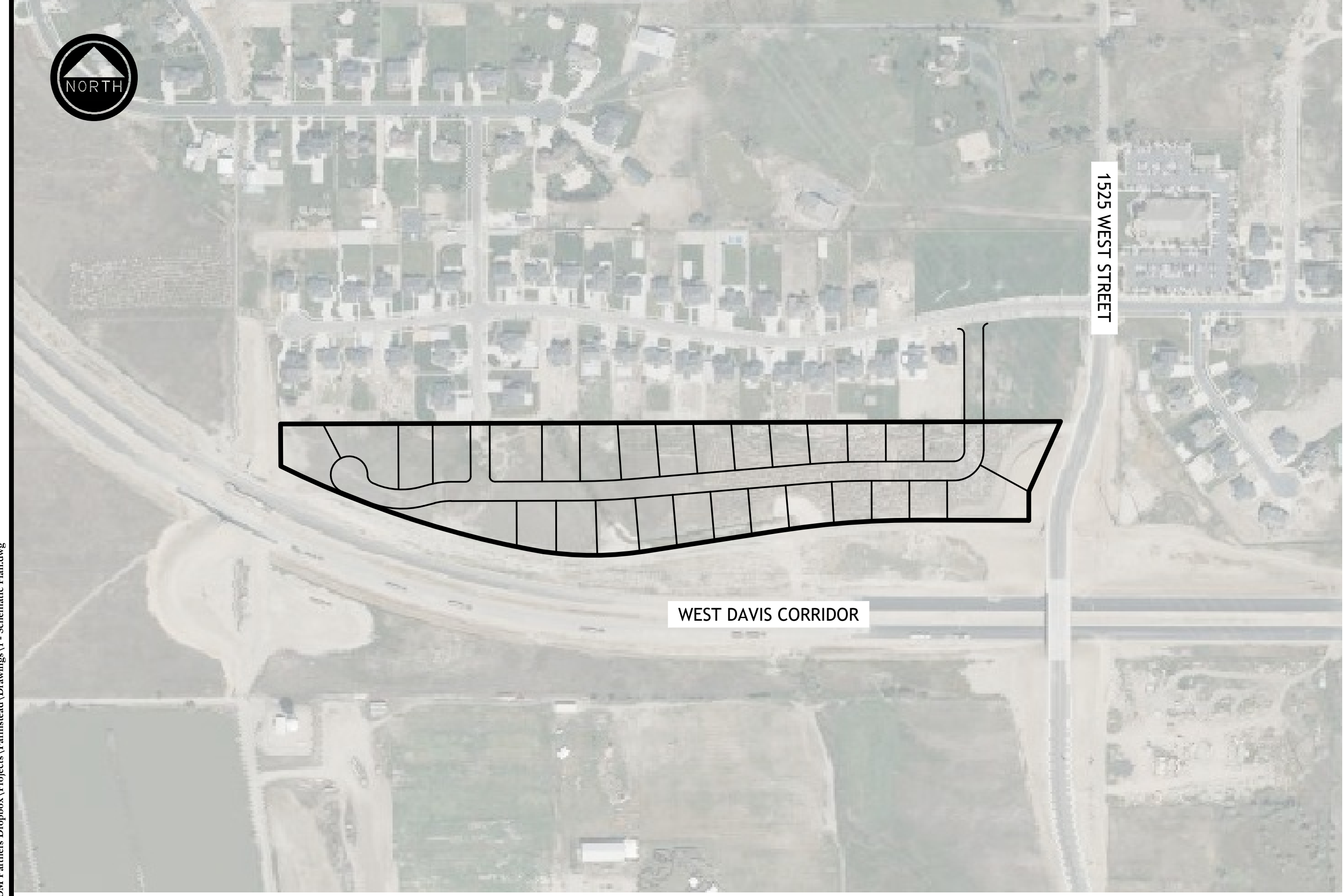
**FOR REVIEW
NOT FOR CONSTRUCTION**



TYPICAL LOT SETBACKS
NOT TO SCALE



RESIDENTIAL ROAD SECTION
NOT TO SCALE



VICINITY MAP
1" = 250'

C:\Users\edm\OneDrive\Projects\Farmstead\Drawings\1 - Schematic Plan.dwg

C.W.
URBAN

THE DESIGNS SHOWN AND DESCRIBED HEREIN INCLUDING ALL TECHNICAL DRAWINGS, GRAPHIC REPRESENTATIONS & MODELS THEREOF, ARE PROPRIETARY & CAN NOT BE COPIED, DUPLICATED, OR COMMERCIALY EXPLOITED IN WHOLE OR IN PART WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM C.W. URBAN

KEYNOTES



70' Wide 2-Story
MOM (4,000 SF)

Exterior

Project number	Project Number
Date	01/09/2022
Drawn by	Author
Checked by	Checker

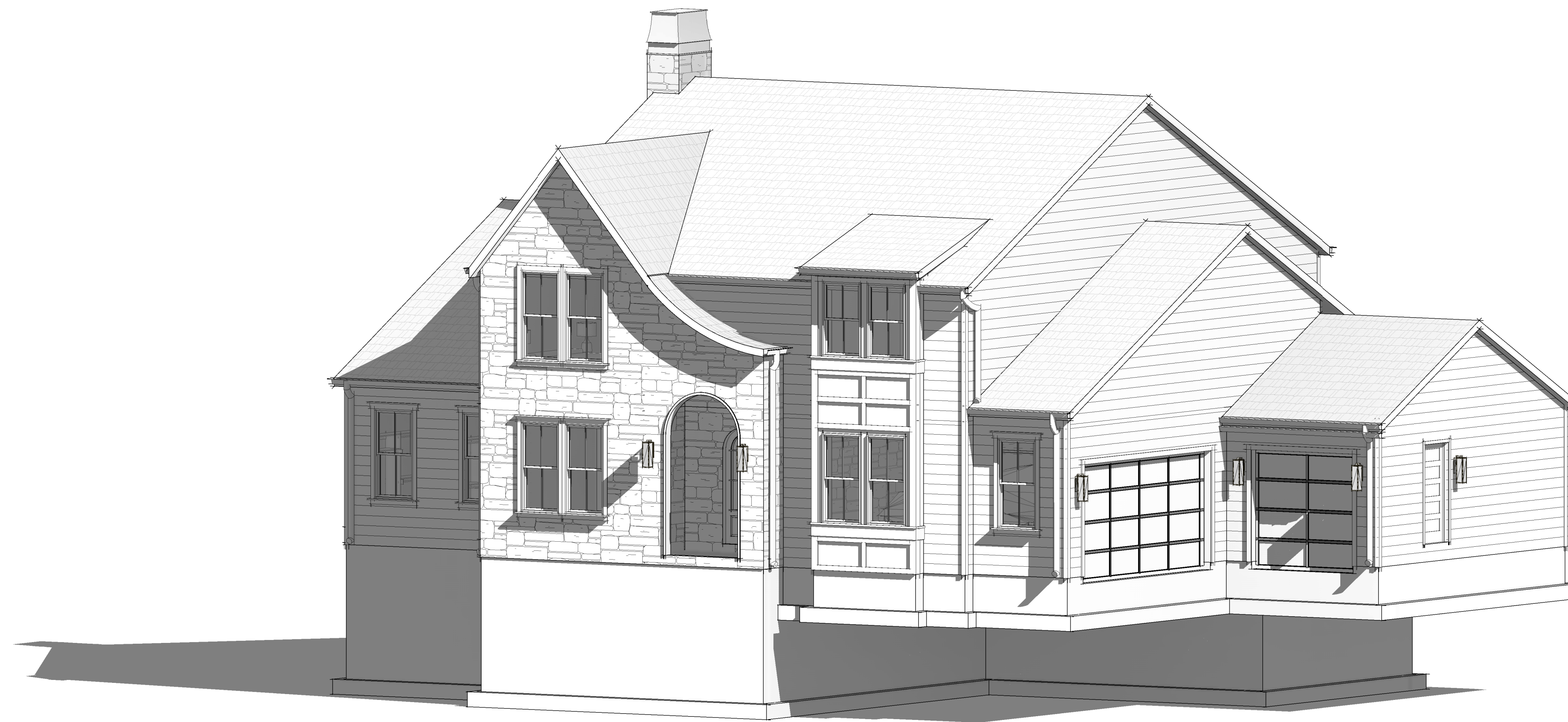
DD-03

Scale

C.W.
URBAN

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KEYNOTES



**70' Wide 2-Story
MOM (3,500 SF)**

PERSPECTIVES

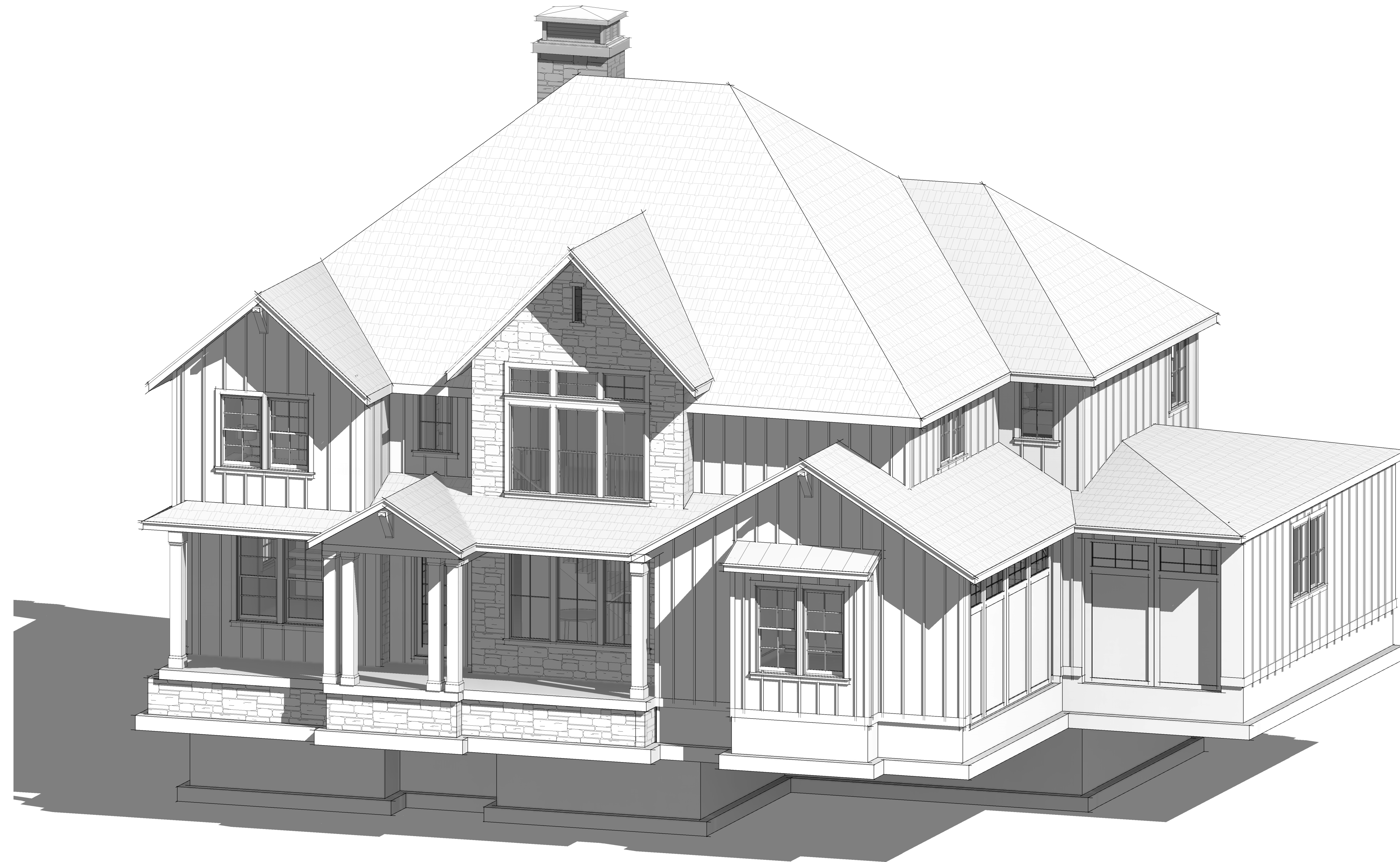
Project number	Project Number
Date	01/09/2022
Drawn by	Author
Checked by	Checker

DD-04

Scale

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KEYNOTES



1 {3D} Copy 1

70' Wide 2-Story PU
(4,100 SF)

3D Views

Project number Project Number

Date 01/09/2022

Drawn by Author

Checked by Checker

DD-03

Scale

C.W.
URBAN

THE DESIGNS SHOWN AND DESCRIBED HEREIN INCLUDING ALL TECHNICAL DRAWINGS, GRAPHIC REPRESENTATIONS & MODELS THEREOF, ARE PROPRIETARY & CAN NOT BE COPIED, DUPLICATED, OR COMMERCIALY EXPLOITED IN WHOLE OR IN PART WITHOUT THE SOLE AND EXPRESS WRITTEN PERMISSION FROM C.W. URBAN

KEYNOTES



70' Wide Rambler
(2,400 SF)

Front

Project number Project Number

Date 08/27/2024

Drawn by Author

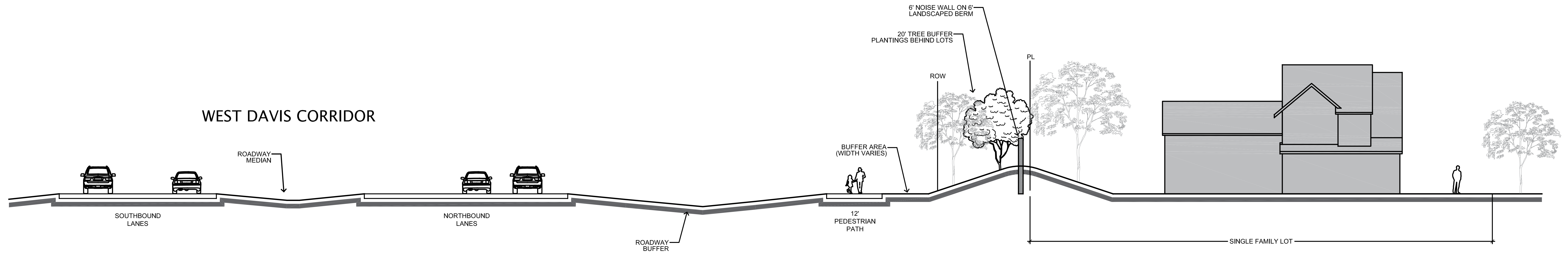
Checked by Checker

DD-02

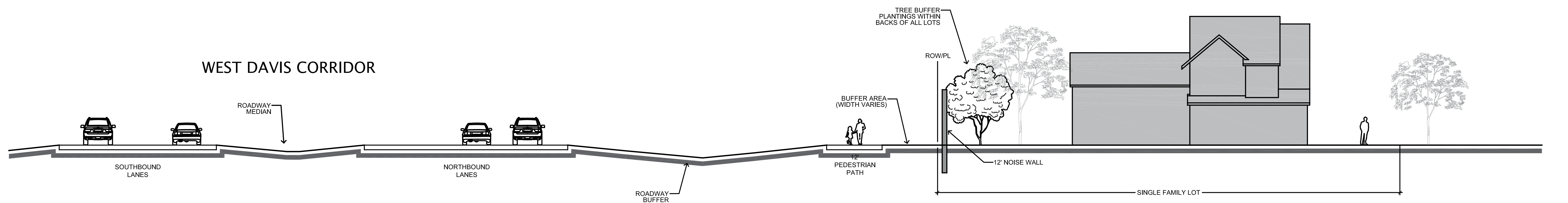
Scale

FARMSTEAD WEST DAVIS CORRIDORSOUND WALL OPTIONS

COLE WEST



SOUND WALL/BERM BUFFER ALTERNATIVE



SOUND WALL BUFFER ALTERNATIVE



When Recorded Mail to:
Farmington City Attorney
160 S. Main Street
Farmington, UT 84025

DEVELOPMENT AGREEMENT
FOR THE FARMSTEAD A CONSERVATION SUBDIVISION

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of the ____ day of _____, 20____, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the “City,” and **CW FARMSTEAD, LLC**, a Utah limited liability corporation, hereinafter referred to as “Developer.”

RECITALS:

A. Developer owns approximately 15.5 acres of land located within the City, identified as Davis County Tax ID Parcel Number 08-081-0125 in the records of the Davis County Recorder, 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 Farmstead Subdivision (the “Project”). Developer has submitted an application to the City seeking approval of a zone change to Agricultural Estates (“AE”) as a Conservation Subdivision in accordance with the City’s Laws.

C. The Property is presently zoned under the City’s zoning ordinance as Agricultural Very Low Density (“AA”) and Agriculture (“A”). 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”).

D. 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 comply 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. **Developer Obligations.** Developer agrees to the following provisions:

a. Developer shall provide for and record enforceable Covenants, Conditions and Restrictions (“CC&Rs”) providing architectural design consistency. Developer shall cause a Homeowners Association (“HOA”) to be constituted as part of the CC&Rs with duties of maintaining the enforcement of the CC&Rs.

b. Developer shall design and install yard drain infrastructure, including required grading, pipes, drains, swales, etc., as required by the City Engineer, so that each individual lot may account for proper water drainage;

1. Upon completion of each home, Developer shall provide a sump well and sump pump which shall connect to the home perimeter drain system; and

2. The Project shall be served by a low-pressure sewer system, as approved by Central Davis Sewer District. Developer shall install the low-pressure sewer system and the required sewer pumps for each home.

5. **City Obligations.** The City agrees to maintain the public improvements dedicated to the City following satisfactory completion thereof and acceptance of the same by the City, including the roads. The City shall also provide all municipal and public services to the Project, with the exception of secondary water. Notwithstanding, the City shall not be required to maintain any privately-owned areas or improvements in the Project that are required to be maintained by a private party or the HOA.

6. **Minimum Lot Standards.** All lots designed for this Project meet or exceed the standards set forth in City Code 11-12-090.

7. **Building Height.** Buildings within the Project are subject to the standards set forth in City Code 11-12-090 and are subject to building code and final approval by the City.

8. **Layout, Circulation, Connectivity.** The project shall provide layout, circulation, and connectivity as shown on the attached Exhibit “B”.

9. **Additional Building Lots – Via Transfer of Development Rights/Lots (TDR).** In addition to the number of conventional lots permitted by the AE zoning district, The Developer hereby desires to enter into a separate agreement with the City detailing the Developer’s purchase of up to seventeen (17) additional Development Rights/Lots via Transfer of Development Rights (TDR). The Developer shall pay the City the total lump sum as outlined in the separate agreement as approved by the Farmington City Council and in accordance with City code.

10. **Total Project Lot Count & Density.** The maximum number of residential building Lots in the Project is thirty (30) lots. The maximum allowable density shall be 1.93 units/acre.

11. **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 generally applicable at the time of payment of all such fees, pursuant to and consistent with standard City procedures and requirements, adopted by the City.

12. **Indemnification and Insurance.** During the period of construction, 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 is caused by any acts or omissions of Developer or of any of its agents, contractors, servants, or employees. 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) and naming the City as an additional insured.

13. **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.

14. **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 subsidiary of Developer, which is majority owned by Developer’s parent company, CW Development Group, LLC.

15. Homeowner’s or Commercial Building Owner’s Association. The Developer warrants and provides assurances that all landscaping, private drives, and amenities located within the Project shall be maintained by a private association of homeowners, building owners, or a combination of the two. The association shall either be created for this Property, or it shall be absorbed by another Association. All costs of landscaping, private drive and amenity maintenance, replacement, demolition, cleaning, snow removal, or demolition, shall be borne exclusively by the association, building owners, or a combination of the two. The City shall have no maintenance responsibility in relation to the property owned by the association (but shall plow and maintain public roads that are designated as public on the plat). This section survives termination of this Agreement, unless specifically terminated in writing.

16. Onsite Improvements. At the time of final plat recordation for the Project, Developer shall be responsible for the installation and dedication to the City of onsite water, sewer, and storm water drainage improvements sufficient for the development of the Project in accordance with City Code.

17. Legal Rights. Developer is represented by counsel and has had an opportunity to receive advice from counsel on this matter. Developer agrees that any obligation entered into in this Development Agreement that may be construed as a restriction of Developer’s rights under clearly established state law, then its inclusion in this written agreement constitutes adequate disclosure under section 10-9a-532(2)(c)(i) of the Utah Code. Developer agrees that it will not attempt to void any obligation identified in this Development Agreement under section 10-9a-532(2)(c)(ii) and agrees to waive any objection to a condition of this Development Agreement pursuant to that subsection of Utah law.

18. 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: CW Farmstead, LLC
Attn: Quinton Stephens
610 North 800 West
Centerville, Utah 84014

To the City: Farmington City
Attn: City Manager
160 South Main Street
Farmington, Utah 84025

19. 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; and/or
- c. The right to terminate this Agreement.

20. Agreement to Run with the Land. This Agreement shall be recorded against the Property as described in Exhibit A hereto, shall be deemed to run with the land, and shall be binding on all successors and assigns of Developer in the ownership and development of any portion of the Project.

21. Vested Rights. The City and Developer intend that this Agreement be construed to grant 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.

22. 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.

23. Completion Timeline. 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 Developer. Whereupon, Developer shall have sixty (60) days during which time 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.

24. Termination After Completion. 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 4 and 5 of this Agreement, the terms of this Agreement shall terminate upon thirty (30) days' written notice to either Party. The non-noticing Party shall, within thirty (30) 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.

25. 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 any other relief granted in such proceeding, to recover its costs and a reasonable attorneys' fee.

26. Entire Agreement. This Agreement together with the Exhibits attached hereto 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.

27. 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.

28. Non-Liability of City Officials, Employees and Others. No officer, representative, agent, or employee of the City shall be personally liable to Developer in the event of any default or breach by the City or for any amount which may become due Developer 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.

29. 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. 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.

30. Ethical Standards. 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.

31. 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 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 Developer's operations, or authorizes funding or payments to Developer. This section does not apply to elected offices.

32. 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.

33. 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.

34. 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.

35. Recordation. This Agreement shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah.

36. Relationship. Nothing in this Agreement shall be construed to create any partnership, joint venture, or fiduciary relationship between the parties hereto.

37. 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.

38. 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 Second District Court of the State of Utah, 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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

“DEVELOPER”

CW Farmstead, LLC
a Utah limited liability company

By: _____
Name: Colin H. Wright
Its: Authorized Representative

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this ____ day of _____, 202_, personally appeared before me, Colin Wright, who being by me duly sworn, did say that he is an Authorized Representative of **CW Farmstead, LLC**, a Utah Limited Liability Company, and that the foregoing instrument was signed on behalf of said limited liability company by authority of its Operating Agreement and duly acknowledgment to me that said limited liability executed the same.

Notary Public

THE "CITY"

FARMINGTON CITY

By: _____
Name: Brett Anderson
Its: Mayer

Attest:

DeAnn Carlile
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this ____ day of _____, 202_, 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 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

A PARCEL OF LAND BEING PART OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 3 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF FLATROCK RANCH A CONSERVATION SUBDIVISION, RECORDED AS ENTRY #3363647 IN THE DAVIS COUNTY RECORDER'S OFFICE. SAID POINT OF BEGINNING BEING S00°16'01"E 1141.15 FEET ALONG THE SECTION LINE AND N90°00'00"E 118.16 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 26 AND RUNNING THENCE ALONG SAID SOUTH LINE OF FLATROCK RANCH A CONSERVATION SUBDIVISION N89°49'08"E 2271.57 FEET; THENCE LEAVING SAID SOUTH LINE S24°23'41"W 224.28 FEET; THENCE S00°05'48"W 83.78 FEET TO A FOUND UDOT RIGHT OF WAY MARKER AND THE NORTHEASTERLY RIGHT OF WAY LINE OF SR-177 (WEST DAVIS HIGHWAY); THENCE ALONG SAID NORTHEASTERLY RIGHT OF WAY THE FOLLOWING FIVE COURSES: 1) N89°54'12"W 323.97 FEET TO A FOUND UDOT RIGHT OF WAY MARKER, 2) ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 2612.50 FEET, A DISTANCE OF 402.98 FEET, A CHORD DIRECTION OF S85°40'40"W, AND A CHORD DISTANCE OF 402.58 FEET TO A FOUND UDOT RIGHT OF WAY MARKER, 3) S81°15'31"W 398.61 FEET, 4) ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 987.50 FEET, A DISTANCE OF 338.56 FEET, A CHORD DIRECTION OF N88°55'11"W, AND A CHORD DISTANCE OF 336.90 FEET TO A FOUND UDOT RIGHT OF WAY MARKER, 5) ALONG A COMPOUND CURVE TO THE RIGHT, HAVING A RADIUS OF 2874.99 FEET, A DISTANCE OF 763.48 FEET, A CHORD DIRECTION OF N71°29'07"W, AND A CHORD DISTANCE OF 761.24 FEET TO A FOUND UDOT RIGHT OF WAY MARKER; THENCE LEAVING SAID NORTHEASTERLY RIGHT OF WAY LINE N00°20'31"W 123.14 FEET TO THE POINT OF BEGINNING.

CONTAINS 15.50 ACRES IN AREA

FARMINGTON, UTAH

ORDINANCE NO. 2025 -

AN ORDINANCE AMENDING THE ZONING MAP TO SHOW A CHANGE OF ZONE FOR PROPERTY LOCATED AT APPROXIMATELY 675 SOUTH 1525 WEST FROM A (AGRICULTURE) AND AA (HEAVY AGRICULTURE) TO AE (AGRICULTURAL ESTATES).

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 before the Planning Commission of Farmington City 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 located at approximately 675 South 1525 West, identified by parcel number: 08-081-0125 is hereby reclassified from zone A (Agriculture) and AA (Heavy Agriculture) to AE (Agricultural Estates) 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 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 7th day of January, 2025.

FARMINGTON CITY

Brett Anderson
Mayor

ATTEST:

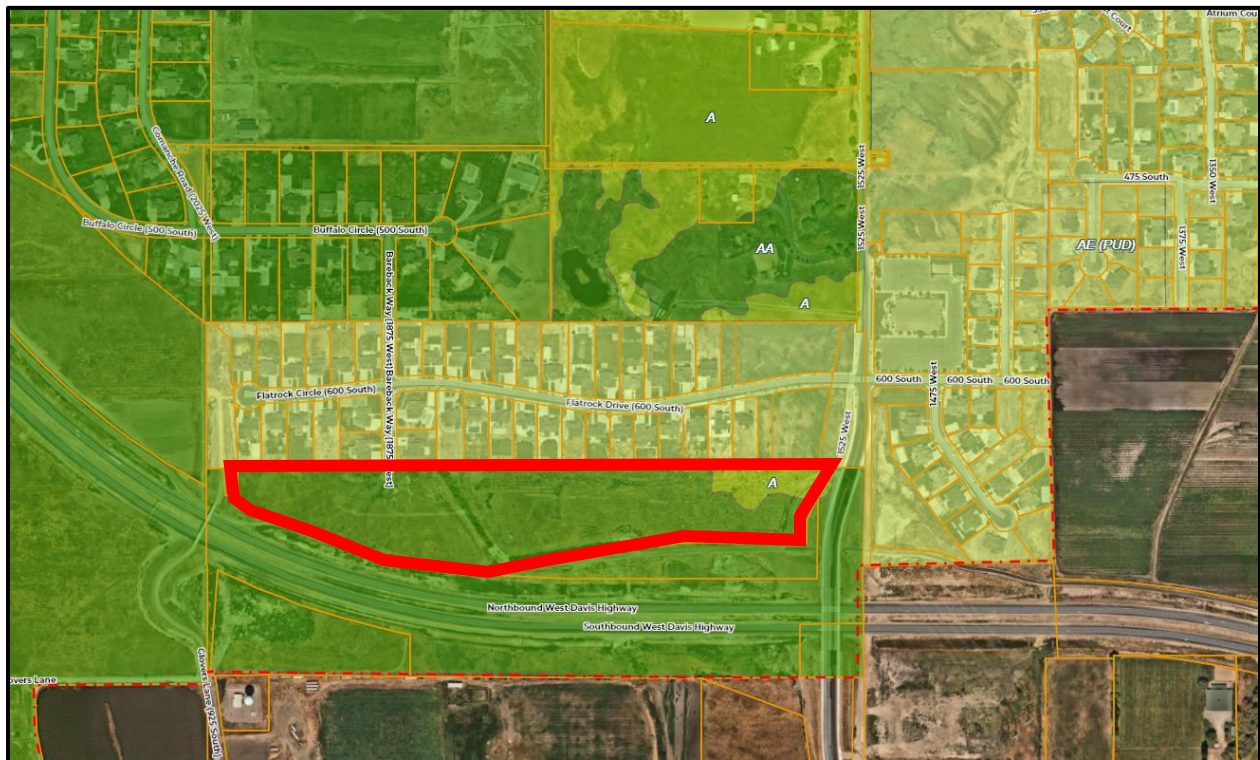
DeAnn Carlile City Recorder

Exhibit "A"

Full Legal Description:

A TRACT OF LAND BEING PART OF UDOT PARCELS 9999:978:ST & 9999:978 SIT IN THE NW 1/4 NW 1/4 & THE NE 1/4 NW 1/4 & THE SW 1/4 NW 1/4 & THE SE 1/4 NW 1/4 OF SEC 26-T3N-R1W, SLB&M. THE BNDRY OF SD TRACT OF LAND ARE DESC AS FOLLOWS: BEG AT THE INTERSECTION OF THE N'LY BNDRY LINE OF SD ENTIRE TRACT & THE N'LY HWY R/W LINE OF SR-67 WEST DAVIS HWY, KNOWN AS PROJECT NO. S-R199(229), WH PT IS 120.78 FT W ALG THE SEC LINE & 1141.50 FT S & 130.73 FT W FR THE N 1/4 COR OF SD SEC 26; & RUN ALG SD N'LY R/W LINE THE FOLLOWING EIGHT (8) COURSES & DISTANCE: (1) TH S 24°34'33" W 224.28 FT; (2) TH S 00°16'40" W 83.78 FT; (3) TH N 89°43'20" W 323.97 FT TO A PT OF CURVATURE OF A CURVE TO THE LEFT WITH A RADIUS OF 2612.50 FT; (4) TH W'LY ALG SD CURVE WITH AN ARC LENGTH OF 402.98 FT, CHORD BEARS S 85°51'32" W 402.58 FT; (5) TH S 81°26'23" W 398.61 FT TO A PT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 987.50 FT; (6) TH W'LY ALG SD CURVE WITH AN ARC LENGTH OF 338.55 FT, CHORD BEARS N 88°44'19" W 336.90 FT TO A PT OF CURVATURE OF A COMPOUND CURVE TO THE RIGHT WITH A RADIUS OF 2874.99 FT; (7) TH NW'LY ALG SD CURVE WITH AN ARC LENGTH OF 763.48 FT, CHORD BEARS N 71°18'15" W 761.24 FT; (8) TH N 00°09'39" W 123.14 FT TO SD N'LY BNDRY LINE OF SD TRACT; TH E 2271.57 FT ALG SD N'LY BNDRY LINE TO THE POB. (NOTE: ROTATE ABOVE BEARINGS 00°09'39" CLOCKWISE TO EQUAL HWY BEARINGS OF PROJECT NO. S-R199(229)). CONT.15.496 ACRES

Map of General Location and Existing Zoning:



CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Amendment to the agreement between Park Lane Commons, LLC and Farmington City

PRESENTED BY: Brigham Mellor

DEPARTMENT: City Manager

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Brigham Mellor, Farmington City Manager
Date: 01/07/2025
Subject: **Amendment to the agreement between Park Lane Commons, LLC and Farmington City**

RECOMMENDATION(S)

Approve the attached amendment to the Park Lane Commons LLC agreement subject to the accurate legal description being completed by the surveyor.

BACKGROUND

A road is planned between Cabela's and the Evans Property. One portion of the road is the responsibility of one property owner, and another portion is the neighboring property's responsibility. It has been seven years, and Park Lane Commons would like to exchange \$125,000 for the road's indefinite obligation. As Mr. Haws is pursuing selling these properties held by the LLC, it would simplify his efforts to exchange cash for the road's liability.

The staff worked with Park Lane Commons to establish the value and are fine to proceed. At the time of writing this staff report, the surveyor is finalizing the legal description.

Respectfully submitted,



Brigham Mellor
City Manager

When Recorded Mail to:
Farmington City Attorney
160 S. Main Street
Farmington, UT 84025

FIRST AMENDMENT TO AN AGREEMENT
BETWEEN PARK LANE COMMONS TWO, LLC and FARMINGTON CITY, UTAH

THIS AMENDMENT (the “Amendment”) is made and entered into as of the ____ day of _____, 2025, by and between **PARK LANE COMMONS TWO, LLC**, a Utah company (the “Developer”), and **FARMINGTON CITY**, a Utah municipal corporation (the “City”), and amends an Agreement dated March 24, 2017, which was duly recorded with the Recorder’s Office of Davis County, Utah, as Entry 3011704, Book 6734, Pages 1903-1909 (the “Agreement”).

RECITALS

- A.** The Parties entered into the Agreement, in which the City permitted deferral of the Developer’s obligations related to certain property identified in the Agreement (the “Property”) to install right-of-way improvements indicated in the Agreement (the “Improvements”). The Property is more particularly described in Exhibit A to this Amendment, which description is incorporated into this Amendment. More than seven years have passed without the Improvements being installed, due to the non-development of the Adjacent Land identified in the Agreement.
- B.** Rather than leave this obligation contingent for an undetermined amount of time, the Parties are willing to enter into this Amendment to satisfy the Developer’s obligations related to the Improvements.

AMENDMENT

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.** The above Recitals are incorporated into this Amendment.
- 2.** This Amendment to the Agreement is made pursuant to Section 7 of the Agreement.
- 3.** The provisions of this Amendment shall supersede and replace all obligations of both parties that are established in the Agreement.
- 4.** Developer hereby represents and warrants that as of the date of the recording of this Amendment, the Property owns fee title interest to the Property.
- 5.** In lieu of installing the Improvements, the Developer will provide one-hundred twenty-five thousand dollars (\$125,000.00) (the “Payment”) to the City.

- 6.** In consideration of this payment, the City will release the Developer from the obligation to install the Improvements. To the extent the Improvements must be installed in the future, the City assumes responsibility for that installation.
- 7.** Developer, and its successors or assigns, expressly permit the City to install the Improvements on the Property within the boundaries of the Property, as described in this Amendment, without any additional compensation. Developer, its successor and assign, specifically disclaims any claim to compensation due to disruptions, disturbances or occupation of the Property, whether such conditions are temporary or permanent. This disclaimer does not stretch beyond the boundaries of the Property.
- 8.** The City Council must authorize the execution of this Amendment by the Farmington City Mayor. Within three (3) business days of both (a) receiving a fully executed copy of this Amendment and (b) confirmation of the Payment's deposit into the City's bank account, the City will deliver the fully-executed Amendment to the office of the Davis County Recorder, to be recorded against the Property.
- 9.** This Amendment will serve as a release of any obligation of the Developer towards the City related to the Improvements.
- 10.** Upon this Amendment's recordation, the Developer releases any claim to the Payment, a refund of the Payment or any portion of it, regardless of when and how the Improvements are installed, or if they are not installed at all.
- 11.** This Amendment shall not modify any other obligation of either party outside of the Agreement, nor shall it impact property entitlements or any other agreements associated with the Property.
- 12.** This Amendment shall be binding upon and inure to the benefit of the parties' subsequent owners, successors and assigns.
- 13.** This Amendment and performances hereunder shall be governed by the laws of the State of Utah.

/Signatures appear on next page/

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”

Park Lane Commons Two, LLC

By

Its

STATE OF UTAH)
 : ss.
COUNTY OF _____)

On this ____ day of _____, 2025, personally appeared before me, _____, who being by me duly sworn, did say that the foregoing instrument was signed by him on behalf of Park Lane Commons, LLC.

Notary Public

FARMINGTON CITY

By _____
Brett Anderson, Mayor

Attest:

DeAnn Carlile
City Recorder

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

On this ____ day of _____, 2025, 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 that the foregoing instrument was signed on behalf of the City for the purposes therein stated.

Notary Public

Approved as to Form:

/s/ Paul H. Roberts _____
Paul H. Roberts
City Attorney

EXHIBIT "A"

PROPERTY DESCRIPTION

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Quote from Big T for park equipment and install

PRESENTED BY: Brigham Mellor

DEPARTMENT: City Manager

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Brigham Mellor, Farmington City Manager
Date: 01/07/2025
Subject: **Quote from Big T for park equipment and install**

RECOMMENDATION(S)

Approve the attached quote for installation and equipment for the new park

BACKGROUND

This is the playground equipment that will be installed at the new park in 2025. Big T is a supplier of products available through a state contract {#PA4281-UT} – which allows cities to purchase products without going through an RFP process.

This product and installation were budgeted during the 2025 FY budget in June 2024 and are coming in at \$200,000 less than anticipated.

This will be the second-biggest playground in our park system, measuring over 7,000 SF (the regional park playground measures 9,500 SF). However, this park playground has twin slides that will be the tallest municipal playground slides in Utah north of Salt Lake County. Combined with the adjacent splash pad and ninja warrior course, Taft Egan (Big T Rec) and Blu Line design have put together the most unique children's play space in the state here at our newest park, which offers something for people of all ages.

Respectfully submitted,



Brigham Mellor
City Manager



Big T Recreation
 11618 S. State St #1602
 Draper, UT 84020
 801-572-0782
 taft@bigtrec.com

QUOTE

Date	Quote #
12/02/2024	19205
Exp. Date	
	02/28/2025

Shipping Address
Farmington City 100 North 720 West Farmington, UT 84025

PRODUCT	DESCRIPTION	QTY	RATE	AMOUNT
	Ivy Acres Custom Playground Project			
Playground Structure	Custom Playground By Playworld Triple Tower with Mighty Slides Timber Stacks Double Decker Cone Spinner Double Bay Swings with Integrated Shade	1	978,283.17	978,283.17
Installation	Installation of Custom Playground (Includes 3rd Party Audit at Completion)	1	287,819.78	287,819.78
Surfacing	Poured In Place Rubber Surfacing Depth to Match CFH Requirements 50/50 Color/ Back EPDM Mix Standard Color Selection and Binder Includes: Shipping and Dumpster Service Not Included:	1	176,100.44	176,100.44
Freight	Site Prep, Supply and Compaction of Base Materials Freight **City Tax Exempt Certificate Due at Time of Order ** Reference State Contract # PA4281-UT	1	37,104.92	37,104.92
			SUBTOTAL	1,479,308.31
			TAX	0.00
			TOTAL	\$1,479,308.31

Accepted By

Accepted Date

Acceptance of this quote agrees to the terms and conditions set by Big T Recreation. Please contact us with any questions or concerns P: 801.572.0782, F: 801.216.3077 or E: taft@bigTrec.com or merit@bigTrec.com.

We thank you for your business.



Ivy Acres

Custom products are shown as conceptual.



Ivy Acres

 **PLAYWORLD**
The world needs play.™

Custom products are shown as conceptual.



Ivy Acres

Custom products are shown as conceptual.





Ivy Acres



Custom products are shown as conceptual.



Ivy Acres

Custom products are shown as conceptual.



Ivy Acres

Custom products are shown as conceptual.



Ivy Acres

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 **PLAYWORLD**
The world needs play.™



Ivy Acres

 **PLAYWORLD**
The world needs play.™

Custom products are shown as conceptual.



Ivy Acres

Custom products are shown as conceptual.

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Addendum to the Development Agreement for
The Trail

PRESENTED BY: Lyle Gibson

DEPARTMENT: Community Development

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 1/7/2025
Subject: Addendum to the Development Agreement for The Trail.

RECOMMENDED MOTION

Staff recommends that the City Council approve the proposed Addendum.

Findings:

1. The proposed addendum reduces the number of units within the project within the parameters initially set and allows for the construction of a building that will be massed and scaled more appropriately for the area.

BACKGROUND

The Trail initially received approval for development at the end of 2022. The project consists of property that has been conveyed to Farmington City on the north side of Spring Creek, a non-residential lot which currently has a 3-story office building under construction, and the nearly 10 acres devoted to the development of housing mainly within an apartment building.

The initial proposal for the site included an apartment building with 392 units which wrapped around a parking structure. The developer is looking to modify the apartment building to include 315 units. In order to accommodate this change, the southwest section of the building would have units removed from around the parking structure. The parking structure would also be reduced in size. The general layout of the site would remain consistent with the original plan, but such a large modification to the exhibits in the current agreement require consideration and approval by the City Council.

It is the opinion of staff that while the building no longer fully covers the parking structure, the reduced scale will be a better visual fit along Burke Lane. While the property is within the HTRZ area and requires a high intensity of residential development, the reduced unit count can be accommodated in other residential development still to come.

In addition to modifying the apartment building, the addendum contemplates flexibility in how townhomes are eventually built. The original plan indicated that townhomes would be built just west of the drive aisle around the apartment building, where the updated plan contemplates the ability to place them closer to the trail in the southwest corner of the property. These townhomes would still have to be within the previously established height limit based on proximity to the trail. Likely this area would be

reviewed for a subdivision plat amendment where that part of the property could be sold to a different developer.

In consideration of the addendum, the council should note the changes to the building and amenities on site, and the layout of townhomes.

Original unit count:

UNIT SCHEDULE	
Name	Count
UNIT - 1BED	113
UNIT - 1BED + DEN	96
UNIT - 2BED	137
UNIT - 3BED	19
UNIT - STUDIO	27
UNIT - TOWNHOME	15

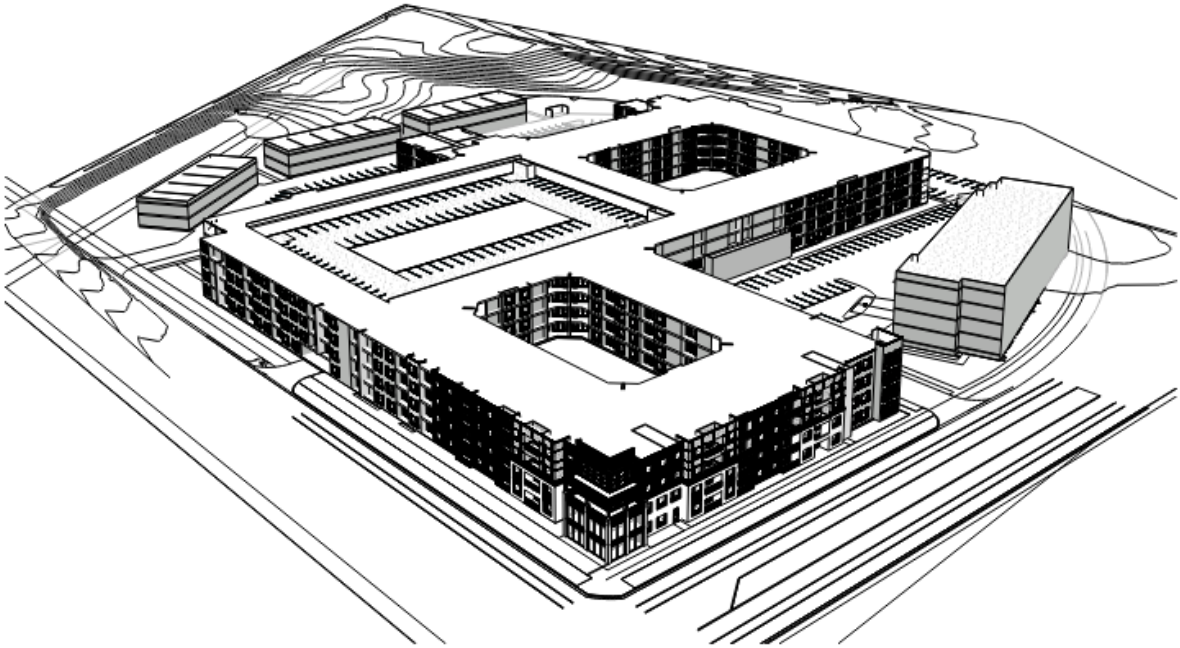
Grand total: 407

Modified unit count:

	#BEDS	#BATHS	GROSS SQFT	TYPE	TOTAL
Unit 1A	1	1	693	A	1
Unit 1B	1	1	693	B	95
Unit 1C	1	1	789	B	48
Unit 2A	2	2	1035	A	1
Unit 2B	2	2	1035	B	104
Unit 2C	2	2	1029	B	20
Unit 2D	1	2	1039	B	16
Unit 3A	3	2	1354	A	1
Unit 3B	3	2	1354	B	25
Unit 3C	3	2	1476	B	4

TOTAL: 315

Original Building 3D Model:



Modified Building 3D Model:



Original Building Rendering (same as current):



The Retreat at Farmington - Evergreen FARMINGTON, UTAH



COVER
8-2-22



Proposed Building Elevations:



1 SOUTH ELEVATION
SCALE 1/32"=1'-0"



2 WEST ELEVATION
SCALE 1/32"=1'-0"

MATERIAL LEGEND	
[Color swatch]	BRICK 1500X75X75
[Color swatch]	FAHSE CEMENT LAP SIDING
[Color swatch]	STUCCO

Respectfully submitted,



**Lyle Gibson
Assistant Community Development Director**

Review and concur,

**Brigham Mellor
City Manager**

Supplemental Information

- 1. Addendum to a Supplemental Development Agreement for The Trail**

AMENDMENT #1 TO
THE SUPPLEMENTAL DEVELOPMENT AGREEMENT

FOR
THE TRAIL

THIS AMENDMENT TO THE SUPPLEMENTAL DEVELOPMENT AGREEMENT FOR THE TRAIL (this “Addendum”), recorded at the Davis County Recorder’s Office on December 15, 2022, is made and entered into as of the ____ day of _____ 2025, by and between **FARMINGTON CITY**, a Utah municipal corporation, hereinafter referred to as the “City,” and **EVERGREEN DEVCO, INC.**, a California corporation, or nominee or assignee, hereinafter referred to as “Developer.”

RECITALS:

- A. Developer owns 10.21 acres of land (the “Property”), within the original boundary identified in A Supplemental Development Agreement for The Trail entered into the 6th day of December, 2022, and recorded with the Davis County Recorder’s Office on December 15, 2022 (The “Agreement”). The Amendment applies to the Property set forth in Exhibit “A” attached hereto and by this reference made a part hereof.
- B. Developer desires to modify details related to the development of the Property under the OMU zone, to be known as “THE TRAIL”.
- C. On October 4, 2022, the City approved a project master plan (the “PMP”) for the Property in accordance with Chapter 18 of the City’s zoning ordinance. The Developer desires to amend the details of the original PMP by replacing it with a new PMP included herein as Exhibit “B” and incorporated herein by reference. The purposes of this updated PMP includes, among other things, reducing the number of units in the primary apartment building and related changes to the building form.
- D. The Property is subject to the City’s Laws, including without limitation Section 11-18-140 of the City’s zoning ordinance, subject to any previously approved deviations from the city code under authorized development agreements.
- E.

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 to the following amendments to the Agreement:

1. **Incorporation of Recitals.** The above Recitals are hereby incorporated into this Amendment.

2. **Updated PMP.** The PMP identified as Exhibit B in The Agreement shall be replaced as follows:
- a. Building form, elevations, overall unit count, architecture and siting as it relates to the Property shall be amended shall be consistent with the provisions of the PMP included herein as Exhibit "B". Elevations shall generally incorporate high quality materials and finishes as shown in the PMP.
 - b. Townhomes shown on the Agreement may be developed at a future date as shown in the Agreement or in a modified location within the Property so long as the addition of townhomes does not violate building height limitations, parking requirements, or other applicable regulations or standards.
 - c. Notwithstanding the omission of trail improvements in Exhibit B, this Addendum and the updated elements of Exhibit "B" do not override prior requirements for the installation of a trail on the south side of Spring Creek identified in the First Amendment to the Development Agreement for The Trail Apartments dated August 18, 2023. The trail improvements, as previously provided, must be included in the Trail's final site plan in order to receive approval from the City.
3. **Recordation.** This Amendment shall be recorded by the City against the Property in the office of the Davis County Recorder, State of Utah, as an Amendment to the Agreement, which is recorded as Entry 3511274, Book 8154, Pages 425-465.
4. **No other changes.** The Parties agree that all other terms of the Agreement remain in effect and are not modified by this Amendment.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment by and through their respective, duly authorized representatives as of the day and year first hereinabove written.

"CITY"
FARMINGTON CITY

ATTEST:

City Recorder

STATE OF UTAH, COUNTY OF DAVIS, ss:

This instrument was acknowledged before me on this _____ day of _____, 20____ by Brett Anderson, on behalf of Farmington City Corporation.

Notary Public
My Commission Expires: _____

“DEVELOPER”

Evergreen Devco, Inc.

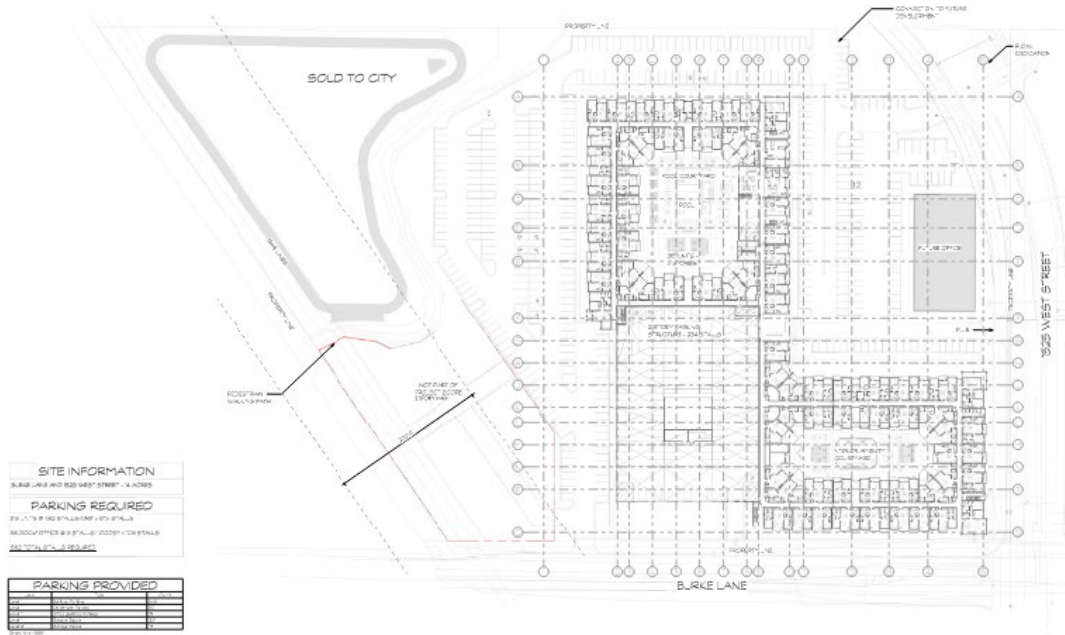
STATE OF _____, COUNTY OF _____, ss:

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____, on behalf of Evergreen Devco, Inc..

Notary Public

My Commission Expires: _____

Exhibit B



THE TRAIL
 STAFFORD NEWSPAPER II



Project Narrative

The Trail is an ultra-high end 394-unit wrap apartment community with 14 townhomes and a hotel or office building. The townhomes along the Western Rail Trail are 2-stories and the apartment height gradually increases to 4 stories along Commerce Drive (a future 5 lane road). The Trail has several large common areas with a wide variety of world class amenities including a pool and spa area, pickleball courts, fitness facility, BBQ and outdoor gathering areas. It is ideally situated along the Western Rail Trail with easy access to the to be built park. The 14.4-acre site will be subdivided into 4 parcels. Parcel 1 is 2.6 acres and is a critical area for the city to use for the water detention for the future Commerce Drive. It will be a park that will be used by trail users and nearby residents. It provides a transition buffer from the single-family homes to the higher density office to the north and east. Parcel 2 is 9.2 acres and will include the residential units. Parking will be hidden by residential units and landscaping. Parcel 3 is 2.2 acres and will most likely be a hotel or office use. Parcel 4 is 0.4 acres and will be dedicated to the city for the future construction of Commerce Avenue.

The Mixed-Use Districts Zoning Ordinance (Farmington City Zoning Regulations Chapter 18) from the Farmington City General Land Use Plan establishes development standards to provide a compatible mix of commercial and residential uses, that is consistent with the Farmington City General Plan. A mix of residential product types and floor plans is also expected. The site is well connected to the trail system, has active open space and tree lined streets. The commercial portion of the site seamlessly blends into the high-end residential units. The Trail is inline with the General Land Use Plan and the PMP Plan that was approved by City Council October 2022.

Chapter 32 of the City's Zoning Ordinance establishes the parking requirements for Farmington City. For greater than 5 units 1.6 stalls per unit and .25 guest stalls per unit is required. Most of the Trail's parking will be provided in the 4-story parking structure; the remainder will be surface parking stalls.

The utilities for the apartments and townhomes are expected to be in Burke Lane. The utilities for the hotel are expected to come from Commerce Drive.



Development | Services | Investments



Evergreen Devco Information



GROUND UP MULTIFAMILY ACTIVITY PER YEAR



Parc Midtown, Phoenix, AZ – 2017 – 305 units



Outlook DTC, Denver, CO – 2017 – 250 units

Evergreen was founded in 1974 by Bruce Pomeroy and Andrew Skipper, and currently operates offices in Phoenix, Los Angeles, Denver, and Salt Lake. We are a fully diversified real estate company with vast experience in all aspects of retail and multifamily development, asset management and leasing.

Evergreen has evolved and expanded since its founding, but the foundation built upon relationships, a disciplined approach and a commitment to excellence have remained constant.

Development | Services | Investments



Benefits to Farmington

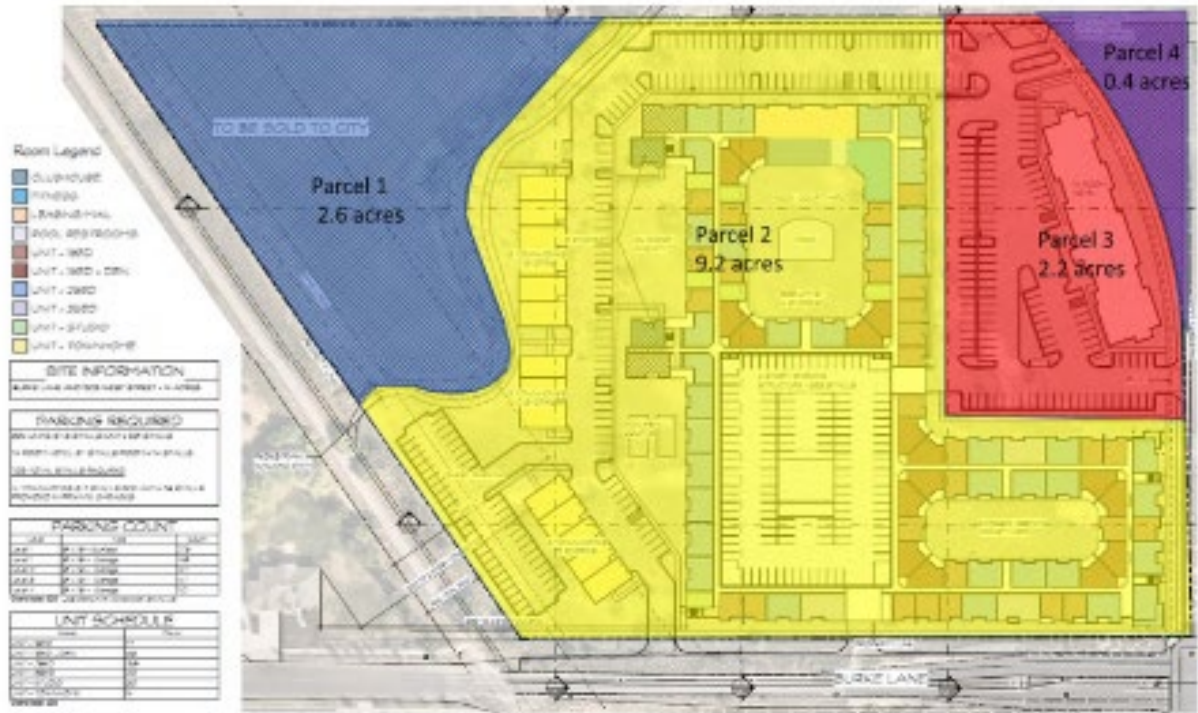
1. Public open space/playground/rest area along the trail that will never be built upon
2. A buffer between the 6-story office (90 feet tall) to the north and east and the single-family homes
3. Donate land necessary for Commerce Drive, provides a regional transportation solution
4. Water detention for Commerce Drive, provides a regional stormwater solution
5. OMU allows 6-story (90') office building with 20' setback, we propose 54' building with 200' setback
6. Creating 41 units of affordable housing



Development | Services | Investments



Subdivision



Development | Services | Investments





THE TRAIL

STATION 12/20/2018/10/18

001
E 1/3



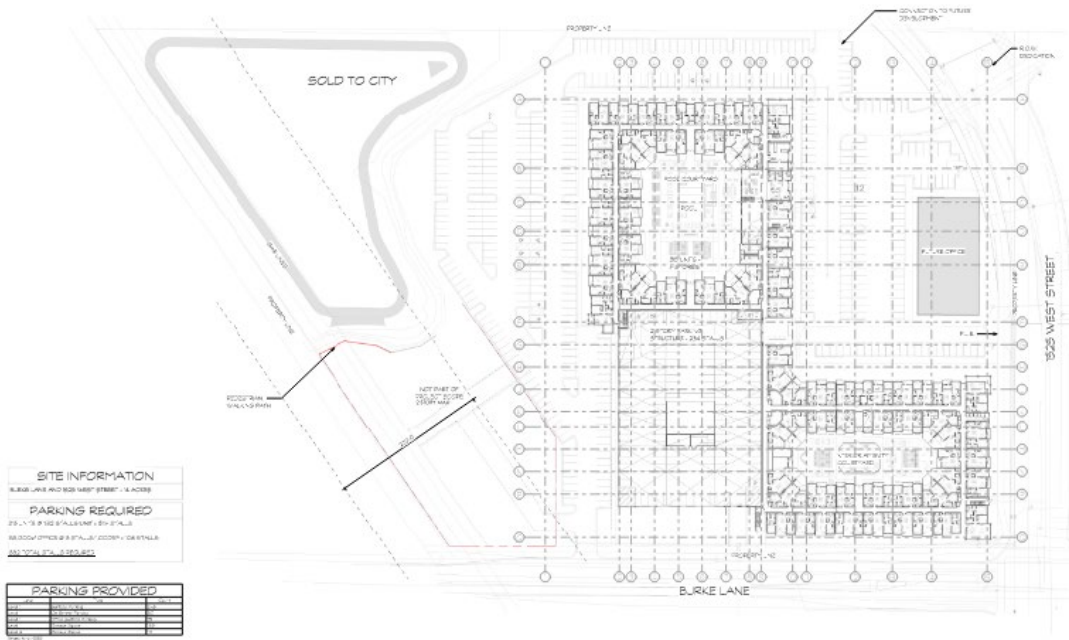


THE TRAIL

STANDARD CONTRACT DOCUMENTS

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THE TRAIL

STANDARD DEVELOPMENT PLAN





NO.	DESCRIPTION	AMOUNT	UNIT	TOTAL
1	100' LWP	100	SQ. FT.	100
2	200' LWP	200	SQ. FT.	200
3	300' LWP	300	SQ. FT.	300
4	400' LWP	400	SQ. FT.	400
5	500' LWP	500	SQ. FT.	500
6	600' LWP	600	SQ. FT.	600
7	700' LWP	700	SQ. FT.	700
8	800' LWP	800	SQ. FT.	800
9	900' LWP	900	SQ. FT.	900
10	1000' LWP	1000	SQ. FT.	1000

NO.	DESCRIPTION	AMOUNT	UNIT	TOTAL
1	100' LWP	100	SQ. FT.	100
2	200' LWP	200	SQ. FT.	200
3	300' LWP	300	SQ. FT.	300

THE TRAIL

STATION 10/20/2010/10/10/10





THE TRAIL
 17000 170th Avenue NE
 Redmond, WA 98053





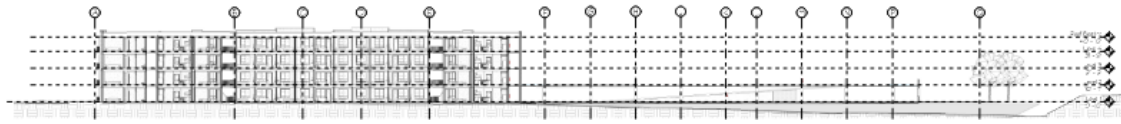
Zone	Area (sqm)	Area (sqft)	Volume (cu m)	Volume (cu ft)
1st floor	10,000	107,639	10,000	353,147
2nd floor	10,000	107,639	20,000	706,294
3rd floor	10,000	107,639	30,000	1,059,441
Total	30,000	322,917	60,000	2,118,182

Zone	Color
1st floor	Blue
2nd floor	Orange
3rd floor	Brown

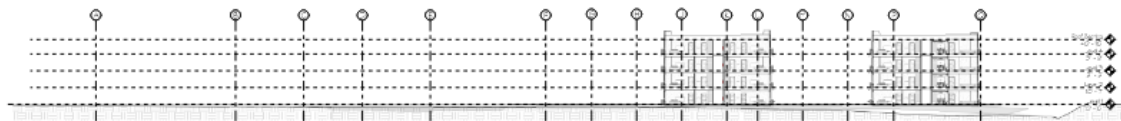
THE TRAIL

STUDIO FOR ARCHITECTURE





Section A



Section B

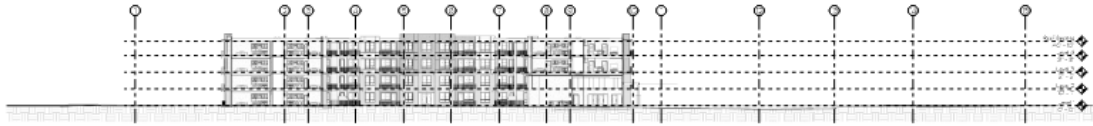
THE TRAIL

STATION CONSTRUCTION IT

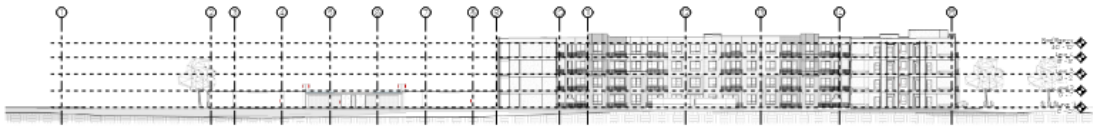
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B-1





Section C



Section D

THE TRAIL

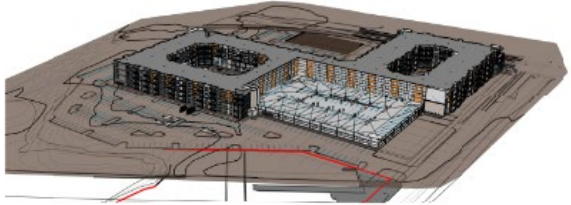
STARKO CONSTRUCTION IT

SECTION
B-1





3D View 1



3D View 2

THE TRAIL

STARKEN TECHNOLOGIES, LLC

SHK
P 11





1.1 NORTH ELEVATION



1.2 EAST ELEVATION

MATERIAL LEGEND	
[Color swatch]	1.1001
[Color swatch]	1.1002
[Color swatch]	1.1003
[Color swatch]	1.1004

THE TRAIL

STATION 102.000 - 102.000

Scale
1" = 10'





SOUTH ELEVATION



WEST ELEVATION

MATERIAL LEGEND

BRICK	WOOD PANELING
STONE	GLASS
CONCRETE	LANDSCAPING
ROOF	LANDSCAPING

THE TRAIL

STANDARD CONTRACT DOCUMENTS

Scale



CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: SIRQ CM/GC Guaranteed Maximum Price Amendment for Park

PRESENTED BY: Brigham Mellor

DEPARTMENT: City Manager

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Brigham Mellor, Farmington City Manager
Date: 01/07/2025
Subject: **SIRQ CM/GC Guaranteed Maximum Price Amendment for Park**

RECOMMENDATION(S)

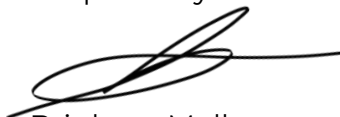
Approve the Guaranteed Maximum Price for the new park as part of the construction manager / general contractor (CM/GC) agreement with SIRQ construction approved on October 15th, 2025.

BACKGROUND

Per the terms of our manager / general contractor (CM/GC) agreement with SIRQ construction approved in the October 15th, 2025, Farmington City Council meeting, the City and the contractor were expected to come back with a “guaranteed maximum price” (GMP) before starting construction. When utilizing a CM/GC construction method, the City, contractor (SIRQ), and design consultants (Blu Line) sift through bids from sub-contractors bidding on the project. The intent is to maintain the project's integrity while reducing the cost.

In the summer of 2024, the City tried a different approach called a hard bid; not many contractors submitted bids, and total price was nearly \$20 million. The staff and design consultant scrapped the bids and tried a new, more labor-intensive, hands-on approach – the CM/CG agreement approved in October. We are delighted with the results thus far. Since October, we have been meeting weekly with SIRQ – it has been extremely valuable, and SIRQ has proved that they are the right contractor for this project. We are happy to present to the City Council **a GMP of \$12,902,012** (total construction costs of \$15.7 Million, including owner-installed products), over a 20% reduction in the GMP from the hard-bid approach used earlier this summer.

Respectfully submitted,



Brigham Mellor
City Manager



3900 North Traverse Mountain Blvd Ste 202
 Lehi, UT 84043 801.253.7825

GMP Amendment

Farmington City Park

1397 West Cook Lane, Farmington, UT
 Farmington City

1/2/2025

Description of work	Total	Bid Subcontractors
General Conditions	\$ 349,081	SIRQ
SURVEY	\$ 71,520	CMT
CLEANING	\$ 43,988	0
CONCRETE	\$ 1,263,226	Cornerstone Concrete
MASONRY	\$ 389,788	AK Masonry
STEEL	\$ 311,460	JT Steel
ROUGH CARPENTRY	\$ 104,592	RJP
DAMPPROOFING	\$ 3,585	GWC
INSULATION	\$ 28,802	USI
AIR BARRIER	See Siding	0
SIDING	\$ 330,071	Eco Exteriors
ROOFING	\$ 129,979	Utah Tile and Roof
JOINT SEALANTS	\$ 37,246	Alpine Caulking
DOORS, FRAMES, HARDWARE	\$ 46,752	LKL & Bedier
OVERHEAD DOORS	\$ 2,259	Premier
DRYWALL	\$ 14,698	Lacem
FLOORING	\$ 23,821	Stewart
PAINTING	\$ 38,091	Pro Painting
SIGNAGE	\$ 19,970	Trademark
SPECIALTIES	\$ 6,263	Specialty Company
SPLASH PAD	\$ 801,004	CEM Aquatics
BOARDWALK	\$ 833,302	Permatrack
PLUMBING	\$ 303,131	MJ/BML
HVAC	See Plumbing	See Plumbing
ELECTRICAL	\$ 1,315,838	GSL Electric
EARTHWORK	\$ 1,842,241	Cazier
ASPHALT	\$ 129,778	Morgan
SPORTS COURTS	\$ 413,438	Parkin Tennis Courts
SITE FURNISHINGS	\$ 2,363,230	Multiple
LANDSCAPING	\$ 1,478,999	Great Western
VE - SHADE CANOPIES/TRELLIS STRUCTURES	\$ (1,123,460)	VE Options Accepted
Sub Total	\$ 11,572,693	
Indirects		
Building Permit	By Owner	
Payment & Performance Bond	\$ 123,200	
General Liability	\$ 94,185	
Builders Risk	\$ 46,447	
Procure Licensing	\$ 19,134	
Contingency		
Construction Contingency	\$ 580,591	
Fee		
Preconstruction Fee	\$ 10,763	
CM Fee	\$ 455,000	
(CM Fee is a minimum fee to complete the project. If GMP amount increases due to Owner-mandated changes, a 3.95% CM fee will be added to the increase.)		
Guaranteed Maximum Price - Grand Total:	\$ 12,902,012	

Owner Furnished		
Court lighting (6 Pickleball courts and 1 basketball) Materials Delivered	\$	264,279
Playground	\$	1,500,000
Tree Structure w/ Cube Lights	\$	500,000
Water Rights	\$	-
Headwater Tree	\$	213,658
32 3000000 20 - Backless Bench (OFCI)	\$	81,180
32 3000000 21 - Backed Bench (OFCI)	\$	33,920
32 3000000 28 - Bike Rack (OFCI)	\$	3,400
32 3000000 27 - Picnic Table (OFCI)	\$	111,000
32 3000000 22 - Circular Bench (OFCI)	\$	7,000
32 3000000 23 - Adirondack Style Chair (OFCI)	\$	50,160
32 3000000 25 - Low Table (OFCI)	\$	5,420
Marquee Board	\$	2,500
32 3000000 26 - Cafe Table and Chairs (OFCI)	\$	10,020
OFOI & Building Subtotal	\$	2,782,537
Project Totals	\$	15,684,549

Clarifications:

- 1 We have included a 5'x5'x18" concrete spot footing for each site furnishing column.
- 2 Plans & Specs call for 60 mil tpo roof but specs call out 30 year warranty. We have included an 80 mil to comply with the 30 year warranty.
- 3 Equipment Hoist in the Splash Pad Equipment Pit has not been included as it is understood that this will be picked up in the owners scope.
- 4 No snow guards at metal roof are included in GMP.
- 5 The price for helical piers is assuming a depth of 21'. Additional depths required will be charged in 7' increments at \$300/ea
- 6 Assuming bolted connections for the corten steel panels at the shade canopies.
- 7 Miscellaneous stainless canopies are as designed. Value engineering options are available to the owner per the VE Log.
- 8 We have included 4,561 CY of imported topsoil for landscaping purposes.
- 9 We have included a \$25,000 allowance for dewatering of site utilities and building foundations as may be needed. Additional amounts required will be an addition to the GMP or covered by a contingency line item.
- 10 Project Substantial Completion Date is October 17, 2025 provided that the Date of Commencement is Jan 15, 2025.
- 11 Owner must accept and approve this GMP Amendment by 1/13/2025 to keep the Substantial Completion date of 10/17/2025.
- 12 SIRQ reserves the right to use alternate subcontractors than those listed to deliver the GMP.

SIRQ Signature: _____

Owner Signature: _____

GMP is based on the following Drawings, Specification and Addenda.

Farmington City Park Construction Drawings/Specification Index

Construction Drawings

Sheet Name	Date
Bid Set Drawings	3/6/2024
Cover Sheet	3/6/2024
L001 - SHEET INDEX	3/6/2024
LD100 - OVERALL DEMOLITION PLAN	3/6/2024
LS100 - OVERALL SITE PLAN	6/11/2024
LS101 - SITE PLAN	6/11/2024
LS102 - SITE PLAN	6/11/2024
LS103 - SITE PLAN	6/11/2024
LS104 - SITE PLAN	6/11/2024
LS105 - SITE PLAN	6/11/2024
LS401 - SITE PLAN ENLARGEMENTS	6/11/2024
LS402 - SITE PLAN ENLARGEMENTS	6/11/2024
LS501 - SITE PLAN DETAILS	6/11/2024
LS502 - SITE PLAN DETAILS	3/6/2024
LS503 - SITE PLAN DETAILS	3/6/2024
LS504 - SITE PLAN DETAILS	11/24/2024
LS505 - SITE PLAN DETAILS	6/11/2024
LS506 - SITE PLAN DETAILS	3/6/2024
LS507 - SITE PLAN DETAILS	3/6/2024
C001 - GENERAL NOTES	3/20/2024
C100 - OVERALL SITE UTILITY PLAN	5/1/2024
C101 - SITE UTILITY PLAN	3/20/2024
C102 - SITE UTILITY PLAN	6/14/2024
C103 - SITE UTILITY PLAN	6/14/2024
C104 - SITE UTILITY PLAN	4/29/2024
C105 - SITE UTILITY PLAN	4/29/2024
C200 - OVERALL GRADING AND DRAINAGE PLA	5/1/2024
C201 - GRADING AND DRAINAGE PLA	6/14/2024
C202 - GRADING AND DRAINAGE PLA	6/14/2024
C203 - GRADING AND DRAINAGE PLA	6/14/2024
C204 - GRADING AND DRAINAGE PLA	6/14/2024
C205 - GRADING AND DRAINAGE PLA	6/14/2024
C300 - EROSION CONTROL PLAN	5/1/2024
C400 - DETAILS	6/14/2024
C401 - DETAILS	3/20/2024
SS001 - GENERAL STRUCTURAL NOTES	3/6/2024
SS002 - SPECIAL INSPECTIONS	3/6/2024
SS003 - STRUCTURAL SCHEDULES & TYPICAL DETAILS	3/6/2024
SS101 - OVERALL SITE PLAN	3/6/2024
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 **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 twenty-fifth 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)

New 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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Addenda

ADDENDUM #1/RFI RESPONSE #1

Date

11/26/2024

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)

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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.)

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:

Anticipated 12/9/2024. Date to be finalized in the GMP Amendment

.3 Substantial Completion date or dates:

Anticipated 9/15/2025. Date to be finalized in the GMP Amendment

.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.

§ 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.

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.)

N/A

§ 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

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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.

§ 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. Equitable adjustment under this section shall only be available to Construction Manager if delays are due to Owner's actions and shall be limited to the actual verifiable costs during the delay

§ 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 within thirty (30) days of presentation of the Construction Manager's invoice to the owner. After thirty (30) days, interest will begin to accrue against the unpaid balance at 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 APR

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) of the Cost of the Work

§ 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) of the cost of the added scope of Work

§ 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.)

\$500/Day. Dates of Commencement and Completion to be determined in the GMC Amendment

§ 6.1.7 Other:

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User Notes:

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

Shared Savings Provision - The resulting savings of 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.

§ 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.

§ 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 (Construction Manager's staff, site office, temp toilets etc.), 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 9.10.3 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.

§ 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% APR

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 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.)

This fee is the cost of two (2) months of General Conditions to aid in the reassigning the project team to other projects. This will equate to approximately \$80,000.

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

Init.

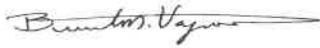
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager's bid or proposal, portions of Addenda relating to bidding or proposal 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)



Approved as to form

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 11:45:22 ET on 11/01/2024.

PAGE 1

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

...

Farmington City
160 South Main St.
Farmington, UT 84025

...

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

...

New 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

...

Anticipated 12/9/2024. Date to be finalized in the GMP Amendment

...

Anticipated 9/15/2025. Date to be finalized in the GMP Amendment

...

N/A

...

N/A

...

N/A

...

Paul Roberts
Russell Coons
160 South Main St.
Farlington, 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

N/A

...

§ 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.

PAGE 8

§ 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. Equitable adjustment under this section shall only be available to Construction Manager if delays are due to Owner's actions and shall be limited to the actual verifiable costs during the delay

...

§ 5.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid (~~ 30) days after the invoice date shall bear interest within thirty (30) days of presentation of the Construction Manager's invoice to the owner. After thirty (30) days, interest will begin to accrue against the unpaid balance at 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 APR

...

3.25 % - (three point two five percent) of the Cost of the Work

...

3.95% - (three point nine five percent) of the cost of the added scope of 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.

...

\$500/Day. Dates of Commencement and Completion to be determined in the GMC Amendment

PAGE 12

Shared Savings Provision - The resulting savings of 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 SRO 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 (Construction Manager's staff, site office, temp toilets etc..), Insurance, Bonds, Contractor Fee

...

§ 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 9-9.10.3 of AIA Document A201-2017.

PAGE 19

Thirteen % 13% APR

PAGE 20

Litigation in a court of competent jurisdiction

PAGE 21

This fee is the cost of two (2) months of General Conditions to aid in the reassigning the project team to other projects. This will equate to approximately \$80,000.

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.

...

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(1985234807)

§ 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.

PAGE 23

§ 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:

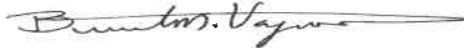
PAGE 24

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 11:45:22 ET on 11/01/2024 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)

Bret M. Vargason

(Title)

Operations Manager

(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

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES

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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.

§ 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.

§ 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.

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- § 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.

§ 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,

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.

§ 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.

§ 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.

§ 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;

- .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

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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.

§ 12.2.2 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.

§ 12.2.3 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

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.

§ 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.

§ 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.

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User Notes:

(1232694585)

§ 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

CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Transfer of Development Rights Agreement with CW
for the Farmstead Subdivision

PRESENTED BY: Lyle Gibson

DEPARTMENT: Community Development

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 1/7/2025
Subject: Farmstead Subdivision TDR Agreement.

RECOMMENDED MOTION

Move that the City Council approve the Agreement with Cole West allowing the transfer of up to 17 TDR lots to the Farmstead Subdivision.

Findings:

- 1. The agreement contemplates a value based on a previously reviewed understanding of profit to the developer for the additional lots.**
- 2. The additional lots in the subdivision are compatible with other lots in the AE zoning district.**

BACKGROUND

Cole West is proposing a new residential development on surplus UDOT property they purchased just west of 1525 West street on the north side of the West Davis Corridor.

At just over 15 acres, the developer is seeking to build at just under 2 units per acre on property they now own. Different mechanisms have been explored to consider the 30 total units desired by the developer including moderate income housing, open space, and a combination of benefits. Ultimately the consideration of TDRs seems the most straight forward with the city's ordinances and may help the city in funding current projects.

The base number of lots allowed per the yield plan is 13 at 1 acre each. To achieve the 30 total lots desired, 17 extra lots beyond what they would otherwise be permitted to subdivide may be purchased. They are seeking approval of the attached agreement allowing the purchase of 17 transfer lots through the city's TDR program. The 17 lots represent lots which could have been developed on the city's regional park site. Money used to purchase the rights to develop these lots can then be used for parks.

The developer has provided staff with a proforma showing the financial benefit to their project of having the additional lots. After reviewing this proforma staff has negotiated the TDRs. The TDR per lot is \$19,444.44.

Respectfully submitted,



Lyle Gibson
Assistant Community Development Director

Review and concur,



Brigham Mellor
City Manager

Supplemental Information
a. TDR Agreement.

DRAFT

TDR AGREEMENT FARMSTEAD SUBDIVISION

THIS AGREEMENT is made and entered into this ____ day of _____, 2025, by and between CW Farmstead, LLC., (hereinafter “Developer”) and FARMINGTON CITY, a Utah Municipal Corporation (hereinafter the “City”).

RECITALS

WHEREAS, Developer is seeking to subdivide property located within Farmington City, which property is located at approximately 1700 West and 650 South, containing approximately 15.50 acres (Davis County Tax I.D. #08-081-0125, more particularly described in Exhibit “A”, attached hereto and incorporated herein by this reference (hereinafter the “Property”); and

WHEREAS, Developer’s Property is zoned AE (Agriculture Estates); and Developer desires to develop a subdivision containing 30 lots, known as Farmstead, and the City is considering a plat (the “Plat”) for the same, which is set forth herein as Exhibit “B”, attached hereto and by this reference made a part hereof (the “Project”); and

WHEREAS, Owner is proposing that 17 of the 30 lots shall consist of transfer lots, or Transfer of Development Right (“TDR”) lots; and

WHEREAS, Section 11-28-240 of the City’s Zoning Ordinance enables the transaction of TDR’s, at the sole discretion of the City, and the City desires to approve such transfer;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. TDR. Prior to the execution of this agreement, the City created a sending zone on property owned by the City at the location of its regional Park at approximately 200 South 650 West (Davis County Tax I.D. #08-076-0116) enabling the exchange of TDR lots, and the receiving zone is the Property referenced herein.
2. TDR Value and Payment. The value of each TDR is \$19,444.44 the total value of which TDR’s is \$330,555.48 (the “TDR Amount”). The owner must pay the TDR Amount to the City prior to the recordation of the final plat (the “Final Plat”) of the Project.
3. Default. This agreement becomes null and void and hereby terminated in the event the Final Plat approval is not received or the City’s approval expires—the timing of each respective expiration period is set forth in the City’s Ordinance.
4. Binding Effect. The covenants contained within this Agreement shall run with the land, shall be recorded with the Davis County Recorder’s Office, and shall be binding upon the officers, employees, agents, representatives, successors in interest and the assigns of the parties.

5. Assignment. Owner shall not assign this Agreement or any rights or interests herein without the prior written consent of the City, which consent shall not be unreasonably withheld.

6. Notice. Any notices, requests and/or 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 its address shown below:

To the Developer:

To the City:

Farmington City
Attention: City Manager
160 South Main
P.O. Box 160
Farmington, Utah 84025

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

7. Amendments. Any amendments to this Agreement must be in writing and signed by the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first hereinabove written.

"CITY"
FARMINGTON CITY

By _____
Brett Anderson, Mayor

ATTEST:

DeAnn Carlile, City Recorder

“Developer”

By: _____

CITY ACKNOWLEDGEMENT

STATE OF UTAH)

:ss.

COUNTY OF DAVIS)

On the ____ day of _____, _____, personally appeared before me _____, who being by me duly sworn, did say that he is the Mayor of Farmington City, a municipal corporation, and that said instrument was signed in behalf of the City by authority of its governing body and said Mayor acknowledged to me that the City executed the same.

NOTARY PUBLIC

My Commission Expires:

Residing at:

DEVELOPERS ACKNOWLEDGEMENT

STATE OF UTAH)

:ss.

COUNTY OF DAVIS)

On the ____ day of _____, _____, personally appeared before me _____, who being by me duly sworn, did say that they are the record property owner of the subject property and acknowledged to me that they executed the foregoing Agreement.

NOTARY PUBLIC

My Commission Expires:

Residing at:

Exhibit "A"

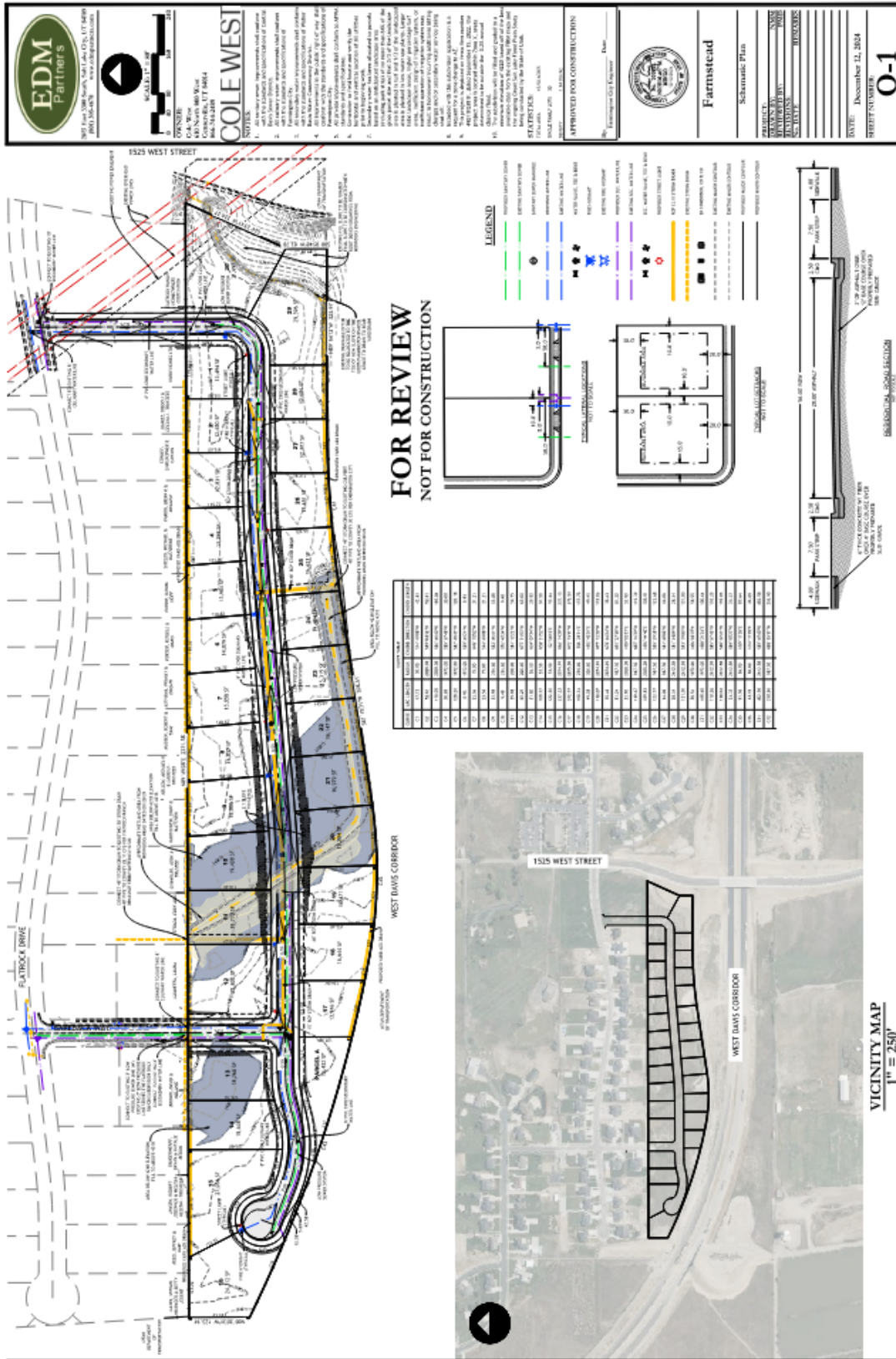
Property Description

Address: Approximately 1700 West and 650 South

Parcel ID: 08-081-0125

Legal Description:

A TRACT OF LAND BEING PART OF UDOT PARCELS 9999:978:ST & 9999:978 SIT IN THE NW 1/4 NW 1/4 & THE NE 1/4 NW 1/4 & THE SW 1/4 NW 1/4 & THE SE 1/4 NW 1/4 OF SEC 26-T3N-R1W, SLB&M. THE BNDRY OF SD TRACT OF LAND ARE DESC AS FOLLOWS: BEG AT THE INTERSECTION OF THE N'LY BNDRY LINE OF SD ENTIRE TRACT & THE N'LY HWY R/W LINE OF SR-67 WEST DAVIS HWY, KNOWN AS PROJECT NO. S-R199(229), WH PT IS 120.78 FT W ALG THE SEC LINE & 1141.50 FT S & 130.73 FT W FR THE N 1/4 COR OF SD SEC 26; & RUN ALG SD N'LY R/W LINE THE FOLLOWING EIGHT (8) COURSES & DISTANCE: (1) TH S 24°34'33" W 224.28 FT; (2) TH S 00°16'40" W 83.78 FT; (3) TH N 89°43'20" W 323.97 FT TO A PT OF CURVATURE OF A CURVE TO THE LEFT WITH A RADIUS OF 2612.50 FT; (4) TH W'LY ALG SD CURVE WITH AN ARC LENGTH OF 402.98 FT, CHORD BEARS S 85°51'32" W 402.58 FT; (5) TH S 81°26'23" W 398.61 FT TO A PT OF CURVATURE OF A CURVE TO THE RIGHT WITH A RADIUS OF 987.50 FT; (6) TH W'LY ALG SD CURVE WITH AN ARC LENGTH OF 338.55 FT, CHORD BEARS N 88°44'19" W 336.90 FT TO A PT OF CURVATURE OF A COMPOUND CURVE TO THE RIGHT WITH A RADIUS OF 2874.99 FT; (7) TH NW'LY ALG SD CURVE WITH AN ARC LENGTH OF 763.48 FT, CHORD BEARS N 71°18'15" W 761.24 FT; (8) TH N 00°09'39" W 123.14 FT TO SD N'LY BNDRY LINE OF SD TRACT; TH E 2271.57 FT ALG SD N'LY BNDRY LINE TO THE POB. (NOTE: ROTATE ABOVE BEARINGS 00°09'39" CLOCKWISE TO EQUAL HWY BEARINGS OF PROJECT NO. S-R199(229)). CONT.15.496 ACRES



CITY COUNCIL AGENDA



BUSINESS

AGENDA TITLE: Zone Text Amendment for Parking Structure Standards

PRESENTED BY: Lyle Gibson

DEPARTMENT: Community Development

MEETING DATE: January 7, 2025

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Lyle Gibson – Assistant Community Development Director
Date: 1/7/2025
Subject: An amendment to Chapter 11-32, OFF STREET PARKING, LOADING AND ACCESS, of Title 11, ZONING REGULATIONS To establish standards for parking structures. (ZT-3-23)

RECOMMENDED MOTION

Move that the City Council approve the zone text amendment to Chapter 11-32 establishing design standards for parking structures.

Findings:

1. Parking structure standards will ensure that structures are built to function adequately for users preventing parking shortages which may negatively impact projects long term viability and neighboring uses.
2. Reasonable design standards will foster the vision of the community and aid in the creating of site which are adaptable, inviting to users, and visually enhance the community.

BACKGROUND

Currently the city has very little structured parking. In consultation with peer cities that have considerable experience with more intense development, Planning Staff has been advised to have regulations in place which more specifically address how parking structures should be designed and built in preparation of anticipated development. The proposed ordinance includes elements found to be important by other municipalities which ensure a high functioning parking structure with improved aesthetics.

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. 2025- ____

AN ORDINANCE AMENDING SECTION 11-32-070, PARKING DEVELOPMENT, STANDARDS AND MAINTENANCE, OF CHAPTER 11-32, OFF STREET PARKING, LOADING AND ACCESS, OF TITLE 11, ZONING REGULATIONS TO ESTABLISH DESIGN STANDARDS FOR PARKING STRUCTURES.

WHEREAS, Farmington City has not previously established standards specific to parking structures; and

WHEREAS, it is anticipated that future development will more frequently include structured parking to support higher intensity of development; and

WHEREAS, the City desires to see parking structures which functionally and aesthetically compliment the city's built environment; 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 11-32-070 of the Farmington City Zoning Ordinance is 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 7th day of January, 2025.

FARMINGTON CITY

Brett Anderson, Mayor

ATTEST:

DeAnn Carlile, City Recorder

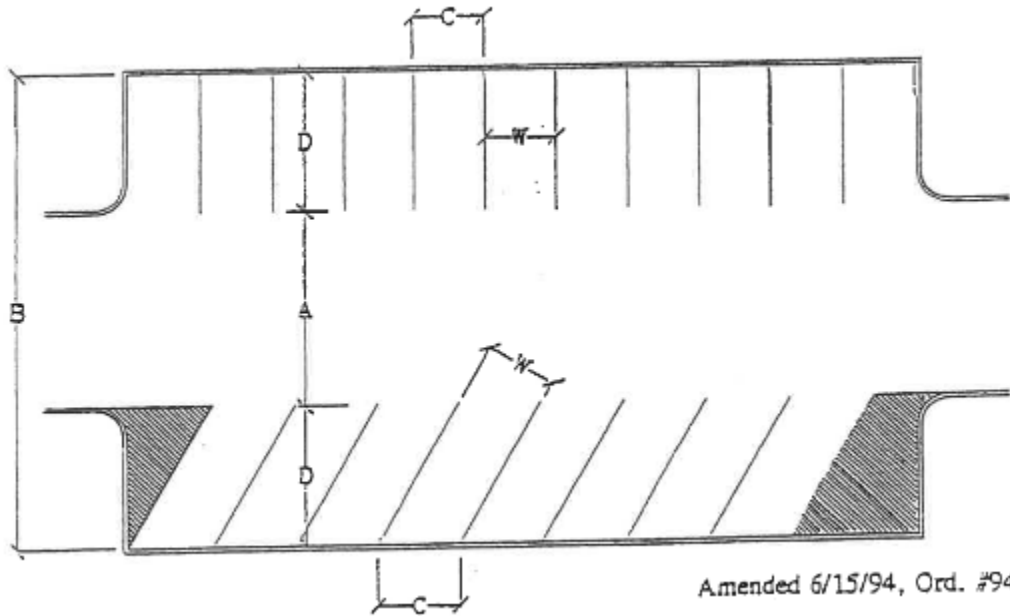
Exhibit “A”

11-32-070: PARKING DEVELOPMENT, STANDARDS AND MAINTENANCE:

- A. Location: Sites shall be designed to transition easily from surface to structured parking to accommodate future infill development.
- B. Size: Each off-street parking space shall be not less than nine feet by eighteen feet (9'x18') except as otherwise provided.
- C. Accessible Parking: All public parking areas shall provide spaces complying with standards for quantity and design established in the federal Americans with disabilities act.
- D. Surfacing: All public parking areas, private residential parking areas for five (5) or more vehicles, and private industrial parking areas with three (3) or more parking spaces (including driveways and loading spaces) shall be paved with asphalt or concrete, shall have appropriate bumper guards so that cars do not project across sidewalks or property lines, and shall be marked so as to provide the orderly arrangement and movement of vehicles.
- E. Grading: All parking areas shall be graded for proper drainage as approved by the city engineer.
- F. Curb And Gutter: All parking areas as described in subsection C of this section shall be finished around the perimeter with concrete curb and gutter.
- G. No Backing Onto Public Streets: All parking areas described in subsection C of this section shall be designed so that vehicles would not be required to back out into a public street.
- H. Screening And Landscaping: All public and private parking areas, except single-family and two-family dwellings, shall be effectively screened by solid fencing or landscaping. The screening and landscaping plan shall be approved by the planning commission in a site plan review.
- I. Lighting: Lighting used to illuminate any off-street parking area shall be designed to direct light away from adjoining property in residential districts.
- J. Design Of Parking Area: Dimensions of all parking lots shall be in compliance with the minimum standards illustrated by the following table and diagram:

MINIMUM DIMENSIONS IN PARKING LOT DESIGN

	W Stall Width	C Curb Length	D Stall Depth	A Aisle Width	B Bay Width
90° parking	9 feet	9 feet	18 feet	24 feet	60 feet
60° parking	9 feet	10.4 feet	16 feet	23 feet	55 feet
45° parking	9 feet	12.7 feet	13 feet	22 feet	48 feet



K. Parking Structure Design Standards.

1. Required Structured Parking.

a) Office and retail uses with more than 250 proposed parking stalls which are over parked at a rate of one and a half times or greater than the number of required stalls (not calculating for potential reductions) shall utilize structured or underground parking for a minimum of 50 percent of the proposed parking to prevent excessive areas of surface parking.

2. Location of Structured Parking. Structured parking shall be located such that they are screened or have minimal visibility from streets other than freeways.

3. Parking Structure Design.

a) Parking structures shall be designed with similar components and materials as the principal onsite building. Exterior materials shall consist of concrete, masonry, rock, glass, or other materials approved by the Planning Commission.

b) It is highly encouraged to utilize horizontal beam construction that avoids placing support columns or walls adjacent to parking stalls and aisles.

c) Parking Stall Size Reductions:

(1) Low Parking Turnover Uses.

Uses with a low turnover parking rate including office, residential, schools, and other uses as approved by the Planning Commission. These uses may be allowed to have as many as 10% of the required stalls provided with reduced parking stall dimensions as defined in this section. Parking stall dimensions may be reduced to eight and a half feet in width and in the case a stall has two feet of overhang space, a stall may be reduced to 16 feet in length. Stalls adjacent to a support column or wall shall be a minimum of 11 feet in width.

(2) High Parking Turnover Uses.

Uses with a high turnover parking rate including retail, restaurants, movie theaters, and medical and dental offices. These uses shall maintain standard dimensions of nine feet by 18 feet unless otherwise approved by the City Engineer.

d) In cases where a site is sloped, parking structures shall take advantage of the topography by retaining the slope with the structure. Where possible the structure shall not be visible from the public street.

e) Exterior facades of a parking structure shall provide a variation of materials, wall projections, or change in architecture every 100 feet.

f) Parking structures shall be designed to allow natural light and public visibility to improve safety.

g) Parking structure stairways shall be covered. It is encouraged to enclose the stairway with architectural elements that relate to the principal building.

h) Screening.

(1) Transformers, ventilation shafts, elevator equipment, and other equipment shall be screened from public view by landscaping, screen walls, or other features incorporated into the design of the structure.

i) Landscaping.

(1) Parking structures shall be landscaped around the base with trees and shrubs. Landscaping shall be provided either on the top level of the structure with the use of planter beds or potted plants, or with the use of green walls or trellised plants.

CITY COUNCIL AGENDA



SUMMARY ACTION

1. Resolution appointing Elise Allred & Leslie Humphries to the Historic Preservation Commission
2. Resolution appointing Spencer Klein to serve as a Planning Commissioner.
3. Resolution appointing Scott Behunin to serve as an Alternate Member of the Planning Commission and reappointing Brian Shepard as an Alternate for an additional year.
4. Resolution appointing Council Members to various Committees and Boards
5. Approval of Minutes 12.17.24

CITY COUNCIL STAFF REPORT

To: Honorable Mayor and City Council

From: David Petersen, Community Development Director

Date: January 7, 2025

SUBJECT: **Appointment of Elise Allred and Leslie Humphries to the Historic Preservation Commission.**

RECOMMENDATION

Move that the City Council approve the enclosed resolution consenting to the proposed appointment of Elise Allred and Leslie Humphries to serve as members of the Farmington City Historic Preservation Commission.

BACKGROUND

The Historic Preservation Commission serves the purpose of encouraging and fostering the preservation of the city's historical, architectural and archaeological resources. Elise and Leslie have been recommended to fill vacancies on the Historic Preservation Commission. Members serve for a term of 4 years.

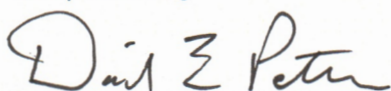
Per [Farmington City Code 3-3-040](#), Commission members shall be appointed by the mayor with the advice and consent of the City Council.

The Mayor, Chair and Vice-Chair of the Historic Preservation Commission, and Community Development Director have met with the candidates and are recommending their appointments.

SUPPLEMENTARY INFORMATION

1. Resolution to Appoint Historic Preservation Commission members.

Respectively Submitted



David Petersen
Community Development Director

Review and Concur



Brigham Mellor
City Manager

RESOLUTION 2025 -

A RESOLUTION OF THE CITY COUNCIL APPOINTING ELISE ALLRED AND LESLIE HUMPHRIES TO SERVE AS A MEMBERS OF THE FARMINGTON CITY HISTORIC PRESERVATION COMMISSION (FCHPC).

WHEREAS, the Mayor of Farmington City shall appoint members of the FCHPC with the consent of the City Council; and

WHEREAS, Elise Allred and Leslie Humphries have demonstrated their interest in serving the community and have been interviewed by the City Mayor, FCHPC Chair and Vice-Chair, and Planning Staff and found to be qualified to serve as members of the FCHPC; and

WHEREAS, the City Council desires now to appoint Ms. Allred and Ms. Humphries to serve as FCHPC members for a full term of up to 4 years;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, AS FOLLOWS

Section 1. Appointment. Elise Allred and Leslie Humphries are hereby appointed to serve as members of the Farmington City Historic Preservation. Ms. Allred and Ms. Humphries shall serve at the pleasure of the City Council and their appointments shall be subject to the ordinance, rules and regulations of Farmington City.

Section 2. Term. In accordance with Section 3-3-040 of the Farmington City Ordinances, the appointment shall be for a full term. This term is due to expire 12/31/2028 and may be extended upon reappointment of successive terms.

Section 3. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, THIS 7TH DAY OF January 2025.

ATTEST:

FARMINGTON CITY

DeAnn Carlile, City Recorder

By: _____
Brett Anderson, Mayor

CITY COUNCIL STAFF REPORT

To: Mayor and City Council
From: Dave Petersen – Community Development Director
Date: January 7, 2025
Subject: Resolutions of The City Council of Farmington City Appointing Individuals to Serve On the Farmington City Planning Commission.

RECOMMENDED MOTION

Move that the City Council approve the enclosed resolutions consenting to the appointment of Spence Klein to serve a full term as a member of the Farmington City Planning Commission and to re-appoint and appoint Brian Shepherd and Scott Behunin to serve as alternate members of the Farmington City Planning Commission.

BACKGROUND

John David Mortensen's term of service ended on December 31, 2024. During the last year Mr. Klein served as an alternative and it is proposed that he fill the vacancy created by the departure of Mr. Mortensen.

Also, the Planning Commission, as of January 1, 2025, is currently operating without any alternate members. The ordinance gives the city the option to have as many as two Planning Commission alternates who serve in the absence of a regular appointed member. The Mayor desires to see participation of alternate members and Brian Shepard Shepherd, who served as alternative last year, and Scott Behunin are being presented to the City Council for their consent to serve as Alternates.

Per [Farmington City Code 11-3-020](#), Planning Commission alternate members shall be appointed by the mayor with the advice and consent of the city council.

Having individuals serve as alternate members better ensures full participation or at least a quorum at Planning Commission meetings and allows for additional input and feedback on issues even if the alternate member may not be voting. Additionally, those serving as an alternate are often trained and prepared to potentially fill a regular role on the Planning Commission in the event of an open position.

SUPPLEMENTAL INFORMATION

- 1. Resolution to Appoint a Planning a Commission Member.
- 2. Resolution to Appoint Alternate Planning Commission Members.

Respectfully Submitted



David Petersen
Community Development Director

Concur



Brigham Mellor
City Manager

CITY COUNCIL RESOLUTION NO. 2025-

**A RESOLUTION OF THE CITY COUNCIL OF FARMINGTON CITY APPOINTING
AN INDIVIDUAL TO SERVE AS A MEMBER OF THE FARMINGTON CITY
PLANNING COMMISSION.**

WHEREAS, the Mayor of Farmington City shall appoint members of the Planning Commission with the consent of the City Council; and

WHEREAS, Spencer Klein has diligently served the past year as an Alternate member of the Planning Commission and has demonstrated interest in further serving the community and has been interviewed by the City Mayor and Planning Staff and found to be qualified to serve as a Planning Commission member; and

WHEREAS, the City Council desires now to appoint Mr. Klein to serve as a Planning Commission member for a full term of up to 4 years;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
FARMINGTO CITY, STATE OF UTAH, AS FOLLOWS**

Section 1. Appointment. Spencer Klein is hereby appointed to serve as member of the Farmington City Planning Commission. Mr. Klein shall serve at the pleasure of the City Council and his appointment shall be subject to the ordinance, rules and regulations of Farmington City.

Section 2. Term. In accordance with Section 11-3-020 of the Farmington City Ordinances, the appointment shall be for a full term. This term is due to expire 12/31/2028 and may be extended upon reappointment of successive terms.

Section 3. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY,
STATE OF UTAH, THIS 7th DAY OF January 2025.**

ATTEST:

FARMINGTON CITY

DeAnn Carlile, City Recorder

By: _____
Brett Anderson, Mayor

CITY COUNCIL RESOLUTION NO. 2025-

A RESOLUTION OF THE CITY COUNCIL OF FARMINGTON CITY APPOINTING BRIAN SHEPHERD AND SCOTT BEHUNIN TO SERVE AS ALTERNATE MEMBERS OF THE FARMINGTON CITY PLANNING COMMISSION.

WHEREAS, according to the Farmington City Code of Ordinances, Two (2) [Planning Commission Alternates] may be appointed by the Mayor with the advice and consent of the City Council; and

WHEREAS, an alternate member may take the place and serve in the same capacity as a regular member in the event that a regular member of the Planning Commission is absent from a meeting; and

WHEREAS, after consideration of potential candidates, the Mayor has recommended reinstating a current Alternate and appointing a new individual for service as Planning Commission Alternates.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, AS FOLLOWS

Section 1. Appointment. Brian Shepherd and Scott Behunin are hereby appointed to serve as alternate members of the Farmington City Planning Commission. These appointed individuals shall serve at the pleasure of the City Council and their appointment shall be subject to the ordinance, rules and regulations of Farmington City.

Section 2. Term. In accordance with Section 11-3-020 of the Farmington City Ordinances, the appointment shall be for a term of 1 year to expire on 12/31/2025. This term may be renewed annually at the discretion of the mayor, with the advice and consent of the city council.

Section 3. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 4. Effective Date. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, THIS 7th DAY OF JANUARY 2025.

ATTEST:

FARMINGTON CITY

DeAnn Carlile
City Recorder

By: _____
Brett Anderson, Mayor

FARMINGTON, UTAH

RESOLUTION NO. 2025- 01

A RESOLUTION PROVIDING FOR THE APPOINTMENT OF CITY COUNCIL MEMBERS TO AND DELEGATING AUTHORITY TO VARIOUS COUNCIL COMMITTEES, ASSIGNMENTS AND PROVIDING FOR THE APPOINTMENT OF CERTAIN INDIVIDUALS TO REPRESENT FARMINGTON CITY ON VARIOUS BOARDS, COUNCILS AND COMMISSIONS

WHEREAS, pursuant to Section 2-1-170 of the Farmington City Municipal Code, the City Council may from time to time delegate portions of its authority to Council Committees and/or assignments and appoint at least two members of the City Council to serve on such Committees; and

WHEREAS, pursuant to the provisions of Chapter 3 of Title 2 of the Farmington City Municipal Code, the Mayor has the right to appoint, with advice and consent of the City Council, persons to fill offices on various commissions, committees and entities; and

WHEREAS, the Mayor desires to make appointments as herein set forth and the City Council desires to consent to such appointments and to take such additional actions as are set forth herein;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF FARMINGTON CITY, STATE OF UTAH, AS FOLLOWS:

Section 1. Appointments to Council Committees and Assignments. The following appointments are hereby made by the Mayor to the Council Committees and assignments and are hereby consented to and approved by the City Council:

(a) Personnel/Problems Resolution Committee: **Mayor Anderson, Alex Leeman
Amy Shumway**

(b) Special Events Liaisons: **Mayor Anderson, Alex Leeman**

(c) Development Review Committee/Economic Development: **Mayor Anderson,
Melissa Layton, Roger Child**

(d) Historic Preservation Liaison: **Melissa Layton**

(e) Youth City Council Liaisons: **Scott Isaacson, Amy Shumway**

- (f) Parks, Recreation, Arts and Trails Liaisons: **Scott Isaacson, Melissa Layton**
- (g) Fundraising Committee Liaison: **Scott Isaacson**
- (h) Community Council Liaisons: **Mayor Anderson, Scott Isaacson**

Section 2. Appointments by the Mayor and Consent of City Council. The Mayor hereby appoints and the City Council hereby consents to the following:

Roger Child as Farmington City representative to the Davis Chamber of Commerce.

Mayor Anderson, Amy Shumway and David Petersen as Farmington City representatives to the Utah League of Cities & Towns.

Section 3. City Appointments to Special District Board. It is hereby confirmed and ratified that the following-named individual has been appointed as a member of the following special district board with term as indicated:

Scott Isaacson, Davis County Mosquito Abatement Board, January 2024 through December 2025.

Mayor Brett Anderson, Wasatch Integrated Waste Board, January 2024 through December 2025.

Section 4. Mayor Pro Tempore. In accordance with Section 10-3b-302(2) of the *Utah Code Annotated*, Council Member **Alex Leeman** has been elected by the City Council to serve as *Mayor Pro Tempore* for the period commencing January 1, 2024 through December 31, 2025.

Section 5. Right to Modify Appointments. The City of Farmington, acting by and through its duly-authorized Mayor and City Council, may change and/or terminate any appointment from time to time as deemed in the best interests of the City.

Section 6. Severability. If any section, part or provision of this Resolution is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other portion of this Resolution, and all sections, parts and provisions of this Resolution shall be severable.

Section 7. Effective Date. This Resolution shall become effective immediately upon its passage.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF FARMINGTON CITY,
STATE OF UTAH, THIS 7th DAY OF JANUARY, 2025.**

FARMINGTON CITY

ATTEST:

DeAnn Carlile
City Recorder

By: _____
Brett Anderson
Mayor

FARMINGTON CITY – CITY COUNCIL MINUTES

December 17, 2024

WORK SESSION

Present:

*Mayor Brett Anderson,
City Manager Brigham Mellor,
Mayor Pro Tempore/Councilmember Alex
Leeman,
Councilmember Roger Child,
Councilmember Scott Isaacson,
Councilmember Melissa Layton,
Councilmember Amy Shumway,
City Attorney Paul Roberts,
City Recorder DeAnn Carlile,*

*Recording Secretary Deanne Chaston,
Community Development Director Dave
Petersen,
Assistant Community Development
Director/City Planner Lyle Gibson,
Assistant City Manager/City Engineer Chad
Boshell,
Finance Director Greg Davis, and
City Lobbyist Eric Isom.*

Mayor **Brett Anderson** called the work session to order at 6:07 p.m.

LEGISLATURE PREVIEW WITH PRESIDENT STUART ADAMS

Utah State Senate President **Stuart Adams** provided a legislative preview to the City Council. Regarding the transportation utility fee, **Adams** said a fee is a tax on people. He ran a bill in 2015 for housing protection for the LGBTQ community. It also provided tax protection for religious organizations. It is a long process to get those protections in the statute. Some across the United States want to remove those tax exemptions for religious organizations. It is an acute concern to him. In his mind, a hole in the dam can erode it so the whole thing comes down. Having Utah be the example could cause the whole dam to come down. He would support maintaining religious tax exemptions and will let religious organizations speak for themselves. He is not O.K. with exemptions for other nonprofits.

City Manager **Brigham Mellor** said that could affect imposing a transportation utility fee on the University of Utah Hospital, Intermountain Health Care, and public schools in the City. **Mellor** said he is comfortable with not including all nonprofits in tax exemptions. The U of U hospital and the high school have a significant impact on Farmington roads, and the utility fee allows the City to maintain roads. The City gets pushback because it is not like a Truth in Taxation hearing.

City Councilmember **Scott Isaacson** said he has been an attorney for the Church of Jesus Christ of Latter-day Saints for 25 years, and most of his work is international. He said the Church is monitoring the issue of taking tax exemptions away from religious organizations. It is not in the federal Constitution to exempt property and income taxes for churches. However, there is clear precedence. An early Supreme Court ruled in favor of Dartmouth College, saying it shouldn't be taxed and controlled by the government, and needs autonomy from the government. The Chief Justice said the power to tax is the power to destroy, a phrase that has persisted in jurisprudence.

Adams agreed, saying there is a clear distinction between religious organizations and cities, counties, and regular nonprofit organizations. This is a challenge for churches even in other

countries. Churches have been asked to pay for street cleaning and other services, but there is a question of where to draw the line.

Adams addressed homelessness, which is a problem everywhere in the United States. Utah is among the most humanitarian states in the nation and will help others when given the opportunity. He questions housing all homeless in one location, as someone who has a substance abuse problem may cause challenges in that housing environment by not being kind to others. The State should tackle the problem head-on by focusing on treatment, which is more important than incarceration. Taking away and reducing penalties for substance abuse but not providing treatment results in chaos. If the homeless are being housed, they should likewise go through the judicial system. Davis Behavioral Health is a receiving center that can help people through the process. To simply tell communities to house the homeless, without giving them help and assistance, is not the solution. To house without help is inhumane.

Regarding immigration, **Adams** praised Utah's guest worker program, which has served the State well. Giving immigrants driver privilege cards helps the State track them. He hoped the Federal Government would follow Utah with the guest worker program, but they didn't. He is worried that the U.S. birth rate has gone the opposite way since 2000, as more people are dying than are being born throughout the nation. We need population growth instead of a negative birth rate, he said. There is a process of welcoming immigrants in, but those breaking the law should be sent home.

Regarding the Utah Department of Transportation's (UDOT) timing of the widening of Interstate 15 (I-15), **Mellor** said it is the least controversial UDOT project in Farmington. UDOT was responsive to the public's request for a Glovers Lane off ramp. **Adams** said it has to be a sophisticated project since traffic can't be shut down during construction. I-15 runs from Canada to the Mexican border. There has been some pushback around Rose Park, and it will be disappointing if the full width can't be secured all the way through. **Mayor Anderson** said UDOT is aware of Farmington's request for a \$40 million off-ramp to the West Davis Corridor (WDC). **Adams** said this is the time to request it. Farmington is being treated well with the Shepard Lane interchange, and the City has worked through a lot of tough issues with UDOT.

Councilmember **Amy Shumway** said she appreciates the pedestrian overpass going into place. She asked about a new State Park between Bountiful and Farmington in the Wasatch Mountains. Utah has 29 State Parks, and it would be nice to round it to 30.

Adams said Utah's economy has been strong, which has helped the State Legislature cut taxes over the years. Regulatory policy is more important than tax cuts. Utah has one of the highest starting teacher salaries in the West. The State set up an ongoing \$50 million annual revenue source for State Parks. A resident of Layton's east side, **Adams** said he can easily access the Shoreline Trail and can quickly drive to recreational sites within 10 to 30 minutes. There is a need to maintain the recreational quality of life in Utah.

DISCUSSION OF REGULAR SESSION ITEMS UPON REQUEST

Regarding vacation of the Right of Way (ROW) at 1800 North between 1075 and 1275 West, **Mellor** advised that Staff doesn't see the benefit of it besides what would go to the developer. Those people on the south of the ROW already got it, and the people on the north couldn't really use it.

Isaacson said the advantage of the ROW is the City can use it to access and maintain the large storm drain that goes through that area. If it was changed into an easement, it would be someone else's property the City would have to restore, and sheds, fences, concrete, and rock walls that would have to be moved. There is not an advantage to the applicant except they may get a little more area to reconfigure lots. They would be nice lots, not more lots. There is not a big financial benefit.

Community Development Director **David Petersen** said there is no record of the ROW officially being vacated for those landowners on the south. City Councilmember **Alex Leeman** said this is a good opportunity to clean up land records.

Assistant City Manager/City Engineer **Chad Boshell** said that storm drain is always flowing and carries water from Fruit Heights. At some point, it will be a complicated process to replace the line. The property corners need to be re-established, as many landowners are squatting on the City ROW.

Mellor said the Summary Action list is large due to end-of-year clean-up. The water line and well house on the Old Farm property are part of the second largest City infrastructure project, second only to the roads in West Farmington. American Rescue Plan Act (ARPA) funds were spent on those roads, complying with requirements that came with COVID funds. Including the park construction and potential new fire house, \$50 million worth of infrastructure may be underway in 2025, which will be a busy year.

Mayor Anderson suggested moving the Old Farm Letter of Intent (LOI) item earlier in the agenda. **Leeman** said there is no development proposed, no pretty picture to show, and no application filed. This is just a structure to start a discussion.

Councilmember **Roger Child** asked for background on the new police chief decision. **Mellor** said Police Chief **Eric Johnsen**'s retirement came earlier than previously expected. Staff evaluated different candidates both internal and external. **Johnsen** and **Mellor** both agreed on the best candidate. Before an offer was extended to **Austin Anderson**, **Mayor Anderson** and some Councilmembers interviewed him. Councilmember **Melissa Layton** already personally knew him as a neighbor. **Mellor** said he has had four years of experience working with **Anderson** in Syracuse. City Attorney **Paul Roberts** worked with him in Syracuse for seven years. **Johnsen** has been **Anderson**'s mentor throughout his career.

REGULAR SESSION

Present:

*Mayor Brett Anderson,
City Manager Brigham Mellor,
Mayor Pro Tempore/Councilmember Alex
Leeman,
Councilmember Roger Child,
Councilmember Scott Isaacson,
Councilmember Melissa Layton,
Councilmember Amy Shumway,
City Attorney Paul Roberts,
City Recorder DeAnn Carlile,
Recording Secretary Deanne Chaston,*

*Community Development Director Dave
Petersen,
Assistant Community Development
Director/City Planner Lyle Gibson,
Assistant City Manager/City Engineer Chad
Boshell,
Finance Director Greg Davis, and
Youth City Councilmembers Amelia Smith,
Jacob Blood, Hallie Gladwell, and
Charlotte Smith.*

Mayor **Brett Anderson** called the meeting to order at 7:07 p.m. Councilmember **Mayor Anderson** offered the invocation, and the Pledge of Allegiance was led by Councilmember **Alex Leeman**.

PRESENTATION:

Musical number by Music in Me

Farmington’s Music in Me program is for youth ages 2 to 11. The group sang a holiday song for the Council.

Student Spotlight: Asher Valentin

Farmington Baseball Coach **Stan Allen** nominated third grader **Asher Valentin** as student of the month. **Asher** is a “one-man cheering machine” who recognized a fellow teammate when he was struggling.

Motion:

Leeman moved that the City Council move the Letter of Intent (LOI) agenda item up in order to consider it first.

Councilmember **Melissa Layton** seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

Letter of Intent (LOI) to purchase approximately 16 acres of land on Main Street

Mayor Anderson said a LOI is like asking someone to consider going to a dance with the City. It is an invitation to have a discussion with a group to see if there is a proposal the City would be interested in. It is not an application, contract, or proposed use. It is just the start of a conversation. If the City does eventually want to move forward, they would want all kinds of public input. This particular LOI invites the Boyer group to consider having a discussion with Farmington City regarding developing land known as the Old Farm. He is not sure what was on social media that made residents think the Council was making a decision about this today, but they are not. The property was zoned Neighborhood Mixed Use (NMU) in 2005, and there is no proposal to change the zone.

Mayor Anderson said Farmington is having this conversation because the City is in desperate need of building a new fire station. The current fire station recently renovated a utility closet into a bedroom because the department is outgrowing the building. The department is not fully staffed because there is nowhere to put them. He said every time Farmington hits pause on a new fire station, the price increases. What used to be \$12 million has now increased to \$16 million. If the City waits a year, it could cost \$18 million.

The Council has wrestled with how to pay for a new fire station. It could be through sales and property taxes, or using assets the City owns. The City could also bond for it and pay interest. For every \$1 million bonded, the City would pay \$600,000 in interest. If part of the expense was paid for with cash, the bond would be a lot less, residents' taxes wouldn't have to be raised, and the City's budget wouldn't be burdened with interest payments. There is a way to turn Old Farm into cash assets to pay for a new fire station. That is the impetus for this LOI, an initial step for Farmington to consider if this is a viable route to pursue.

Councilmember **Scott Isaacson** said there will be multiple public hearings, and plenty of time for the public to give comments. A decision is not before the Councilmembers at this point. It is not on the agenda as a public hearing tonight. The LOI is not binding on anyone. Getting a new fire station on the west side of Farmington is a health and public safety concern. If an emergency were to make it impossible to get across the freeway, fire trucks could not get to Farmington's west side, where a majority of the City's population now lives.

Leeman said an LOI is nonbinding room to negotiate. Farmington has put out there that it is willing to sell the Old Farm property. The LOI set out some broad parameters in order to dial in the price. Boyer has made no proposal; there are no pictures or maps to look at. Knowing broadly what Farmington is looking for, they can make proposals and go through the full entitlement process. But it has to start somewhere. The LOI is the structure.

Assistant Community Development Director/City Planner **Lyle Gibson** said Farmington put out a Request for Qualifications (RFQ) a few months ago, and they got a few responses. The City solicited for experience and wanted to understand the responding parties' financials. The Boyer Company stood out, so the City decided to go with them instead of others.

Councilmember **Roger Child** said before Farmington goes forward with a decision to sell the Old Farm property, the City would look at other options such as increasing taxes as well. Those elements would be put forward to the public so they could see how much taxes would be lowered if the City sells this property. If Farmington decides to bond for the entire amount to build a new fire station, taxes will be higher. That information will be put forward to the public as well.

Mayor Anderson said the Council is trying to make an informed decision. They can consider various kinds of development, doing nothing and letting it sit, etc. Over the years, groups have come forward with various ideas, some promising and some very expensive. He does not want to turn the ground into a liability that the City will have to pay to maintain. The Council is not interested in putting lots of houses out there. It could be commercial, mixed use, office, housing; the Council doesn't know yet. What a developer is willing to pay is dependent on a sliding scale. If they can get a lot of density, they will pay more. Whatever money Farmington doesn't get for the Old Farm property it will have to pay for in a fire station bond. The gap will grow or shrink depending on what Farmington sells this property for. The question is how much the City wants to stomach on the bond or increase taxes to get the new fire station.

Leeman said Farmington is the property owner, so it is nice that the City gets to hold all the cards. Because zoning entitles the property owner, there is a limit to what the City can approve on this property. If the City doesn't like the proposal, it won't sell the property. The City can wait until it sees something it likes. Staff explained to Boyer why it needs to sell, and told them residents would be interested and watching.

Child said the City is in the process of bidding out developing and improving a park on the west side. Money earmarked for open space is going to that project. A similar request for a park on the east side would increase demands on that same money.

City Manager **Brigham Mellor** said the City has decided to retain the Rock Mill, but it has no resources to maintain it. There is a lot of debate of what is wanted at the Old Mill, and this will also help create resources for it.

Mayor Anderson said the City wants feedback and input from residents. The Council wants to make sure they are thoughtful about this.

Layton said as negotiations proceed, this is not the City vs. the citizens. All Councilmembers are also citizens of Farmington. This is where she lives, where her children's friends are. It is important to her that this is developed in a certain way, and this is an open discussion. Since everyone is on the same team, she would like to take the divisiveness out of this. Residents should be heard.

Mayor Anderson said the proposal better be so awesome that the public wants it. It should be some public amenity like an ice rink. He wants residents to engage in this discussion.

Leeman said there will be opportunities for the Mayor to reach out to the public. Next time there is a public hearing about this, there will be a proposal to put up on the screen for all to see. Then the Council will ask the public, "Do we sell the property at this price for that?" At that point, the public can take their turns at the mic to share their input.

Rick Dutson (2083 Summerwood Drive, Farmington, Utah) addressed the Council. He thanked the Mayor and Councilmembers for explaining this issue to the large crowd that had gathered in chambers.

Isaacson said all the Council is doing is agreeing to talk to Boyer and no one else at this point for a while. By responding to the RFQ, developers showed the City their wallet and experience. If the City doesn't like what Boyer presents, they are not obligated to proceed. The LOI

represents nothing binding. It is an agreement to engage in a conversation with this particular developer to see if the two parties can reach something that can be moved upon.

Leeman said the RFQ is not to be confused with a Request for Proposal (RFP). An RFQ is like showing someone your resume. Boyer knows this property is zoned NMU, and that is about all they know going into this. Boyer is a developer that builds everything from office to single family. They built The Ranches in Farmington.

Mayor Anderson said he looks forward to getting feedback from the Community Council. It is like intense, direct feedback every other month. It is held every second Wednesday at 7 p.m. He invited everyone in the audience to be part of it. He asked the public to email and text Councilmembers with their input. An LOI is like chewed up gum that can be thrown out.

Isaacson said he has received quite a few emails, and he read as many as he could before coming to this meeting. He welcomes the input, and ensured the audience that he will respond to their emails.

Motion:

Shumway moved that the City Council approve the Letter of Intent from The Boyer Company L.C.

Finding 1:

1. The provided LOI sets the tone for a future Purchase and Sale Agreement.

Child seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

PUBLIC HEARING:

Consideration of an ordinance to vacate an unimproved section of Right-of-Way (ROW) at approximately 1800 North between 1075 West and 1275 West

Gibson presented this agenda item, which is a follow up from several months ago. In February of 2022, the City Council rezoned property along the 1075 West frontage road north of this ROW to the Large Residential (LR) zoning district. This zoning allows for the development of 20,000 square feet as a conventional subdivision. Instead of only two 20,000 square foot lots, the applicant is asking for an alternate lot size of 10,000 square feet if the Council determines that sufficient additional benefit is provided as outlined in the ordinance.

While looking at this proposed development, the subject ROW became part of the discussion in order to determine the amount of property the developer actually controls, as well as related future access or development of other area properties. Prior attempts to abandon the ROW in the 1990s and early 2000 were never completed.

In July of 2023, a deed-restricted Accessory Dwelling Unit (ADU) was approved to qualify the project for additional smaller lot sizes. The developer hired a surveyor to identify the ROW with the understanding that the City may wish to vacate it in order to clean up property lines.

The findings of the survey work are that the ROW, identified as Manning Road, was originally a 66-foot ROW. The center line of the 66 feet runs along the north lot line of lots 222 to 226 of the Oakridge Park Estates PUD Plat 2 subdivision. The southern half of the original ROW appears to be within the rear yards of these properties, presumably vacated with the platting of the Oakridge Park Estates PUD Plat 2 recorded in the spring of 1998. Typically, half of a vacated ROW goes to the owner of one side, while the other half goes to the owner of the other side. Survey work indicates that half has already gone to those on the south side. Therefore, the request is to have the remainder 33 feet go to the property owners to the north. **Gibson** said Staff feels these survey results don't match up with what Davis County previously produced, but this is the first on-the-ground survey work that has been completed in many years.

The property is unimproved and not likely to be used or needed as a street. In addition, there are significant slopes in the area. There is an existing storm drain line within or just south of the ROW. The storm drain channels a large amount of water and in some areas is very deep and may require access in the event there is a need to repair, maintain, or replace the line. Currently, the City can access the ROW in order to get access to this system.

While vacation of the ROW could clean up property boundaries and provide residents more direct control of land, it may also limit development options for properties to the north. The project that spurred these discussions would not gain additional lots with the property, but the lots would be slightly larger, which would allow more flexibility for lay out.

Gibson said Staff's recommendation is to leave the ROW in place.

Applicant **Luke Martineau** (1216 Legacy Crossing Boulevard, Centerville, Utah) addressed the Council, saying this ROW is south of the property they want to develop. They plan to do some improvements on the ROW property including detention and utilities. However, they do not plan to add density to their property. They would like to clean up property lines. The City is currently paying taxes on this land, which is too steep for the City to access. They would be happy to put an easement in so the City can access existing infrastructure.

City Attorney **Paul Roberts** said the City doesn't pay property taxes on this land. **Mayor Anderson** said the Council has received several emails about this agenda item, and they will be made part of the record.

Mayor Anderson opened and closed the Public Hearing at 7:58 p.m.

Grant Romney (1252 Carston Court, Farmington, Utah) lives on Lot 223 on the south side of road being discussed. He was surprised and shocked with the letter he was recently sent regarding the fact that they actually didn't get the 33-foot half of the ROW years earlier. He has been mowing and maintaining this land for the past 20 years. This is what he sees outside his back door. He came to an agreement with his neighbor in order to place a shed. He and his neighbors know that the property to the north of them does not belong to them, as it is an abandoned road. As neighbors, they have amicably taken care of and used this land amongst themselves. He would like records inspected so that everything is out in the open and on the table.

Mayor Anderson said there are still some questions on if the ROW was vacated earlier. Staff is trying to decide what happened historically.

Sam Noel (Lot 222, 1262 Carston Court, Farmington, Utah) moved to the western-most property in 2015. At the time, the City told him the property was an abandoned road that could be vacated if everyone was in agreement. There is no good cause to give it all to the property owners on the north. He has a storm drain in his yard, which overflowed one summer. Resulting garbage and residue was in his yard. He likes the idea of leaving the property as an abandoned road so the City can have access to that storm drain, which may need to be cleaned and enlarged. He mows and maintains the land currently. Every wind storm, a lot of trees come down to that area. He doesn't trust the map the developer provided, and has a lot of questions.

Thomas Noel (1262 Carston Court, Farmington, Utah) is **Sam's** son. He said he and his brother always play on the abandoned road. They have a garden there that they cared for. They mow the grass and pick up the leaves.

Laurence Noel (1262 Carston Court, Farmington, Utah) is **Thomas's** brother. He said the northern landowners don't use the abandoned road, as they don't go down the slope. The trees block the area. This land is the only thing he and his family see from their windows.

Jim Reimann (1242 Carston Court, Farmington, Utah) lives in Oakridge Park Estates and already sent an email to the Council. Even though it may be painful, the truth is needed. Trust but verify. He wants due diligence done to verify the situation. None of his neighbors are aware of any communication from the developers.

Rob Potter (1228 Carston Court, Farmington, Utah) moved here 28 years ago. His backyard has flooded. He has a trampoline and play area for his 12 grandchildren in the area and has boarded up an 8- to 10-foot incline. The area is steep and covered by thick shrub oak. Ten years ago, the people above them wanted to just give this land away. He lives 300 to 400 feet down from his neighbor, who has never come down that slope. It would be disruptive and disastrous to him if he had to take out the tramp, playground, and sprinklers there. He is confused why this is coming up at this time.

Cindy Roybal (1267 W. 1875 North, Farmington, Utah) said this is news to her. She asked the City to be fair to all property owners. The storm drain is a really big issue. She was around when the City had a 500-year storm, which flooded all the Fieldstone homes. The drain was not big enough to drain all the water at that time. If another storm of that magnitude comes again, the holding pattern is into the Oakridge Country Club. More research is needed about the storm drain and property lines.

Mayor Anderson closed the Public Hearing at 8:20 p.m.

Isaacson said there was a mistake made with the southern 33 feet of the ROW when the subdivision was created. That should have been transferred to those people. Vacating half of a ROW is not a controversy at all. **Gibson** agreed that the 33 feet has never been vacated according to County records. **Isaacson** said it should have been cleared up, but it wasn't. He is not in favor of vacating the northern half, as there is a major storm water drain there. It is important for the City to get in there to repair and maintain it. He knows some neighbors have been using the property to the north. However, if the City needs to come in an repair a storm drain, they will not hesitate to take out a shed to do so. The City recently sent letters to other

residents who are using a ROW to remind them that someday they may be asked to take improvements off the property. He would like to clear up the southern part so it is not confusing, but does not want to vacate the northern part.

Shumway said it is not a question of if the City needs to replace that storm water line, but when. They know the lines are failing, and obviously this one is old.

Community Development Director **David Petersen** said this might be a 19th Century ROW. In the 1920s to 1940s, things happened and overlapped, which happens in other states as well.

Mayor Anderson said he has no idea what the City told residents in the area in the past, but he thanked those providing public comment tonight for the background. The City is desperately trying to fix this issue.

Assistant City Manager/City Engineer **Chad Boshell** said current Staff doesn't know what conversations were had 10 years ago. He advised Staff against vacating the ROW at this point. He would like to keep the ROW in order to replace the line. The southern 33 feet should have been given to the landowners, but the City should keep the upper north 33 feet.

Motion:

Leeman moved that the City Council deny the request to vacate the remaining portion of the Manning Road Right-of-Way subject to the finding in the Staff Report.

Finding 1:

1. The City has a storm water line in the rear yard of the properties to the south of the subject Right-of-Way. Staff prefers that the City maintain as much control over the access to this line as possible in the event future repair, maintenance, or replacement work needs to happen.

Shumway seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___ Nay
Councilmember Roger Child	X Aye	___ Nay
Councilmember Scott Isaacson	X Aye	___ Nay
Councilmember Melissa Layton	X Aye	___ Nay
Councilmember Amy Shumway	X Aye	___ Nay

Leeman made an additional request that Staff try to clean up the southern half in order ensure that the intent of the subdivision plat is fulfilled.

BUSINESS:

Appointment of Austin Anderson as Police Chief beginning February 1, 2025

Mellor presented this agenda item. With the announced retirement of Chief **Eric Johnsen**, the City has need of a new police chief. **Austin Anderson** has worked for Syracuse Police Department for 17 years, and currently serves as their Assistant Police Chief. He has a breadth and depth of experience that will serve the Farmington community well.

Mayor Anderson said Farmington employs several people who used to be employed by Syracuse including **Roberts, Mellor, Gibson**, Assistant Finance Director **Levi Ball**, and Communications Specialist **Jody Peeters**.

Leeman said he spent an hour chatting with **Anderson** alone last week about his experience and background. He was impressed that included in the qualifications packet **Anderson** prepared for the City were thank you notes from people he had interacted with in the past. That spoke volumes and clearly displayed **Anderson's** true values, as those notes are what he saved and is most proud of. This position is a step up for him in his career, and he has a lot to learn.

Shumway was impressed with his desire to learn and continue his education. **Shumway** and **Isaacson** previously met with him to look at his credentials.

Isaacson said choosing a police chief is one of the most important decisions a City Council can make, as a police chief is influential in day-to-day interactions with the City.

Layton said she personally knows **Anderson**, and he is an upstanding human who treats people with respect. He will be a great leader in Farmington.

Mellor said that while no one can replace **Johnsen**, **Anderson** is someone who can continue with the progress that has recently been made in the department. This is a difficult job, but **Anderson** will enhance the department.

Motion:

Isaacson moved that the City Council provide advice and consent to the appointment of **Austin Anderson** as the Farmington City Police Chief, which appointment will be effective on February 1, 2025.

Leeman seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

Fire Alarm Ordinance

Boshell, who is over both Public Works and the Fire Department, presented this agenda item. It is proposed that the Council adopt the proposed ordinance governing fire alarms to encourage business owners to repair or improve their fire alarm systems, reserving public safety resources for actual emergencies. When fire alarms go off, the Fire Department is notified and required to respond. Out of the 785 total calls this year, 23% of them have been false alarms. This is an increase compared to 2023's 15%, 2022's 16%, and 2021's 13%. This sharp increase is troubling, and many are repeat offenders who have no intention of fixing their alarms. Each time the department responds to a call, it costs \$9,000. If false fire alarms are reduced, the Farmington wouldn't have to grow its Fire Department as quickly.

Boshell's intent with the new ordinance is to curb repeat offenders with a charge per false alarm. Some cities create a penalty for multiple false alarms. Currently, there is no charge for false

alarms in Farmington. The Consolidated Fee Schedule is being changed to include a \$500 charge on the third offense, and \$600 after four offenses. **Boshell** said the City will be flexible with new tenants and commercial buildings in their first year as they learn their systems, and there is a grace period. The new ordinance is to try to fix the behavior.

Shumway said the City’s resources are in demand, but they are supposed to eliminate waste. **Isaacson** said an “s” needed to be added to the word “violation” in Section 10 purpose, Section B second line from the bottom. He also asked when the 365-day period starts for the third offense. **Roberts** said it rolls beginning at the first false alarm. **Isaacson** asked if it was intentional in the draft to mention both the fire marshal and fire chief, even though each is not separately defined. **Roberts** said it was intentional. **Isaacson** also wanted to add the word “the” in front of “administrative official” in the first line of Section 80.

Motion:

Layton moved that the City Council enact Chapter 7-12 of the Farmington Municipal Code, related to fire alarms within Farmington City, with **Isaacson**’s suggested edits.

Shumway seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

Miller Meadows Phase 10 Transfer of Development Rights (TDR) Agreement

Gibson presented this agenda item, saying the City has seen a couple of development concepts for this 2-acre piece of property that has been available. The land is currently under contract for those developing single-family lots with Rainey Homes in Miller Meadows, which has excess units available from other phases. They are now interested in doing six lots on this property using TDR. It is a right to purchase what could have been developed in other areas of the City. Staff reviewed the pro forma, which seemed to have sensible amount of \$12,900 for both lots.

Leeman said he is glad to see that the TDR hasn’t been abandoned as a useful development tool.

Motion:

Child moved that the City Council approve the Agreement with Rainey Homes allowing the transfer of two lots to the Miller Meadows Phase 10 Subdivision.

Findings 1-2:

1. The agreement contemplates a value based on a previously reviewed understanding of profit to the developer for the additional lots.
2. The additional lots in the subdivision are compatible with other lots in the immediate area.

Leeman seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman
Councilmember Roger Child
Councilmember Scott Isaacson
Councilmember Melissa Layton
Councilmember Amy Shumway

X Aye ___ Nay
X Aye ___ Nay
X Aye ___ Nay
X Aye ___ Nay
X Aye ___ Nay

Storm Water Permit and Enforcement Amendments

Boshell presented this agenda item. Last Utah legislative session, House Bill 507 was enacted, completely changing storm water pollution prevention. The proposed amendment is Farmington’s way to comply with the legislation, which takes effect January 1, 2025. The State mandates the fees included on the Consolidated Fee Schedule amendment proposed on today’s agenda. **Boshell** said he hasn’t heard of one city in Utah that is pleased with the direction the legislature is going with this, but there is not much to do but comply at this point. He predicts that within a year, there will be enough violations to this that the City can’t handle them all, and it may swing back.

With the passage of HB507, the City can no longer require a land disturbance permit for construction activity smaller than one acre, with similar best management practices (BMPs) to prevent small-scale construction activity from introducing pollutants into the City’s storm water system. Construction activity can be a major source of pollutants into the City’s storm water system. Per HB507, the permit is now being removed from Farmington’s ordinances.

HB507 also prohibits the storm water official from inspecting a construction site in person unless there is a “documented reason” for the on-site visit. Otherwise the City will inspect via photographic evidence of site conditions provided by the contractor. The bill also took away the ability of the City to stop work on a failed site. All of the storm water officials in the state are working on a way to classify BMPs so that their storm water systems can be protected as much as possible.

Motion:

Child moved that the City Council adopt the ordinance amending various sections within Title 16 of the Farmington Municipal Code, related to storm water pollution prevention and enforcement, and adopt the findings provided in the Staff Report.

Findings 1-3:

1. The amendments bring the City into compliance with mandatory directives from the State of Utah regarding storm water pollution prevention permits associated with construction activity.
2. The amendments preserve as much authority as possible for the storm water official to protect the storm water systems of the City.
3. The prevention of pollution to our storm water system is an important part of the City’s protection of the health and welfare of our residents and the community at large.

Isaacson seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

Mayor Anderson left the meeting.

Zone Text Amendments to Multiple Section of the Zoning Ordinance Regarding Accessory Dwelling Units (ADUs), Subordinate Single Family dwelling (SSFs), and Miscellaneous items

Petersen presented this agenda item. Farmington has had a new ADU ordinance for five months, and now minor changes are needed. The definition of an ADU needs to now be changed to Internal Accessory Dwelling Unit (IADU) and Detached Accessory Dwelling Units (DADU). The Planning Commission previously voted to delete a whole paragraph due to its subjectivity. Other issues include the Certificate of Occupancy, which could affect financing with banks. The change could give flexibility to situations where someone wants to refinance their whole property and carve off some for a DADU. The proposed language could help people subdivide before getting a certificate of occupancy. He is not sure if the City can create a solution for those who don't want to refinance.

Child said the intent and objective was to create affordable housing, not solve all problems.

Leeman said he has always had mixed feelings with this ordinance, which allows people to stick additional homes in people's backyards. He would like a way for the City to step in when something is too big, too much, or too weird. **Isaacson** doesn't want a shipping container to be allowed to be dropped in backyards.

Roberts said there are restrictions in State law on what the City can and can't require. The ability to actually dictate certain things is questionable. All eyes are in Farmington regarding this ordinance, as it has attracted the attention of both the media and Utah League of Cities and Towns. Utah Governor **Spencer Cox** has recently said that Farmington is doing it right.

Petersen said compatibility wars can ensue as people constantly update styles. While **Isaacson** understands the difficulty, he wants something the City can use.

Leeman asked if it is ever advisable to state that the terms and conditions of the statute override the terms of any declared covenants, conditions, and restrictions (CC&Rs). If CC&Rs are eliminated by ordinance, neighborhoods can't get in fights in their Homeowner's Association (HOAs). **Roberts** said people can contractually give their rights away. While he personally thinks HOAs should not keep affordable housing out, he does not think it important to mention that the statute overrides CC&Rs.

Motion:

Isaacson moved that the City Council approve the enabling ordinance (enclosed in the Staff Report) amending Sections 11-2-020, 11-28-200, and 11-17-050 of the Zoning Ordinance, and repealing Section 11-28-110, incorporating Findings 1 and 2 with all their subparts; except a change in the definition of DADU so that we continue to strike the language that says "not physically connected in any way to the single family dwelling," but then put back into the

definition the rest of the deleted language, which is “architecturally compatible to the neighborhood and single family dwelling,” and continuing to strike the last section. In the next IADU definition, add the language that had been stricken in the draft.

Findings 1-2:

1. The City enacted a major amendment of its ADU ordinance on July 16, 2024, including, among other things, the creation of a subordinate single-family dwelling, or SSF. Now after five months since its passage, the modifications in the enabling ordinance (attached in the Staff Report) will help in its continued implementation. Reasons in support of these changes include, but are not limited to the following:
 - a. Setbacks for an SSF lot must follow the building code, and the proposed changes to the definition of a DADU ensure that the Zoning Ordinance is consistent with the building code.
 - b. The amendment removes a “design and character” paragraph and “architecturally compatible” language which are difficult to objectively consider as part of the site plan review process and enforce during and after construction.
 - c. In the past, the City has been able to meet its decades-long minimum 850 square foot dwelling size because the ordinance does not dictate the minimum size of dwelling units (such as apartments or ADUs) within a dwelling. Prior to July, the code limited “dwellings” to single-family, two-family, and multiple-family dwellings. However, an SSF is now a new type of dwelling, not a dwelling unit, yet it is anticipated that some SSFs (like existing DADUs) may be less than 850 square feet. Additionally, it is legally questionable whether a zoning ordinance can contain a minimum size standard for dwellings.

Existing definition in Chapter 2 of the Zoning Ordinance related to dwellings and dwelling units include the following:

DWELLING: Any building or portion thereof which is designed for use for residential purposes, except hotels, apartment hotels, boarding houses, short-term rentals and/or rooming houses, tourist courts and automobile house trailers.

DWELLING, MULTIPLE-FAMILY: A detached building containing three (3) or more dwelling units.

DWELLING, SINGLE-FAMILY: An attached or detached building designed for the occupation exclusively by one (1) family.

DWELLING, TWO-FAMILY: A detached building containing two (2) dwelling units.

DWELLING UNIT: One (1) or more rooms connected together, but structurally divided from all other rooms in the same building and constituting a separate independent housekeeping unit which may be used for permanent residential occupancy by humans, with facilities for such humans to sleep, cook, and eat.

- d. The “or any other yard” phrase of the Original Townsite Residential (OTR) zone text (Chapter 17) may make placement of some ADUs/SSFs

cumbersome, and Staff cannot recall the last time they considered “any other yard” in the placement of a garage or other accessory building.

- e. Typically, subdivisions must be recorded to enable the issuance of most building permits for dwellings. As some developers look to record plats to include SSF lots, consistent with such subdivision recordations, and to meet City moderate income standards if necessary, they are prevented from doing so because the current ordinance does not allow for an SSF lot until after the issuance of a certificate of occupancy for the SSF. A deed restriction represents a good way to resolve this issue—even for the owners of existing lots who wish to pursue an SSF.
2. As in July, the proposed changes support and further objectives of the City’s Affordable Housing Plan—an element of the General Plan—and many of the changes clarify and/or memorialize long-held practices and interpretations by the City.

Shumway seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

Petersen said other cities are developing ADU tool kits as an illustrative method of helping the layman understand what ADUs are. He passed out a proposed draft for Farmington, and asked that any comments about it are back to him by January 9, 2025.

Letter of Intent (LOI) to purchase approximately 16 acres of land on Main Street

This item was addressed earlier in the agenda. **Issacson** asked about the mention that no culinary water rights are required for this project. **Roberts** said the City is not allowed to sell water rights. In some cities, developers have to bring water rights with them in order to develop. In this case, they don’t have to bring any additional rights with them.

Consolidated Fee Schedule Amendments

Assistant Finance Director **Greg Davis** presented this agenda item. The proposed fee schedule includes increases for the false fire alarms as already discussed, as well as some changes in recreation program reservations. Other than that, the changes are not really material.

Mellor said that while talking to City Parks and Recreation Director **Colby Thackeray** earlier that day, **Thackeray** said the lion’s share of the changes related to his department are not controversial, as they mostly apply to nonresidential fees. None of the fees make the City profit; they merely reduce the amount the City subsidizes, especially in recreation. Farmington subsidizes recreation at about \$1 million annually. **Mellor** also mentioned that he would like to look into people dumping trash in City garbage cans so they can be charged for what it costs Farmington to dump others’ trash.

Roberts recommended that the language be changed to mention the third fire alarm offense in a 365-day period, to match the ordinance.

Motion:

Isaacson moved that the City Council adopt the resolution amending the Consolidated Fee Schedule, incorporating the City Attorney’s recommendation (above).

Layton seconded the motion. All Councilmembers voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	<input type="checkbox"/> Nay
Councilmember Roger Child	X Aye	<input type="checkbox"/> Nay
Councilmember Scott Isaacson	X Aye	<input type="checkbox"/> Nay
Councilmember Melissa Layton	X Aye	<input type="checkbox"/> Nay
Councilmember Amy Shumway	X Aye	<input type="checkbox"/> Nay

SUMMARY ACTION:

Minute Motion Approving Summary Action List

The Council considered the Summary Action List including:

- Item 1: Consider approval of Stapp Construction for the Main Street waterline replacement project in the amount of \$2.88 million. The City is in need of replacing and upsizing the existing culinary water line in Main Street from State Street to about 630 North. The City received six bids for the project ranging from \$2.288 million to \$43.939 million. **Isaacson** asked that section 4.03 about liquidated damages be filled in with a number.
- Item 2: Consider Stapp Construction for the Shepard Creek well house project for \$2.906 million. The City received seven bids ranging from \$2.906 million to \$4.13 million. **Isaacson** asked that a number be put in the liquidated damages portion.
- Item 3: Release of Trail Easement on County Property. The Farmington Creek trail south of the Western Sports Park and north of the creek has been closed for over two years. There is a trail on the south side, which is used far more than the north side. Vacating the trail on the north side would give room for planned expansion of the Davis County Justice Complex.
- Item 4: Franchise Agreement with SenaWave Communications. The City is required to provide equal access to all providers, and this agreement is similar to those approved for other fiber providers in recent years. **Roberts** noted that the franchise fees are paid to the State, and then the State pays them to Farmington.
- Item 5: Cell Tower Lease Amendment and Extension with Cellco Partnership, dba Verizon, aka American Tower. They have leased the cell tower near the Police Station since 2011. The lease was extended in five-year increments to 2081 for a lump sum of \$30,000, with an annual escalation of 2%. **Mellor** said this represents above-market rent, and they can terminate every seven years. **Roberts** said the City couldn’t terminate the extension even if they wanted to, but they could condemn it.
- Item 6: Monthly Financial Report.
- Item 7: Ordinance establishing dates, time, and place for holding regular Farmington City Council Meetings.
- Item 8: Surplus property including a utility trailer and 2014 Ford F550 service truck.
- Item 9: Approval of Minutes November 12, and November 19, 2024.

Motion:

Child moved to approve the Summary Action list Items 1-9 as noted in the Staff Report.

Shumway seconded the motion. All Council members voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	<input type="checkbox"/> Nay
Councilmember Roger Child	X Aye	<input type="checkbox"/> Nay
Councilmember Scott Isaacson	X Aye	<input type="checkbox"/> Nay
Councilmember Melissa Layton	X Aye	<input type="checkbox"/> Nay
Councilmember Amy Shumway	X Aye	<input type="checkbox"/> Nay

GOVERNING BODY REPORTS:

City Manager Report

Mellor said he is taking time off between Christmas and New Year’s. He recently looked at the signs that **Isaacson** mentioned in North Salt Lake. He talked to City officials about the signs, which costs \$350 each time they are changed out every quarter. Residents of North Salt Lake really like them, and that City gets a lot of compliments on them. He likes the sign style and thinks Farmington could pick two to three locations to try it out in 2025. **Mellor** said he would come back on January 7, 2025, with details on the tree sculpture at the new park.

Mayor Anderson and City Council Reports

Layton complimented the Public Works Department for their work at Grandview interacting well with the neighbors. **Mellor** compared that to Huntsville not being able to find a secondary water leak. She appreciates that Farmington saves money that would otherwise be hired out to remove 15,000-pound lids.

Layton said that at 900 West Old Shepard Road adjacent to Smith’s, back behind the car wash strip mall, the houses there have no lights on their street. It is so dark and they want lights. **Mellor** said he would see what is possible there.

Isaacson would like to get a better microphone at the audience podium.

Shumway thanked the Public Works Department for removing tree branches that were covering a traffic signal. She talked to **Thackeray** about taking out a dumpster by Heritage Park. The City should provide a garbage receptacle at a public park. She wants signage indicating a fine, as well as camera to deter misuse of the dumpster. She would like to know how much extra the City is paying the dump dumpsters due to unauthorized use, and what the hotspots are. She would like an audit, and to encourage residents to dump their own mattresses and trash. **Mellor** said each extra dump costs Farmington \$75.

Leeman asked when the raised median is going in at the reconnection of Clark to Park Lane, so that it will prohibit people from turning left. **Mellor** said the project is now under construction. **Leeman** complimented Code Enforcement for patrolling branches in park strips, including his, that are overhanging the street. He and his neighbors recently got an appropriate, well-written, and friendly letter.

He asked how the City handles election signs that have remained up after the election was over, mostly by freeways. **Mellor** answered that the City only has the authority to remove signs on their own or county property. Code enforcement intends to look into the issue, but doesn't want to cause any undue problems with campaigns.

Mellor said the Main Street replacement project has a preconstruction meeting this upcoming Thursday morning, when he will get more details about the project's timing. It is part of the Stapp waterline project.

ADJOURNMENT

Motion:

Youth City Councilmember **Jacob Blood** made a motion to adjourn the meeting at 9:58 p.m.

Shumway seconded the motion. All Council members voted in favor, as there was no opposing vote.

Mayor Pro Tempore/Councilmember Alex Leeman	X Aye	___	Nay
Councilmember Roger Child	X Aye	___	Nay
Councilmember Scott Isaacson	X Aye	___	Nay
Councilmember Melissa Layton	X Aye	___	Nay
Councilmember Amy Shumway	X Aye	___	Nay

DeAnn Carlile, Recorder

December 15, 2024

Dear Sirs,

I am writing to express my views concerning the proposed vacating of the Manning Road right-of way. Perhaps a little history of this right-of way may be of interest and have some bearing on the decision. This is the history as I know it and as told to me by my family.

The three 'north' lots were all owned by members of the Manning family. The west lot was owned by my uncle, Rex Manning (Walker), the center lot was owned by my mother, Noreen Manning Olsen and the north lot was owned by my uncle, Roy Manning. I presently reside on the western most of these three lots where I have lived since 1981. The three lots were deeded to the children of my grandfather James Manning. The Manning farm once encompassed all the land bounded by 1875 North, Highway 89, Shepard Lane and Oakridge Lane.

The Manning farm was originally owned by my great, great grandfather William Walker who settled there after moving from the Fielding-Garr ranch on Antelope Island where he had been the ranch foreman.

What is now being called the abandoned right-of-way was originally the driveway into the farmhouse owned by James Manning and is where my mother was raised, The farmhouse was located next to what is now the 2nd green of Oakridge golf course. The lane continued south to where the Walker house was located just north of the Oakridge driving range and then on to Oakridge Lane.

It has always been my contention that the right-of-way was intended to be used as an access to the bottom half of the three north lots. This is also bourn-out by the fact that my original warranty deed included an attached piece of land that was approximately 40 feet wide and 300 feet long that led from the bottom of my lot and connected to 1800 North. This was an extension to the present right-of-way that is under discussion.

Unfortunately, any hopes I had of using the right-of-way as access to the bottom of my lot has been dashed by the manner in which UDOT constructed the frontage road north of us. It is much to steep to allow an access road way to be built.

It is my feeling that the Manning Road right-of-way should be vacated to the north properties. Evidently, as per the packet that was sent by Lyle Gibson

dated 12/17, the southern properties have already been given ½ of the original right-of-way when the Oakridge Park Estates were deeded.

I submit that since the property that is in question was originally Manning property, any vestiges of that property should be returned to the Manning properties'.

Sincerely,

Larry Olsen
1289 West 1875 North
Farmington, Utah

DeAnn Carlile

From: Noel, Samuel J. <SNoel@lowenstein.com>
Sent: Tuesday, December 17, 2024 9:59 AM
To: banderson@farmington.utah.gov; rchild@farmington.utah.gov;
sisaacson@farmington.utah.gov; mlayton@farmington.utah.gov;
aleeman@farmington.utah.gov; ashumway@farmington.utah.gov
Cc: lgibson@farmington.utah.gov; dcarlile@farmington.utah.gov
Subject: Comment for Public Hearing to Vacate the Abandoned Road between Carston Ct and 1875 N
Attachments: Abandoned Road_14SEP2015.jpg

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mayor and City Council,

We look forward to the Public Hearing tonight regarding the request to vacate the abandoned road that comes off of 1075 W between Carston Court and 1875 N. I have lived at 1262 Carston Ct (the west-most property on the abandoned road on Carston Ct) since 2015.

As we were purchasing our property, I became familiar with the Utah Code stating that the city can vacate the abandoned road if "good cause exists for the vacation" and "neither the public interest nor any person will be materially injured by the vacation."

In 2015, I spoke with Dave Peterson at the City Development and then I spoke with the Davis County Surveyor's Office. Dave mentioned that the city would only vacate the abandoned road if all of the neighboring property owners were on board (in "public interest") and only if we started at the western-most portion of the abandoned road and move east (to not have a landlocked portion of the abandoned road). When I spoke with the Davis County Surveyor's Office in 2015, they printed off the attached map showing that the current abandoned road goes pretty much right down the middle of the old road to the south of Levi Thorton's property.

I then spoke with all of the neighboring property owners. They mentioned that vacating the abandoned road was brought before the city council in the early 2000s and not all of the neighboring property owners were on board, so the city council told us that we could continue using and maintaining the abandoned road. When I approached all of the neighboring property owners in 2015, again, not all of the neighboring property owners were in favor of vacating the abandoned road, so I did not submit a request because per Dave Peterson, the city council would only approve if all bordering property owners were on board.

Now a current request is before the city council from Joey Green and the vacant lot owners at the northeast of the abandoned road to vacate the abandoned road and give the abandoned road to the property owners to the north. Good cause does not exist for their proposed vacation. Also, public interest and people will be materially injured by the proposed vacation.

Good Cause does not Exist for the Proposed Vacation

The attached Davis County Surveyor's Office map shows the current abandoned road down the middle of the road south of the old Levi Thorton Property. The new map prepared for Joey Green shows the abandoned road being exactly the north half of the Manning Roadway. The notes to the side of the Joey Green map has language like "we set," "we rotated," "we shifted," "we relocated," "neither...fit the improvements well," "the Manning Roadway appears to be," "county ownership maps show the location of the Manning Roadway inconsistently," "this suggested that," "for equity we set," etc. There are a lot of assumptions that make up the Joey Green map. Where there are assumptions to be made and inconsistencies, we believe the Joey Green map is biased towards Joey Green's desires to obtain the entire portion

of the abandoned road bordering the northeast property. In previous proposals, Joey Green has submitted incorrect maps (e.g., omitting the abandoned road all together), so we do not fully trust the maps provided by Joey Green.

Also, the allegation that the original abandoned road was 66 ft wide does not make sense. The current abandoned road is flat. The north border of the current abandoned road (abutting the north properties) is a steep slope and the south border of the current abandoned road (abutting the south properties) is also a steep slope. It does not make sense that the original abandoned road would include a northern half that is flat and a southern half that is a steep slope.

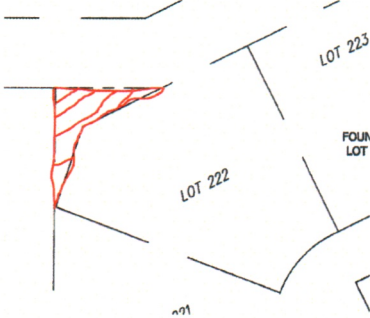
Also, if the city had vacated the southern half of the abandoned road, they should have record of such vacation. The city has not provided any documents showing when and how much of the abandoned road was vacated and given to any property owner.

Good cause does not exist to vacate the abandoned road to the properties to the north based on maps prepared for Joey Green that admit to inconsistencies and that make assumptions especially when the Davis County Surveyor's Office has prepared drastically different maps in the past and there is no record of vacating the southern half of the abandoned road.

Public Interest will be Materially Injured by the Proposed Vacation

As noted by Lyle Gibson in the City Council Staff Report, there is a storm sewer line that is either in the abandoned road or directly south of the abandoned road. On my property at 1262 Carston, we have a manhole for the storm sewer. In August of this year, the manhole overflowed, moving the manhole cover, and leaving debris in our yard. Especially with the proposed development of the vacant lot to the northeast, the storm sewer line will become even more full and will require maintenance and possibly upgrading of size. Vacating the abandoned road would greatly hinder the city's ability to maintain the storm sewer line.

Even if the Joey Green map were accurate, it shows that not all of the alleged southern half of the abandoned road was vacated to 1262 Carston Ct (as shown in red below):



Even if Joey Green's map were correct, the alleged southern half of the current abandoned road has not been given completely to the property owners to the south of the abandoned road. There is a portion of the alleged southern half of the current abandoned road that has not been vacated that borders 1262 Carston Ct. Per Dave Peterson, the abandoned road will not be vacated if all of the bordering property owners are not in agreement with the vacation. As a bordering property owner of an unvacated portion of the abandoned road that would be given to us if half were given to the north and half were given to the south, we do not agree with moving forward with the request to vacate.

Public interest would be materially injured if the abandoned road were vacated and given to the property owners to the north since that will greatly limit the city's ability to maintain the storm sewer line and since not all bordering property owners are in agreement.

People will be Materially Injured by the Proposed Vacation

The property owners along Carston Ct were told by the previous city council that they could use the abandoned road and that is what we have done. We have maintained the road, removing the garbage trees, removing the branches that fall during the snowstorms and windstorms, we have planted grass and gardens, etc. We have used and maintained the abandoned road as part of our backyards. Much time and effort has been put in to maintain the abandoned road by the

property owners along Carston Ct. The properties to the north of the abandoned road are very sloped and long. Given the slope and property length, the bottom half of those properties are not used and have large garbage trees and other vegetation growing on them and also dead vegetation and branches that have fallen over time. If the abandoned road were given to the property owners to the north, where they are not maintaining the southern half of their properties as is, it is unlikely that they would be able to maintain or use the abandoned road. The property owners along Carston Ct, having used and maintained the abandoned road for the last 24 years based on the words of the city council at that time, would be materially injured by the proposed vacation.

Thank you for your help with this matter. Please let me know if you have any questions.

Best,
Sam

Samuel J. Noel
Counsel
Lowenstein Sandler LLP

T: (801) 304-4672



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