



**Tremonton City Corporation
City Council Meeting
September 1, 2015
Meeting to be held at
102 South Tremont Street
Tremonton, Utah**

AGENDA

**CITY COUNCIL WORKSHOP
6:00 p.m.**

1. Review of agenda items on the 7:00 p.m. City Council Meeting
2. Training on Public Official and Public Employees Cans and Cannots of Ballot Proposition
3. ***Closed Session:***
 - a. ***Strategy session to discuss the purchase, exchange, or lease of real property when public discussion of the transaction would disclose the appraisal or estimated value of the property under consideration or prevent the public body from completing the transaction on the best possible terms.***

**CITY COUNCIL MEETING
7:00 p.m.**

1. Opening Ceremony
2. Introduction of guests
3. Approval of agenda
4. Approval of minutes – August 18, 2015
5. Public comments: This is an opportunity to address the Council regarding your concerns or ideas. Please limit your comments to three minutes.
6. Hearing
 - a. Wherein the City Council may formally consider the revocation of the business license of *My Style* (located at 980 West Main Street) pursuant to Title 9, Licensing, Control and Regulation of Business and Construction, Chapter 9-100 Licensing, Control and Regulation of Business, Chapter 9-120 Revocation or Denial of Business License of the Revised Ordinances of Tremonton City where allegations of violation exists, or in this case a conviction of a criminal violation.
7. New Council Business:
 - a. Discussion and consideration pursuant to revocation of the business license of *My*

Style (located at 980 West Main Street) based upon preponderance of the evidence and pursuant to Title 9, Licensing, Control and Regulation of Business and Construction, Chapter 9-100 Licensing Control and Regulation of Businesses, and Part 9-120 Revocation or Denial of Business License of the Revised Ordinances of Tremonton City

- b. Discussion and consideration of approving utility bill write-off's for non-collectable accounts
 - c. Discussion and consideration of adopting Resolution No. 15-33 accepting a Petition for Annexation of Parcel Numbers 05-186-0009 and 05-186-0001
 - d. Discussion and consideration of implementing bicycle facilities (by signage and/or pavement markings) on Main Street and 300 East (UDOT Roads) and 600 South, 600 North, and Tremont Street (City Streets)
 - e. Discussion and consideration to surplus Patrol Car T31 – a 2005 Chevrolet Impala
 - f. Discussion and consideration of approving Resolution No. 15-34 approving a Development Agreement with Spring Hollow Subdivision, Phase 1
9. Unfinished Business:
10. Comments:
- a. Administration/City Manager Advise and Consent
 - 1) Status of September 15, 2015 City Council Meeting
 - b. Council Reports
11. Adjournment

Anchor location for Electronic Meeting by Telephone Device. With the adoption of Ordinance No. 13-04, the Council may participate per Electronic Meeting Rules. Please make arrangements in advance.

Persons with disabilities needing special assistance to participate in this meeting should contact Darlene Hess no later than 48 hours prior to the meeting.

Notice was posted, August 28, 2015 a date not less than 24 hours prior to the date and time of the meeting and remained so posted until after said meeting. A copy of the agenda was delivered to The Leader (Newspaper) on, August 28, 2015.

Darlene S. Hess, RECORDER

HB 362 Local Option

WHAT'S GOING ON?

WHAT YOU CAN AND CANNOT DO

HB 362 Local Option—as of Aug 17

RESOLUTIONS: 111 CITIES AND TOWNS IN 21 COUNTIES

Counties who have acted:

BEAVER

BOX ELDER

CARBON

GRAND

JUAB

MORGAN

SALT LAKE

SAN JUAN

UINTAH

HB 362 Local Option—as of Aug 17

Counties who are still considering 2015:

DAVIS (Aug 18 agenda)

DUCHESNE (Aug 24 agenda)

MILLARD

RICH

SANPETE (Aug 18 agenda)

SEVIER (Aug 24 agenda)

TOOELE (Aug 18 agenda)

UTAH (Aug 18 agenda)

WEBER (Aug 18 agenda)

HB 362 Local Option—people are watching



HB 362: What COUNTY must do

FACTUAL INFORMATION FRAMEWORK

1) Voter information pamphlet (500 words of support)

Up to 5 sponsors

2) 500 word statement of support on website/newsletter from governing body

Possible 500 word counter argument

Possible 250 word county rebuttal

Possible 250 word counter rebuttal

3) Publicize and hold a public hearing between October 20-30

HB 362: What PUBLIC ENTITY **CANNOT DO**

CANNOT: make an expenditure from public funds to influence a ballot proposition (Class B misd)

- General rule
- Key exceptions to “expenditure” and to “influence” (see next slide)
- Applies to ULCT, cities, towns, associations of government, and transit districts

CANNOT: spend public money or provide anything of value from tax dollars to campaign or advocate for or against the ballot proposition

CANNOT: Provide services at less than fair market value for a political issues committee

- You can rent City Hall at market value to supporters/opponents of ballot proposition

HB 362 Local Option—what CITY CAN DO

CAN: provide a “brief statement” about the public entity’s position & reason for the position

- Explain your resolution

CAN: provide “factual information” as long as the public entity grants “equal access” to opponents of the ballot proposition

CAN: provide “factual information” that is consistent with the TBPA (county req’ts)—up to 500 word arguments & 250 word rebuttals—for publicizing arguments & rebuttals

- ULCT template coming asap

CAN: neutrally encourage voters to vote regardless of whether the city/town provides a “brief statement” or “factual information”

- ULCT template coming asap

CAN: hold a public meeting between October 20-30

HB 362: What Public Official CAN DO

Public official:

- Elected/appointed gov't officials with authority to make public policy
- Person with “supervisory authority over the personnel & affairs of a public entity AND approves the expenditures of funds”

CAN: advocate for or against the ballot proposition by speaking independently of the public entity, using your personal email account, and **without using public funds**

- Personal facebook page: advocate!
- City funded facebook page: do not advocate but can provide factual information

CAN: advocate for or against the ballot proposition by providing campaign contributions from personal resources

- Donate (or encourage others to donate) to advocates or opponents

HB 362: What Public Employee CANNOT DO

Note: This law applies to **ANYONE** with access to a public email

CANNOT: use public email to send emails that advocate for or against the ballot proposition

- You cannot send, but you can receive emails
- If you as a public official receive an email from a constituent, respond via phone and/or refer them to the “factual information” about the ballot proposition
 - A public official can give his/her own personal opinion about the ballot proposition so long as you do not use public funds

HB 362 Local Option:
Any questions?

Date: July 31, 2015
To: ULCT membership and other public entities in Utah
From: Cameron Diehl and the ULCT legal team
RE: Public entity and public official involvement during a ballot proposition election

INTRODUCTION

(Note: ULCT urges city officials to consult with your city attorney and to consider any relevant municipal ordinances in your jurisdiction)

Three acts govern public entity involvement in ballot propositions. First, the legislature enacted the Transparency of Ballot Propositions Act (TBPA) in 2014 that only applies to the entity that imposes the tax. In this case, the imposing entity is the county. Second, the county is also responsible for arguments in the voter information pamphlet. Third, the Political Activities of Public Entities Act (PAPEA) applies to all public entities, regardless of who imposes the tax. The PAPEA allows public entities to offer a brief statement of support and provide factual information so long as opponents have equal access. PAPEA also prohibits public entities from using public funds to influence the ballot proposition election.

Once your county governing body votes to place the local option on the ballot for the November election, then the county triggers both the official ballot proposition and the governing statutes. This memo examines the TBPA, PAPEA, and the voter information pamphlet requirements, and encourages election consolidation between counties and municipalities.

I) TRANSPARENCY OF BALLOT PROPOSITIONS ACT AND VOTER INFORMATION PAMPHLET

A) MANDATORY AND EXCLUSIVE COUNTY ACTION TO PUBLICIZE SUPPORT AND OPPOSITION

The Transparency of Ballot Propositions Act defines the procedure for a governing body to propose a ballot proposition to their voters. A taxing entity must comply with the Act to submit a ballot proposition. In the case of the HB 362 local option, the governing body is the county governing body.

Once a county governing body submits the local option to voters, the county must then follow TBPA guidelines to provide public statements of support, offer an opportunity for the opposition to respond, and hold a public meeting in October on the local option. The county must also provide a local voter information pamphlet which has a different calendar and argument requirements than the TBPA.

First per TBPA, the county governing body must submit to the county clerk an argument in favor of a ballot proposition. In reply, any eligible voter may submit to the county clerk an argument against the ballot proposition.¹ Both arguments must not exceed 500 words in length and be submitted no later than 60 days before Election Day.² In 2015, the 60 day deadline is Friday, September 4.

Second, both the county governing body and the opponent may provide a rebuttal argument to each other that does not exceed 250 words and is submitted at least 40 days before Election Day. In 2015, the 40 day deadline is Thursday, September 24. If multiple opponents submit arguments and rebuttals against the county position, then the county clerk designates one of the opponents to provide the official counter argument and rebuttal.³

¹ Utah Code Ann. § 59-1-1604(1)

² Utah Code Ann. § 59-1-1602, 1604(2)

³ Utah Code Ann. § 59-1-1604(1)(b)(ii)

Third, the county governing body must then post the arguments and rebuttals on the Statewide Electronic Voter Information Website and the county website for 30 consecutive days before the election. In 2015, the 30 day window begins on Sunday, October 4.⁴ The county governing body would also have to post the arguments and rebuttals in the next scheduled newsletter (if the county has a newsletter) published before Election Day.⁵

Fourth, the county governing body must hold a public meeting between four and 14 days before Election Day, which would be between Tuesday, October 20, and Friday, October 30.⁶ The county governing body must allow equal time for a presentation of the arguments both in favor of the ballot proposition and against the ballot proposition.⁷ The public meeting must begin at or after 6 pm.⁸ The county governing body must then provide a digital audio recording of the public meeting no later than three days after the meeting on the county website or, in the case of counties without websites, at the primary government building.⁹

B) CERTIFIED BALLOT AND VOTER INFORMATION PAMPHLET

Meanwhile separate from TBLA, the county governing body must submit the certified ballot title of the ballot proposition to the county clerk 65 days prior to the election¹⁰ which is Sunday, August 30. Additionally, the county clerk must also prepare a voter information pamphlet and receive petitions from supporters and opponents to prepare arguments for and against the ballot proposition by August 30. If more than one person files a request to prepare arguments for or against the ballot proposition in the local voter information pamphlet, then the governing body must make the final designation¹¹ and give priority to sponsors or members of the local governing body. The voter information pamphlet arguments may not exceed 500 words in length and not list more than five names as sponsors.¹² The authors of the 500 word arguments for the voter information pamphlet must submit their arguments to the county clerk¹³ by 50 days before Election Day which is September 14.

C) TBPA APPLICATION TO OTHER PUBLIC ENTITIES

Cities and towns and other public entities are not officially responsible for any of the aforementioned requirements because only counties can impose the HB 362 local option. However, the Transparency in Ballot Propositions Act provides a framework for other public entities that could fit within the broad parameters of the Political Activities of Public Entities Act.

⁴ Utah Code Ann. § 59-1-1604(5)

⁵ Utah Code Ann. § 59-1-1604(6)

⁶ Utah Code Ann. § 59-1-1605(1)

⁷ Utah Code Ann. § 59-1-1605(2)

⁸ Utah Code Ann. § 59-1-1605(3)(b)

⁹ Utah Code Ann. § 59-1-1605(4)

¹⁰ Utah Code Ann. § 20A-6-106

¹¹ Utah Code Ann. §20A-7-402(2)(a)(ii)

¹² Utah Code Ann. §20A-7-402(2)(a)(v)

¹³ Utah Code Ann. § 20A-7-402(2)(a)(vi)

II) POLITICAL ACTIVITIES OF PUBLIC ENTITIES ACT (PAPEA, 20A-11-1201)

A) WHAT ALL PUBLIC ENTITIES CANNOT DO

A public entity such as the state, county, municipality, or governmental inter-local cooperative may NOT make an expenditure from public funds for political purposes or to influence a ballot proposition.¹⁴ Violating this section of state law is a class B misdemeanor.¹⁵ As “political purposes” refers to the elections of candidates and judges, this analysis will focus only on the ballot proposition restriction.¹⁶

A “public entity” includes the state, county, municipality, governmental interlocal cooperation agency, local district, and each administrative subunit therein.¹⁷ As such, the Utah Department of Transportation, all counties, all cities and towns, the Utah League of Cities and Towns, associations of governments and the Utah Transit Authority and other transit agencies are considered “public entities.”

State law defines an “expenditure” as a “payment, donation, gift of money, or anything of value” for any recipient.¹⁸ State law further defines “expenditure” when the recipient is a political issues committee as “goods or services provided for political purposes at less than fair market value.”¹⁹ State law also defines “public funds” as any money received by a public entity from appropriations, grants, taxes, fees, interest, or returns on investment.²⁰

State law defines “influence” as “campaign or advocate for or against a ballot proposition” with one key exception. “Influence” does **not** mean “providing a brief statement about a public entity’s position on a ballot proposition and the reason for that position.”²¹ This exception is critical because it allows the public entity to explain why the ballot proposition would be beneficial and allows for the activities that the TBPA requires of counties.

In short, a county, city, town, or other public entity may not spend taxpayer dollars to campaign or advocate for or against a ballot proposition with the notable exception of providing a “brief statement” and/or “factual information” with “equal access” (analysis below) about the public entity’s position.

B) WHAT ALL PUBLIC ENTITIES CAN DO

Per PAPEA, the public entity may provide a “brief statement” about the public entity’s position and the reason for that position.²² A public entity (both those that impose the tax and those who do not impose like a city or town) may also provide “factual information” about the ballot proposition to the public, so long as the entity grants “equal access” to both the opponents and proponents of the ballot proposition.²³ The public entity may also neutrally encourage voters to vote.²⁴

Even though the county is the governing body that submits the ballot proposition to voters and thus **must** comply with the aforementioned Transparency of Ballot Propositions Act, any public entity like a city or town **may** provide a “brief statement” and “factual information” with “equal access” to explain the entity’s position without violating the PAPEA restriction on influencing the election.

¹⁴ Utah Code Ann. § 20A-11-1203(1)

¹⁵ Utah Code Ann. § 20A-11-1204

¹⁶ Utah Code Ann. § 20A-11-1202(9)

¹⁷ Utah Code Ann. § 20A-11-1202(10)

¹⁸ Utah Code Ann. § 20A-11-1202(4)(a)

¹⁹ Utah Code Ann. § 20A-11-1202(4)(e)

²⁰ Utah Code Ann. § 20A-11-1202(11)(a), (b)

²¹ Utah Code Ann. § 20A-11-1202(6)(a)

²² Utah Code Ann. § 20A-11-1206(6)(b)

²³ Utah Code Ann. § 20A-11-1206(2)

²⁴ Utah Code Ann. § 20A-11-1206(3)

III) ULCT RECOMMENDATION: WHAT CITIES, TOWNS, & PUBLIC ENTITIES MAY DO PER BOTH ACTS

PAPEA allows for a “brief statement” and “factual information” so long as the public entity provides “equal access.” Even though TBPA does not apply to cities, towns, and other public entities in this context because counties will impose the tax, the TBPA does provide a parallel framework for public entities (like cities and towns) to provide the PAPEA-allowed “factual information” with “equal access.”

A) BRIEF STATEMENT

A public entity may provide a “brief statement” explaining their position on the ballot proposition and the reason for that position. PAPEA and case law are silent as to what a “brief statement” is. For example, ULCT believes that cities and towns (and public officials) can reference the resolutions that they passed that demonstrate the official municipal position on the local option.

B) FACTUAL INFORMATION AND EQUAL ACCESS

PAPEA allows but does not require a public entity to provide “factual information” to the public about the ballot proposition so long as the public entity provides “equal access” to opponents. PAPEA does not provide guidance for “factual information” and “equal access.” However, TBPA allows an imposing public entity (in this case counties) up to a 500 word public argument and 250 word rebuttal to express support for the ballot proposition. TBPA also outlines how the public entity should provide equal access to opponents by providing an opportunity to a registered voter in the county to submit counter arguments that would be publicly shared in the same manner as the public entity argument.²⁵

Since PAPEA does not require a city, town, or other public entities to provide “factual information,” then a city, town, and other public entities need not provide “factual information.” If a city or town decides not to provide “factual information,” then the city or town need not provide “equal access” to opponents to respond. The city or town could still offer a “brief statement” though the line separating a “brief statement” and “factual information” with “equal access” is unclear.

If a city or town elects, however, to provide “factual information” to demonstrate support of the local option, then ULCT recommends that the city or town follow the same framework in the TBPA: 500 word argument and counter argument, 250 word rebuttal and counter rebuttal, and post all arguments on the municipal website. Since PAPEA is silent about how to provide “equal access” to opponents, ULCT recommends that the city or town could use the same counter argument and counter rebuttal that the county clerk has designated for the county per TBPA. The city or town may choose to have an open meeting to discuss the local option as TBPA requires of counties but that meeting is not mandatory to satisfy the “equal access” requirement.

In conclusion, if a city or town elects to provide “factual information” about the ballot proposition, the city or town should follow the TBPA “equal access,” argument, and counter argument framework.

C) WHAT A PUBLIC OFFICIAL AND PUBLIC EMPLOYEE CANNOT DO—EMAIL

A “public official” has a different legal framework than a “public entity.” A “public official” includes both elected and appointed government officials who have authority to make public policy. A “public official” also includes any person with “supervisory authority over the personnel and affairs of a public entity and approves the expenditures of funds.” As such, a “public official” does not include public employees who do not have authority to make public policy nor does it include public employees who do not have supervisory authority over the public entity’s personnel AND do not have the authority to approve expenditures.²⁶

²⁵ Utah Code Ann. § 59-1-1604; see section I(a) above

²⁶ Utah Code Ann. § 20A-11-1202(12)

Public officials may not use public funds to influence a ballot proposition. Specifically, the legislature in 2015 enacted a provision that now also restricts a person—public official, public employee, or anyone—from using the email of a public entity to send an email to advocate for or against a ballot proposition.²⁷ The county clerk may impose a civil fine of \$250 for the first violation and then \$1000 for each subsequent violation multiplied by the number of violations that the person commits.²⁸ The violation is the act of sending the email from the public account, regardless of the quantity of recipients.²⁹ Receiving an email on your public account, however, is not a violation. The law does provide for a safe harbor if the lieutenant governor determines that the email was inadvertently sent as a reply.³⁰

Consequently, anyone—public official, public employee, etc.—with access to an email of a public entity may not send an email from the public account to advocate for or against the ballot proposition.

D) WHAT A PUBLIC OFFICIAL AND PUBLIC EMPLOYEE CAN DO

A public official may advocate for or against a ballot proposition and may speak, contribute personal money, or otherwise exercise his/her First Amendment rights independent of the public entity and without using public funds or resources.³¹ For example, a public official may post on his/her personal Facebook page but he/she may not send an email from the email of a public entity or face a civil fine. Public officials and public employees may use their own personal email accounts and other modes of communication to exercise their First Amendment rights so long as they do not use public funds.

IV) ELECTION CONSOLIDATION

Previous ULCT analysis determined that state law encourages but does not require counties and municipalities to consolidate elections.³² As of July 2015, many municipalities still intend to conduct their own election in November. If the county in which those municipalities reside puts the ballot proposition to voters, then the voters in that county could receive one ballot from the city/town with the city/town council candidates and another ballot from the county with the ballot proposition. Voters receiving two ballots may be confused about which ballot to submit and may result in low turnout. Consequently, ULCT recommends that counties and municipalities consider election consolidation.

²⁷ Utah Code Ann. § 20A-11-1205(1) (note: though the word “influence” is not used in this statute, the definition herein is consistent with “influence” within PAPEA)

²⁸ Utah Code Ann. § 20A-11-1205(2)

²⁹ Utah Code Ann. § 20A-11-1205(5)

³⁰ Utah Code Ann. § 20A-11-1205(5)

³¹ Utah Code Ann. § 20A-11-1206(1)

³² Utah Code Ann. §20A-1-204(2)(a),(b)

HB 362 Local Option: County Requirements ¹



A county must follow these steps if the county submits the ballot proposition to voters in 2015:

AS SOON AS THE COUNTY ACTS: The county clerk must prepare an election notice of the election either 100 days prior to the election OR as soon as possible before the local election to use in conjunction with a federal write-in absentee ballot²

- The notice must include the ballot propositions and other offices as well as instructions for how to use the federal write-in absentee ballot
- The county clerk must post the notice on the county website & provide it upon request³
- Once the ballot is certified, then the county clerk must update & publish the notice

AUG 30 (LAST DATE FOR 2015 ACTION): The county governing body must submit the certified ballot title of the ballot proposition to the county clerk 65 days prior to the election⁴

AUG 30: The county clerk must receive petitions from supporters and opponents to prepare arguments for and against the ballot proposition for the local voter information pamphlet⁵

- If more than one person files a request to prepare arguments for or against the ballot proposition in the local voter information pamphlet, then the governing body must make the final designation⁶ and give priority to members of the governing body. The voter information pamphlet arguments may not exceed 500 words in length and not list more than five names as sponsors.⁷

SEP 4: Per the TBPA, the county clerk must provide the ballot proposition title, number, and text, the county legislative vote, and other factual information to the lieutenant governor for the Statewide Electronic Voter Information Website⁸

- The county governing body must provide a 500 word argument in favor of the ballot proposition to the county clerk per the TBPA to later publish on the county website, state website, and county newsletter (if applicable) by Sep 4
- The county clerk must receive the 500 word opposing argument by Sep 4 as well
- If multiple opposing arguments arrive, then the county clerk designates one as “official”

SEP 14: The authors of the 500 word arguments for the voter information pamphlet must submit their arguments to the county clerk⁹

SEP 24: The county governing body may provide a 250 word rebuttal per the TBPA to the opposing argument

- The opponents may provide a 250 word rebuttal to the county rebuttal by Sep 24 too

OCT 4-NOV 3: The county per the TBPA must post the argument, opposing argument, and rebuttals on the county website, state website, & the county newsletter (if applicable) until Election Day

OCT 20-30: The county governing body per the TBPA must publicize and hold one public meeting after 6 pm during this time frame and present both supporting and opposing arguments

¹ Transparency of Ballot Propositions Act, Utah Code Ann. § 20A-1-1602; voter information pamphlet, § 20A-7-402

² Utah Code Ann. § 20A-16-502(1),(2)

³ Utah Code Ann. § 20A-16-502(5)

⁴ Utah Code Ann. § 20A-6-106

⁵ Utah Code Ann. § 20A-7-402(1),(2)(a)(i)

⁶ Utah Code Ann. § 20A-7-402(2)(a)(ii)

⁷ Utah Code Ann. § 20A-7-402(2)(a)(v)

⁸ Utah Code Ann. § 20A-7-801(4)(iii)

⁹ Utah Code Ann. § 20A-7-801(2)(a)(vi)



Public Entities: What can and can't be done¹⁰

* Consult with your city attorney and see the *Public entity and public official involvement memo* available on ULCT website for more details

CAN: provide a “brief statement” about the public entity’s position & reason for the position¹¹

CAN: provide “factual information” as long as the public entity grants “equal access” to opponents of the ballot proposition¹²

CAN: provide “factual information” that is consistent with the TBPA—up to 500 word arguments & 250 word rebuttals—for publicizing arguments & rebuttals¹³

CAN: neutrally encourage voters to vote regardless of whether the city/town provides a “brief statement” or “factual information”¹⁴

CANNOT: make an expenditure from public funds to influence a ballot proposition¹⁵

CANNOT: spend public money or provide anything of value to campaign or advocate for or against the ballot proposition¹⁶

CANNOT: Provide services at less than fair market value for a political issues committee¹⁷

Public Officials & Public Employees: What can and can't be done

CAN: advocate for or against the ballot proposition by speaking independently of the public entity, using your personal email account, and without using public funds¹⁸

CAN: advocate for or against the ballot proposition by providing campaign contributions from personal resources¹⁹

CANNOT: use your public email account to send emails that advocate for or against the ballot proposition²⁰

CANNOT: approve expenditures from public funds to influence the ballot proposition²¹

¹⁰ Transparency of Ballot Propositions Act, Utah Code Ann. § 20A-1-1602; Political Activities of Public Entities Act, § 20A-11-1201

¹¹ Utah Code Ann. § 20A-11-1202(6)(a),(b)

¹² Utah Code Ann. § 20A-11-1206(2),(3)

¹³ Utah Code Ann. § 59-1-1604

¹⁴ Utah Code Ann. § 20A-11-1206(3)

¹⁵ Utah Code Ann. § 20A-11-1203(1)

¹⁶ *Id.*; Utah Code Ann. § 20A-11-1202(4)(a)

¹⁷ Utah Code Ann. § 20A-11-1202(4)(e)

¹⁸ Utah Code Ann. § 20A-11-1206(1)

¹⁹ *Id.*

²⁰ Utah Code Ann. § 20A-11-1205(1)

²¹ Utah Code Ann. § 20A-11-1203(1)

Draft Minutes

TREMONTON CITY CORPORATION CITY COUNCIL MEETING August 18, 2015

Members Present:

Diana Doutre
Lyle Holmgren
Jeff Reese
Bret Rohde
Byron Wood
Roger Fridal, Mayor
Shawn Warnke, City Manager
Darlene S. Hess, Recorder

CITY COUNCIL WORKSHOP

Mayor Fridal called the August 18, 2015 City Council Workshop to order at 6:00 p.m. The meeting was held in the City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Those in attendance were Mayor Fridal, Councilmembers Doutre, Holmgren, Reese, Rohde, and Wood, City Manager Shawn Warnke, and Recorder Darlene S. Hess. The following Department Heads were also present: Fire Chief Steve Batis, Zoning Administrator Steve Bench (arrived at 6:04 p.m.); Public Works Director Paul Fulgham, Police Chief David Nance, and Treasurer Sharri Oyler (arrived at 6:20 p.m.). Also in attendance were: City Attorney Dustin Ericson (arrived at 6:04 p.m. and left at 6:35 p.m.), and Judge Kevin Christensen.

1. Review of agenda items on the 7:00 p.m. Council Meeting:

The Council reviewed the August 18, 2015 Agenda with the following items being discussed in more detail:

Manager Warnke told of an agreement between the City and Judge Christensen several years ago regarding a URS settlement. Justice Court Judges were eligible for Utah State Retirement Systems (URS) and some cities, including Tremonton City, were not making the contributions to URS. The City received a bill from URS for the principle and interest, with interest totaling approximately \$20K. Judge Christensen agreed to accept the principle amount as a contribution, not as a URS credit which would have mandated that the City pay the \$20K in interest. Manager Warnke appreciates Judge Christensen for his willingness to cooperate and help the City with the URS resolution.

Draft Minutes

State Law limits the amount a Justice Court Judge can make during a year. Judge Christensen's salary exceeded that limit several years ago. It is proposed that the amount paid over the limit be settled by amending the URS settlement agreement to acknowledge that the amount required to be paid back by the Judge to Tremonton City has been as satisfied in whole by virtue of Judge Christensen forgoing the approximately \$20,000 interest that he had previously waived. The amount Judge Christensen is required to pay Tremonton City back is \$3,477.75. Councilmember Wood noted it was a good arrangement and helps the City. The Councilmembers thanked Judge Christensen for working with the City. Judge Christensen appreciates the comments that were made.

Motion by Councilmember Rohde to move into Closed Session. Motion seconded by Councilmember Wood. Roll Call Vote: Councilmember Rohde – aye, Councilmember Wood – aye, Councilmember Reese – aye, Councilmember Doutre – aye, Councilmember Holmgren – aye. Motion approved.

The Council moved into closed session at 6:08 p.m.

2. **Closed Sessions.**

- a. **Strategy session to discuss pending and/or reasonably imminent litigation.**
- b. **Investigative proceedings regarding allegations of criminal misconduct.**

Motion by Councilmember Wood to return to open meeting. Motion seconded by Councilmember Rohde. Roll Call Vote: Councilmember Rohde – aye, Councilmember Wood – aye, Councilmember Reese – aye, Councilmember Doutre – aye, Councilmember Holmgren – aye. Motion approved.

The Council returned to open session at 6:19 p.m.

Ordinance No. 15-11. Attorney Ericson stated that Ordinance No. 15-11 is a temporary Land Use Ordinance. The Council would have six months to analyze the situation and allow for a permanent draft to be presented for the Council's consideration by February 2016. Any business that has been granted a business license that is contrary to Ordinance No. 15-11 would be grandfathered unless the business was abandoned for a year or their business license was revoked. Manager Warnke noted that a business that is grandfathered could not increase the degree of nonconformity by expanding their operations. The grandfather status respects what is in place when the temporary ordinance was enacted.

Industrial Protection Area. Attorney Ericson is waiting to hear from the County regarding the Industrial Protection Area. The Council adopted an Industrial Protection

Draft Minutes

Ordinance recently and authorized a Resolution allowing City Staff to apply for an Industrial Protection Area for the Tremonton City Wastewater Treatment Plant Complex. The City submitted an application to itself for the Industrial Protection Area. The City has jurisdiction regarding the approval of an Industrial Protection Area within Tremonton City incorporated limits. There was a fifteen day direct mail notice sent to all surrounding property owners within 1,000 feet and postings were put up on the property and around town. There were no comments during the fifteen days. The information was forwarded to the Tremonton City Planning Commission and Industrial Protection Board from the County.

The County Industrial Protection Board questioned whether it was appropriate for the Tremonton City Council to be approving the Industrial Protection Area for the City's property. The Industrial Protection Board's recommendation was that the County Commission should review and approve Tremonton City's application for an Industrial Protection Area for its Wastewater Treatment Plant Complex. Attorney Ericson is awaiting a response from the County Attorney regarding his counsel on this issue. Attorney Ericson stated it is not a unique situation. State Code states that if the land applied for is within the municipal incorporated city limits then it should run through that municipality's legislative body. Even if the City was inclined to turn the application over to the County, State law does not allow it.

Manager Warnke commented that the City was also required to notice this Public Hearing. Some people have contacted City Staff and they were encouraged to come to the Public Hearing tonight. The Council was given the criteria in the State Code for them to consider when creating an Industrial Protection Area. Manager Warnke believes the City's application meets all the criteria contained within the State Code. If the Ordinance is adopted, the City must send notices to the County Recorder's Office and Elwood City as Elwood borders the proposed Industrial Protection Area. If approved, the Industrial Protection Area would protect the City from nuisances related to the City's Wastewater Treatment Plant. Attorney Ericson noted that the Industrial Protection Area would also protect citizens of Elwood and Tremonton by putting them on notice that a Wastewater Treatment Plant (WWTP) is in use in that area.

Glenn Smith contacted City Staff with concerns. Manager Warnke noted that improvements are planned for the WWTP which will make operations more efficient. Mayor Fridal stated that the concerns Mr. Smith has are relating to old issues and cannot be changed at this time.

Attorney Ericson was excused at 6:31 p.m.

Draft Minutes

Canvass – August 11, 2015. Recorder Hess spoke about the canvass. Councilmember Wood asked how much the Primary Election cost. Recorder Hess stated that it cost the City over \$1K. The judges were paid \$150 as set by the County. There were also costs for the judge’s meals during elections.

July Warrant Register. Councilmember Doutré asked about the charges to WesTech. Director Fulgham explained they are for chains and bearings for one of the mechanical processes at the Wastewater Treatment Plant which should be good for fifteen years. Councilmember Doutré also wondered about the charge to Mtn. Valley Motor and Pump. Director Fulgham said that Mountain Valley Motor and Pump repairs the City’s pumps. There have been two repairs for wastewater pumps, one with a blower problem and wet water pumps. The pumps are located in the basement of the wastewater facility. They are large pumps with 50 horse power motors that pump 2,000-3,000 gallons a minutes.

Resolution No. 15-30. Manager Warnke noted that Central Box Elder County Fire District returned the agreement with three comments that have been addressed that were primarily typos and corrections. Chief Batis explained that Honeyville asked Tremonton City to provide Mutual Aid when the Central Box Elder County Fire District is in need and visa versa. This will be the first Mutual Aid agreement Tremonton Fire has entered into. Tremonton has automatic aid/mutual aid agreement with Garland and Brigham City if they need help with fires but there are no strictly Mutual Aid agreements. There is a medical automatic aid with Brigham City for ambulances. The platform trucks are set up for automatic aid if there is a major incident on either City’s main streets.

Resolution No. 15-31. Chief Batis met with representatives last week. Brigham City Council gave approval to modify boundaries to allow Tremonton City to serve as medical transport for the area as Honeyville Mayor Forsgren requested. Brigham City Fire Chief and Chief Batis re-formed the boundaries to reflect the changes. The State accepted the changes because all cities involved were in agreement. The State received a letter from Honeyville disputing Brigham City changing to Paramedics. The State put a hold on the change until the dispute is resolved. According to Honeyville Mayor the fee for having a Paramedic on board with Brigham would cost Honeyville residents \$400 more than the Advanced Level fee from Tremonton. Manager Warnke noted that the final boundaries and description were received today and will replace the information contained in the Resolution that is currently in the City Council packets.

The meeting adjourned at 6:45 p.m. by consensus of the Council.

CITY COUNCIL MEETING

Draft Minutes

Mayor Fridal called the August 18, 2015 City Council Meeting to order at 7:00 p.m. The meeting was held in the Tremonton City Council Meeting Room at 102 South Tremont Street, Tremonton, Utah. Those in attendance were Mayor Fridal, Councilmembers Doutre, Holmgren, Reese, Rohde, and Wood, City Manager Shawn Warnke, and Recorder Darlene S. Hess. The following Department Heads were also present: Fire Chief Steve Batis, Zoning Administrator Steve Bench, Public Works Director Paul Fulgham, Police Chief David Nance, and Treasurer Sharri Oyler. Also in attendance was: Judge Kevin Christensen (left at 7:09 p.m.)

1. Opening Ceremony:

Mayor Fridal informed the audience that he had received no written or oral request to participate in the Opening Ceremony. He asked anyone who may be offended by listening to a prayer to step out into the lobby for this portion of the meeting. The prayer was offered by Councilmember Doutre and the Pledge of Allegiance was led by Councilmember Reese.

2. Introduction of guests:

Mayor Fridal welcomed Kevin Christensen from Bear River Health Department, Honeyville Mayor David Forsgren, Jason Watterson from Utah Local Governments Trust, and scouts. Mayor Fridal encouraged the scouts to receive the rank of Eagle Scout as it is a great honor and privilege. Mayor Fridal also welcomed Marilyn and Glenn Smith.

3. Approval of Agenda:

Mayor Fridal asked if there were any changes or corrections to the Agenda. There were no changes or corrections.

Motion by Councilmember Doutre to approve the agenda of August 18, 2015. Motion seconded by Councilmembers Holmgren and Reese. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

4. Approval of minutes – August 4, 2015:

Mayor Fridal asked if there were any changes to the minutes. There were no comments.

Motion by Councilmember Reese to approve the minutes of August 4, 2015. Motion

Draft Minutes

seconded by Councilmember Holmgren. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

5. Canvass of the August 11, 2015 Primary Election

a. Discussion and consideration if approving the results of the August 11, 2015 Primary Election

Recorder Hess stated that the City contracted with the County to do the Primary Election with the following results: There were 3,159 registered voters and 511 total cast ballots or 16.8% of total voters. There were 14 provisional ballots but two did not count as one voter was not registered and the other did not have identification. The City sent out 286 absentee ballots and 179 were returned with 170 counted. The votes were as follows: Lyle Vance – 319, Jeff Reese – 241, Diana Doutre – 204, Jim Abel – 203, Bryce Rigby and Nate Wright were one point apart with 168 and 169, with Ben Greener being eliminated. Canvass Report attached.

Motion by Councilmember Wood to approve the Canvas of the Primary Election of August 11, 2015. Motion seconded by Councilmember Rohde. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

6. Presentation

a. Utah Local Government Trust Accountability Program- Jason Watterson

Jason Watterson thanked Mayor Fridal and the Council for allowing him to make a presentation. Tremonton City has achieved the Trust Accountability Program Award. There are over 560 local government members in the State comprising cities, towns, special districts, and counties. Utah Local Governments Trust (ULGT) provides insurance coverage and loss prevention to help local governments stay out of trouble, avoid lawsuits, and provide coverage for losses and injuries. Less than 10% of members received the Trust Accountability Program Award last year.

The Trust Accountability Program Award was built around the most common and costly cause of loss, being car accidents, with five points being addressed. Tremonton participates by sending driver information to ULGT to monitor

Draft Minutes

driving records. The majority of drivers or 87% have nothing on their record and the majority of the others just have a little bit. There are a few drivers that have more problems and need help.

The second most common cause of loss is related to sewer backups. Director Fulgham has a great Sanitary Sewer Management Plan. A big part of a good plan includes inspecting manholes yearly to see what is happening. ULGT provides a webinar each quarter on Land Use Training. Members need to have an active Safety Committee that reviews incidents and discusses concerns and takes action. Manager Warnke and the Safety Committee do a good job of reviewing and creating plans to prevent further incidents. Mr. Watterson presented the City the Trust Accountability Program Award and told the Council that the City also received a reimbursement of 5% of the Liability premium. The City is eligible to receive the 5% reimbursement each year. The City also recently received a dividend of 10% of the Liability premium for a combined total of just under \$9K. Mr. Watterson congratulated City staff and City Council for a job well done in earning the award by keeping accidents and lawsuits down.

7. Public Hearing:

Mayor Fridal called a Public Hearing to order at 7:12 p.m. to consider an Industrial Protection Area. There were 15 people in attendance.

- a. Public hearing on the proposal to create the Industrial Protection Area, the recommendations of the Box Elder County Industrial Protection Area Advisory Board, the recommendations of the Tremonton City Planning Commission and any requests for modification of the proposal and any objections to the proposal to create the Industrial Protection Area for the Tremonton City Public Works Complex and Waster Water Treatment Plant located at approximately 300 East 1200 South, Tremonton Utah

Glenn Smith was told by City staff that the purpose of creating the Industrial Protection Area was to announce and warn future developers in the immediate vicinity of the Wastewater Treatment Plant (WWTP) that there are odors and they can't complain about it. There did not use to be odors at the WWTP but it does have odors when it is overloaded. The odor extends to Main Street and other areas and does not just affect those in the immediate vicinity. The Council might want to consider the creation of an Industrial Protection Area again as residents could never voice concerns over the odor. The Council should do what needs to be done to alleviate the odor. It could hinder future growth if not resolved.

Draft Minutes

Mayor Fridal closed the Public Hearing at 7:17 p.m.

8. Public comments: Comments limited to three minutes:

There were no public comments.

9. New Council Business:

- a. Discussion and consideration of approving the July 2015 Warrant Register.

Motion by Councilmember Holmgren to approve the July 2015 Warrant Register. Motion seconded by Councilmember Doutre. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

- b. Discussion and consideration of approving the July 2015 Financial Statement.

Motion by Councilmember Wood to approve the July 2015 Financial Statement. Motion seconded by Councilmember Holmgren. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

- c. Discussion and consideration of adopting Ordinance No. 15-11 approving a temporary ordinance of Tremonton City prohibiting the practice of tattooing and body art within the Highway Commercial (CH) zoning district of incorporated Tremonton City, including all of the intersection of 1000 West Main Street

Manager Warnke explained that Ordinance No. 15-11 is a temporary Land Use Ordinance as allowed by State Law. The Ordinance will be in effect for six (6) months to allow Tremonton City to investigate and study issues before making a decision. This Ordinance will prohibit tattooing in the Commercial Highway zone which was recently amended to allow as a conditional use that type of land use. Any existing business in the Commercial Highway zone will be grandfathered in unless doing something that would lose the grandfather status such as losing their business license. The Council would need to address the issue again before February 2016 if wanting to make a permanent decision. Councilmember Rohde likes that the permanent makeup is not included in the Ordinance and is still allowed. Manager Warnke noted that permanent makeup

Draft Minutes

was a little unclear before but this Ordinance separates it and prohibits body art and tattooing.

Motion by Councilmember Rohde to adopt Ordinance No. 15-11. Motion seconded by Councilmembers Reese, Wood, Holmgren, and Doutre. Roll Call Vote: Councilmember Rohde - aye, Councilmember Wood - aye, Councilmember Reese - aye, Councilmember Doutre - aye, and Councilmember Holmgren - aye. Motion approved.

- d. Discussion and consideration of adopting Ordinance No. 15-12 approving an Industrial Protection Area for parcels: 05-187-0002; 05-187-0009; and 05-186-0042 currently used for the City's wastewater treatment facility and public works complex located at approximately 300 East and 1200 South, Tremonton Utah

Director Fulgham explained that odors come with industrial growth. The Council addressed those concerns in the Capital Facilities Plan by doing more solids handling and expansion of the plant that will mitigate the odor issues. This Ordinance is to protect the City and give new developments notice that there is a WWTP that has been functioning since 1964. Notice will be included on property deeds informing new residents that there is an Industrial Protection Area nearby. The odor problem will be addressed with the expansion of the plant.

Councilmember Wood stated that the odors reach his home and the Council is aware of the odor problem and would like the odors controlled. The Council agrees with Mr. Smith's concerns and continually works to improve the WWTP and eliminate the odor. The Council thanked Mr. Smith for coming to City Council. Director Fulgham noted that the City has a plan and will be moving forward changes and ways to help control the odor. Councilmember Doutre stated that the Council is happy to hear from residents anytime. Manager Warnke explained that \$600K has been budgeted in this fiscal year. Director Fulgham commented that the City is looking at all the regulations and concerns so the City will not have to address them again in a few years.

Mayor Fridal thanked Director Fulgham for all his work. Manager Warnke noted that the Planning Commission and the County's Industrial Protection Board have reviewed the plan and made a recommendation to approve it based upon criteria. Manager Warnke explained and reviewed the criteria to be considered for the creation of an Industrial Protection Area. Specifically, the criteria include: 1) The land must currently be used for industrial use; 2) the land is zoned for industrial use; 3) the land is viable for industrial use; 4) the extent and nature of the existing

Draft Minutes

improvements and expansion of the industrial use; and 5) current trends in the industry and technology. Manager Warnke noted that the land in question meets all the criteria.

Motion by Councilmember Holmgren to adopt Ordinance No. 15-12 and approve the Industrial Protection Area for the Wastewater Treatment Plant.

Motion seconded by Councilmember Doutre. Roll Call Vote: Councilmember Rohde - aye, Councilmember Wood - aye, Councilmember Reese - aye, Councilmember Doutre - aye, and Councilmember Holmgren - aye. Motion approved.

- e. Discussion and consideration of adopting Resolution No. 15-30 entering into a mutual aid agreement pursuant to the provisions of Utah Code Annotated 11-7-1 and 11-7-2 with the Central Box Elder County Fire District

Honeyville Mayor David Forsgren explained that with the exception of a few minor housekeeping changes to the Mutual Aid Agreement, the Central Box Elder County Fire District would like to enter an agreement with Tremonton Fire Department. Councilmember Reese thanked Honeyville Mayor Forsgren for his thoroughness in reviewing the agreement. Mayor Fridal commented that it makes sense to support one another and the County.

Motion by Councilmember Wood to adopt Resolution No. 15-30. Motion seconded by Councilmembers Rohde and Reese. Roll Call Vote: Councilmember Rohde - aye, Councilmember Wood - aye, Councilmember Reese - aye, Councilmember Doutre - aye, and Councilmember Holmgren - aye. Motion approved. Honeyville Mayor Forsgren asked for a signed copy of the Mutual Aid Agreement and he can bring it to their (Central Box Elder County Fire District) next meeting on September 14 and get the necessary signatures and return it to Tremonton. Mayor Fridal told Honeyville Mayor Forsgren that he will get a signed copy and deliver it to him tomorrow night.

- f. Discussion and consideration of adopting Resolution No. 15-31 authorizing the Fire Department to submit a request to the State of Utah Bureau of Emergency Medical Services (EMS) to amend the boundaries for Tremonton City EMS to include Honeyville City

Honeyville Mayor Forsgren is petitioning Tremonton City to provide ambulance service to a large part of Honeyville. The Fire Chiefs from Tremonton, Brigham, and the Central Box Elder County Fire District met last Thursday and came to an

Draft Minutes

agreement for new boundaries. Tremonton Fire will cover from the south end of Honeyville and to mile marker 369 on I-15.

Motion by Councilmember Doutre to adopt Resolution No. 15-31 authorizing the Fire Department to submit a request to the State of Utah Bureau of Emergency Medical Services to amend the boundaries. Motion seconded by Councilmember Reese. Roll Call Vote: Councilmember Rohde - aye, Councilmember Wood - aye, Councilmember Reese - aye, Councilmember Doutre - aye, and Councilmember Holmgren - aye. Motion approved.

- g. Discussion and consideration of adopting Resolution No. 15-32 approving the First Amendment to the Settlement Agreement and Universal Release originally approved with the adoption of Resolution No. 11-72 between Tremonton City Corporation and Judge Kevin Christensen

Motion by Councilmember Reese to adopt Resolution No. 15-32. Motion seconded by Councilmember Rohde. Roll Call Vote: Councilmember Rohde - aye, Councilmember Wood - aye, Councilmember Reese - aye, Councilmember Doutre - aye, and Councilmember Holmgren - aye. Motion approved.

10. Comments:

- a. Administration/City Manager Advice and Consent.

- 1) No advice and consent was discussed.

- b. Council Reports:

Councilmember Holmgren knows of people that have tried to connect to UTOPIA without any success and wondered if there was anything the City can do to ensure residents get connected. Councilmember Rohde has tried to work with UTOPIA for his business but it has been extremely difficult. UTOPIA must have better customer service. Councilmember Reese agreed with Councilmembers Holmgren and Rohde. Mayor Fridal stated that someone from UTOPIA needs to be contacted to help resolve the problems. Manager Warnke will contact UTOPIA to discuss the problems with residents getting connected.

Councilmember Doutre stated that people comment about the flowers on Main Street. The flowers show pride in our community. Councilmember Doutre expressed her thanks to Councilmember Holmgren for his work with the flowers.

Draft Minutes

Councilmember Wood suggested the Council send a letter of congratulations to the new Garland Mayor and express a desire to work hand in hand with him as a sister city. The Council thought it was a great idea. Councilmember Wood congratulated the six candidates that will be in the General Election.

Mayor Fridal gets some negative responses to the flowers on Main Street even though others enjoy them. The City looks good and is functioning well. Mayor Fridal thanked City employees for all their work.

11. Adjournment.

Motion by Councilmember Wood to adjourn the meeting. Motion seconded by Councilmember Doutre. Vote: Councilmember Doutre - aye, Councilmember Holmgren - aye, Councilmember Reese - aye, Councilmember Rohde - aye, and Councilmember Wood - aye. Motion approved.

The meeting adjourned at 7:40 p.m.

The undersigned duly acting and appointed Recorder for Tremonton City Corporation hereby certifies that the foregoing is a true and correct copy of the minutes for the City Council Meeting held on the above referenced date. Minutes were prepared by Cynthia Nelson.

Dated this _____ day of _____, 2015.

Darlene S. Hess, Recorder

**TREMONTON CITY
CITY COUNCIL MEETING
SEPTEMBER 1, 2015**

TITLE:	Discussion and consideration of approving utility bill write-off's for Non collectable accounts.
FISCAL IMPACT:	Non collectable - \$1,283.45
PRESENTER:	Sharri Oyler

Prepared By:

Sharri Oyler

RECOMMENDATION:

The recommendation is to write off the non collectable accounts of \$1,283.45

BACKGROUND:

These accounts have been sent to Checknet or Express Recovery, which are our collection companies. They were sent over a year ago and we have not received any money. Old accounts that are non collectable are written off about once a year. Checknet and Express Recovery will continue to try and collect on these accounts. This will reduce the accounts receivable by \$1,283.45.

Bankruptcy:

Attachments:

Copy of the write offs

UTILITY BILLING WRITE-OFF'S AUG 2015

These have been sent to Collections (Check Net or Express Recovery)

<u>Acct #</u>	<u>Name</u>	<u>Debt Occured</u>	<u>Reason</u>	<u>Amt</u>
1940	Sean Coombs	09/01/11	bad address	\$156.12
1916	Jonathan Gardner	11/06/13	bad address	\$192.40
601	Francisco Graciano	11/26/13	bad address	\$147.83
6570	Russell Price	03/01/13	no forwarding	\$101.00
2750	Andrew Long	06/01/13	bad address	\$100.60
4780	Bart Gardner	09/01/13	moved out of state	\$203.00
1956	Cheryl Varney	09/30/13	bad address	\$131.11
5253	Marti Sue Peterson	03/01/12	bad address	\$251.39
			Total	\$1,283.45

Please Sign:

RESOLUTION NO. 15-33

A RESOLUTION ACCEPTING A PETITION FOR ANNEXATION OF CERTAIN REAL PROPERTY UNDER THE PROVISIONS OF SECTIONS 10-2-403 AND 10-2-405, UTAH CODE ANNOTATED, 1953, AS AMENDED.

WHEREAS, on August 26, 2015, the owners of certain real property, Tremont Place LLC and Joshua John Canfield, petitioners, filed a petition with the City Recorder of Tremonton City, Box Elder County, State of Utah requesting that such property be annexed to the corporate boundaries of Tremonton City; and

WHEREAS, said petition contains the signatures of the owners of private real property that is: 1) located within the area proposed for annexation; 2) covers a majority of the private land area within the area proposed for annexation; 3) covers 100% of rural real property within the area proposed for annexation; and 4) is equal in value to at least one-third of the value of all private real property within the area proposed for annexation; and

WHEREAS, the petitioners certify that said property proposed for annexation lies contiguous to the present boundaries of Tremonton City and the petitioners have caused an accurate plat or map of the real property proposed for annexation to be prepared by a licensed surveyor and have filed said plat or map with the City Recorder; and

WHEREAS, said petition appears to comply with all of the requirements of Section 10-2-402 and 403, Utah Code Annotated, 1953, as amended.

NOW THEREFORE, BE IT RESOLVED by the City Council of Tremonton City, Box Elder County, State of Utah, that the Annexation Petition, attached hereto as Exhibit "A" is hereby accepted for further consideration under the provisions of Utah State Annexation Law and is hereby referred to the City Recorder for review pursuant to Section 10-2-405(2), Utah State Code Annotated, 1953, as amended.

BE IT FURTHER RESOLVED that this resolution shall become effective upon adoption.

ADOPTED AND PASSED by the City Council this 1st day of September 2015.

TREMONTON CITY
A Utah Municipal Corporation

By _____
Roger Fridal, Mayor

ATTEST:

Darlene S. Hess, City Recorder

**TREMONTON CITY
COUNCIL MEETING
SEPTEMBER 1, 2015**

TITLE:	Review and discussion of implementing bicycle facilities (by signage and/or pavement markings) on Main Street and 300 East (UDOT Roads) and 600 South, 600 North, and Tremont Street (City Streets)
FISCAL IMPACT:	Forthcoming
PRESENTER:	Shawn Warnke, City Manager

RECOMMENDATION:

The City's Public Works Director; Planning Zoning Admin., Parks and Recreation Director, City Manager, and City Engineer met to discuss the options listed below in background section. Based upon this discussion the City staff has the following recommendations:

300 East: It is recommended that the City work with UDOT to have a white shoulder stripe (fog line) painted and that UDOT install bike route signs. Under this option it is City staff understands that UDOT would paint and maintain the shoulder stripe and purchase and install the bike route signs. The City would only be responsible for maintenance of the signage.

City Staff recommends a shoulder stripe and bike route signs for 300 East for the following reasons:

- These improvements would match the rest of the City's network of bike routes signs which are purchased but not yet installed.
- It is anticipated that there is less of a maintenance costs with signage rather than pavement markings that require repainting on a periodic basis. Additionally, maintaining bike route signs is something that the City can do in house as opposed to contracting with a company to paint pavement markings.
- It is anticipated that Garland City is more likely to participate in maintain their Main Street with bike signs as opposed to having to maintain striped bike lanes.

Main Street: It is recommended that if the City Council is incline to have some bicycle facility on Main Street that the City have sharrows painted. UDOT would paint the sharrows and the City would have to maintain these painted markers on the road. The City does not have the ability to maintain these pavement parkers in house and as such the City would need to contract the work. Paul Fulgham, Public Works Director is getting a price for the maintenance of these sharrows which will be presented at the meeting.

As an alternative choice to the sharrows UDOT would be willing to install a yellow diamond shape bike sign with a share the road sign underneath. City staff does not recommend this improvement because the consensus is that this improvement would become invisible overtime to drivers and thereafter would just add to the visual clutter of signage on Main Street. For this reason City staff would suggest that if the City Council is not incline to have painted sharrows then it is recommended that there be no improvement made to Main Street for bicycles.

BACKGROUND:

Current Background- for September 1, 2015 City Council Discussion. You may recall that the City Council discussed this issue on their August 4, 2015 City Council meeting. Based upon this City Council discussion I had a conversation with Darren Firstrup, UDOT Traffic Engineer to clarify several issues. Specifically, I was able to confirm the following:

- That UDOT would install the initial improvements and then the City would be responsible for on going maintenance
- That as a standard practice that UDOT requires local governments to maintain bike facilities on UDOT roads
- Striping would have to be maintained to UDOT standards

Beyond confirmation of the aforementioned issues Darren Firstrup and I discussed several options for bike facilities

on UDOT roads which are summarized below. As you know there are two UDOT roads that are being considered for improvements and as such the types of improvements can be different on each road. For this reason the City Council can pick and choose elements from the different options summarized below.

Option 1: Having bike route signs rather than striped bike lanes and pavement markings on 300 East. On Main Street the signage would be yellow diamond shape bike sign with a share the road sign underneath rather than the sharrows. Under this option I understand that UDOT would paint and maintain the shoulder stripe. The City would only be responsible for maintenance of the signage.

Option 2: Having the shoulder stripe added on 300 East with bike pavement signs (rather than a bike lane with two stripes that create the bike lane). On Main Street the pavement marker would still be the sharrows. Under this option, it is my understanding that UDOT would maintain the shoulder stripe and the City would maintain the pavement markings.

Option 3 (Original Proposal to UDOT): Having bike lanes on 300 East with bike pavement signs. On Main Street the pavement marker would be the sharrows. Under this option, it is my understanding that UDOT would maintain the shoulder stripe and the City would maintain the second stripe on 300 East (which creates the lane) plus pavement markings. City would be responsible for maintain the sharrows on Main Street.

Previous Background- for August 4, 2015 City Council Discussion. City staff believes that the proposal of implementing bicycle facilities (by signage and pavement markings) on Main Street and 300 East (UDOT Roads) and 600 South, 600 North, and Tremont Street (City Streets) is generally consistent with other City plans and policies.

Over the past couple of years City staff has been working with UDOT regarding establishing bike facilities and bike lanes on several UDOT facilities. Specifically, these UDOT roads include Main Street in Tremonton and 300 East (Tremonton)/Main Street (Garland). The proposal would be dedicated bike lanes on 300 East where there is plenty of right-of-way width and sharrows on Main Street in Tremonton. A sharrow is a street marking painted in the center of a travel lane to indicate that a cyclist may use the lane too. Both of these proposed bike facilities meet national standards for safety. Please see attached drawings that show the proposal.

Several months back Tremonton City staff reached out to Garland City and inquired if they would be interested in jointly proposing the bike lanes with UDOT on UDOT roads within their incorporated limits. The Garland City Council did indicate that they wanted to be included in the proposal to UDOT. The current proposal is that there are no costs to the cities for the construction or maintenance of these bike facilities on UDOT roads.

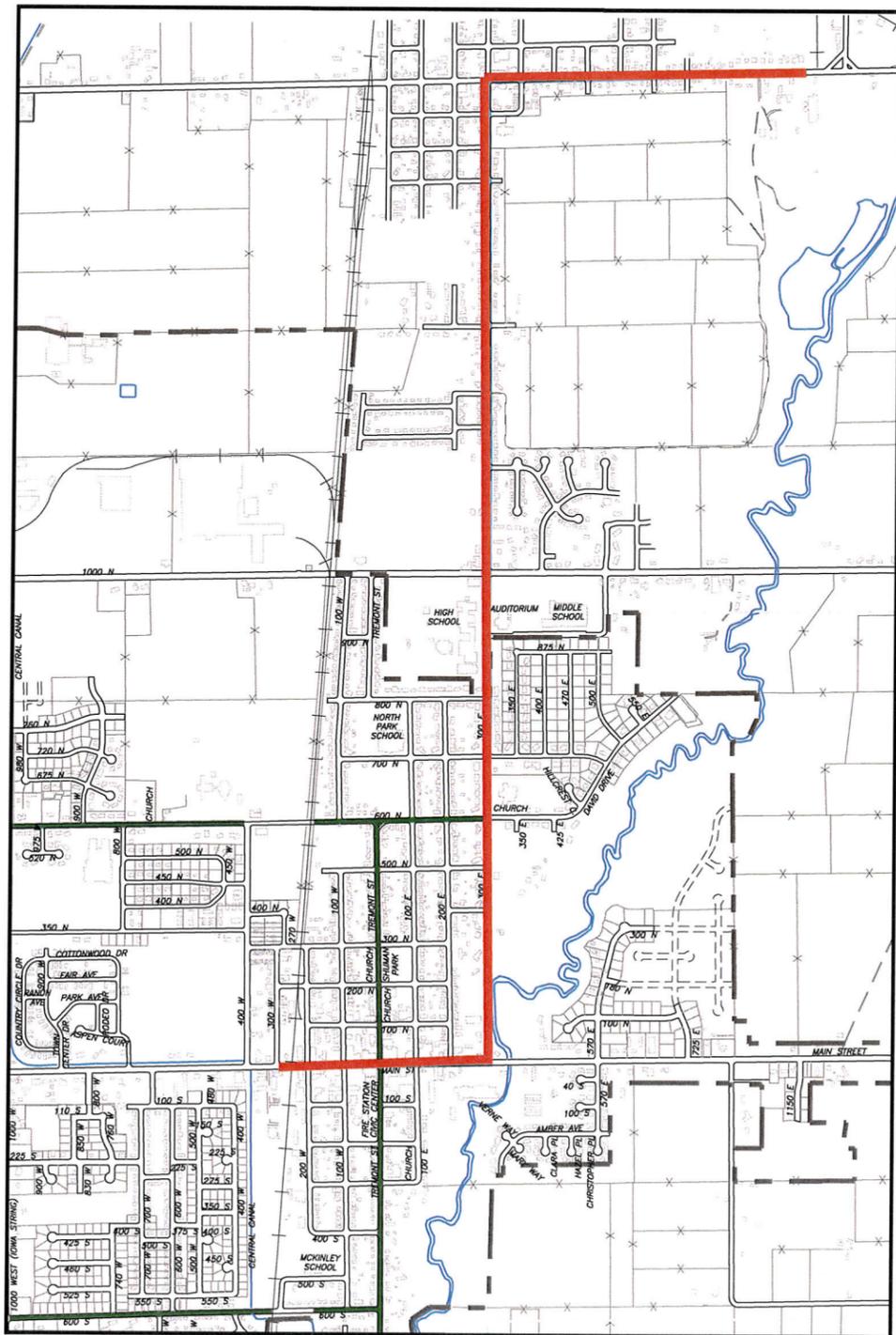
City staff has been working with Darin Furstrup, Region Engineer regarding the technical issues of the City's request for bike lanes on UDOT facilities. In City staff's discussion with UDOT representatives it was discussed that there be a bike system that included bike facilities on City streets. City staff has identified from previous City plans 600 North, 600 South, and Tremont Street as streets with bike facilities. The City has purchased the supplies to mark these streets within the City as bike facilities.

In the past Tremonton City staff has submitted several applications to UDOT requesting Transportation Alternative Program (TAP) funding for bike lanes on UDOT facilities. The last time City staff spoke with Kris Peterson, Region Director for northern Utah it was City staff's understanding that City staff and Darin Furstrup were to work through the technical aspects of Tremonton and Garland's proposal. Thereafter, Kris Peterson would find the funds to install these bike facilities on UDOT roads. Mr. Peterson thought that using UDOT funding rather than TAP funding was preferred because the cost of the bike lane project (being minimal) and TAP funding has more administrative regulations.

Attachments: Original bike facility proposal to UDOT (Option 3 described above)

TREMONTON CITY CORPORATION

MAIN STREET BIKE LANES



LOCATION MAP

Index

- 1.....COVER SHEET
- 2.....FUTURE BIKE & WALKING PATHS
- 3.....BIKE LANE STA: 0+00 TO 22+00
- 4.....BIKE LANE STA: 22+00 TO 37+00
- 5.....BIKE LANE STA: 37+00 TO 59+00
- 6.....BIKE LANE STA: 59+00 TO 81+00
- 7.....BIKE LANE STA: 81+00 TO 103+00
- 8.....BIKE LANE STA: 103+00 TO 125+00
- 9.....BIKE LANE STA: 125+00 TO 145+00
- 10.....BIKE LANE STA: 145+00 TO 167+00

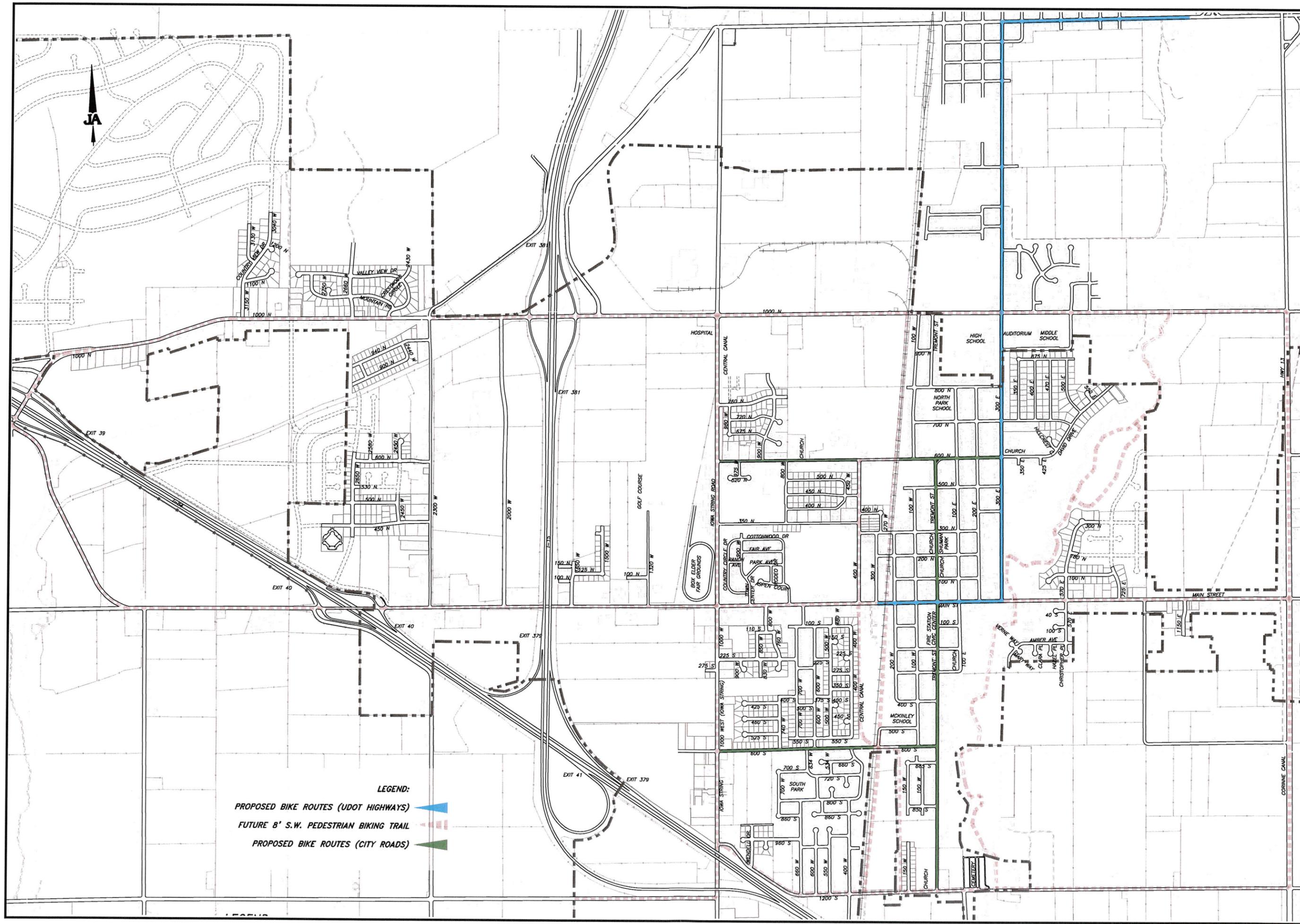
MAY 2015



CONSULTING ENGINEERS

1716 EAST 5600 SOUTH
South Ogden, Utah 84403 (801) 476-9767

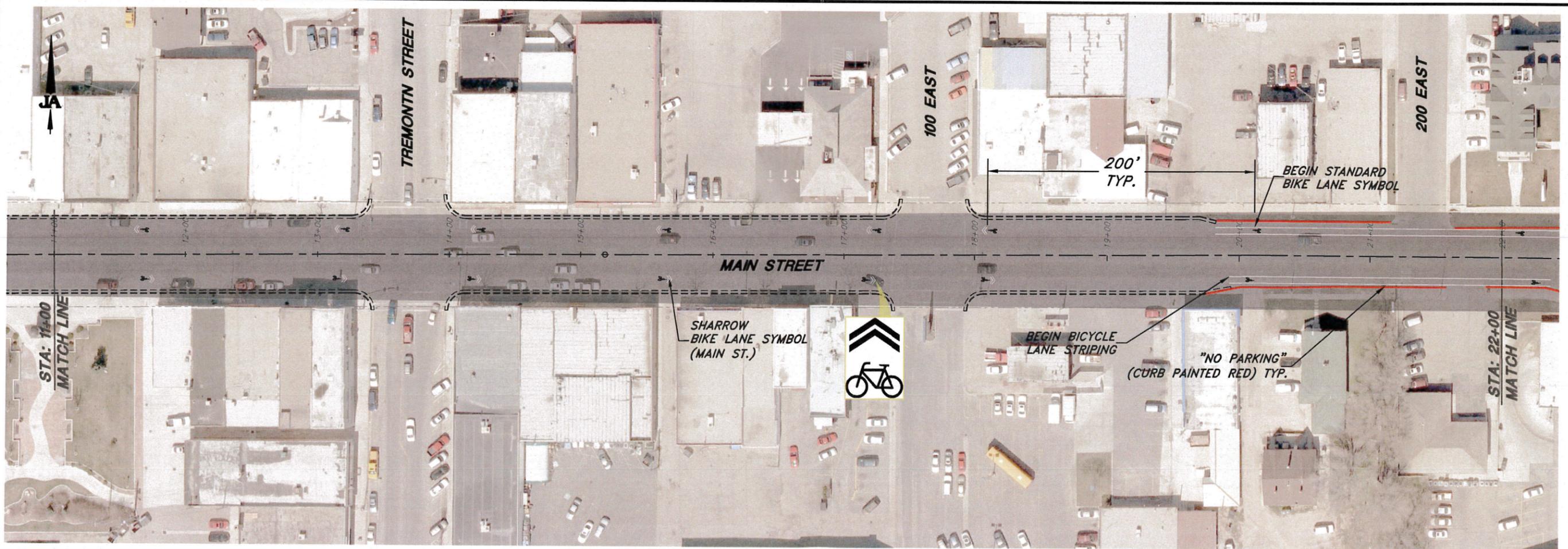
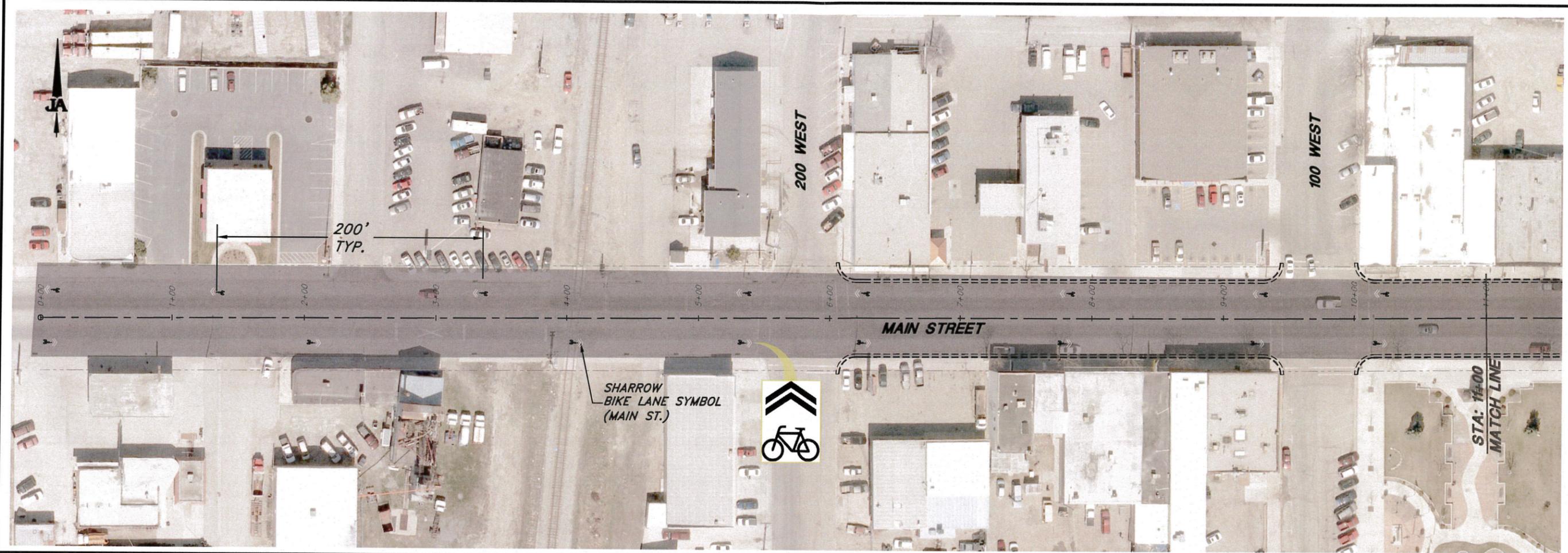
TREMONTON CITY CORPORATION
MAIN STREET BIKE LANES
FUTURE BIKE & WALKING PATHS



LEGEND:
 PROPOSED BIKE ROUTES (UDOT HIGHWAYS) 
 FUTURE B' S.W. PEDESTRIAN BIKING TRAIL 
 PROPOSED BIKE ROUTES (CITY ROADS) 

SCALE:	DATE	DESCRIPTION
24"x36" 1"=800'		
11"x17" 1"=1600'		
SHEET: 2 OF SHEETS		

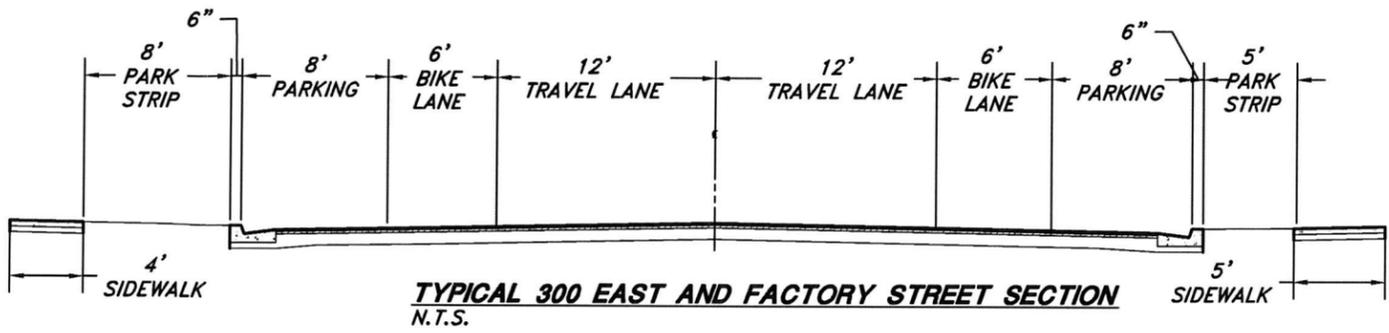
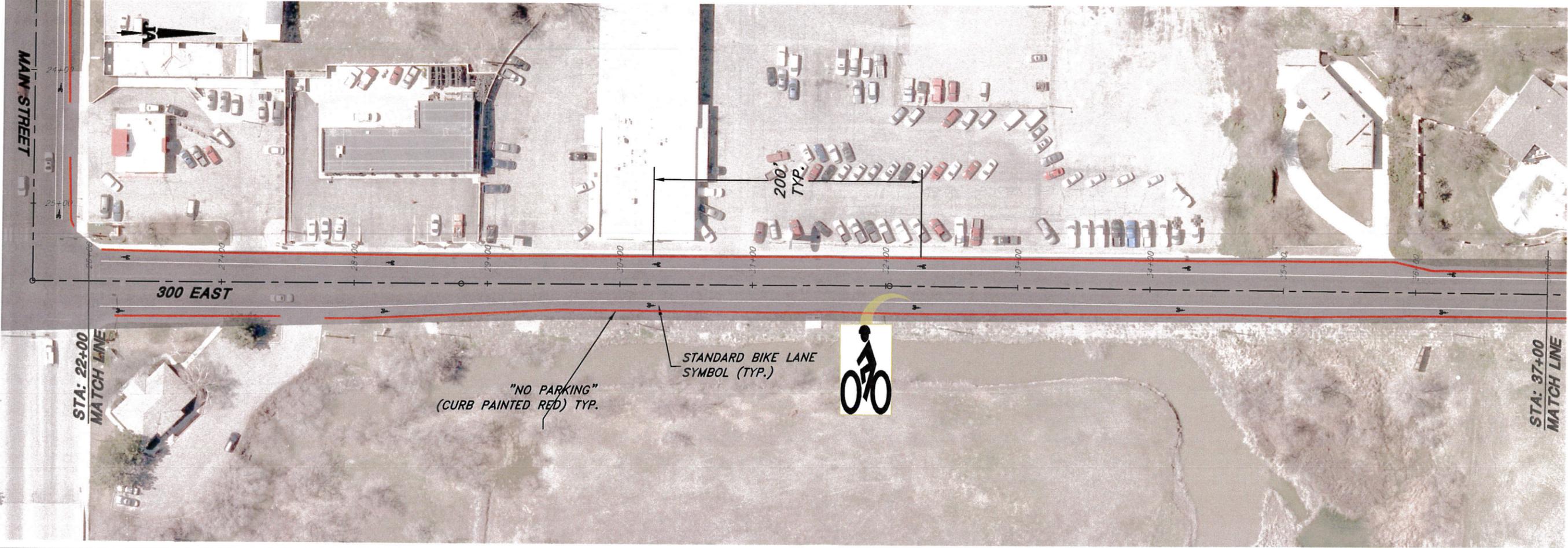
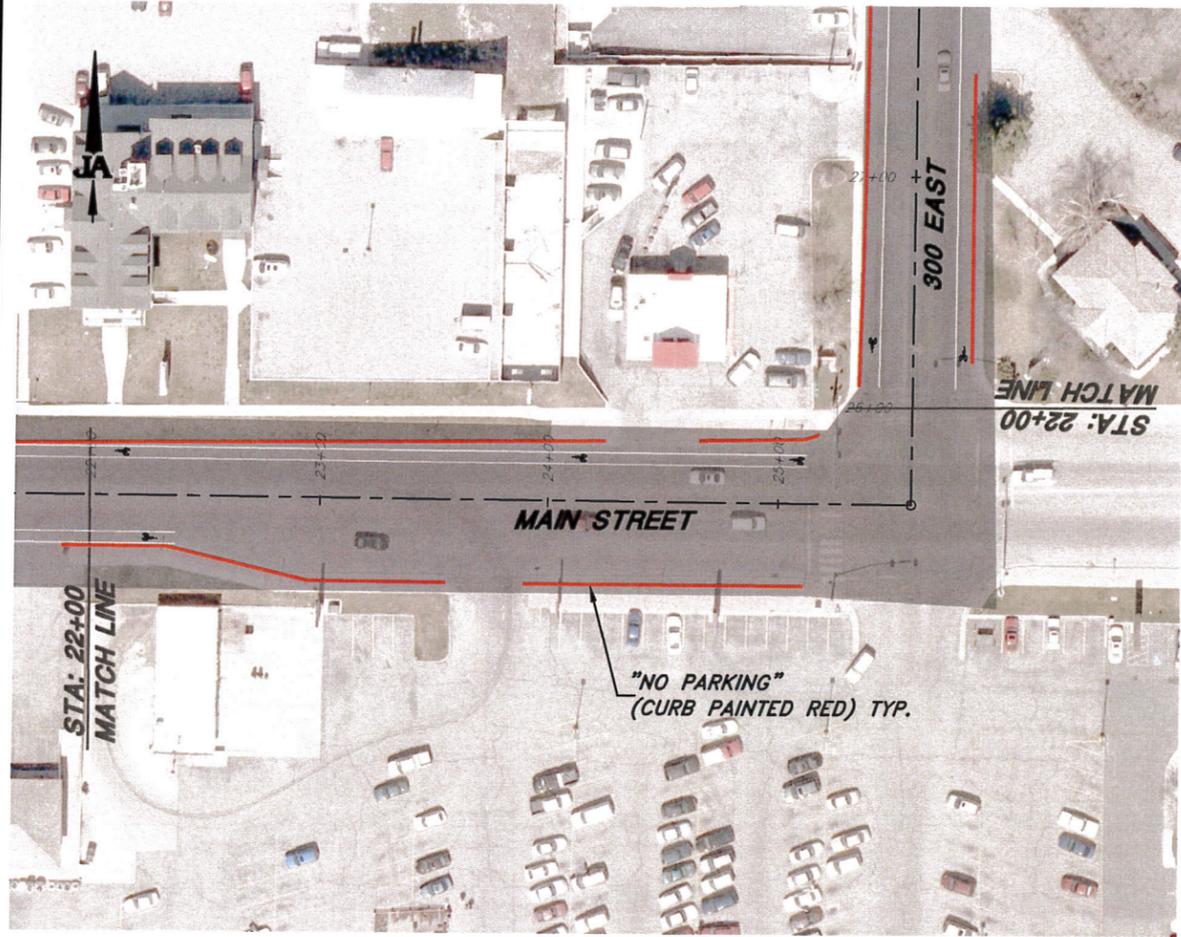
DESIGNED: _____
 DRAWN: _____
 CHECKED: _____



TREMONTN CITY CORPORATION
MAIN STREET BIKE LANES
BIKE LANE STA: 0+00 TO 22+00

DATE	DESCRIPTION

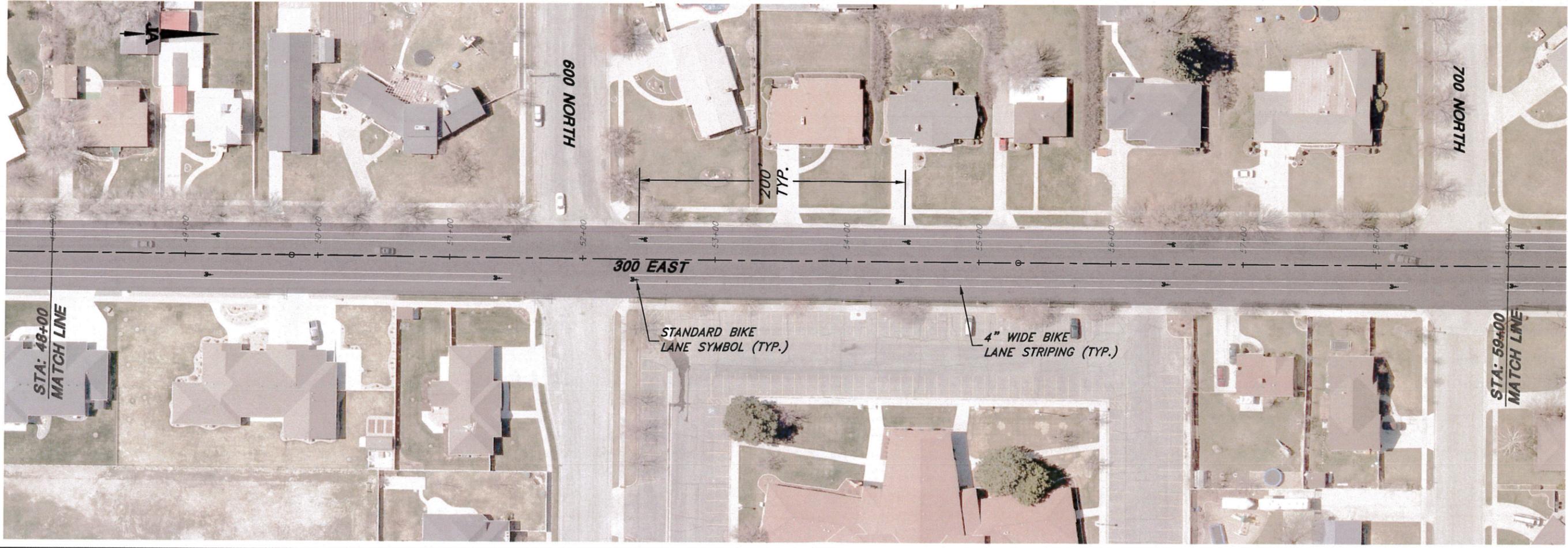
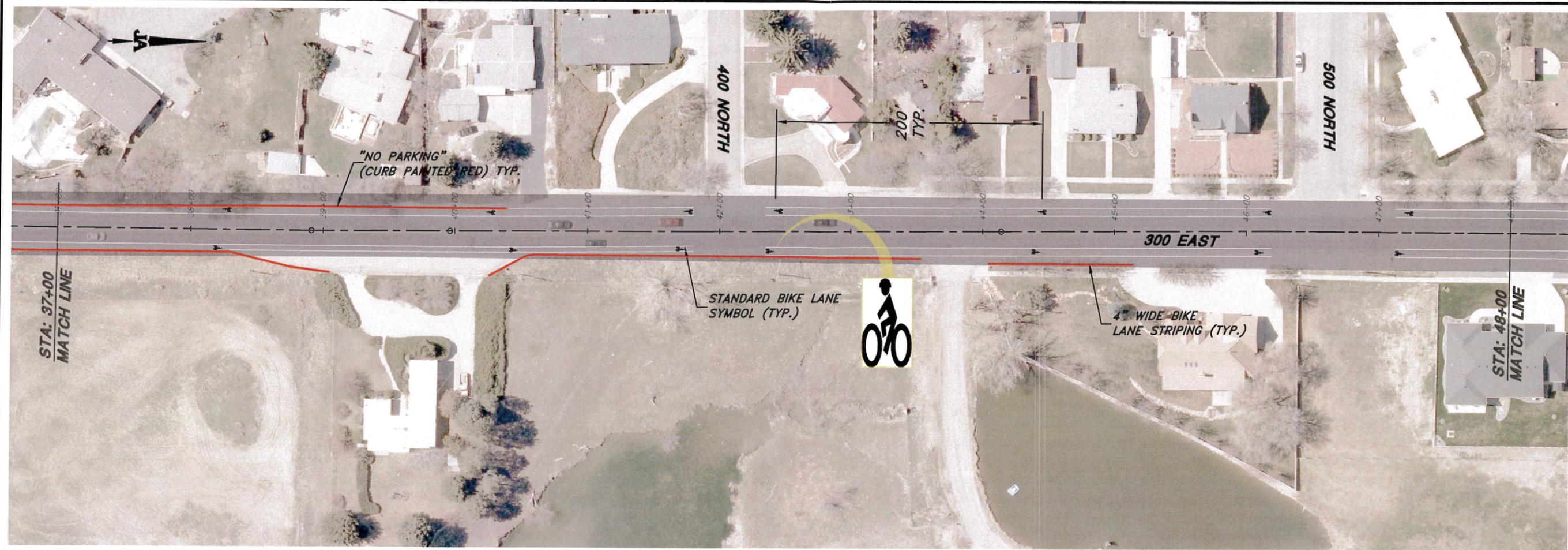
SCALE:	CLB DESIGNED	CLB DRAWN	CLB CHECKED
24" x 36"			
1" = 40'			
11" x 17"			
1" = 80'			



TREMONTON CITY CORPORATION
 MAIN STREET BIKE LANES
BIKE LANE STA: 22+00 TO 37+00

DATE	DESCRIPTION

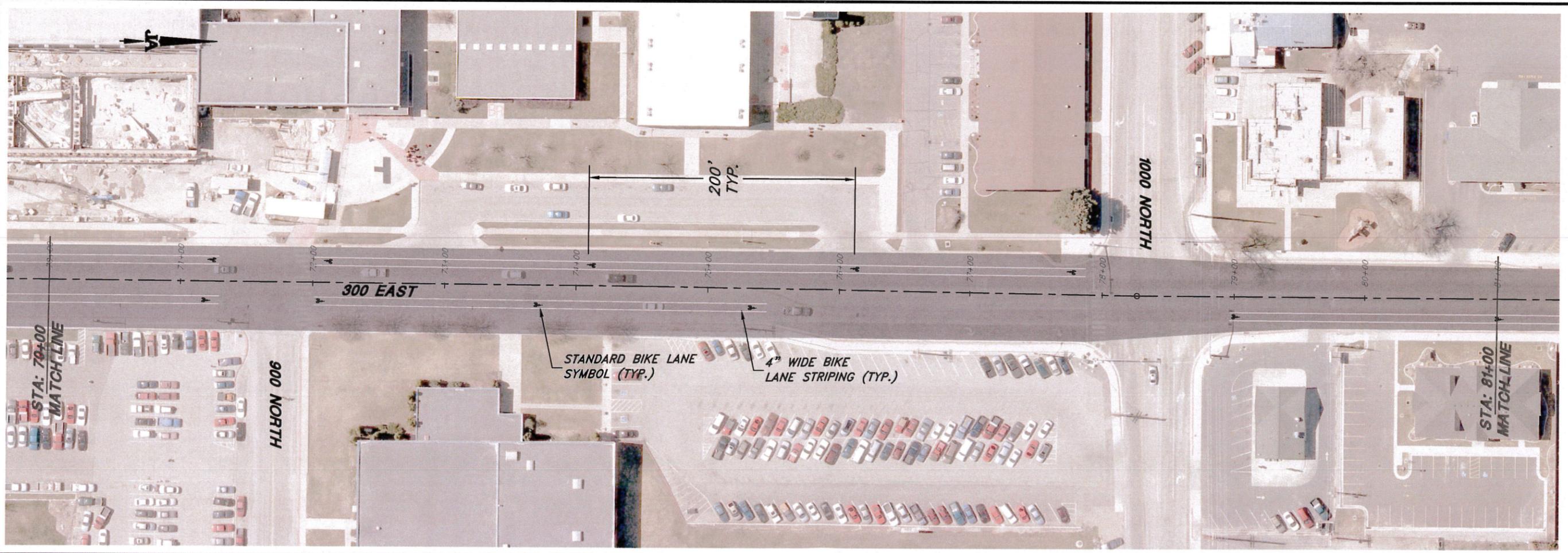
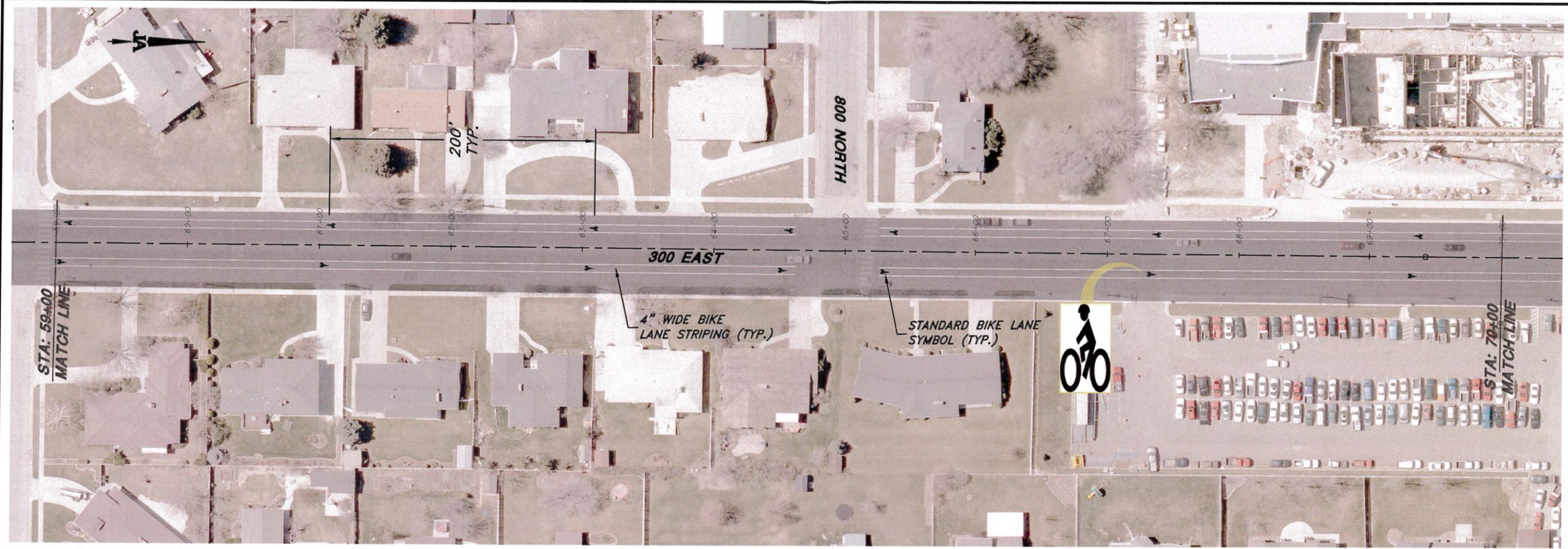
SCALE:	CLB DESIGNED	CLB DRAWN	CLB CHECKED
24"x36"			
1" = 20'			
11"x17"			
1" = 80'			



TREMONTON CITY CORPORATION
MAIN STREET BIKE LANES
BIKE LANE STA: 37+00 TO 59+00

DATE	DESCRIPTION

CLB DESIGNED	CLB DRAWN	CLB CHECKED

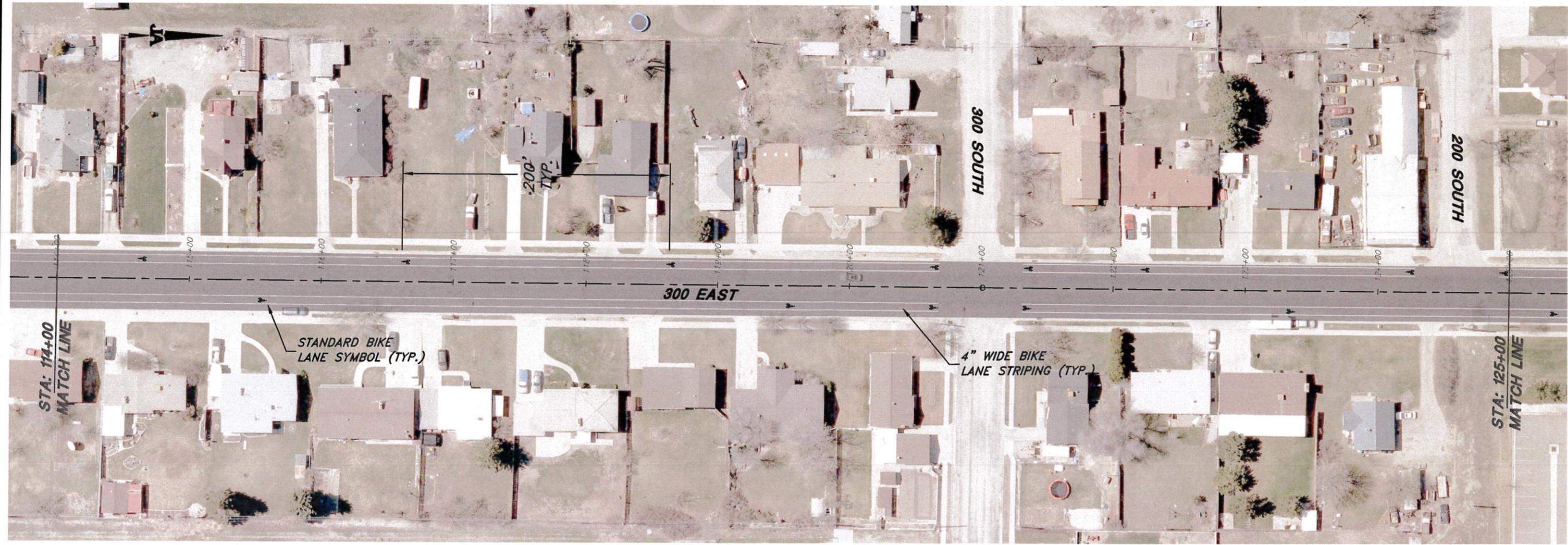
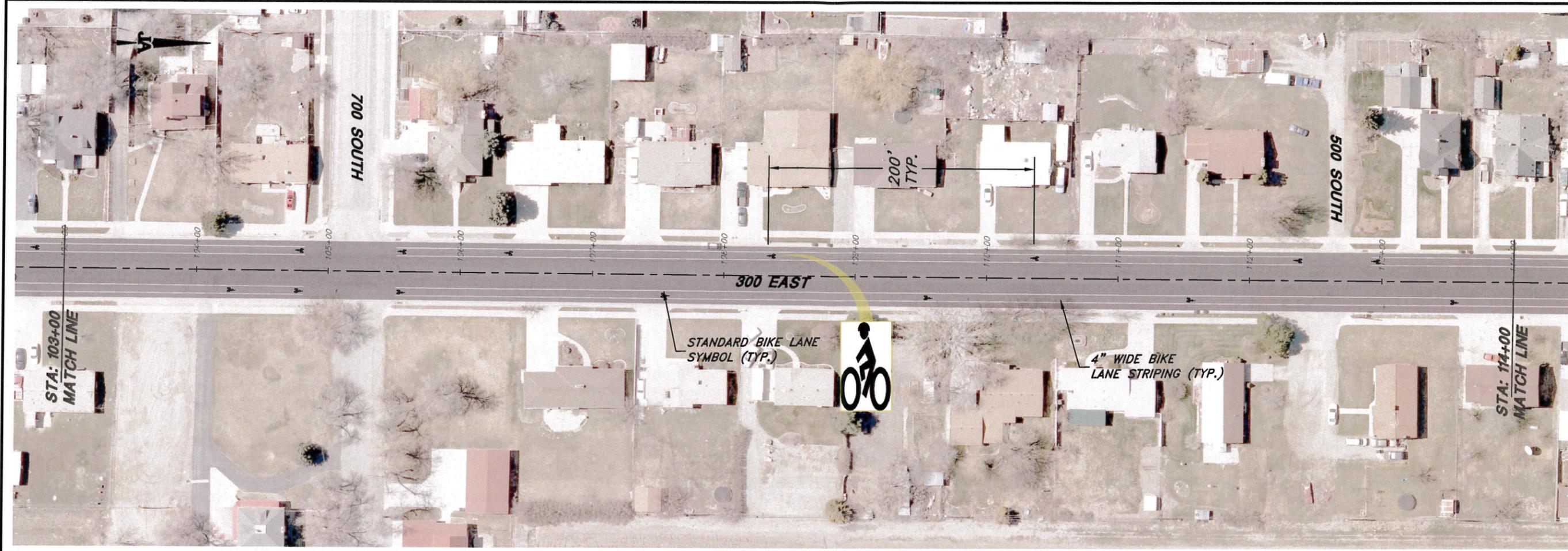


TREMONTON CITY CORPORATION
MAIN STREET BIKE LANES
BIKE LANE STA: 59+00 TO 81+00

DATE	DESCRIPTION

CLB DESIGNED	CLB DRAWN	CLB CHECKED
--------------	-----------	-------------

SCALE:
 24" x 36"
 1" = 20'
 11" x 17"
 1" = 80'



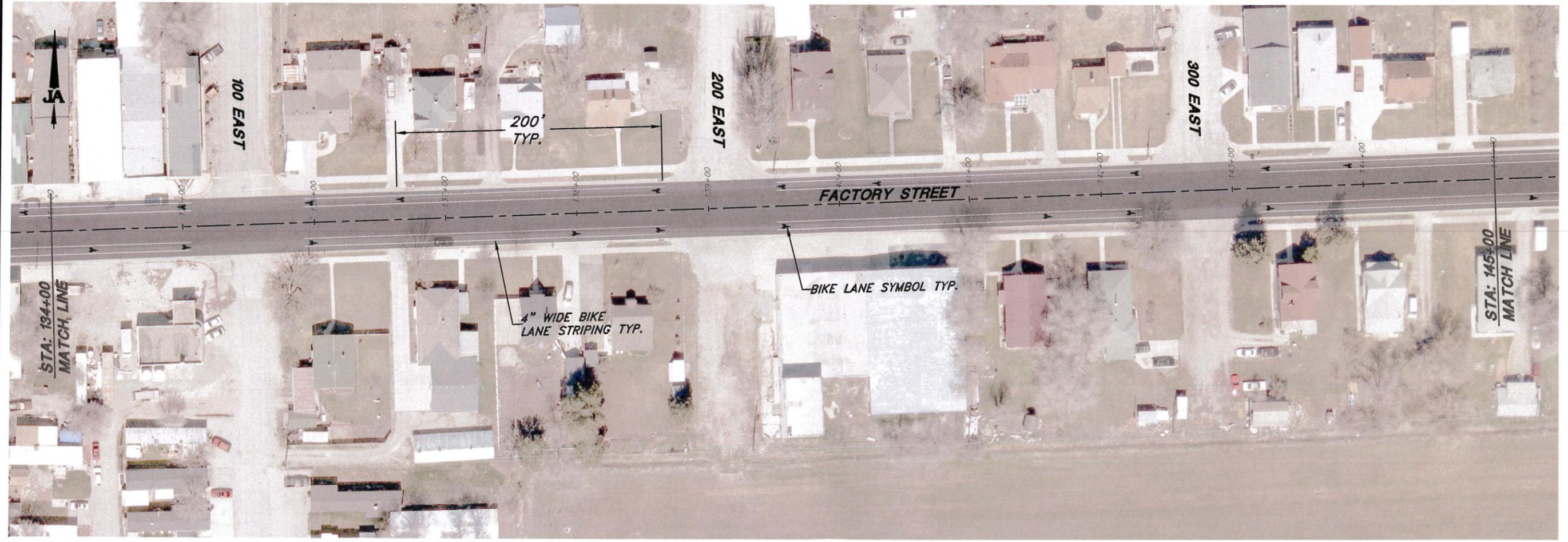
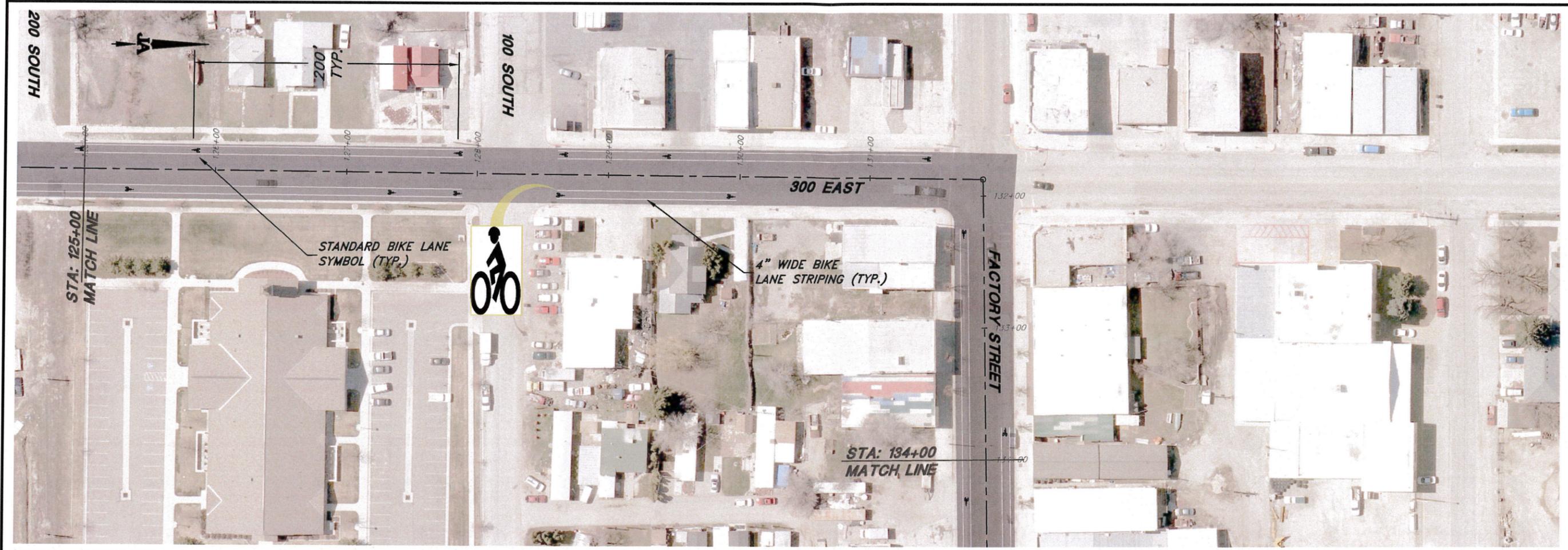
TREMONTON CITY CORPORATION
MAIN STREET BIKE LANES
BIKE LANE STA: 103+00 TO 125+00

DATE	DESCRIPTION

SCALE: $\frac{24' \times 36'}{1" = 20'}$
 $\frac{11' \times 17'}{1" = 80'}$

CLB DESIGNED	CLB DRAWN	CLB CHECKED

SHEET: **8**
 OF SHEETS



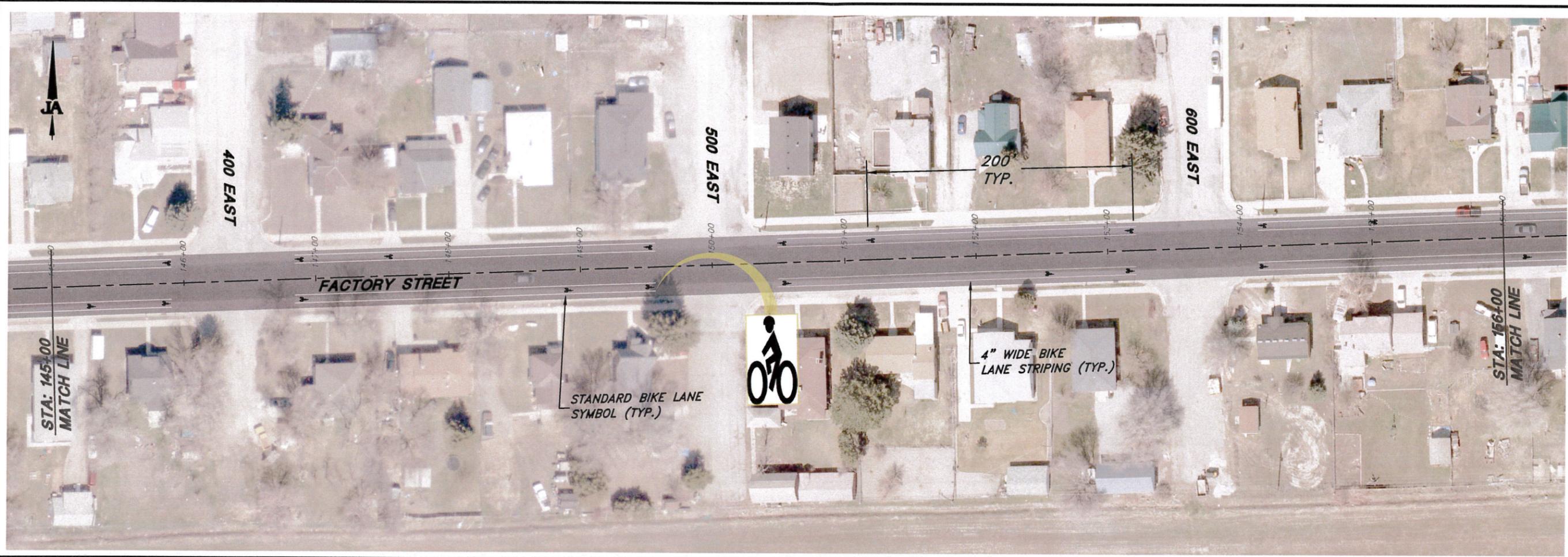
TREMONTON CITY CORPORATION
MAIN STREET BIKE LANES
BIKE LANE STA: 125+00 TO 145+00

DATE	DESCRIPTION

SCALE: 24" x 36" 1" = 20'
 11" x 17" 1" = 80'

DESIGNED: CLB
 DRAWN: CLB
 CHECKED: CLB

SHEET: **9**
 OF SHEETS



SCAL
 $\frac{24' \times 36'}{1"}$ =
 $\frac{11' \times 17'}{1"}$ =
 SHEET:
10
 OF SHEETS

DATE	DESCRIPTION

TREMONTON CITY
CITY COUNCIL MEETING
SEPTEMBER 1, 2015

TITLE:	Discussion and consideration to surplus Patrol Car T31 - a 2005 Chev Impala (VIN # 2G1WF52K159152346 mileage 108,100)
FISCAL IMPACT:	Unknown revenue to General Fund 2005 Impala to be removed from the City's Balance Sheet for <i>General Fixed Asset</i> (as such there will be an insignificant/unnoticeable adjustment downward)
PRESENTER:	Chief Nance

Prepared By:

David Nance
Police Chief

RECOMMENDATION:

I move that the City Council approve the disposal of the 2005 Chev Impala, that the vehicle be put up for bid and that the city accept the highest bid for the sale of the aforementioned vehicle.

BACKGROUND:

Vehicle T-31 is a 2005 Chev Impala (Police Package) it was purchased 09/21/04 and placed in operation as an un-marked police vehicle. A couple of years ago T-31 was replaced, but kept as a spare vehicle. A vehicle that is being retired this year will be used as a "Spare", and we are suggesting that this vehicle be disposed of through auction. The vehicle has several mechanical issues, I have checked with other Department Heads in the City, none of them are interested in the vehicle in its present condition.

If the City Council approves the disposal of the vehicle it will be taken off the City's Balance Sheet for *General Fixed Asset*; as such there will be an unnoticeable adjustment downwards of the Balance Sheet. The vehicle would be placed up for bid and sold to the highest bidder.

Attachments: None

RESOLUTION NO. 15-34

**A RESOLUTION OF TREMONTON CITY CORPORATION APPROVING THE
SPRING HOLLOW SUBDIVISION, PHASE 1 SUBDIVISION DEVELOPMENT
AGREEMENT**

WHEREAS, the Developer desires to develop certain real property situated in the corporate city limits of Tremonton City, Box Elder County, State of Utah; and

WHEREAS, the Developer has submitted to the City all plats, plans (including utility plans), reports and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code; and

WHEREAS, the Developer and City hereto have agreed that the development of the property will require municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Tremonton as a whole; and

WHEREAS, the City has approved the Spring Hollow Subdivision, Phase 1 Final Plat for recording with the Recorder's Office of Box Elder County, Utah; and

WHEREAS, Section 2.04.045 of the City's Land Use Code requires that a Subdivision Development Agreement be entered into between the City and the Developer.

NOW THEREFORE BE IT RESOLVED by the Tremonton City Council that the Spring Hollow Subdivision, Phase 2 Subdivision Development Agreement is approved as attached in Exhibit "A".

Adopted and passed by the governing body of Tremonton City Corporation this 1st day of September 2015.

TREMONTON CITY
A Utah Municipal Corporation

By _____
Roger Fridal, Mayor

ATTEST:

Darlene S. Hess, Recorder

EXHIBIT "A"

**SPRING HOLLOW SUBDIVISION, PHASE 1
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, is made and entered into this ___ day of _____, 2015, by and between the TREMONTON CITY, a body corporate and politic of the State of Utah, (hereinafter the "City") and Spring Acres Development Group, (hereinafter "Developer") the City or Developer may be referred to individually as "Party" or collectively as Parties:

WHEREAS, Developer desires to develop certain real property situated in the corporate city limits of Tremonton City, Box Elder County, State of Utah (hereinafter sometimes referred to as the "Property" or "Development") and legally described as follows, to wit:

SPRING HOLLOW VIEW PHASE I & SPRING HOLLOW LEGENDS PHASE I

PART OF S.E. ¼ SECTION 32, T 12 N, R 3 W, SLB&M

Beginning on the west right-of-way line of 2660 West Street and Northeast Corner of Spring Acres Estates Phase 4 at a point 1096.90 feet N 89°41'00" E (Basis of Bearing) along the Section Line and 982.54 feet NORTH from the Southwest Corner of the Southeast Quarter Section 32, T 12 N, R 3 W, SLB&M and running thence S 89°41'06" W 1098.96 feet along the northerly boundary of said Phase 4 to a fence; thence N 00°25'20" W 665.00 feet along said fence; thence N 89°16'26" E 123.67 feet; thence S 65°40'00" E 66.23 feet thence N 89°16'26" E 240.00 feet; thence N 83°03'31" E 60.35 feet; thence N 89°16'26" E 211.53 feet; thence S 74°40'23" E 142.66 feet; the N 89°41'06" E 276.69 feet; thence N 88°23'12" E 72.40 feet; thence N 65°11'04" E 151.68 feet; thence S 00°18'54" E 184.54 feet; thence S 02°23'12" W 60.07 feet; thence S 00°18'54" E 240.00 feet; thence S 12°22'59" W 61.50 feet; thence S 00°18'54" E 130.00 feet to the north line of Spring Acres Estates Phase 3; thence S 89°41'06" W 203.26 feet to the point of beginning. Containing 18.91 acres more or less.

WHEREAS, Developer desires to develop the Property and Developer has submitted to the City all plats, plans (including utility plans), reports and other documents required for the approval of a Final Plat according to the City's outlined policies, procedures, and code; and

WHEREAS, the Parties hereto have agreed that the development of the Property will require municipal services from the City in order to serve such area and will further require the installation of certain improvements primarily of benefit to the lands to be developed and not to the City of Tremonton as a whole; and

WHEREAS, the City has approved the Final Plat for recording with the Recorder's Office of Box Elder County, Utah, which was submitted by the Developer subject to certain

requirements and conditions, which involved the installation of and construction of utilities and other municipal improvements in connection with the Property.

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, it is agreed as follows:

I. General Conditions

A. **Development Activities.** The terms of this Agreement shall govern all development activities of the Developer pertaining to the Property. For the purposes of this Agreement, "development activities" shall include, pursuant to Utah Code Annotated (hereinafter "U.C.A.") § 10-9a-103(8), but be not limited to, the following: any change in the use of land that creates additional demand and need for public facilities. Furthermore, for purposes of this agreement only, "development activities" shall also include the following: (1) the actual construction of improvements, (2) obtaining a permit therefore, or (3) any change in grade, contour or appearance of the Property caused by, or on behalf of, the Developer with the intent to construct improvements thereon, none of which shall occur until execution of the Agreement and City approval of the Final Plat.

B. **Time Limitations for Improvements.** All water lines, sanitary sewer collection lines, storm sewer lines and facilities, streets, curbs, gutters, sidewalks, streetlights, and trails shall be installed as shown on the Final Plat and in full compliance with the standards and specification of the City, at the time of approval of the Final Plat, subject to a two (2) year time limitation from the date of approval of the Final Plat, which is in compliance with Chapter 2.05 the Tremonton City Land Use and Development Code. In the event that the Developer commences or performs any construction pursuant hereto after the passage of two (2) years from the date of approval of the Final Plat, the Developer shall resubmit the Final Plat and documentation supporting a new guaranty bond to the City Engineer for reexamination. Pursuant to U.C.A. § 10-9a-603, the City may then require the Developer to comply with the approved standards and specifications of the City at the time of resubmission.

After two (2) years from the date of approval of the Final Plat, if any development improvements have not been completed, the City, at its sole discretion, may use the guaranty bond money to complete development improvements.

C. **Building Permit Issuance.** No building permit for the construction of any structure within the development shall be issued by the City until all individual lots in the development are staked by licensed surveyor, the public water lines and stubs to each lot, charged fire hydrants, sanitary sewer lines and stubs to each lot, street lights and public streets (including all weather access, curb, gutter, and pavement with at least the base course completed), serving such structure have been completed and accepted by the City.

D. **Certificate of Occupancy.** No Certificates of Occupancy shall be issued by the City for any structure within the development until gas lines to the structure are installed, street signs are installed, and all electrical lines are installed.

E. **Financial Responsibilities of Developer.** Except as otherwise herein specifically agreed, the Developer agrees to install and pay for all water, sanitary sewer, and storm drainage facilities and appurtenances, and all streets, curbs, gutters, sidewalks, trails and other public improvements required by this Development as shown on the Final Plat and other approved documents pertaining to this Development on file with the City.

F. **Utility Line Installments.** Street improvements shall not be installed until all utility lines to be placed therein have been completely installed, including all individual lot service lines (water and sewer) leading in and from the main to the property line, all electrical lines, and all communication conduits.

G. **Inspection by City Officials.** The installation of all utilities shown on the Final Plat shall be inspected by the Engineering Department and/or Public Works Department of the City and shall be subject to such department's approval. The Developer agrees to correct any deficiencies in such installations in order to meet the requirements of the plans and/or specifications applicable to such installation. In case of conflict, the Tremonton City Public Works Standards shall supersede the Final Plat and Construction Drawings, unless written exceptions have been made.

H. **Form of Recorded Drawings.** The Developer shall provide the City Engineer with two (2) certified Record Plan Drawings upon completion of each phase of the construction. Utilities will not be initially accepted prior to as-built drawings being submitted to and approved by the City of Tremonton. The City reserves the right to request alternative forms of plans (i.e., CAD drawings, GIS images, etc.).

I. **Developer Compliance with EPA and other Regulations.** The Developer specifically represents that to the best of its knowledge all property dedicated (both in fee simple and as easements) to the City associated with this Development (whether on or off-site) is in compliance with all environmental protection and anti-pollution laws, rules, regulations, orders or requirements, including solid waste requirements, as defined by the U.S. Environmental Protection Agency Regulations at 40 C.F.R. Part 261, and that such property as is dedicated to the City pursuant to this Development, is in compliance with all such requirements pertaining to the disposal or existence in or on such dedicated property of any hazardous substances, pollutants or contaminants, as defined by the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, and regulations promulgated thereunder. The Developer, for itself and its successor(s) in interest, does hereby indemnify and hold harmless the City from any liability whatsoever that may be imposed upon the City by any governmental authority or any third Party, pertaining to the disposal of hazardous substances, pollutants or contaminants, and cleanup necessitated by leaking underground storage tanks, excavation and/or backfill of hazardous substances, pollutants or contaminants, or environmental cleanup responsibilities of any nature whatsoever on, of, or related to any property dedicated to the City in connection with this Development, provided that such damages or liability are not caused by circumstances arising entirely after the date of acceptance by the City of the public improvements constructed on the dedicated property, except to the extent that such circumstances are the result of the acts or omissions of the Developer. Said indemnification shall

not extend to claims, actions or other liability arising as a result of any hazardous substance, pollutant or contaminant generated or deposited by the City, its agents or representatives, upon the property dedicated to the City in connection with this Development. The City agrees to give notice to the Developer that he must obtain a complete discharge of all City liability through such settlement. Failure of the City to give notice of any such claim to the Developer within ninety (90) days after the City of first receives a notice of such claim under the Utah Governmental Immunity Act for the same, shall cause this indemnity and hold harmless agreement by the Developer to not apply to such claim and such failure shall constitute a release of this indemnity and hold harmless agreement as to such claim.

J. **City Ownership Rights.** The Developer acknowledges and agrees that the City, as the owner of any adjacent property (the "City Property") on which off-site improvements may be constructed, or that may be damaged by the Developer's activities hereunder, expressly retains (and does not by this Development Agreement waive) its rights as property owner. The City's rights as owner may include without limitation those rights associated with the protection of the City Property from damage, and/or the enforcement of restrictions, limitations and requirements associated with activities on the City Property by the Developer as an easement recipient.

K. **Developer Vesting.** Developer, by and through execution of this agreement, receives a vested right to develop the number of lots shown and configured on the Final Plat, without interference from the City, so long as development is completed in accordance with the plans specifically shown on the Final Plat and pursuant to the statutory requirements codified by Utah State and Tremonton City Codes. Furthermore, following execution of the Agreement, Developer's right to develop and construct in accordance with the statutory requirements at the time of execution of the Agreement shall be deemed vested.

II. Special Conditions

A. **Sewer Lines**

1. Access through easements needs to be maintained for maintenance of sewer lines.

B. **Storm Drainage Facilities, Lines, and Appurtenances**

1. Access through easements needs to be maintained for maintenance of storm drainage.

C. **Fee In Lieu Payments for Chip Seal and Fog Coat**

1. That the Developer make a fee in lieu for payment in the amount of \$28,163.25 for chip seal and fog coat prior to recording the subdivision plat.

D. Streetlights

1. That the Developer make a fee in lieu for payment in the amount of \$7,200.00 for installation of street lights prior to recording the subdivision plat.

E. Spring Hollow Legends Overlay Zoning Ordinance

1. Developer and subsequent property owners acknowledge and agree to comply with the requirements contained in the Spring Hollow Legends Overlay Zoning Ordinance which includes but is not limited to the following:

A. To mitigate the density associated with the Spring Hollow Legends Overlay Zone, the project shall have the following amenities within the specified timeframe:

1. The Developer shall construct the common 8 foot wide walking trail, landscaping of the common areas and common parking lot as shown on Map 1.08 contained in Exhibit "C", prior to issuing any Building Permit.
2. The Developer shall construct the Club House, which includes an indoor pickleball court, on or within one (1) year after the first home has been constructed as shown on Map 1.08 contained in Exhibit "C".
3. The Developer shall construct the remaining hard surface common recreation improvements (basketball and pickle ball court) as shown on Map 1.08 after fifteen (15) building lots are sold or thirty-six (36) months from the date the final plat is recorded with the Box Elder County Recorder, whichever occurs first.
4. The Developer shall construct the perimeter fencing around the subdivision after fifteen (15) building lots are sold or thirty-six (36) months from the date the final plat is recorded with the Box Elder County Recorder, whichever occurs first.
5. The Developer shall install front yard and side yard landscaping at time of occupancy except during the winter season, which shall be completed as soon thereafter between the months of May through October.

B. As allowed by Section 1.16.020 F. of the Tremonton City Land Use Code the Tremonton City Council authorizes the substituting of the amenities shown on Map 1.08 as follows:

1. The Developer shall be allowed to amend the original development plan by: 1) eliminating the construction of the one

pickleball court, one tennis court and two shuffleboard amenities; 2) along with the reduction in open space and 3) increase of the number of building lots from 29 shown on Map 1.08 as contained in Exhibit "C" to "33" building lots.

2. As a substitute for the aforementioned amendments the Developer shall construct a pickleball court inside the clubhouse and shall install secondary water mains and laterals to the common areas of the Spring Hollow Legends and to each building lot in the Spring Hollow View of the plat. The Developer dedicates the secondary water mains and laterals to the City as a public improvement.
3. The Developer acknowledges that there is no timeline for when the City may provide secondary water through the secondary water mains.

III. Miscellaneous

A. **Construction Site Safety.** The Developer agrees to provide and install, at its expense, adequate barricades, flaggers, warning signs and similar safety devices at all construction sites within the public right-of-way and/or other areas as deemed necessary by the City Engineer, City Public Works Department, and Traffic Engineer in accordance with any and all Federal Regulations, the City's Policies and Procedures, Utah Department of Transportation Requirements, OSHA, and Manual of Uniform Traffic Control Devices ("MUTCD") and shall not remove said safety devices until the construction has been completed.

B. **Construction Site Waste.** The Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, or building materials caused by the Developer's operation, or the activities of individual builders and/or subcontractors; shall remove such rubbish as often as necessary, but no less than daily and; at the completion of the work, shall remove all such waste materials, rubbish, tools, construction equipment, machinery, and surplus materials from the public right-of-way. The Developer further agrees to maintain the finished street surfaces so that they are free from dirt caused by the Developer's operation or as a result of building activity. Any excessive accumulation of dirt and/or construction materials shall be considered sufficient cause for the City to withhold building permits and/or certificates of occupancy until the problem is corrected to the satisfaction of the City Building Inspector and/or the City Public Works Director. If the Developer fails to adequately clean such streets within two (2) days after receipt of written notice, the City may have the streets cleaned at the Developer's expense and the Developer shall be responsible for prompt payment of all such costs. The Developer also agrees to require all contractors within the Development to keep the public right-of-way clean and free from accumulation of dirt, rubbish, and building materials. Under no circumstances shall the Developer or any sub-contractors use open burning procedures to dispose of waste materials.

C. **Compliance with City Building Inspector, City Engineer, and City Public Works Director.** The Developer hereby agrees that it will require its contractors and subcontractors to cooperate with the City's Building Inspector, City Engineer, or City Public Works Director by ceasing operations when winds are of sufficient velocity to create blowing dust, which, in the inspector's opinion, is hazardous to the public health and welfare.

D. **Consequences of Developer non-compliance with Final Plat and the Agreement.** The Developer shall, pursuant to the terms of this Agreement, complete all improvements and perform all other obligations required herein, as such improvements or obligations may be shown on the Final Plat, or any documents executed in the future that are required by the City for the approval of an amendment to the Final Plat or the Agreement, and the City may withhold such building permits and certificates of occupancy as it deems necessary to ensure performance in accordance with the terms of the Agreement.

E. **No Waiver of Regulation(s).** Nothing herein contained shall be construed as a waiver of any requirements of the City Code or the Utah Code Annotated, in its current form as of the date of approval of the Final Plat, and the Developer agrees to comply with all requirements of the same.

F. **Severability of Waivers.** In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.

G. **City Council Budgetary Discretion.** All financial obligations of the City arising under this Agreement that are payable after the current fiscal year are contingent upon funds for the purpose being annually appropriated, budgeted and otherwise made available by the Tremonton City Council, in its discretion.

H. **Covenants Run with the Land.** This Agreement shall run with the Property, including any subsequent, approved, amendments to the Final Plat of all, or a portion of the Property. This Agreement shall also be binding upon and inure to the benefit of the Parties hereto, their respective personal representatives, heirs, successors, grantees and assigns. It is agreed that all improvements required pursuant to this Agreement touch and concern the Property regardless of whether such improvements are located on the Property. Assignment of interest within the meaning of this paragraph shall specifically include, but not be limited to, a conveyance or assignment of any portion of the Developer's legal or equitable interest in the Property, as well as any assignment of the Developer's rights to develop the Property under the terms and conditions of this Agreement.

I. **Liability Release.** With limitations pursuant to Utah Code Annotated § 10-9a-607, in the event the Developer transfers title to the Property and is thereby divested of all equitable and legal interest in the Property, the Developer shall be released from liability under this Agreement with respect to any breach of the terms and conditions of this Agreement occurring after the date of any such transfer of interest. In such event, the succeeding property owner shall be bound by the terms of this Agreement.

J. **Default and Mediation.** Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either Party shall fail to perform according to the terms of this Agreement, such Party may be declared in default. In the event that a Party has been declared in default hereof, such defaulting Party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the Party declaring default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance or; (c) avail itself of any other remedy at law or equity.

In the event of the default of any of the provisions hereof by either Party, which shall give rise to commencement of legal or equitable action against said defaulting Party, the Parties hereby agree to submit to non-binding mediation before commencement of action in any Court of law. In any such event, defaulting Party shall be liable to the non-defaulting Party for the non-defaulting Party's reasonable attorney's fees and costs incurred by reason of the default. Nothing herein shall be construed to prevent or interfere with the City's rights and remedies specified in Paragraph III.D of this Agreement.

L. **No Third-Party Beneficiaries.** Except as may be otherwise expressly provided herein, this Agreement shall not be construed as or deemed to be an agreement for the benefit of any third Party or Parties, and no third Party or Parties shall have any right of action hereunder for any cause whatsoever.

M. **Applicable Laws.** It is expressly understood and agreed by and between the Parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Utah and the City of Tremonton, Utah.

N. **Notice.** Any notice or other communication given by any Party hereto to any other Party relating to this Agreement shall be hand-delivered or sent by certified mail, return receipt requested, addressed to such other Party at their respective addresses as set forth below; and such notice or other communication shall be deemed given when so hand-delivered or three (3) days after so mailed:

If to the City: Tremonton City
102 S. Tremont Street
Tremonton, UT 84337

With a copy to: Ericson & Shaw, LLP
1047 South 100 West, Suite 190
Logan, UT 84321

If to the Developer: Spring Acres Development Group
905 North 2000 West
Tremonton, Utah 84337

Notwithstanding the foregoing, if any Party to this Agreement, or its successors, grantees or assigns, wishes to change the person, entity or address to which notices under this Agreement are to be sent as provided above, such Party shall do so by giving the other Parties to this Agreement written notice of such change.

O. **Word Meanings.** When used in this Agreement, words of the masculine gender shall include the feminine and neutral gender, and when the sentence so indicates, words of the neutral gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning and as if prepared by all Parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the Parties hereto pertaining to the matters addressed in this Agreement.

P. **Complete Agreement.** There shall be deemed to be no other terms, conditions, promises, understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the Parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

Q. **Property Owner as Party.** The Owner is made a Party to this Agreement solely for the purpose of subjecting the Property to the covenants contained in this Agreement. The City and the Developer expressly acknowledge and agree that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

Developer expressly acknowledges and agrees that the Owner shall not be liable for any obligations of the Developer under this Agreement, unless the Owner were to exercise any of the rights of the Developer in which event the obligations of the Developer shall become those of the Owner.

R. **Greenbelt Taxes.** Pursuant to Utah Code Annotated § 10-9a-603(3), The City shall require payment of all Greenbelt Taxes, if applicable, prior to Recordation of the Final Plat.

S. **Recording.** The City and Developer/Owner are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of the Agreement, and the Developer/Owner agrees to execute any such instruments upon reasonable request.

T. **“Arms Length” Transaction.** The Parties hereto expressly disclaim and disavow any partnership, joint venture or fiduciary status, or relationship between them and expressly affirm that they have entered into this Contract as independent Parties and that the same is in all respects an “arms-length” transaction.

THE CITY OF TREMONTON, UTAH

By: _____
Mayor, Tremonton City

ATTEST:

City Recorder

APPROVED AS TO CONTENT:

City Engineer

APPROVED AS TO FORM:

City Attorney

DEVELOPER:

By: Blake Christensen - Springs Acres Development Group

Print Name: Blake Christensen

OWNER:

By: _____

Print Name: _____

State of Utah)
County of _____) §

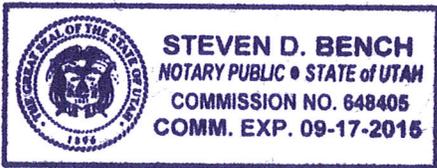
On this ____ day of _____, in the year 20 ____, before me _____ a notary public, personally appeared Roger Fridal, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to this instrument, and acknowledge executing the same.

Notary Public

Developer/Owner Acknowledgment

State of Utah)
County of BOXELDEL) §

On this 19 day of AUG, in the year 2015, before me STEVEN D BENCH a notary public, personally appeared BLAKE CHRISTENSEN, and proved on the basis of satisfactory evidence to be the person(s) whose name(s) subscribed to this instrument, and acknowledge executing the same.



[Signature]
Notary Public

EXHIBIT "A"

CONSTRUCTION/IMPROVEMENT GUARANTEE:

The Bond guaranteeing the Developer's timely and proper installation and warranty of required improvements shall be equal in value to at least one hundred-ten (110) percent of the cost of the required improvements, as estimated by the City Engineer contained in Exhibit "B". The purpose of the bond is to enable the City to make or complete the required improvements in the event of the developer's inability or failure to do so. The City need not complete the required improvements before collecting on the bond. The City may, in its sole discretion, delay taking action on the bond and allow the developer to complete the improvements if it receives adequate assurances that the improvements shall be completed in a timely and proper manner. The additional ten (10) percent shall be used to make up any deficiencies in the bond amount and to reimburse the City for collection costs, including attorney's fees, inflationary costs, etc.

All required improvements shall be completed and pass City inspections within one (1) year of the date that the Final Plat is recorded. Required improvements for plats recorded between November 1st and March 31st shall be completed by the next October 1st. For example, the required improvements for a plat recorded on February 6th, shall be completed by October 1st, in the same calendar year. Failure to meet this time frame may result in forfeiture of the bond. A written agreement to extend the completion of the improvements may be granted by the Land Use Authority Board where due to circumstances as determined by the Land Use Authority Board would delay the completion of required improvements.

All subdivision improvements shall be completed by qualified contractors in accordance with Title III General Public Works Construction Standards and Specifications. No work may be commenced on improvements intended to be dedicated to the City without approved construction drawings and a pre-construction meeting with the City.

The Bond shall be an escrow bond, or cash bond in favor of the City. The requirements relating to each of these types of bonds are detailed below. The City Attorney shall approve any bond submitted pursuant to this section. The City Attorney reserves the right to reject any of the bond types if it has a rational basis for doing so. Escrow bonds shall be held by a federally insured bank, savings and loan or credit union or a title insurance underwriter authorized to do business in the State of Utah. A developer may use a cash bond by tendering the required bond amount in cash or certified funds to the City, partial releases may be made from the cash bond as allowed for other bond types, but shall retain ten (10) percent of the bond through the warranty period for any repairs necessary prior to final approval at the end of the warranty period. If no repairs are required at the end of the warranty period the remaining portion of the bond shall be released to the Developer. The City shall not pay any interest on funds held as a cash bond.

MAINTENANCE GUARANTEE:

The Developer hereby warrants and guarantees to the City, for a period of one (1) years from the date of completion and final inspection by the City of the public improvements warranted hereunder, the full and complete maintenance and repair of the public improvements constructed for this Development. This warranty and guarantee is made in accordance with the Tremonton City Land Use Code and/or the Utah Code Annotated, as applicable. This guarantee applies to the streets and all other appurtenant structures and amenities lying within the rights-of-way, easements and other public properties, including, without limitation, all curbing, sidewalks, trails, drainage pipes, culverts, catch basins, drainage ditches and landscaping and all other improvements contained in Exhibit "B" of this Agreement. Any maintenance and/or repair required on utilities shall be coordinated with the owning utility company or city department.

The Developer shall maintain said public improvements in a manner that will assure compliance on a consistent basis with all construction standards, safety requirements and environmental protection requirements of the City until one (1) year following the final inspection. The Developer shall also correct and repair or cause to be corrected and repaired, all damages to said public improvements resulting from development-related or building-related activities. The City may require the Developer to guarantee and warrant that any repairs remain free from defect for a period of one (1) year following the date that the repairs pass City inspection. The City may retain the Developer's guarantee until the repairs have lasted through the warranty period, and may take action on the bond if necessary to properly complete the repairs. In the event the Developer fails to correct any damages within thirty (30) days after written notice thereof, then said damages may be corrected by the City and all costs and charges billed to and paid by the Developer. The City shall also have any other remedies available to it as authorized by this Agreement. Any damages which occurred prior to the end of said one (1) year period which are unrepaired at the termination of said period shall remain the responsibility of the Developer.

REPAIR GUARANTEE:

The Developer agrees to hold the City, harmless for a one (1) year period, commencing upon the date of completion and final inspection by the City of the public improvements constructed for this Development, from any and all claims, damages, or demands arising on account of the design and construction of public improvements of the Property shown on the approved plans and documents for this Development; and the Developer furthermore commits to make necessary repairs to said public improvements, to include, without limitation, all improvements contained in Exhibit "B" of this Agreement, roads, streets, fills, embankments, ditches, cross pans, sub-drains, culverts, walls and bridges within the right-of-way easements and other public properties, resulting from failures caused by design and/or construction defects. This agreement to hold the City harmless includes defects in materials and workmanship, as well as defects caused by or consisting of settling trenches, fills or excavations.

Further, the Developer agrees that the City shall not be liable to the Developer during the warranty period, for any claim of damages resulting from negligence in exercising engineering techniques and due caution in the construction of cross drains, drives, structures or buildings, the

changing of courses of streams and rivers, flooding from natural creeks and rivers, and any other matter whatsoever on private property. Any and all monetary liability occurring under this paragraph shall be the liability of the Developer.

The obligations of the Developer pursuant to the “maintenance guarantee” and “repair guarantee” provisions set forth above may not be assigned or transferred to any other person or entity unless the warranted improvements are completed by, and a letter of acceptance of the warranted improvements is received from the City by, such other person or entity.

EXHIBIT "B" CITY ENGINEER'S ESTIMATE FOR COST OF IMPROVEMENTS

EXHIBIT "C" SPRING HOLLOW SUBDIVISION

