

Extra Materials

When recorded, return to:
Heber City Corporation
Attention: Anthony Kohler
75 North Main Street
Heber City, UT 84032

SUBDIVISION AGREEMENT
AND
COVENANT RUNNING WITH THE LAND
(Heber Gateway Plaza 2)

THIS SUBDIVISION AGREEMENT AND COVENANT RUNNING WITH THE LAND (“Agreement”) is entered into as of this this 5th day of September, 2014, by and between Heber City (the “City”) and Wells Fargo Bank, a national association (the “Owner”).

WHEREAS, the Owner has proposed a plat for a three lot commercial subdivision, Heber Gateway Plaza 2, in the C-2 Commercial Zone in Heber City (the “Plat”), a true and correct copy of which is attached as Exhibit A;

WHEREAS, the Plat is to be recorded to subdivide the real property described in the attached Exhibit B;

WHEREAS, in connection with the approval and recording of the Plat, the parties desire to set forth their understandings with respect to certain public dedications and improvements; and

WHEREAS, this Agreement is entered into with the understanding that Owner is intending to sell the parcels described therein, “Lot 1”, “Lot 2” and “Parcel A” to successor owners and developers and this Agreement allocates certain responsibilities and benefits to the lots collectively and individually as stated below;

NOW, THEREFORE, the parties hereby agree as follows:

1. **Prior Annexation Agreement.** This Agreement replaces any remaining obligations stated in the Agreement and Covenant Running with the Land dated February 23, 1999 and recorded with the Wasatch County Recorder as Entry No. 00212299 on March 18, 1999.

2. **Plat.** City hereby approves the Plat and authorizes its agencies and employees to execute the Mylar of the Plat prepared by Owner, which Plat shall be in the form attached to this Agreement. Owner shall not be required to post any subdivision or improvement bond, letter of credit, deposit or guaranty in connection with recording the Plat.

3. **Road Dedications and Improvements.**

a. **500 East Dedication.** The Plat shall dedicate to City the proposed 75 foot wide 500 East right-of-way which is included within the property subject to the Plat and which adjoins the east boundary of the Plat’s Lot 2 and adjoins the west boundary of Parcel A (“**500 East**”).

b. **Turn Lane.** The Plat shall depict an approximate 250 foot by 12 foot wide right turn lane from 1200 South to 500 East in the location depicted on the Plat (the “**Turn Lane**”). The Parties agree to the following as to the Turn Lane:

i. The owner of Lot 2 shall be required to dedicate the Turn Lane as part of the subdivision and the owner of Lot 2 shall not receive compensation for this dedication in exchange for the benefits described below in Subsection 3(c); and

ii. The owner of Lot 2 shall have no obligation to construct or improve the Turn Lane as this road element will serve regional interests and the need for the Turn Lane is not created by the development depicted on the Plat;

c. **500 East Improvements.** The owner of Lot 1 shall have no obligation to improve 500 East in any way. Lot 2 and Parcel A may be sold and developed without requiring the owners of Lot 2 or Parcel A to improve or construct 500 East and without requiring or obligating the owners of Lot 2 or Parcel A to participate in a special improvement district or assessment bond to fund construction and improvement of 500 East. It is anticipated that the City or another party will improve 500 East but only at such time as City or another party is able to do so according to their own timetable. The future connection of Lot 2 or Parcel A to 500 East shall be governed by the below subsections:

i. **Pioneer Improvements.** Should the owner of Lot 2 or the owner of Parcel A desire to construct road improvements within 500 East at a time sooner than City is prepared to construct or improve 500 East, such owner may negotiate with City concerning such owner paying for such improvements and access connections, consistent with this agreement.

ii. **Connection Fee for Access After Construction of 500 East.** In the event City or another party has constructed and improved 500 East, and should an owner of Lot 2 or Parcel A desire^[1] an access “curb cut” on to 500 East, such owner shall pay a “connection fee” to City of \$30,000 for an access connection on the south side of 500 East (benefiting Lot 2 or portion thereof) and \$30,000 for an access connection on the north side of 500 East (benefitting Parcel A, or portion thereof). The per side connection fee may be prorated as between multiple access curb cuts should there be more than one access curb cut on the south side of 500 East or the north side of 500 East.^[2] The requirement to pay a connection fee shall not apply if a connection is made after a date which is ten (10) years after the date on which construction of 500 East is completed by City or another party.

4. **Plat Notes.** The following notes shall be placed on the Plat:

a. “Both owners of Lot 1 and Lot 2 have entered, or soon will enter, into a reciprocal access and utility agreement for the benefit of both lots and providing public access to 1200 South Street along

the east boundary of Lot 1. The reciprocal access and utility agreement will be recorded with the Wasatch County Recorder.

b. “The owner of Lot 1 has entered into or soon will enter into an access and utility easement agreement with the Heber Gateway Plaza Property Owners Association, Inc. for purposes of providing access to Lot 1 through the private roads within the Heber Gateway Plaza subdivision. The access and utility easement agreement will be recorded with the Wasatch County Recorder. No property described in this subdivision plat is a member or part of said owners’ association.”

c. “Each lot will be required to dedicate water rights to Heber City prior to obtaining a building permit.”

d. ^[3]“Access to 500 East from Lot 2 or Parcel A shall be subject to the Subdivision Agreement and Covenant Running with the Land recorded concurrently herewith.”

e. “Parcel A is unimproved and is actively devoted to agricultural use. Parcel A will not include surface improvements that are not an integral part of Parcel A's agricultural use unless in accordance with a future re-subdivision plat or site plan.”

5. **Project Costs.** Infrastructure improvement costs that are “project improvements” as that term is defined in the Utah Impact Fees Act (U.C.A. 11-36a-101) shall be paid by, and be the sole responsibility of, the Owner, its assigns, transferees or successors as owners or developers. Nothing in this Agreement shall obligate Owner to pay for “system improvements” as defined in the Utah Impact Fees Act, except through impact fees assessed at the time of obtaining a building permit in accordance with law.

6. **Weed Control.** Owners of lots within the Plat shall comply with City’s noxious weed control requirements and ordinances.

7. **Miscellaneous.**

a. This Agreement contains the entire agreement between the parties, and no statement, promise or inducement made by either party hereto, or agent of either party hereto which is not contained in this written Agreement shall be valid or binding. This Agreement may not be enlarged, modified or altered except in writing approved by the parties.

b. This Agreement shall be a covenant running with the land, and shall be binding upon the parties and their assigns and successors in interest. This Agreement shall be recorded with the Wasatch County Recorder.

c. In the event there is a failure to perform under this Agreement and it becomes reasonably necessary for either party to employ the services of an attorney in connection therewith (whether such attorney be in-house or outside counsel), either with or without litigation, on appeal or otherwise, the prevailing party in the controversy shall be entitled to recover its reasonable attorney’s fees incurred by such party and, in addition, such reasonable costs and expenses as are incurred in enforcing this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their hands the day and year first

above written.

HEBER CITY:

By: _____
Alan McDonald, Mayor

ATTEST:

Heber City Recorder

OWNER:

Wells Fargo Bank, a national association

By: _____

ACKNOWLEDGEMENTS

STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

The foregoing instrument was acknowledge before me this ____ day of _____, 2014 by _____, who executed the foregoing instrument in his capacity as the Mayor of the Heber City, Utah _____ and _____, who executed the foregoing instrument in his/her capacity as the City Recorder.

NOTARY PUBLIC

STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

On this _____ day of _____, 2014, personally appeared before me the above named authorized representative of Owner, who duly acknowledged to me that Owner is the owner in fee of the land in Heber Gateway Plaza 2 Plat and executed the same as such.

NOTARY PUBLIC

EXHIBIT A
(Copy of Subdivision Plat)

(Legal Description)

EXHIBIT B

HEBER CITY CORPORATION

ENGINEERING STAFF REPORT

MEETING TYPE:	Work Meeting	MEETING DATE:	September 4, 2014
SUBMITTED BY:	Bart L Mumford	FILE NO:	14015
APPROVED BY:	Mark K. Anderson		
SUBJECT:	2014 VALLEY HILLS TANK CONNECTION - BORE CHANGE ORDER		

PURPOSE

To consider a change order on the Valley Hills Tank Connection pipeline to bore approximately 210 feet of pipe instead of open cutting between Lots 49 and 50 in Valley Hills Plat D.

RECOMMENDED ACTION

That the City Council provide guidance on weather staff should proceed with change order of up to a net amount of \$8,500, to bore a segment of pipeline in lieu of using the open cut method.

BACKGROUND/HIGHLIGHTS

At the August 21, 2014 City Council Meeting, a contract was awarded to Silver Spur Construction to install the Valley Hills Tank Connection pipeline. One of the segments of this pipeline is located between two homes, Lots 49 and 50 in Valley Hills, Plat D. The contractor has proposed an alternate method of boring this segment of pipeline to avoid disturbing the surface improvements, potential damage to the homes, etc. Staff is receptive to using this method if the cost is similar to the costs incurred using the open cut method because the disturbance and potential conflicts are less, and the pipe is more durable.

Attached are two maps of the properties and pipeline location, along with photos, and a comparison of the cost of the two methods. The difference is estimated to be less than \$300.

However, at the time the project was bid, it was understood that the pipeline was in a utility easement on property owned by Lot 49. In evaluating the boring proposal, it was discovered that even though the subdivision plat calls the pipeline area an easement, the property was actually dedicated to the City. This means that the Lot 49 improvements and landscaping are on City property, not private property. If the area were open cut, the City would not be legally obligated to restore the landscaping improvements. The cost of the restoration is estimated at \$8,500, of which part or all may not need to be spent. This would reduce the open cut option by the amount not

spent. It could also potentially leave the City's strip of pipeline property between the homes a barren weedy nuisance.

The situation is further complicated by the fact that Lot 49 was recently purchased by Councilperson Franco, to whom the prior owner represented the pipeline area was part of her property. This could be seen as a conflict of interest.

Staff believes that, regardless of the owner, it would be easier for the contractor and less disruptive for the adjacent property owners to bore the pipeline. As a result, the contractor is looking to see if they can further reduce their cost. Normally boring is significantly more expensive than open cutting and that is why this method wasn't considered in the original bid. Staff is seeking Council guidance on if the potential savings are worth the risk of open cutting this area.

Options to consider:

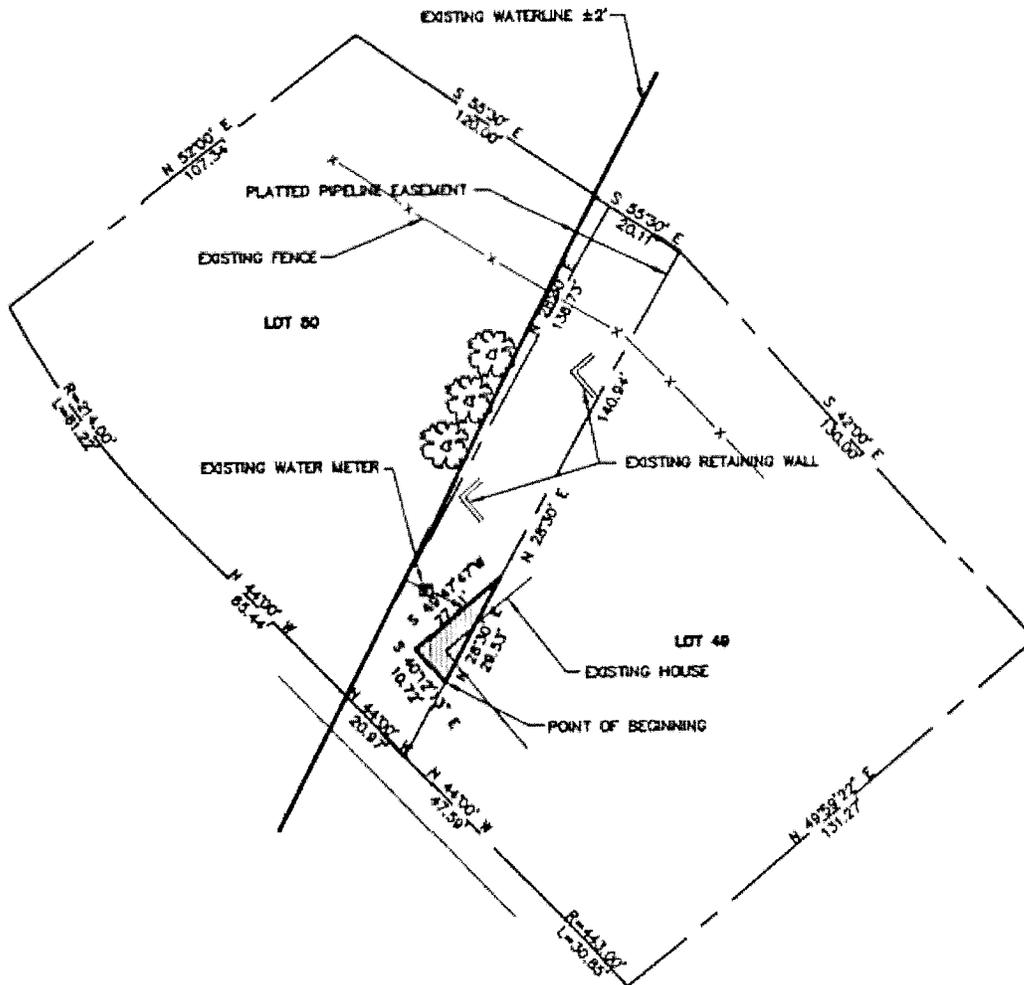
- 1) Bore the pipeline at an additional cost of up to \$8,500
- 2) Open cut the pipeline and try to minimize damage to the landscaping and the driveway.
- 3) Consider sharing the additional cost of boring with the homeowner.

FISCAL IMPACT

The estimated net cost increase of this change order will be between \$0 and \$8,500.

LEGAL IMPACT

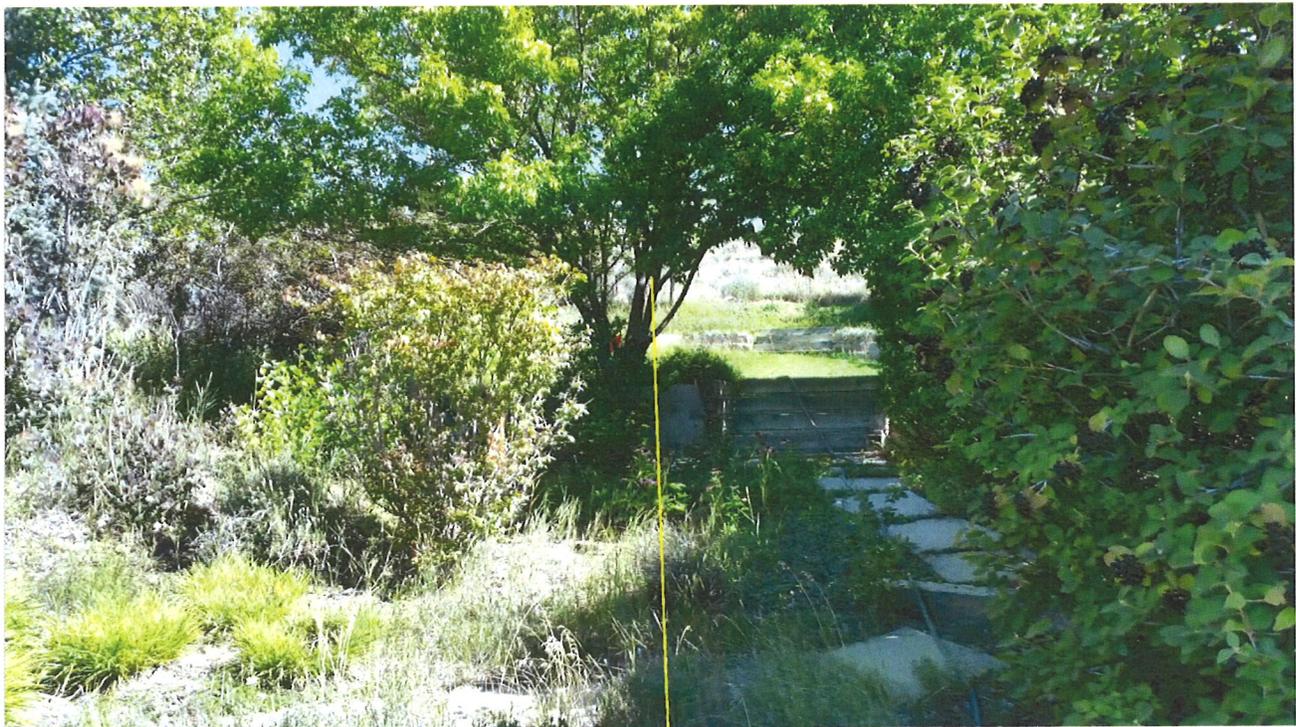
None



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EXHIBIT "A"





Directional Drill Price Comparison 8/29/14					
Bid Item Eliminated	Description	Quantity	Unit	Unit Price	Amount
	4 10" PVC C900 DR-18 (out of roadway)	210	LF	\$46.00	\$9,660.00
	18 Timp Canal Crossing: Bore & Casing Under Canal	21	LF	\$1,150.00	\$24,150.00
	19 Property Repairs at Cottonwood Circle	1	LS	\$8,500.00	\$8,500.00
	20 Rock Excavation	195	CY	\$30.00	\$5,850.00
	22 Import/Processed Native Material	156	CY	\$22.00	\$3,432.00
	Estimated savings: Inspection, Conflicts?	1	LS	\$2,000.00	\$2,000.00
	Total				\$53,592.00
Silver Spur Directional Drill Cost Estimate					
	Directional Drill Subcontractor				\$42,000.00
	Drill/Excavate for Drill				\$5,000.00
	210 LF DR-11 10" HDPE	210		\$22.49	\$4,722.90
	Fuse 10" HDPE Pipe - 3.00/Lf	210		\$3.00	\$630.00
	10" HDPE adapters - 2EA	2	EA	\$750.00	\$1,500.00
	Total				\$53,852.90
				NET	\$260.90

Automotive Service and Repair
Assisted Living/Care Centers
Banks
Big Box
Convenience Store with Gas - Open 24 hours
Convenience Store with Gas - Not open 24 hours
Department Store
Entertainment
Farmer's Market Vendors (<i>excluding utility costs</i>)
Film Events - Large
Film Events - Small
Fireworks
General Services - (Business & Professional, Personal, Construction & Contracted Services)
Home Occupation
Large Grocery with Gas
Large Grocery without Gas
Hotel/Motel
Extended Stay Hotel/Motel
Manufacturing
Mobile Home Park (< 25 units)
Mobile Home Park (25+ units)
Mortgaged Street Vendors
Non-Depository Credit Intermediation
Restaurants
Seasonal
Social Club
Special Events - Large
Special Events - Small
Specialty Foods
Sales/Rental/Wholesale
Solicitor
Storage Units
Tobacco Store
Transportation