Auditor

SUMMIT COUNTY

Michael R. Howard

September 10, 2015

Council,

Please consider approval of the 2015 Board of Equalization stipulations prepared for your review on September 16th.

Sincerely,

Kathryn Rockhill

Kathryn Rockhill
BOE Clerk

60 No. Main, P.O. Box 128, Coalville, UT 84017
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2015 BOE Adjustments

Account #	Serial #	New Market Value	Old Market Value	MV Difference	New Taxable Value	Old Taxable Value	Taxable Difference	Old Tax Estimate	% Difference	Explanation for adjustment
0038152	HR-91	$ 581,532.00	$ 581,532.00	$ -	$ 319,842.00	$ 581,532.00	$ (261,690.00)	$ 4,931.39	-45.00%	To Primary per Ashley
0038145	HR-90	$ 533,668.00	$ 533,668.00	$ -	$ 293,517.00	$ 533,668.00	$ (240,151.00)	$ 4,525.50	-45.00%	To Primary per Ashley
0038160	HR-92	$ 576,011.00	$ 576,011.00	$ -	$ 316,806.00	$ 576,011.00	$ (259,205.00)	$ 4,884.57	-45.00%	To Primary per Ashley
0405195	RCCS-1	$ 1,532,500.00	$ 1,532,500.00	$ -	$ 1,532,500.00	$ 1,532,500.00	$ -	$ 15,386.30	0.00%	Denied No Change made
0399919	SHEP-A	$ 1,200,574.00	$ 1,200,574.00	$ -	$ 660,315.00	$ 1,200,574.00	$ (540,259.00)	$ 10,180.87	-45.00%	To Primary per Ashley
0407878	PSSR-28	$ 2,643,818.00	$ 2,935,605.00	$ (291,787.00)	$ 1,454,099.00	$ 1,614,601.00	$ (160,502.00)	$ 16,289.71	-9.94%	To Comparable sales Value
0420590	GCC-13	$ 2,293,870.00	$ 2,293,870.00	$ -	$ 1,261,629.00	$ 1,261,629.00	$ -	$ 12,666.76	0.00%	To Comparable sales Value
0154025	PE-1-3	$ 265,435.00	$ 265,435.00	$ -	$ 265,435.00	$ 265,435.00	$ -	$ 2,165.40	0.00%	Denied No Change made
0166334	WA-9-923	$ 25,000.00	$ 35,525.00	$ (10,525.00)	$ 25,000.00	$ 35,525.00	$ (10,525.00)	$ 289.99	-29.63%	To Comparable sales Value
0154629	PE-3-318	$ 430,715.00	$ 520,487.00	$ (89,772.00)	$ 430,715.00	$ 520,487.00	$ (89,772.00)	$ 4,247.17	-17.25%	To Comparable sales Value
0154637	PE-3-319	$ 24,000.00	$ 35,000.00	$ (11,000.00)	$ 24,000.00	$ 35,000.00	$ (11,000.00)	$ 285.60	-31.43%	To Comparable sales Value
0154918	PE-4-411	$ 24,000.00	$ 35,000.00	$ (11,000.00)	$ 24,000.00	$ 35,000.00	$ (11,000.00)	$ 285.60	-31.43%	To Comparable sales Value
0144455	PI-D-65	$ 310,000.00	$ 389,565.00	$ (79,565.00)	$ 310,000.00	$ 389,565.00	$ (79,565.00)	$ 3,351.04	-20.42%	To Comparable sales Value
0286280	ASR-II-70	$ 3,671,302.00	$ 6,939,507.00	$ (3,268,205.00)	$ 2,019,216.00	$ 6,939,507.00	$ (4,920,291.00)	$ 58,847.02	-70.90%	Change value to reflect acutal construction costs.
0054845	PP-87-15	$ 890,674.00	$ 1,007,174.00	$ (116,500.00)	$ 512,145.00	$ 583,646.00	$ (71,501.00)	$ 4,802.24	-12.25%	To Comparable sales Value
0439152	BJUMP-26	$ 400,000.00	$ 400,000.00	$ -	$ 400,000.00	$ 400,000.00	$ -	$ 4,016.00	0.00%	Denied No Change made
0269412	CD-431-A-2	$ 1,285,040.00	$ 1,285,040.00	$ -	$ 339,605.00	$ 1,285,040.00	$ (945,435.00)	$ 11,106.60	-73.57%	To Primary per Ashley
0037170	3K-9-B	$ 429,000.00	$ 620,000.00	$ (191,000.00)	$ 429,000.00	$ 620,000.00	$ (191,000.00)	$ 5,257.60	-30.81%	to fee appraisal value
0432892	LINE-5	$ 36,666.00	$ 110,000.00	$ (73,334.00)	$ 20,166.00	$ 60,500.00	$ (40,334.00)	$ 513.04	-66.67%	adjusted value to prorate time under exemption for this year
0462056	AGIO-260-201-1AM	$ 1,840,000.00	$ 1,840,000.00	$ -	$ 1,840,000.00	$ 1,012,000.00	$ 828,000.00	$ 851.76	81.82%	To Non primary per Ashley
0225163	RGP-101-1AM	$ 850,000.00	$ 850,000.00	$ -	$ 850,000.00	$ 850,000.00	$ -	$ 7,208.00	0.00%	Denied No Change made
0068431	SU-M-18	$ 628,405.00	$ 653,555.00	$ (25,150.00)	$ 345,622.00	$ 359,455.00	$ (13,833.00)	$ 3,147.39	-3.85%	to fee appraisal value
0465808	LWPCRS-3508A-AM	$ 269,000.00	$ 340,000.00	$ (71,000.00)	$ 269,000.00	$ 340,000.00	$ (71,000.00)	$ 2,797.52	-20.88%	To sale Price
0270300	FVL-1-16-A	$ 1,100,000.00	$ 1,100,000.00	$ -	$ 605,000.00	$ 605,000.00	$ -	$ 5,130.40	0.00%	Denied No Change made
0364590	SDLC-C106	$ 230,000.00	$ 230,000.00	$ -	$ 230,000.00	$ 230,000.00	$ -	$ 1,982.44	0.00%	Denied No Change made
0193171	PWV-B-36-AM	$ 470,000.00	$ 470,000.00	$ -	$ 258,500.00	$ 258,500.00	$ -	$ 2,263.43	0.00%	Denied No Change made
0190854	QS-4	$ 590,000.00	$ 590,000.00	$ -	$ 590,000.00	$ 590,000.00	$ -	$ 5,003.20	0.00%	Denied No Change made
0248348	RGP-101-1AM	$ 850,000.00	$ 850,000.00	$ -	$ 850,000.00	$ 850,000.00	$ -	$ 7,208.00	0.00%	Denied No Change made
0154041	PE-1-5	$ 24,000.00	$ 17,500.00	$ 6,500.00	$ 24,000.00	$ 17,500.00	$ 6,500.00	$ 142.80	37.14%	To Dry Lot value
0161913	WA-1-8	$ 47,088.00	$ 47,088.00	$ -	$ 47,088.00	$ 47,088.00	$ -	$ 384.24	0.00%	Denied No Change made
0154033	PE-1-4	$ 149,612.00	$ 149,612.00	$ -	$ 149,612.00	$ 149,612.00	$ -	$ 1,220.83	0.00%	Denied No Change made
0420632	GCC-17	$ 1,482,532.00	$ 1,482,532.00	$ -	$ 1,482,532.00	$ 1,482,532.00	$ -	$ 14,884.62	0.00%	Denied No Change made
0097414	SHA-448	$ 87,500.00	$ 104,821.00	$ (17,321.00)	$ 48,125.00	$ 57,651.00	$ (9,526.00)	$ 498.28	-16.52%	To sale Price
0146708	SS-156-D	$ 1,804,752.00	$ 1,804,752.00	$ -	$ 1,281,766.00	$ 1,281,766.00	$ -	$ 11,025.75	0.00%	Denied No Change made
0415640	SWS-3	$ 915,296.00	$ 915,296.00	$ -	$ 503,412.00	$ 915,296.00	$ (411,884.00)	$ 7,761.71	-45.00%	To Primary per Ashley
0040893	PKM-5-47	$ 667,299.00	$ 667,299.00	$ -	$ 367,014.00	$ 667,299.00	$ (300,285.00)	$ 5,658.70	-45.00%	To Primary per Ashley
0397236	FPRV-19-A-2	$ 330,000.00	$ 330,000.00	$ -	$ 181,500.00	$ 330,000.00	$ (148,500.00)	$ 2,715.24	-45.00%	To Primary per Ashley
0065676	SU-H-85	$ 603,067.00	$ 700,063.00	$ (96,996.00)	$ 331,686.00	$ 385,035.00	$ (53,349.00)	$ 3,371.37	-13.86%	To Comparable sales Value
0303523	CDE-II-13	$ 560,000.00	$ 700,000.00	$ (140,000.00)	$ 560,000.00	$ 700,000.00	$ (140,000.00)	$ 61,129.20	-20.00%	To Comparable sales Value
0274245	EKH-B-E107	$ 851,294.00	$ 851,294.00	$ -	$ 468,212.00	$ 468,212.00	$ -	$ 4,099.66	0.00%	Denied No Change made
0284848	MH-24	$ 1,445,575.00	$ 1,394,704.00	$ 50,871.00	$ 1,445,575.00	$ 1,394,704.00	$ 50,871.00	$ 12,212.03	3.65%	To Comparable sales Value
0030563	SNC-1047	$ 125,000.00	$ 125,000.00	$ -	$ 68,750.00	$ 125,000.00	$ (56,250.00)	$ 1,060.00	-45.00%	To Primary per Ashley
0030589	SNC-1049	$ 160,000.00	$ 160,000.00	$ -	$ 88,000.00	$ 160,000.00	$ (72,000.00)	$ 1,356.80	-45.00%	To Primary per Ashley
0030514	SNC-1042	$ 125,000.00	$ 125,000.00	$ -	$ 68,750.00	$ 125,000.00	$ (56,250.00)	$ 1,060.00	-45.00%	To Primary per Ashley
0030639	SNC-1054	$ 125,000.00	$ 125,000.00	$ -	$ 68,750.00	$ 125,000.00	$ (56,250.00)	$ 1,060.00	-45.00%	To Primary per Ashley
0038863	PKM-2-1	$ 928,038.00	$ 928,038.00	$ -	$ 510,420.00	$ 928,038.00	$ (417,618.00)	$ 7,869.76	-45.00%	To Primary per Ashley
	Totals for 9/16/2015	**$ 34,412,263.00**	**$ 38,848,047.00**	**$ (4,435,784.00)**	**$ 24,171,304.00**	**$ 32,924,908.00**	**$ (8,753,604.00)**			
	Totals for 9/9/2015	**$ 176,779,950.00**	**$ 222,839,821.00**	**$ (46,059,871.00)**	**$ 68,855,918.00**	**$ 206,584,917.00**	**$ (54,309,843.00)**			
	Totals for 8/26/2015	**$ 38,269,555.00**	**$ 42,006,991.00**	**$ (3,737,436.00)**	**$ 28,749,294.00**	**$ 35,750,043.00**	**$ (7,000,749.00)**			
	Totals for 8/19/2015	**$ 131,164,123.00**	**$ 129,173,808.00**	**$ 1,990,315.00**	**$ 95,356,818.00**	**$ 113,606,508.00**	**$ (18,249,690.00)**			
	Running Total	**$ 380,625,891.00**	**$ 432,868,667.00**	**$ (52,242,776.00)**	**$ 217,133,334.00**	**$ 388,866,376.00**	**$ (88,313,886.00)**			

The Market value decrease for 2015 is ($ 52,242,776) As of 09/16/2015

The Taxable Value decrease for 2015 is ($ 88,313,886) As of 09/16/2015

STAFF REPORT

To: Summit County Council
From: Ray Milliner, County Planner
Date of Meeting: September 16, 2015
Type of Item: Work Session/Regular Session, Possible Action
Process: Legislative Review

RECOMMENDATION: Staff recommends that the Summit County Council do the following:

1. Review the transportation component of the proposed amendment to the Canyon Corners Development Agreement, as a work session item, and provide staff and the applicant with direction.
2. Review the proposed amendments to the Canyon Corners Development Agreement during the regular session, and approve it per the findings of fact, conclusions of law and conditions of approval in this staff report.

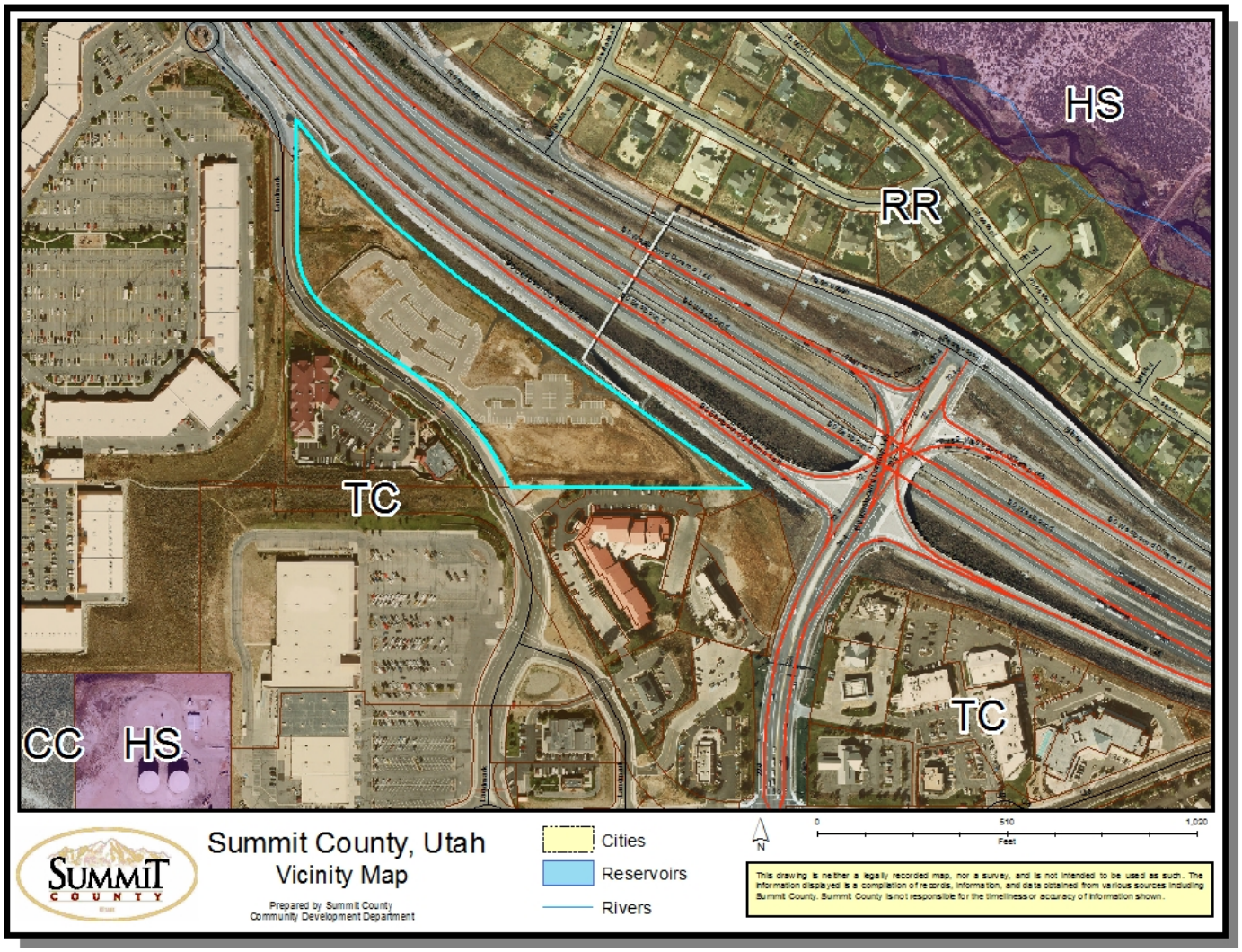
Project Description

Project Name:	Canyon Corners Development Agreement
Applicant(s):	Centercal Properties, Alec Paddock Representative
Property Owner(s):	W Meeks Wirthlin Investment Company LLC
Location:	6622 North Landmark Drive
Zone District:	Town Center (TC)
Parcel Number and Size:	Parcel # CANCOR-1, 8.42 Acres
Type of Process:	Legislative
Final Land Use Authority:	Summit County Council

Proposal

The applicant is proposing an amendment to the existing Canyon Corners Development agreement. The proposal would modify the approved site plan to accommodate a new site configuration with a 43,000 square foot retail structure as the anchor tenant and another two story structure with 18,000 square feet of retail and 19,700 square feet of affordable residential square footage (affordable housing density is not applied to total density calculations). The total commercial square footage requested is 61,000. The total square footage is 80,700 square feet.

Vicinity Map



Background

On August 11, 2015 the County Council conducted a public hearing and reviewed a proposed amendment to the Canyon Corners Development Agreement. At the meeting, the Council raised a number of concerns regarding the project, and instructed staff and the applicant to address the following:

- Provide more information regarding the proposed traffic mitigation plan of the site. Provide information relating to a roundabout.
- Look at ways to insert a condition of approval that would require the applicant to study the traffic issues on Landmark Drive and mitigate any problems generated by the project. The study would take place two years after the issue of a certificate of occupancy for the building.

- Address the proposed use table in the draft development agreement to ensure that the uses listed will be sufficient if proposed Building A becomes vacant.
- The Council requested a number of amendments to the Development Agreement.
- Address the timing of the affordable housing component to ensure that the units are built and occupied concurrently with the rest of the development.

Project History

On August 4, 2004, the Summit County Board of County Commissioners approved the Canyon Corners Development Agreement as part of a specially planned area. The duration of the agreement was five (5) years, expiring on August 4, 2009. On October 29, 2008, the Board of Commissioners granted a five (5) year extension to the agreement, expiring on December 22, 2013. Another extension, this time for four (4) years, was granted by the County Council on October 2, 2013. As a result, the existing development agreement is set to expire on December 22, 2017.

The approved site plan for the development features 7 buildings labeled buildings A through G. The total density approved is 61,000 square feet.

The applicant, Centercal Properties has submitted an application to amend the approved development agreement. The amendment would reduce the number of buildings on site to accommodate a large grocery/retail building. The total amount of square footage would remain at the approved 61,000 square feet.

Planning Commission Review

This application was reviewed by the Snyderville Basin Planning Commission on March 10, May 12, June 23, July 15 and August 11, 2015. Issues addressed by the Planning Commission included:

- Community benefits
- Affordable housing
- Access to Building A from the Bus Stop
- Detail the impacts of the rear of building B as viewed from the freeway
- Visual impacts of the development from different vantage points in the area
- Access to the project from Landmark Drive
- Vehicular safety and traffic calming along Landmark Drive

On August 11, 2015 the Commission found that the project met the minimum requirements for approval and forwarded a positive recommendation to the County Council.

Project Description

The property is 8.42 acres located at 6622 North Landmark Drive. There is an existing driveway access from Landmark Drive. Across Landmark Drive is the existing Ruby Tuesday restaurant, and the Tanger Outlet Mall. The Best Western Hotel is immediately adjacent to the south.

The proposed amendments feature a new site plan for the development highlighting 2 buildings labeled buildings A and B with a 43,000 square foot retail structure as the anchor tenant and another two story structure with 18,000 square feet of retail and 19,700 square feet of affordable residential square footage (affordable housing density is not applied to total density calculations). The total commercial square footage requested is 61,000. The total square footage is 80,700 square feet.

- **Building A** = 43,000 square foot structure. Permitted use = Grocery Store, with general retail and restaurant uses.
- **Building B** = 34,900 square foot structure. Permitted use = General Retail, Office on the ground floor and affordable housing/residential on the second floor.

The number of buildings would decrease by 5, and the total amount of square footage would stay the same (excepting the square footage for the affordable housing, which is exempt per the Code).

Community Benefits

Chapter 10-2-12 of the Development Code establishes a base density in the Town Center Zone as one (1) unit per twenty (20) acres on developable land. In order to receive an increase in density, a land owner must demonstrate "significant community benefits" subject to the regulations in the TC zone, and the regulations in Section 10-3-11 Specially Planned Areas. The approved community benefits were:

- Construction of trails to connect existing community trails to the I-80 pedestrian bridge (Completed)
- Construction of two crosswalks across Landmark Drive (Completed)
- Construction of a bus shelter and turn-around on site (turn-around completed but bus shelter not)
- Improvement of an onsite storm water detention area (Completed)
- Construction of a Landmark Drive Deceleration lane (Completed)
- Maintenance and construction of a sidewalk (Sidewalk built, maintenance on-going)
- Financial contribution of $150,000 to Summit County for traffic related studies and/or improvements in the Kimball Junction area (to be completed at time of certificate of occupancy issuance for buildings)

Except for the bus stop shelter and the $150,000 contribution for traffic studies, the amenities and facilities described have been completed and approved by Summit County including interior trails, Landmark Drive crosswalks, bus stop turnout, onsite detention, Landmark Drive deceleration lane, Landmark Drive sidewalk and Open Space.

The applicant has proposed that the $150,000 contribution be eliminated from the development agreement. The rationale for the request is that when the development agreement was first approved, the County had not adopted the transportation impact fee required at the time of building permit issue. Now that the fee is required of all building permits, the applicant will be required to pay significantly more than the $150,000 required by the development agreement (approximately $700,000).

In addition to those amenities, the applicant has agreed to commit the following amenities to the County (Section D.6. of the Development Agreement Exhibit A).

- Developer shall be subject to all transportation impact fees.
- Developer agrees to participate in the Kimball Junction circulation bus system by making a one-time financial contribution of $50,000. Payment shall be due upon commencement of the operation of the circulation system if prior to the issuance of a certificate of occupancy for any building located on the Project Site.
- Developer agrees to create a bicycle sharing program for the Project Site and for two other sites within the Kimball Junction area and provide not less than 24 bicycles, 8 to be located on the Project Site and an additional 8 to be located on each of the two other sites.
- Developer shall provide customer van/car pool only parking spaces in the most convenient parking locations adjacent to the buildings, similar to the locations for handicap parking, with not less than 2 such spaces to be located adjacent to the Building "A" and not less than 2 such spaces located adjacent to Building "B."
- Developer shall provide a minimum of 4 low emission vehicle parking spaces on the Project Site.
- Developer shall provide 20.5 Affordable Housing Unit Equivalents under the policies for affordable housing in the Snyderville Basin Development Code.
- Developer shall install additional improvements to Landmark Drive as described in Exhibit H of the Development Agreement.

Issues for Discussion

Transportation

The Planning Commission and County Council instructed the applicant and the Engineering Department to review the possibility of installing a roundabout at the north entrance to the project. The possibility was reviewed and the Engineering Department issued the analysis found as attachment B of this report. This analysis has not changed, and staff does not recommend

that the applicant be required to build a roundabout as part of this development agreement (analysis attached as exhibit B and C).

The applicant and staff have also been working to address the issue of capacity along Landmark Drive. The Council directed staff to create a condition of approval requiring a review of the traffic impacts of the project on landmark Drive two years after final certificate of appropriateness of the project is issued. The Legal Department has been working with the applicant's legal representative to create that language. The specific language will be forwarded to the Council.

Affordable Housing

The Council requested that the Legal Department clarify the timing of the affordable housing component in the Development Agreement. This would ensure that the housing is built and occupied concurrently with the rest of the project. The Legal Department has been working with the applicant's legal representative to clarify the language in the DA. Specific language will be forwarded to the Council.

Use Table

The council requested that staff look at the proposed uses and density chart in the agreement to ensure that the list of uses would be sufficient were proposed Building A constructed and the proposed Whole Foods did not occupy the structure. Staff has reviewed the document and fount that although it is impossible to predict future uses or densities that may come along, the proposed table anticipates the types of uses that would generally be appropriate for that site. Smaller uses requiring less mitigation are listed as permitted uses, while larger uses with larger impacts are conditional, requiring review and approval from the Snyderville Basin Planning Commission.

Analysis and Findings

Per Section 10-3-11 of the Development Code the County Council may approve, approve with conditions, or deny of the proposed application to modify the SPA. The recommendation is based upon written findings of fact according to each of the following standards. It is the responsibility of the applicant to provide written and graphic evidence demonstrating compliance.

Standard 1: Circumstances relevant to the request have changed since, or were unknown at the time of, the original SPA plan approval;

> **Analysis**: The circumstances relevant to the request have changed in that the type and scale of the proposed use on site has changed. The original approval was for 7 smaller buildings with small scale retail and restaurant uses. The current proposal is for two

buildings, one a large grocery store. The applicant indicates that the proposed development is more in line with current market trends and is an appropriate use for the site.

Standard 2: The modification will not otherwise alter any of the findings required in this section;

Analysis: The original SPA approval made findings per the requirements of Chapter 10-3-11 of the Development Code. Staff review of these findings indicate that provided the applicant, staff and the Commission continue to work to mitigate issues raised in this staff report, the project will be required to meet all of the findings required by the Code.

Standard 3: The modification is generally consistent with the efficient development and preservation of the entire SPA plan;

Analysis: Although the configuration of the buildings and use of the structure has changed, the amount of square footage and parking (excluding the affordable housing) remain the same.

Standard 4: The modification does not affect in a substantially adverse manner either the enjoyment of land abutting upon or in the general vicinity of the property in question.

Analysis: The principal issue relating to the impacts of the project on adjoining properties is traffic circulation and congestion. The applicant has been working with the Engineering Department and neighboring properties in an effort to mitigate said impacts.

Staff has received comments from property owners to the west of the proposal stating they have concerns about the visual impacts of the two buildings as it relates to their view. The applicant has submitted a visual analysis of the proposal from various vantage points for review by the Commission.

Standard 5: The public health, safety and general welfare are not adversely impaired by the modification.

Analysis: Staff and the applicant are working to ensure that the impacts of the building and site on the public are mitigated through careful planning and best practices in site design and traffic circulation.

Chapter 4 Analysis

Staff has conducted a review of the project and is requesting Planning Commission direction regarding the issues raised below.

Code Requirement	Analysis	Finding
1. Environmental Criteria	Review from the Health Department indicates no issues with relation to air quality, water quality or watershed protection.	**COMPLIES**
2. Critical Areas	The proposed use is not located on or near a critical ridgeline, wetland, slope or flood plain	**COMPLIES**
3. Open Space	The original SPA approval was for 2.73 acres of open space. The applicant is providing 2.94 acres of open space.	**COMPLIES**
4. Water and Water Supply	A will-serve letter has been received from Summit Water indicating that there is sufficient water for the site.	**COMPLIES**
5. Sanitary Sewer	Staff received a letter from SBWRD indicating that the project is within the SBWRD service area and has the capacity to serve the site.	**COMPLIES**
6. Fire Protection	Information from the Park City Fire Services District state that they will be able to provide fire protection.	**COMPLIES**
7. Loading and Unloading	The applicant has, and continues to work with the Engineering Department to finalize the traffic impact analysis. See analysis above.	**COMPLIES**
8. Parking Requirements	The original SPA allowed 279 spaces. The applicant proposes 289 spaces of which 10 are for affordable housing.	**COMPLIES**
9. Transportation Infrastructure and Access Design	The applicant and staff have addressed the issue. Steps have been taken to enhance the safety of pedestrians and motorists on the site.	**COMPLIES**
10. Public Utilities	All necessary public utilities are available on site. Rocky Mt. Power and Questar have provided will-serve letters.	**COMPLIES**
11. Mail Delivery	Mail will be delivered on site.	**COMPLIES**
12. Solid Waste and Recycling	Garbage and recycling facilities for each building are provided in a location appropriate for the site.	**COMPLIES**
13. Snow Removal and Storage	Numerous snow storage areas have been shown on the site plan and will comply with the Code.	**COMPLIES**
14. Police and Security	Analysis indicates that the design of the building will provide adequate access for police and security personnel.	**COMPLIES**
15. Parks, Trails, and	The project was reviewed by the Snyderville	**COMPLIES**

Trailheads	Basin Recreation District who indicated that it complies with all necessary criteria. They have requested that a condition of approval be inserted requiring grading near the proposed detention pond be less abrupt along the trail.	
16. ADA Access	The project will be reviewed by representatives from the building Department for compliance with all ADA requirements prior to the issue of a building permit.	**COMPLIES**
17. Special Site Design Requirements	Staff reviewed the petition for compliance with each of the special site design requirements and found that it meets the minimum required for approval.	**COMPLIES**
18. Architectural Regulations for All Structures	Staff has reviewed the architecture for compliance with the standards in the Code. The façade shifts, color and materials are compatible with said requirements.	**COMPLIES**
19. Landscape Regulations	As proposed, the landscaping meets the minimum standards of the Code. Prior to final recordation of the FSP, Staff must confirm that plant size, count and irrigation plans meet all standards of chapter 10-4-21.	**COMPLIES**
20. Lighting Regulations	A photometric plan has been submitted for verification of foot-candle compliance and the proposed fixtures and bulbs will be reviewed for compliance with the Code. Prior to the issuance of a building permit, staff shall review the final photometric lighting plan for compliance with the fixture, bulb and foot-candle standards in 10-4-22.	**COMPLIES**
21. Height Regulations	The proposed maximum height of building A is 40 feet above finish grade. The proposed height of Building B is 37 feet above finish grade. There is no predetermined height in the TC zone; rather height is determined by the development agreement. Staff review of the project indicates that the height of the building is compatible with the surrounding buildings and structures and therefore finds that the proposed heights are appropriate for the site.	**COMPLIES**

Recommendation

Staff recommends that the Summit County Council do the following:

1. Review the transportation component of the proposed amendment to the Canyon Corners Development Agreement, as a work session item, and provide staff and the applicant with direction.
2. Review the proposed amendments to the Canyon Corners Development Agreement during the regular session, and approve it per the findings of fact, conclusions of law and conditions of approval in this staff report.

Findings of Fact

1. On August 4, 2004, the Summit County Board of County Commissioners approved the Canyon Corners Development Agreement as part of a specially planned area.
2. The duration of the agreement was five (5) years, expiring on August 4, 2009.
3. On October 29, 2008, the Board of Commissioners granted a five (5) year extension to the agreement, expiring on December 22, 2013.
4. Another extension, this time for four (4) years, was granted by the County Council on October 2, 2013.
5. The existing development agreement is set to expire on December 22, 2017.
6. The property is 8.42 acres located at 6622 North Landmark Drive.
7. There is an existing driveway access from Landmark Drive.
8. The property is zoned Town Center (TC).
9. The approved site plan for the development features 7 buildings labeled buildings A through G.
10. The total density approved is 61,000 square feet.
11. The proposed amendment would reduce the number of buildings on site to accommodate a large grocery/retail building.
12. The total amount of square footage would remain at 61,000.
13. The applicant is proposing 20 one bedroom affordable housing units above Building B.
14. The applicant is required to provide 20.5 Affordable Unit Equivalents (AUE).
15. The Development Code states that a one-bedroom unit is equal to .8 AUEs, which converts the proposed 20 units to 16 AUEs.
16. Section 10-5-4.F.2 of the Development Code allows for a 25% reduction in required AUEs if the targeted income group does not exceed 50% of the Area Median Income (AMI).
17. The proposed units qualify for the 25% reduction.
18. The 25% reduction in AUEs would calculate to 15.4 AUEs so the 16 AUEs for the 20 one-bedroom units satisfy the affordable housing requirement.
19. There are 200 parking stalls proposed for Building A and 89 parking stalls proposed for Building B for a total of 289 stalls proposed.
20. The original SPA provided for 279 spaces.

21. The applicant is proposing that 10 of the spaces be provided for the affordable units.
22. Spaces assigned to affordable housing do not count against the overall number of spaces for the site and therefore do not constitute an increase in the number of spaces allowed on site.
23. The project will cause significant traffic increases along Landmark Drive.
24. Studies from the applicant state that there is "more than the required sight distance to safely execute egress movements onto Landmark Drive" from the proposed ingress and egress areas on site.
25. There will be an onsite bus stop integrated into the overall design of the project.
26. The applicant has agreed to participate in the proposed Kimball Circulation shuttle. The applicant has agreed to create a bicycle sharing project on site.
27. It is anticipated that once the system is in place, there will be other properties in the area that will want to participate in the project.
28. The proposed amendment does not constitute an increase in commercial density within the Snyderville Basin.

Conclusions of Law:

1. There is good cause for this SPA amendment.
2. The proposed SPA amendment as conditioned complies with all requirements of the Snyderville Basin Development Code.
3. The SPA amendment as conditioned is consistent with the Snyderville Basin General Plan, as amended.
4. The SPA amendment is not detrimental to public health, safety and welfare, as the roads and public services in the area are sufficient to accommodate the increase in intensity of the use.
5. The SPA amendment is compatible with the existing neighborhood character and will not adversely affect surrounding land uses.
6. The effects of any differences in use or scale have been mitigated through careful planning.

Conditions of Approval:

1. All conditions and requirements within the attached development agreement shall be met.

Attachments

Exhibit A –	Letter from Mountainlands Community Housing Trust
Exhibit B -	Engineering Department Analysis of traffic
Exhibit C -	Traffic analysis from applicant
Exhibit D-	Proposed Ordinance with Development Agreement (will be forwarded to Council from County Attorney)

September 9, 2015

Summit County Council
c/o Summit County Planning Department
Summit County Courthouse
Coalville, Utah 84017

RE: Canyon Corners

Dear Councilors,

I have been asked to clarify the calculation of the number of affordable units required for the Canyon Corners proposed development.

Mountainlands Community Housing Trust (MCHT) has been working with the developer and planning staff in considering options for the development to meet its affordable housing obligation. I have been provided a floor plan and elevations for the 18,000 square building which will provide twenty one-bedroom apartments with a minimum 650 square feet each. Staff has calculated that the commercial space generates a requirement for 20.5 Affordable Unit Equivalents (AUE). Under the Land Management Code Chapter 5 10-5-4 C 4 a one-bedroom unit is equal to .8 AUEs so these 20 units equal 16 AUEs.

Chapter 5 10-5-4 F 2 allows for a 25% reduction in required AUEs if the targeted income group does not exceed 50% of the Area Median Income (AMI). The developer has indicated rents will be limited to households with incomes earning less than 50% AMI. Under Chapter 5 10-5-12 A 2 one-bedroom rents are calculated for a two-person household. The AMI for a two-person household in Summit County is $40,500. Allowing 30% of gross income for rent and utilities this would equate to $1012.50 per month. Although, seemingly high, a market rate unit in the Snyderville Junction currently rents for an average of $1100-$1200 per month plus utilities. In Park City it would be closer to $1500 per month plus utilities. This 25% reduction in AUEs would calculate to 15.4 AUEs so the 16 AUEs for the 20 one-bedroom units satisfy the affordable housing requirement.

Chapter 5 10-5-3 B 7 requires that no more than 75% of the units target one income level but there is an exception if all units are located in a single building. Chapter 5 10-5-3 B 8 states that no one size or style of unit shall make up more than 75% of the required units but, again, makes an exception for a single structure.

MCHT supports the proposed targeted income levels and the unit mix. All other requirements of the Land Management Code related to affordable housing requirements, including monitoring, will be included in the development agreement or a separate housing agreement.

1960 Sidewinder Drive, Suite 107, Park City, UT 84060
Ph: 435.647.9719 Fax: 435.658.3890
www.housinghelp.org

EXHIBIT A

MCHT supports this proposal. The most significant obstacle in creating affordable housing in Summit County is the high cost and availability of land. Whenever it is possible to locate affordable housing on site it should be done. The unit type, one bedroom units, is the most desirable for the anticipated workforce for this location. There exists a strong demand and need for these types of units at the proposed rents Studio units are too small for a two person household and, because of limited space, are more transient. Larger units are more appropriate for families with children who would be difficult to accommodate in this commercial location. MCHT believes one bedroom units on the second floor over a commercial building in an area with public transportation and other amenities is the best way to meet the requirement and can serve as a model for future commercial re-zonings.

Please let me know if you have any questions or desire additional information.

Sincerely,

Scott Loomis
Executive Director

cc. Patrick Putt
Ray Milliner

1960 Sidewinder Drive, Suite 107, Park City, UT 84060
Ph: 435.647.9719 Fax: 435.658.3890
www.housinghelp.org

EXHIBIT A

Public Works Director Derrick A. Radke, P.E.

MEMORANDUM

August 4, 2015

To: Ray Milner, Senior Planner
David Thomas, Chief Civil Deputy County Attorney

From: Derrick Radke, PE - Summit County Public Works Director
Brandon Brady, PE – Summit County Traffic Engineer

Re: Revised - Canyon Corners Amended Development Agreement Comments

After reviewing the information submitted by the applicant at our request and that of the Planning Commission, we have the following follow-up comments:

1. Round-About Intersection
    a. The construction of a Round-About at the intersection appears to be technically feasible
    b. Significant additional design work would be required to fully understand the design elements and impacts to the adjoining property owners
    c. Probable that the extent of the reconstruction of Landmark Drive would be double that shown on the plan/profile drawing provided
    d. There would likely be significant impacts to adjoining property owners such as loss of parking and reconfiguration of the drive isles and parking
    e. The cost of the Round-About would be near $1M due to the length of Landmark Drive requiring modification and the cost of property acquisition
    f. A Round-About intersection at this location is not in the County's Capital Improvement Project List or Transportation Master Plan and as such the project would not be able to use Traffic Impact Fees as a source of revenue until such time as it may be added
    g. From an Engineering perspective, we would not categorize the project as a Capacity Improvement Project
    h. We would categorize the Round-About as a safety improvement project based on the fact that the severity of crashes within a Round-About are significantly reduced
    i. Based on the cost and that there is no apparent capacity improvement, we would not recommend that the Developer be required to construct a Round-About as a condition of approval for this project
2. Access to Landmark Drive (Safety concerns)
    a. We are comfortable that the design of the access points for this project (as shown in Exhibit H) would be safe if the typical driver maintained a speed close to the posted speed limit of 25 MPH or less
    b. We were concerned that the actual speeds on Landmark Drive in the vicinity of this project were higher than the posted speed limit. We believe it was a concern

EXHIBIT B

shared by the applicant since they have proposed several traffic calming measures to help mitigate the speeds. Since the meeting with the Planning Commission, Engineering conducted a quick speed study which shows that the 85th percentile of vehicles are traveling at speeds over 35MPH. The applicant conducted a study that indicates that the 85th percentile speed is about 33MPH. In either case, the actual speeds exceed the desired speed by 5 to 10 MPH.

c. At the measured speeds, the site distance triangles are adequate up to 30 MPH.
d. We believe that with some additional Traffic Calming Measures and safety improvements, the speeds can be reduced to near 25MPH and the intersection will meet our safety expectations. These measures would include the following:
    i. Modify existing crosswalk at the bus pullout to a raised crosswalk similar to the ones recently built on Rasmussen Road and Highland Drive, and add medians to create a pedestrian refuge
    ii. Add Speed Display at Bus pullout as proposed (exact location TBD with Engineering)
    iii. Proposed crosswalk at western end of project to be built as a raised crosswalk similar to the ones recently built on Rasmussen Road and Highland Drive, and keep medians to create a pedestrian refuge.
    iv. Add Speed Display west of crosswalk as proposed (exact location TBD with Engineering)
    v. Exact details and layout of Traffic Calming and Pedestrian Improvements TBD and approved by Engineering
    vi. Add Street Lighting at each crosswalk and access per SC Code Section 10-4-21.
e. Future Access Modifications
    i. We need to add language in the DA Amendment that the Developer understands that the County has the right and the ability to further modify the access (at the County's expense) if they prove to be dangerous (Heath, Safety and Welfare). Similar to the change we had to make at the WalMart access.

3. Trip Reduction Strategies
    a. The DA has the following strategies detailed:
        i. Cash contribution to a Kimball Junction Circulator of $50,000. Payment should be escrowed prior to CO. Payable to the entity that implements the Kimball Circulator, which will likely be Summit County or Park City Transit.
            1. As noted previously, (e) Kimball Junction Circulation Bus System. Developer agrees ...Developer shall have the right to use the outside surfaces of circulation busses for advertising purposes for a period of up to one/two years unless the circulation bus is operated by a local government run district. Developer agrees ... [I don't think PC Transit allows outside advertising and if they do allow advertising, there is probably a fee charged. I don't think we have the ability to force them to change their policies]
        ii. The Developer has agreed to create and maintain a bicycle sharing program for the Project Site and for two other sites within the Kimball Junction area and provide not less than 24 bicycles
    b. Given there will be no second look to see if there has been a significant reduction in trips directly attributable to the project, we would recommend the following, or similar additional programs implemented

EXHIBIT B

i. Employee/customer Car Pool Only parking spaces located convenient to each building

ii. Bike racks for persons bringing their own bikes to the project. Racks should be located near the Bus Stop and each store. A minimum number of 16 (?) bike racks should be provided

<u>Added Comments to the revised documents sent August 4, 2015</u>

- Section D6(f) Please change to Developer shall provide customer van/car pool
- Section D6(h) New paragraph regarding future access modifications needs to be reviewed by our Attorney's
- Exhibit "H" needs to remove the added note "-Median to be modified to allow for left turn into project-Median to restrict left turn out of project" (note located in the lower left part of the Exhibit). This alternative was only offered while we were considering restricting left into and out of the main access.
- Add Street Lighting notes per Section 2(d)(vi) above.
- The revised document seems to address all points in the first part of this memorandum except for those bullets listed just above.

Please let Brandon or I know if there are any questions or if we can be of further assistance.

Enclosure (Access ALT 4 amended)

cc: Robert Hilder, County Attorney (via email)
Peter Barnes, Planning & Zoning Administrator (via email)
Michael Kendall, PE – Senior Engineer (via email)
file (C:\Users\DRadke\Documents\MyDocs\Community Development\canyon corners traffic-safety revised comments 8-4-15.doc)

PLANNING COMMISSION MEETING

CANYON CORNERS | SUMMIT COUNTY

AUGUST 10, 2015

CENTERCAL PROPERTIES, LLC

EXHIBIT C

CANYON CORNERS PLANNING COMMISSION TAKEAWAYS

1. The Commission would like the applicant to study the merits of a roundabout at the projects primary entrance.

2. The Commission would like the applicant to study the speed of traffic on Landmark Drive and confirm all turn movements will be safe.

3. The Commission would like time to allow staff and themselves to review the final proposed language for the Development Agreement

EXHIBIT C

HALES ENGINEERING
1220 N 500 W, SUITE 202
LEHI, UT 84043
(801) 766-4343

DRAWINGS REUSE STATEMENT
THIS DOCUMENT AND THE INFORMATION CONTAINED HEREIN ARE THE PROPERTY OF HALES ENGINEERING AND IS NOT TO BE REPRODUCED, MODIFIED OR USED IN WHOLE OR IN PART, FOR ANY OTHER PROJECT OR EXTENSION OF THIS PROJECT EXCEPT BY WRITTEN AUTHORIZATION OF HALES ENGINEERING.

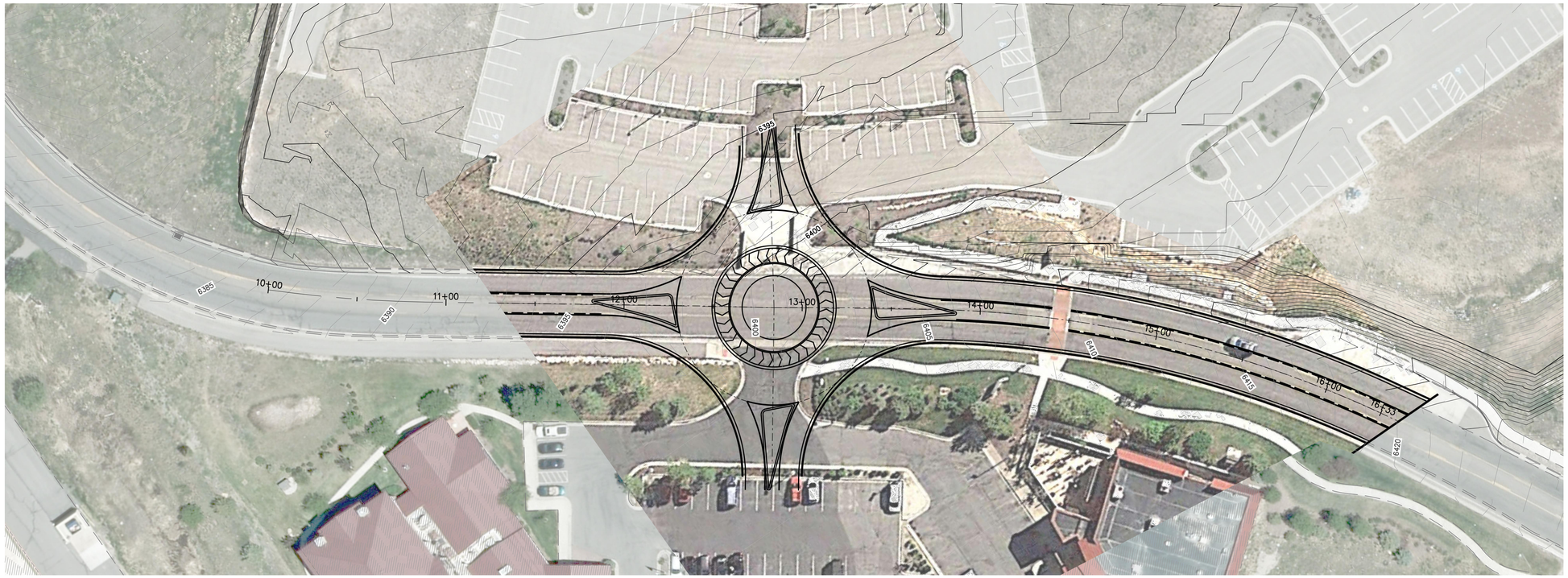
REVISION	DATE	BY

CANYON CORNERS
SINGLE LANE ROUNDABOUT OPTION

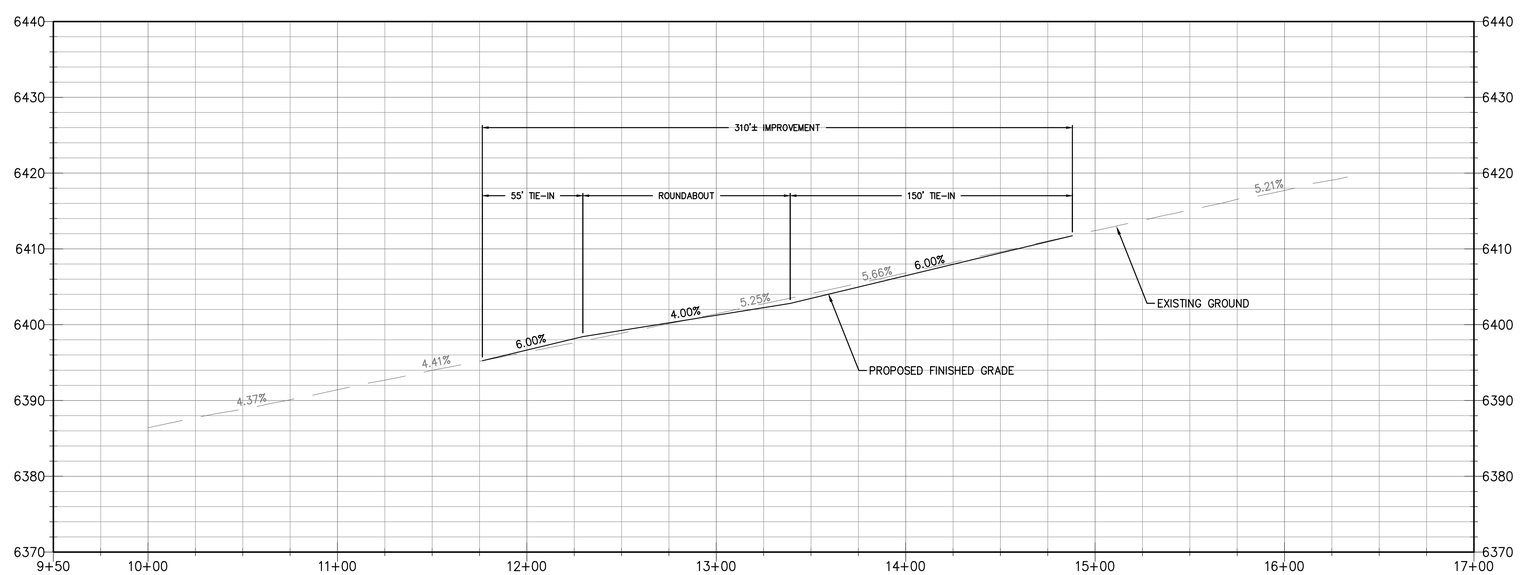
HALES ENGINEERING
innovative transportation solutions

PROJ. #: 2015005
CAD FILE: $FILEABBREV$
DRAWN BY: MIJ
DESIGN BY: SJ
CHECKED BY: RDH
SCALE OF SHEET
HOR SCALE: 1" = 40'
VER SCALE: 1" = 40'
SHEET 1
OF 1

EXHIBIT C



LANDMARK DRIVE
PLAN



LANDMARK DRIVE
PROFILE

40 0 40 80
SCALE OF FEET
FULL SIZE (22x34) 1"=40'

NO.	REVISION DESCRIPTION	DATE

NOT FOR CONSTRUCTION
THESE PLANS HAVE NOT BEEN APPROVED BY THE GOVERNING AGENCY AND ARE SUBJECT TO CHANGE

SUBMITTAL	PRELIM
DRAWN BY:	ATR
CHECKED BY:	SDR
APPROVED BY:	SDR
RELEASE:	PRELIM
PLOT DATE:	7/22/15

PSOMAS
Balancing the Natural and Built Environment
4179 Riverboat Road, Suite 200
Salt Lake City, UT 84123
(801) 270-5777 (801) 270-5782 fax
www.psomas.com

PROJECT NUMBER: 8CPL010200

CANYON CORNERS
ROUNDABOUT GRADING

GRADING PLAN AND PROFILE

PP1

SHEET NO. 1 OF 1

7/22/2015 4:48 PM U:\8CPL010200\ENGR\EXHIB\PLANNING EXHIBITS\ROUNDABOUT PROFILE.DWG

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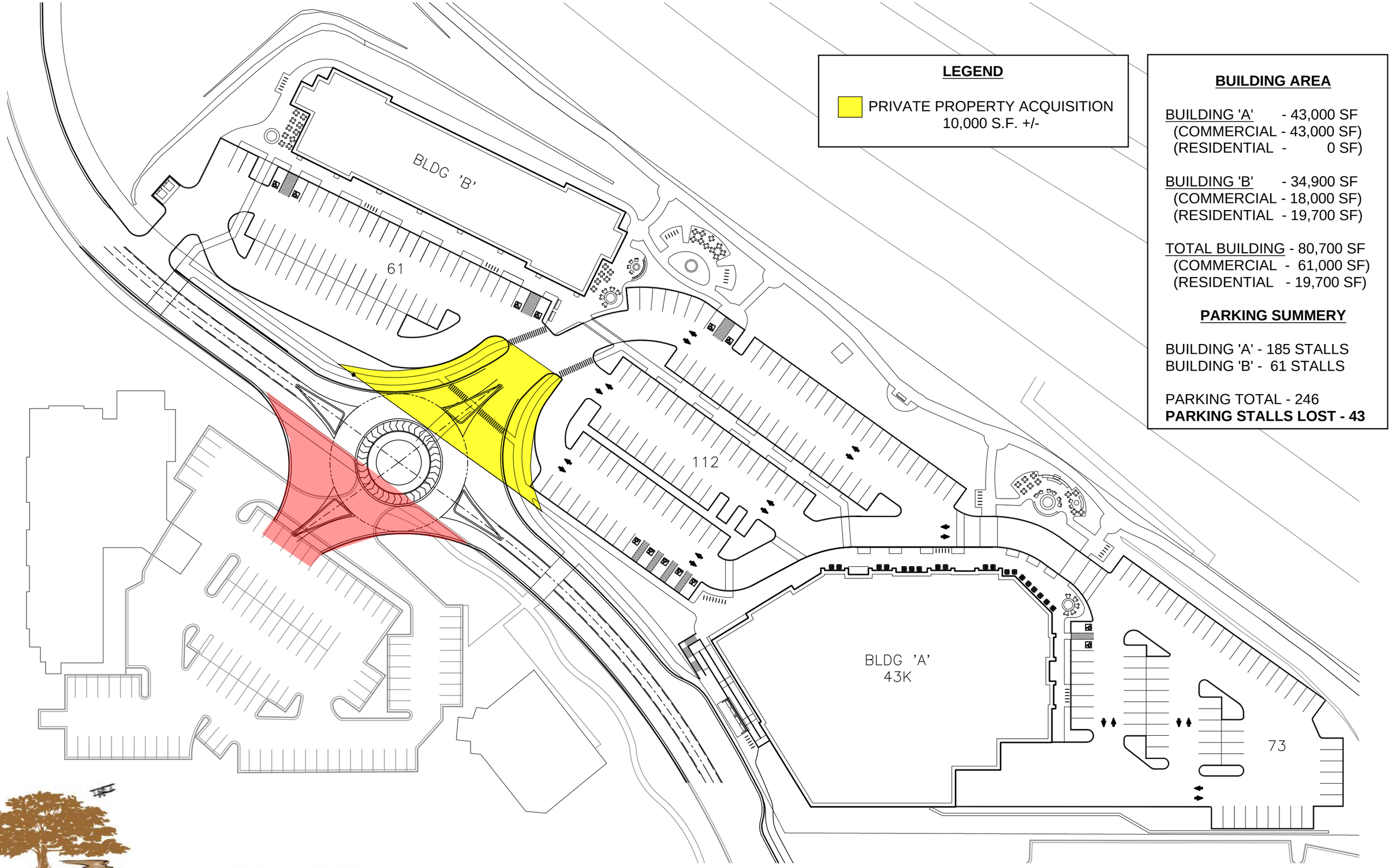


LEGEND

PRIVATE PROPERTY ACQUISITION
10,000 S.F. +/-

BUILDING AREA

BUILDING 'A' - 43,000 SF
(COMMERCIAL - 43,000 SF)
(RESIDENTIAL - 0 SF)

BUILDING 'B' - 34,900 SF
(COMMERCIAL - 18,000 SF)
(RESIDENTIAL - 19,700 SF)

TOTAL BUILDING - 80,700 SF
(COMMERCIAL - 61,000 SF)
(RESIDENTIAL - 19,700 SF)

PARKING SUMMERY

BUILDING 'A' - 185 STALLS
BUILDING 'B' - 61 STALLS

PARKING TOTAL - 246
PARKING STALLS LOST - 43

CENTERCAL PROPERTIES, LLC

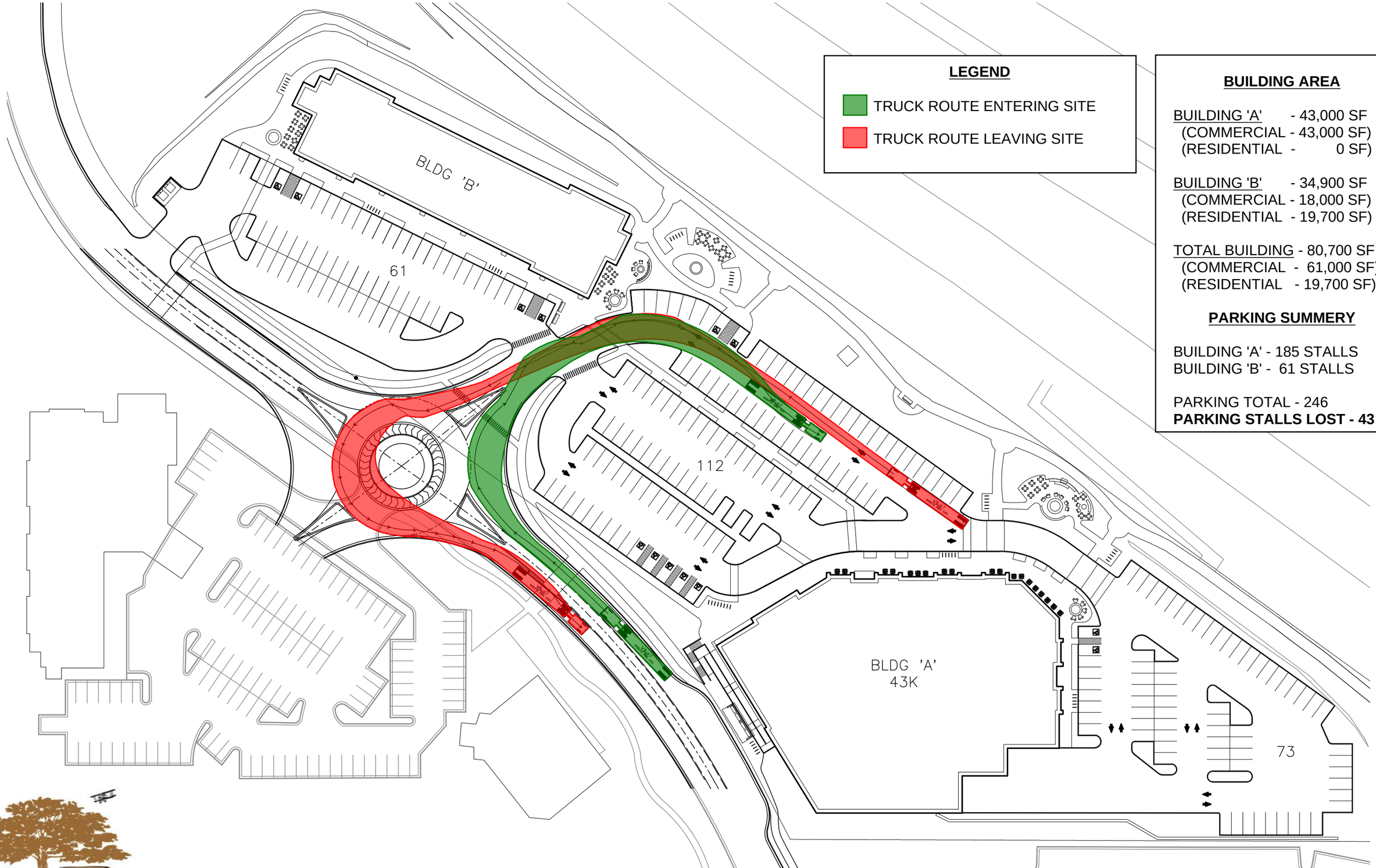
CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: CLIENT REVIEW

DATE: 07-30-2015
BY: JTW
PROJECT #: 14221

Roundabout Option

CSHQA

EXHIBIT C



LEGEND

- TRUCK ROUTE ENTERING SITE
- TRUCK ROUTE LEAVING SITE

BUILDING AREA

BUILDING 'A' - 43,000 SF
(COMMERCIAL - 43,000 SF)
(RESIDENTIAL - 0 SF)

BUILDING 'B' - 34,900 SF
(COMMERCIAL - 18,000 SF)
(RESIDENTIAL - 19,700 SF)

TOTAL BUILDING - 80,700 SF
(COMMERCIAL - 61,000 SF)
(RESIDENTIAL - 19,700 SF)

PARKING SUMMERY

BUILDING 'A' - 185 STALLS
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CENTERCAL PROPERTIES, LLC

CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: CLIENT REVIEW

DATE: 07-30-2015
BY: JTW
PROJECT #: 14221

Roundabout Option

CSHQA

EXHIBIT C

Sight Distance Calculations

- American Association of State Highway and Transportation Officials (AASHTO)
  - A Policy on the Geometric Design of Highways and Streets, 2011, 6th Edition
    - Published since 1950
    - Continually updated with new research
    - Standard for calculating design elements including Sight Distance
    - Left turn sight distance = 290 feet
    - Right turn sight distance = 240 feet

EXHIBIT C

Intersection Sight Distances -
Existing Access (25 mph)
Lincoln Hwy
80
N Landmark Dr
ISD – 295 ft
ISD – 240 ft
Google earth
©2015 Google
200 ft
N

EXHIBIT C

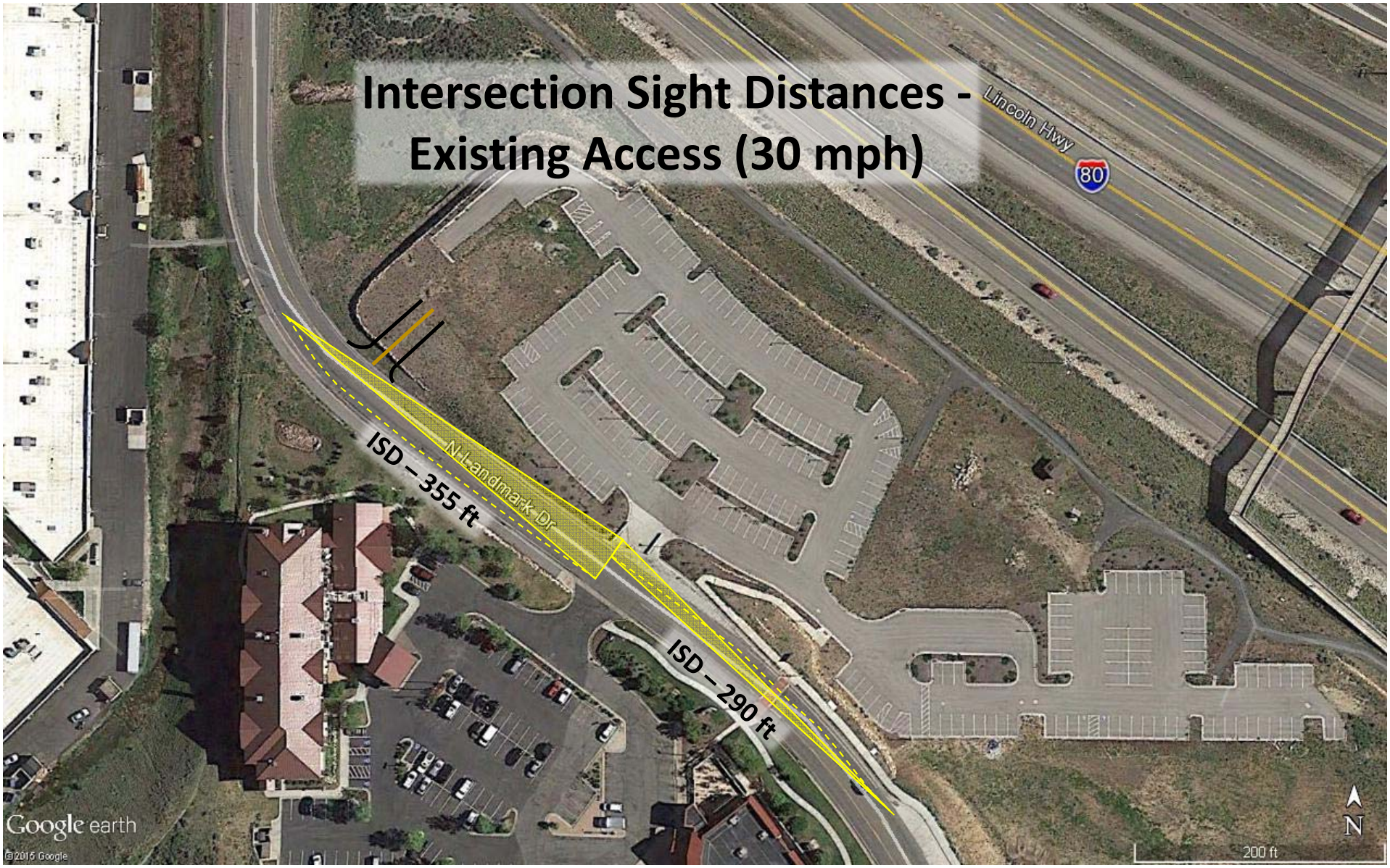

Intersection Sight Distances -
Existing Access (30 mph)
Lincoln Hwy
80
N Landmark Dr
ISD – 355 ft
ISD – 290 ft
Google earth
©2015 Google
200 ft
N

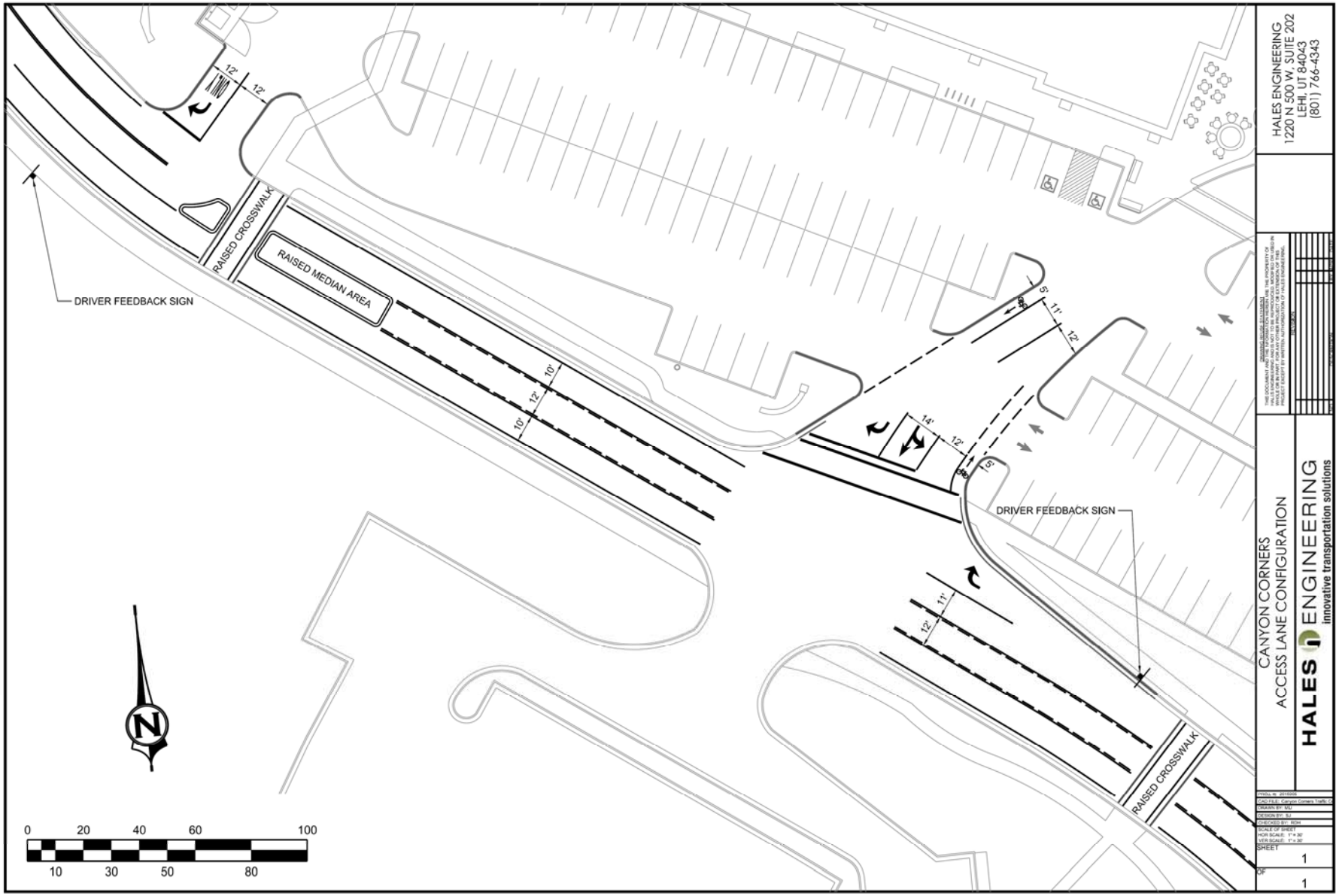
EXHIBIT C

Looking Southeast on Landmark Drive
Adequate Sight Distance!

EXHIBIT C

Looking Southeast on Landmark Drive
Adequate Sight Distance!

EXHIBIT C


DRIVER FEEDBACK SIGN
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RAISED MEDIAN AREA
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14'
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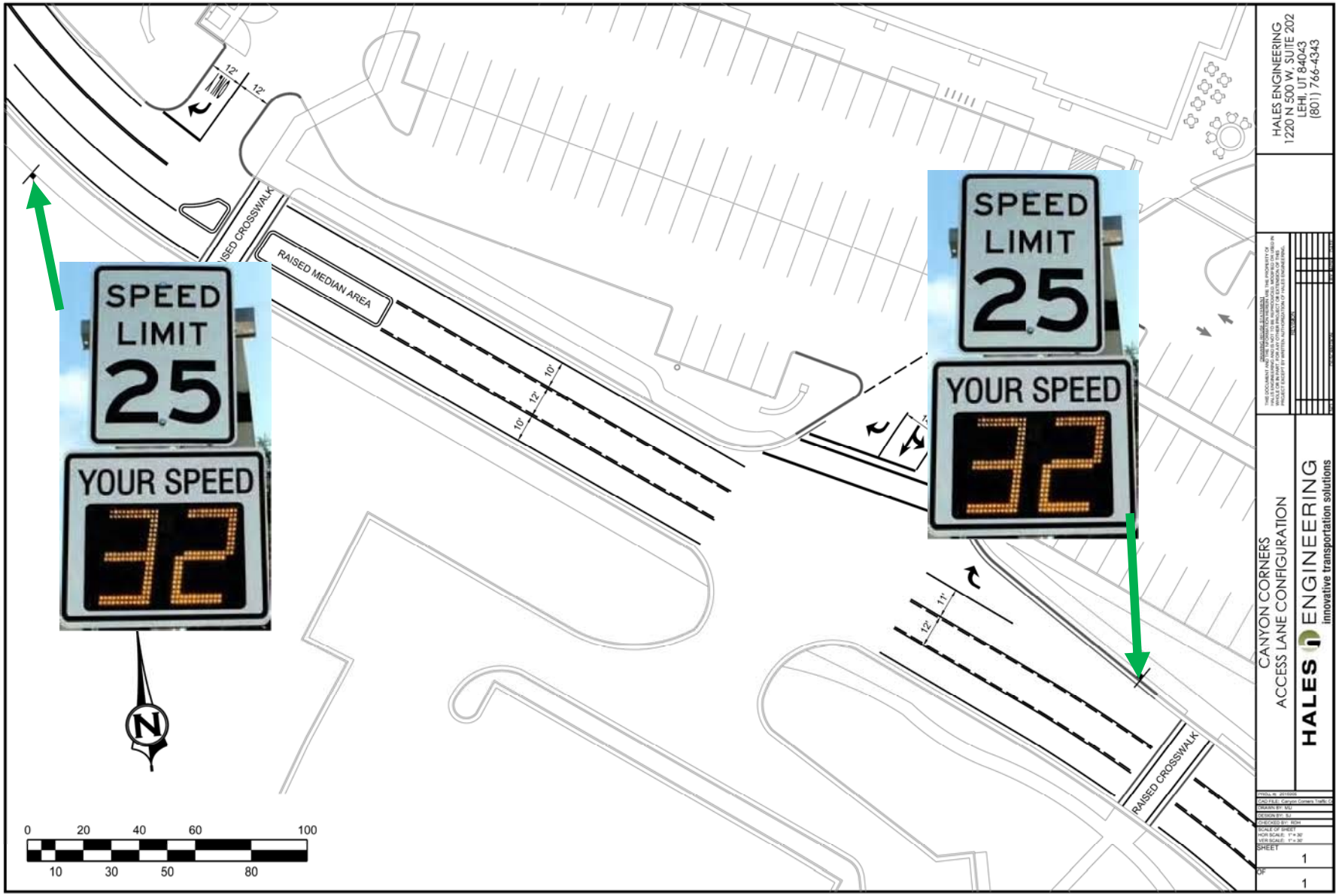
DRIVER FEEDBACK SIGN
11'
12'
RAISED CROSSWALK
0 20 40 60 100
10 30 50 80
HALES ENGINEERING
1220 N 500 W, SUITE 202
LEHI, UT 84043
(801) 766-4343
CANYON CORNERS
ACCESS LANE CONFIGURATION
HALES ENGINEERING
innovative transportation solutions
SHEET 1
OF 1

EXHIBIT C


SPEED LIMIT 25
YOUR SPEED
32
RAISED MEDIAN AREA
RAISED CROSSWALK
12'
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11'
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0 20 40 60 100
10 30 50 80
HALES ENGINEERING
1220 N 500 W, SUITE 202
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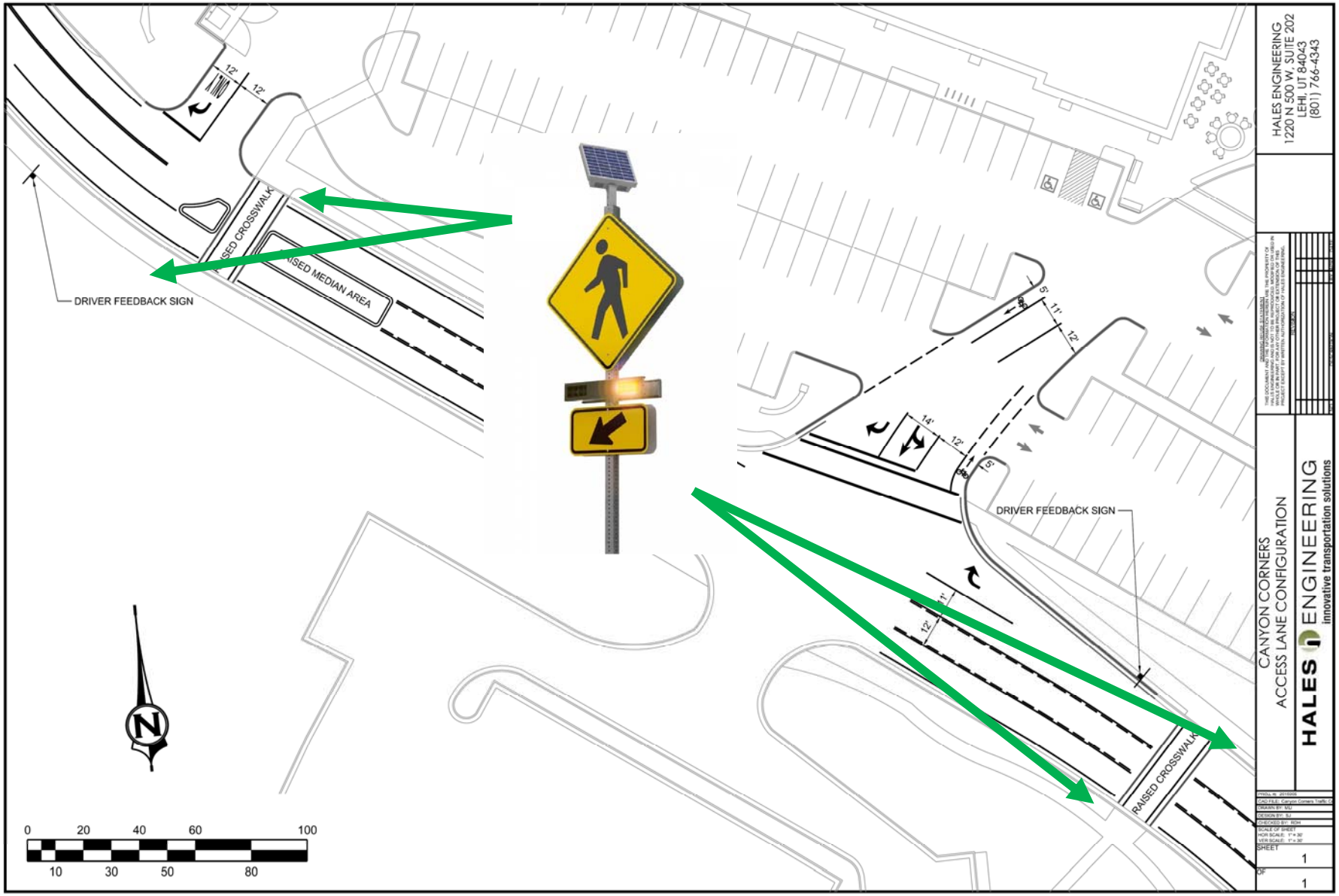
DRIVER FEEDBACK SIGN
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DRIVER FEEDBACK SIGN
RAISED CROSSWALK
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innovative transportation solutions
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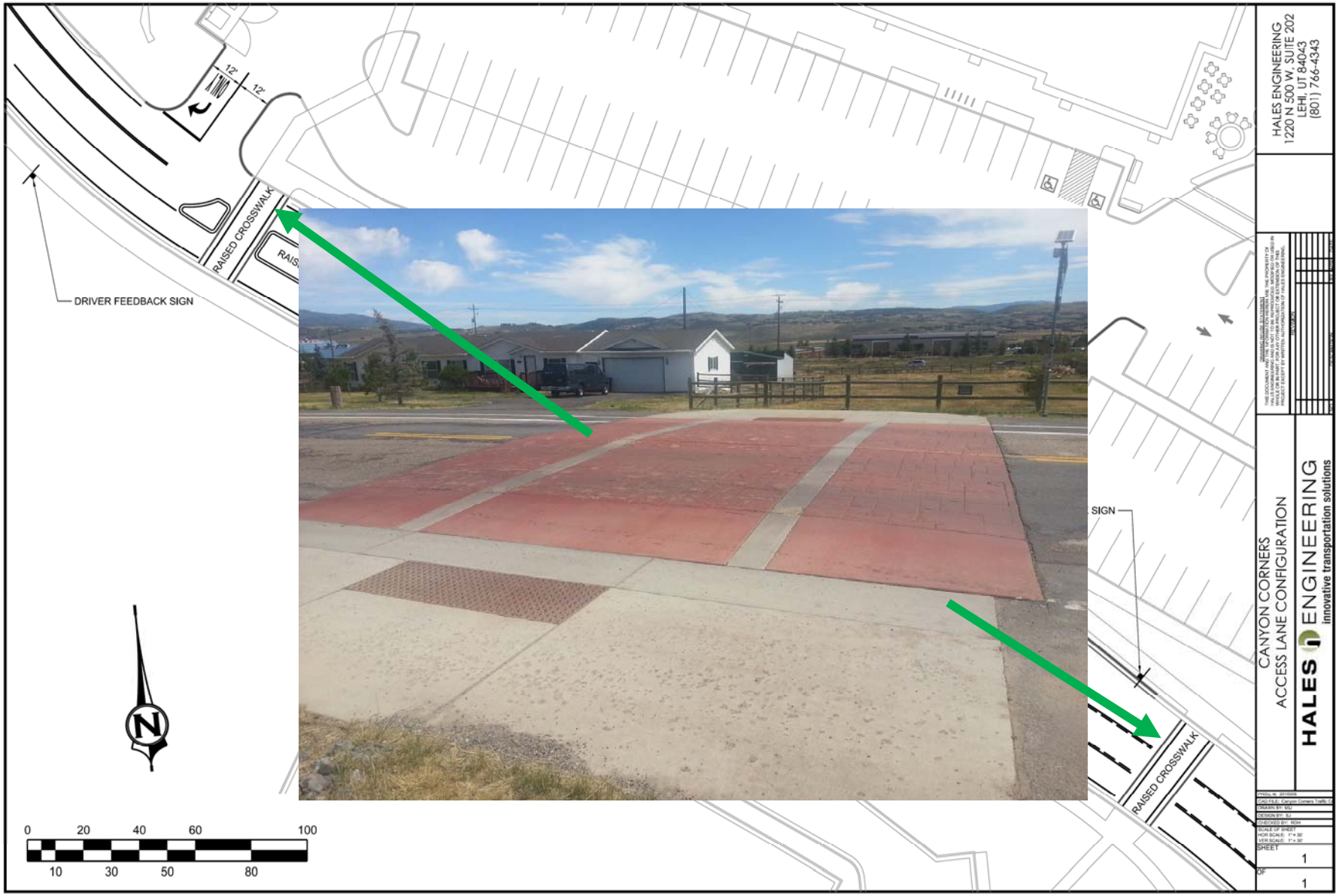
EXHIBIT C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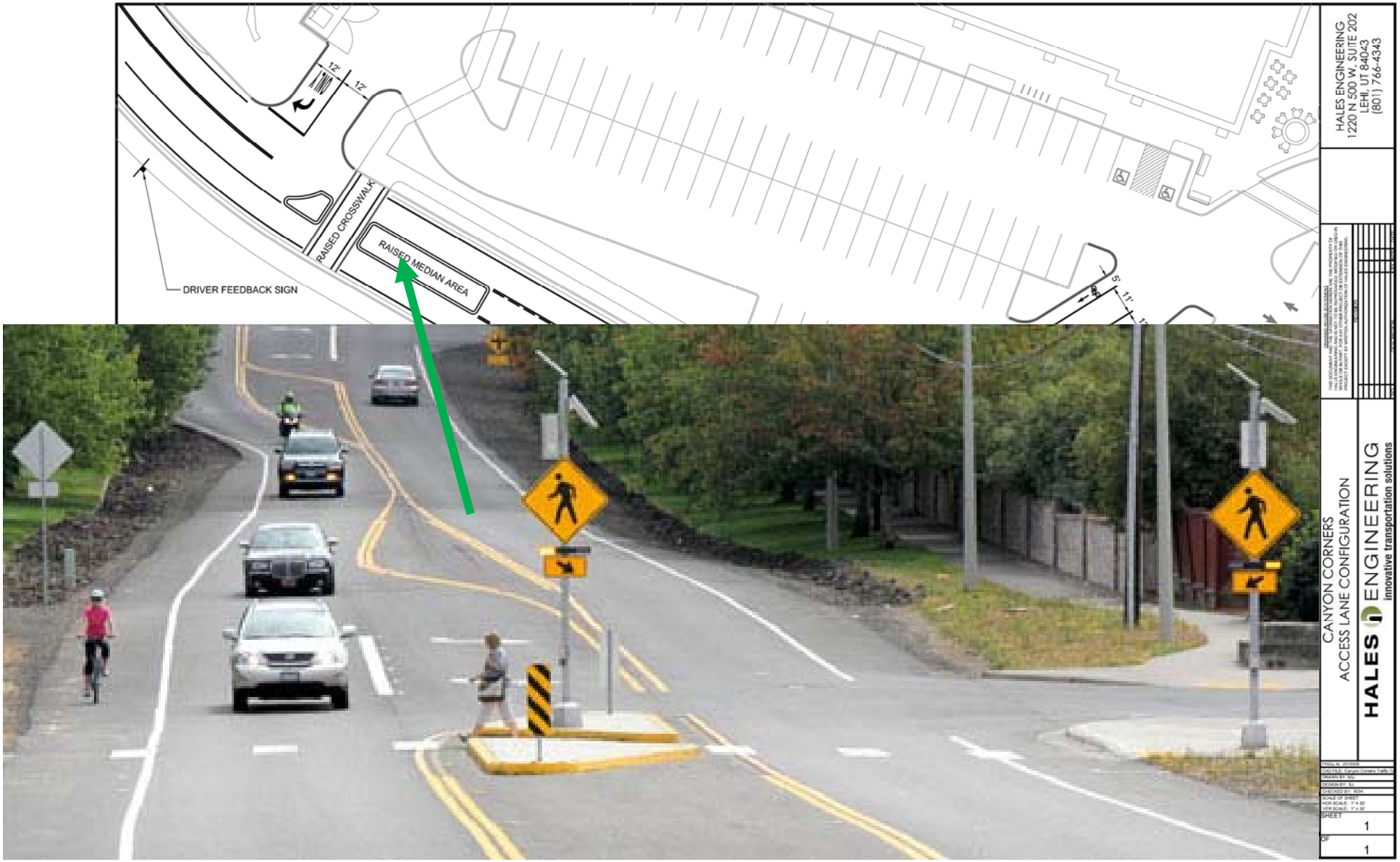
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12'
RAISED CROSSWALK
RAISED MEDIAN AREA
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SHEET
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OF
1

EXHIBIT C

SUMMIT COUNTY, UTAH
ORDINANCE NO.____

AN ORDINANCE TO APPROVE THE SECOND AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE CANYON CORNERS SPECIALLY PLANNED AREA

WHEREAS, the Utah State Code, Sections 17-27-101 *et. seq*. grants to counties the authority to regulate land use, and Section 10-3-7 of the Summit County Code sets forth the mechanism to amend a Specially Planned Area within the Snyderville Basin; and

WHEREAS, the Snyderville Basin Planning Commission considered the application for a SPA amendment in a work session on March 10, 2015 and held a legally noticed public hearing on May 12, June 23, and July 14, 2015; and

WHEREAS, the Snyderville Basin Planning Commission considered public input and forwarded a positive recommendation to the Board of County Commissioners based upon the required findings in Section 10-3-7 of the Summit County Code on August 11, 2015; and

WHEREAS, a public hearing was legally noticed and held before the Board of County Commissioners on August 19, 2015; and

WHEREAS, the Board of County Commissioners conditionally approved the Second Amendment to the Development Agreement for the Canyon Corners Specially Planned Area on September 16, 2015; and

WHEREAS, Section 10-3-8 of the Summit County Code sets forth the authority for the County to enter into Development Agreements; and

WHEREAS, the Planning Commission reviewed the Development Agreement and the suggested changes were made pursuant to that review;

NOW, THEREFORE, pursuant to the authority granted to the Summit County Council (Council) as the County Legislative Body of the County of Summit, State of Utah, the Council hereby ordains as follows:

Section 1. **Adoption.** The Development Agreement for the Second Amendment to the Development Agreement for the Canyon Corners Specially Planned Area is hereby adopted by Summit County, and the Council Chair is authorized to sign and execute the Development Agreement and all necessary exhibits on behalf of Summit County.

EXHIBIT D

Section 2. **No Rights Created in Third Parties.** This Ordinance is not intended to, nor shall it be construed to create any rights, claims, or causes of action in third parties other than as specifically defined in the Development Agreement.

Section 3. **Savings Clause.** In the event one or more of the provisions of this Ordinance shall, for any reason, be held to be unenforceable or invalid in any respect under any applicable laws, such unenforceability or invalidity shall not affect any other provision; and in such an event, this Ordinance shall be construed as if such unenforceable or invalid provision had never been contained herein.

Section 4. **Effective Date.** This Ordinance shall take effect 15 days after passage by the Summit County Council and subsequent publication in a newspaper of general circulation in Summit County, Utah.

APPROVED, ADOPTED, AND PASSED and ordered published by the Summit County Council, this _____day of _____, 2015.

ATTEST:

_____
Kent Jones
Summit County Clerk

SUMMIT COUNTY COUNCIL

_____
Kim Carson, Chair

APPROVED AS TO FORM

_____
David L. Thomas
Chief Civil Deputy

VOTING OF COUNTY COUNCIL:

Councilmember Carson _____
Councilmember Robinson _____
Councilmember Ure _____
Councilmember Armstrong _____
Councilmember McMullin _____

EXHIBIT D

Traffic Study

Canyon Corners

HALES ENGINEERING
innovative transportation solutions

Table of Contents

- Landmark Village (DA Approved) and Traffic Capacity Performance
  - Study Parameters
  - Evolution of Study
  - Capacity Conclusions
- Comparison of Traffic Conclusions for approved project and proposed
- Roundabout Study
- Safety Study
  - Landmark Improvement Summary
- Access Options Study
- Hampton Inn Analysis

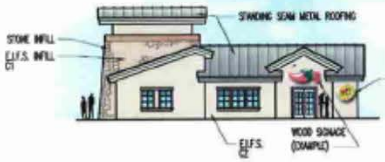
KEYED NOTES

1 PEDESTRIAN BRIDGE
2 DECELERATION BRIDGE
3 LEFT TURN LANE
4 STAMPED CROSSWALK
5 FEATURE AREA
6 FLASHING LIGHT
7 SNOW STORAGE
8 TRASH ENCLOSURE
9 NATURAL LANDSCAPING
10 STORM WATER RETENTION
11 OFF SITE LANDSCAPE AREAS
12 NEW ASPHALT PATH
13 MONUMENT SIGN
14 3-LANE DRIVE-UP
15 BIKE RACK / TABLES
16 OUTDOOR DINING
17 COVERED WALKWAY
18 BERM AND SCREENING
19 BUS STOP
20 RAMP & STAIRS

General Display of the Commercial Village
Exhibit A

Landmark Village

BLDG. A South East Elevation
Scale 1/8" = 1'-0"

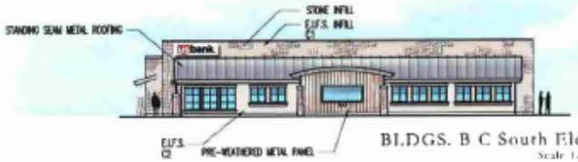


BLDG. A North East Elevation
Scale 1/8" = 1'-0"

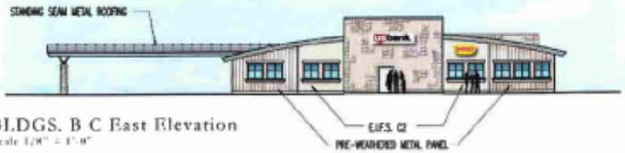
BLDG. A North West Elevation
Scale 1/8" = 1'-0"

BLDG. A South West Elevation
Scale 1/8" = 1'-0"

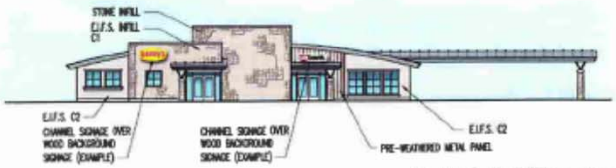
BLDGS. B C North Elevation
Scale 1/8" = 1'-0"



BLDGS. B C South Elevation
Scale 1/8" = 1'-0"



BLDGS. B C East Elevation
Scale 1/8" = 1'-0"



BLDGS. B C West Elevation
Scale 1/8" = 1'-0"

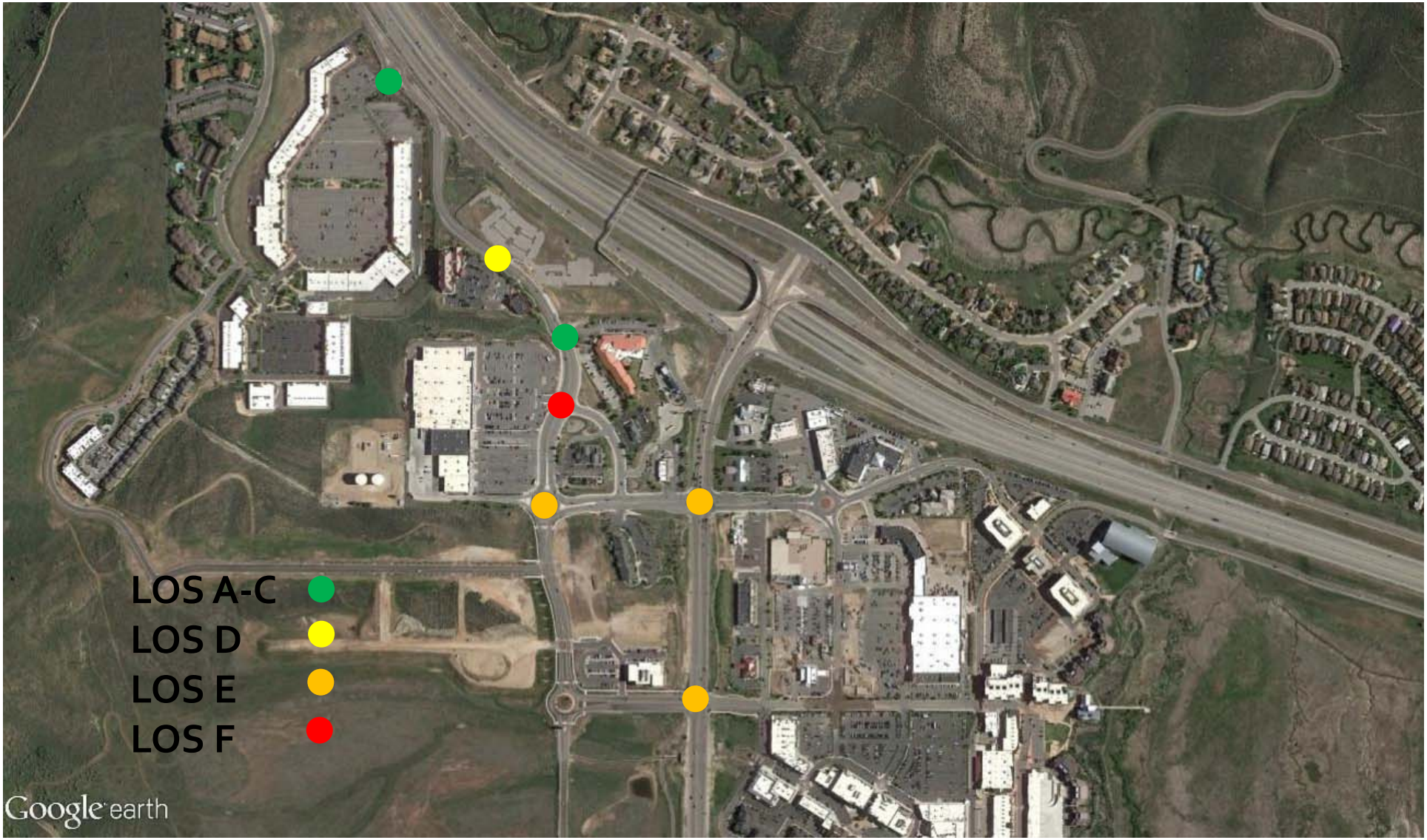
Sign Concepts
Exhibit I

Landmark Village

Trip Generation Landmark Village

- Landmark Village (DA) Site Plan
  - Shopping Center (38,000 square feet)
  - Restaurant (7,000 square feet)
  - Drive-in Bank (9,000 square feet)
  - Drive-in Bank (7,000 square feet)
    - 4,626 daily trips
    - 588 p.m. peak hour trips

Future 2040 Plus Project Conditions LOS (Landmark Village DA)

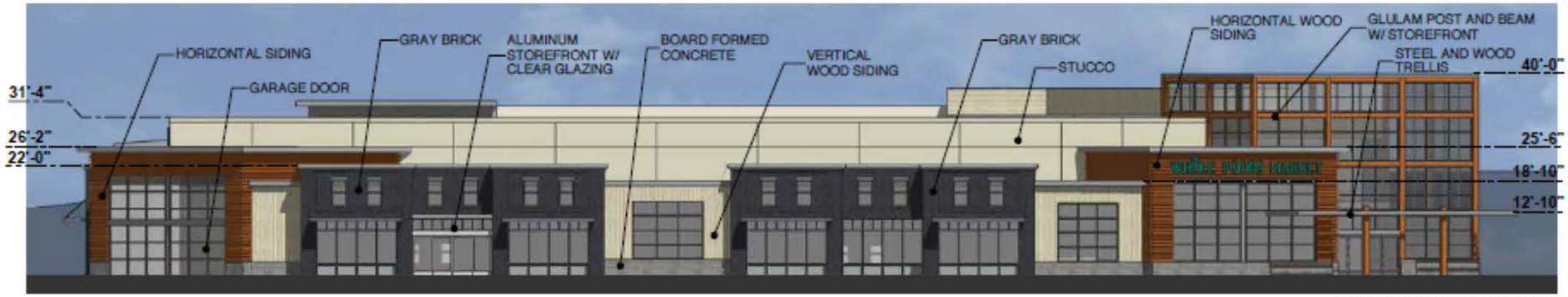


CANYON CORNERS COUNCIL MEETING

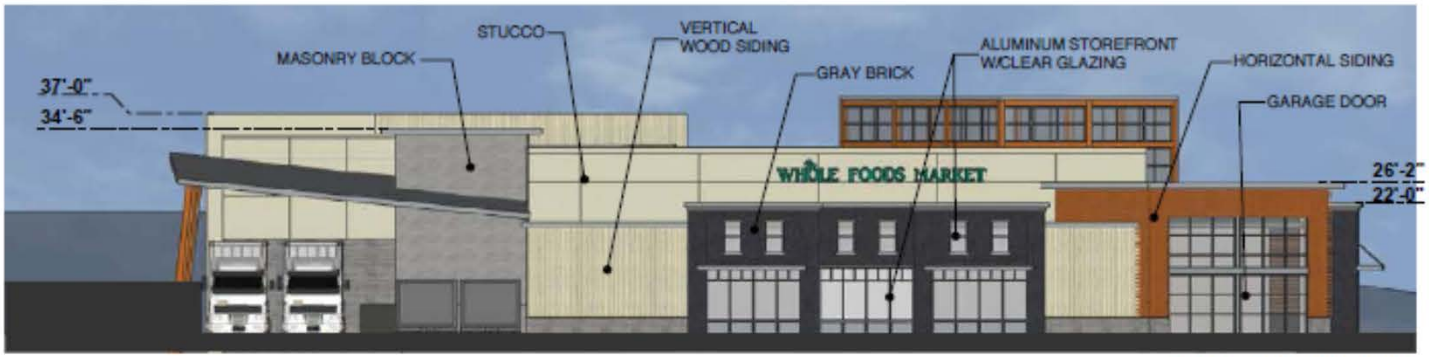
ILLUSTRATIVE PLANS

CANYON CORNERS COUNCIL MEETING

BUILDING A ELEVATIONS



NORTH ELEVATION



EAST ELEVATION

Canyon Corners Study Area

Thursday, October 30, 2014
4:30 – 5:30 p.m. Peak Hour

Seasonal Traffic Adjustment = 10% increase

Trip Generation Comparison

- Institute of Transportation Engineers
  - Supermarket (43,000 square feet)
  - Shopping Center (18,000 square feet)
    - 5,168 daily trips
    - 476 p.m. peak hour trips
- Canyon Corners Site Plan
  - **Whole Foods** (43,000 square feet)
  - Shopping Center (18,000 square feet)
  - **Affordable Housing** (20 Units)
    - 6,132 daily trips
    - 707 p.m. peak hour trips

Trolley Square – Whole Foods

Trip Generation (Trolley Square)

- Whole Foods Wednesday, March 25, 2015
  - Counted from 7:00 a.m. – 10:00 p.m.
    - Trips in / out of the surface parking lot
    - Trips in / out of the parking structure
    - Alternative trips
      - Walking
      - Biking
      - Other
  - Morning Peak 8:00 – 9:00 a.m. (5.6% of daily traffic)
  - Noon Peak 12:30 – 1:30 p.m. (9.8%)
  - Evening Peak 5:15 – 6:15 p.m. (12.4%)

Study Area Adjustments

- Seasonal Traffic Adjustment = 10% increase
- Site Traffic Adjustment = 48.5% increase

Trip Generation Reduction Strategies

- Participation in Kimball Junction Circulator R1
- Adding new enhanced bus shelter
- Adding carpool / vanpool parking stalls near building
- Adding Bike Share Program
- Connecting trails and walking paths

Slide 14

R1 I beleive this is off the table now. Let's talk about this one.
Ryan, 9/4/2015

Trip Generation Reduction Strategies

- Transit / shuttle

Trip Generation Reduction Strategies

- Carpool / vanpool

UBER

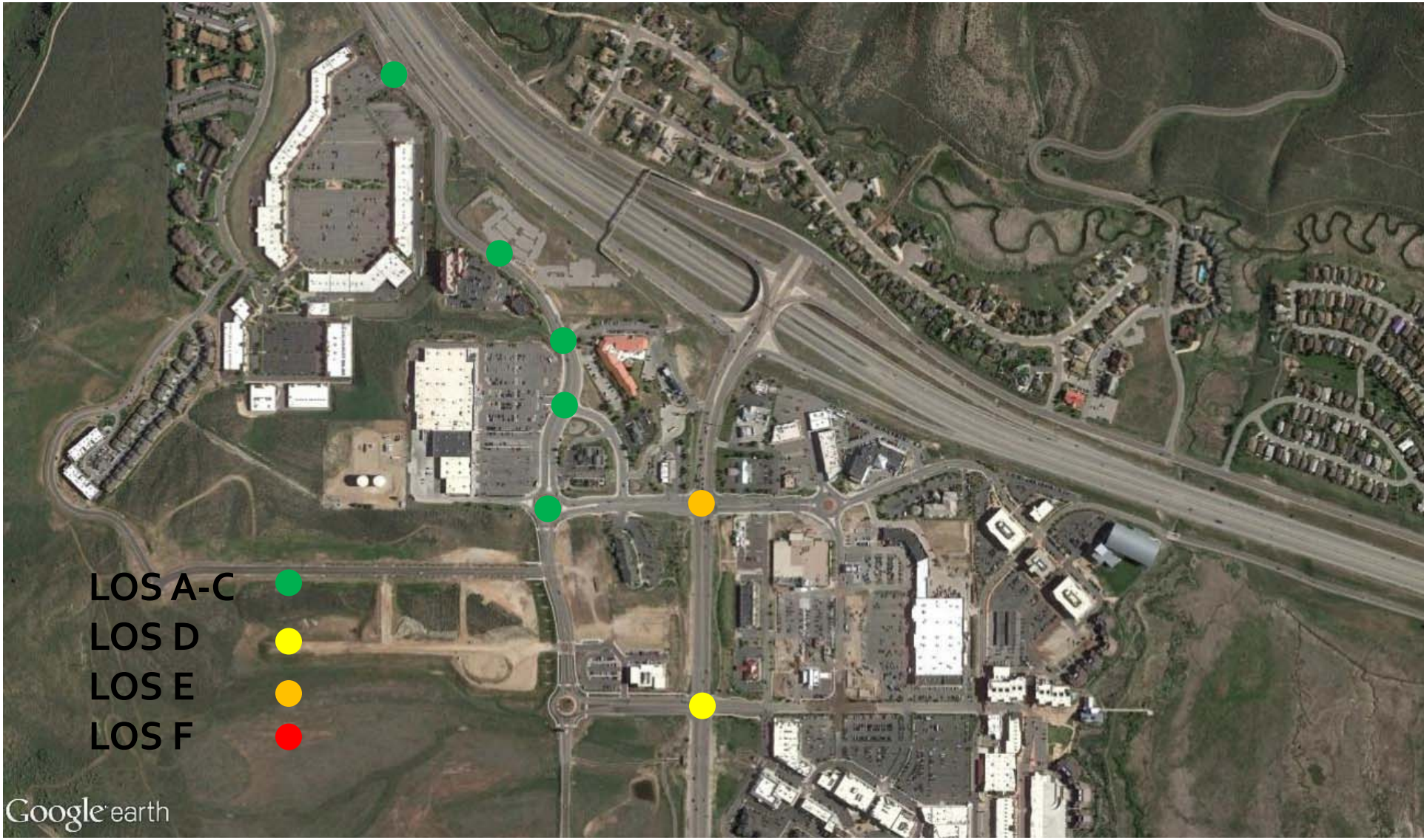
Trip Generation Reduction Strategies

- Bicycle / walking

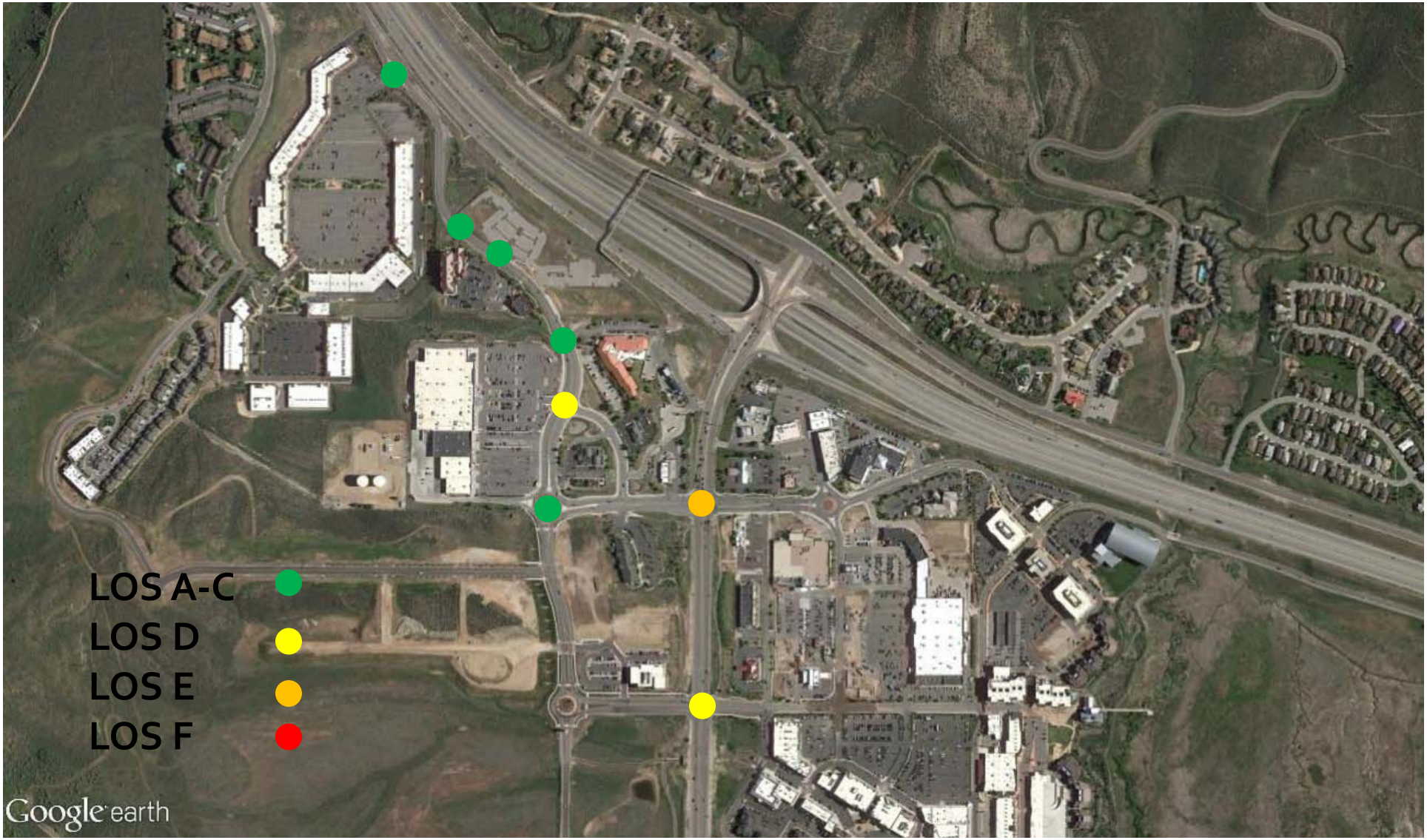
Trip Generation Comparison

- Development Agreement – August 2004
  - Land uses (Shopping Center, Restaurant, 2 Banks)
    - 588 p.m. peak hour trips
- Canyon Corners Site Plan
  - Supermarket (43,000 square feet)
  - Shopping Center (18,000 square feet)
  - Affordable Housing (20 units)
    - 630 p.m. peak hour trips

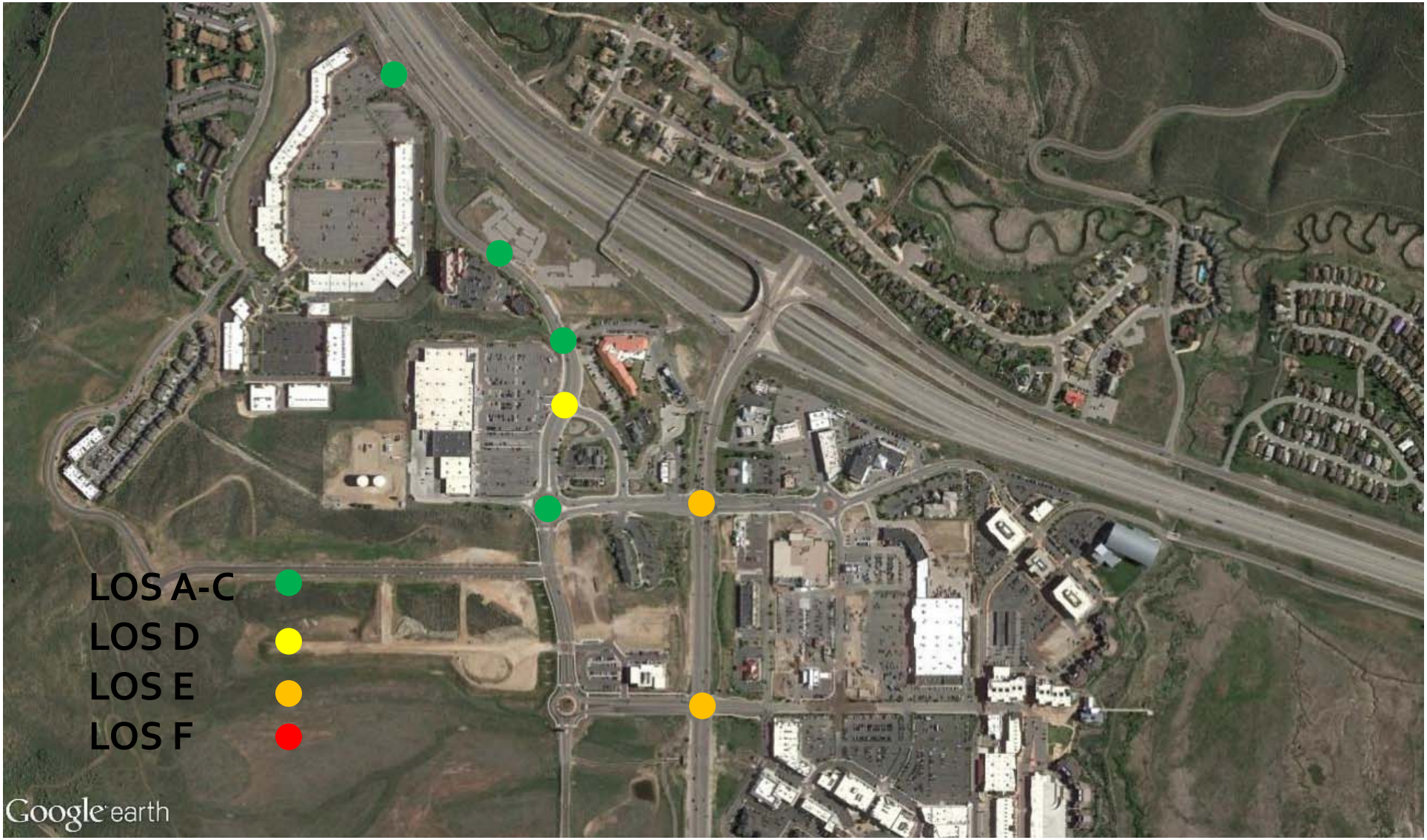
Existing Conditions LOS



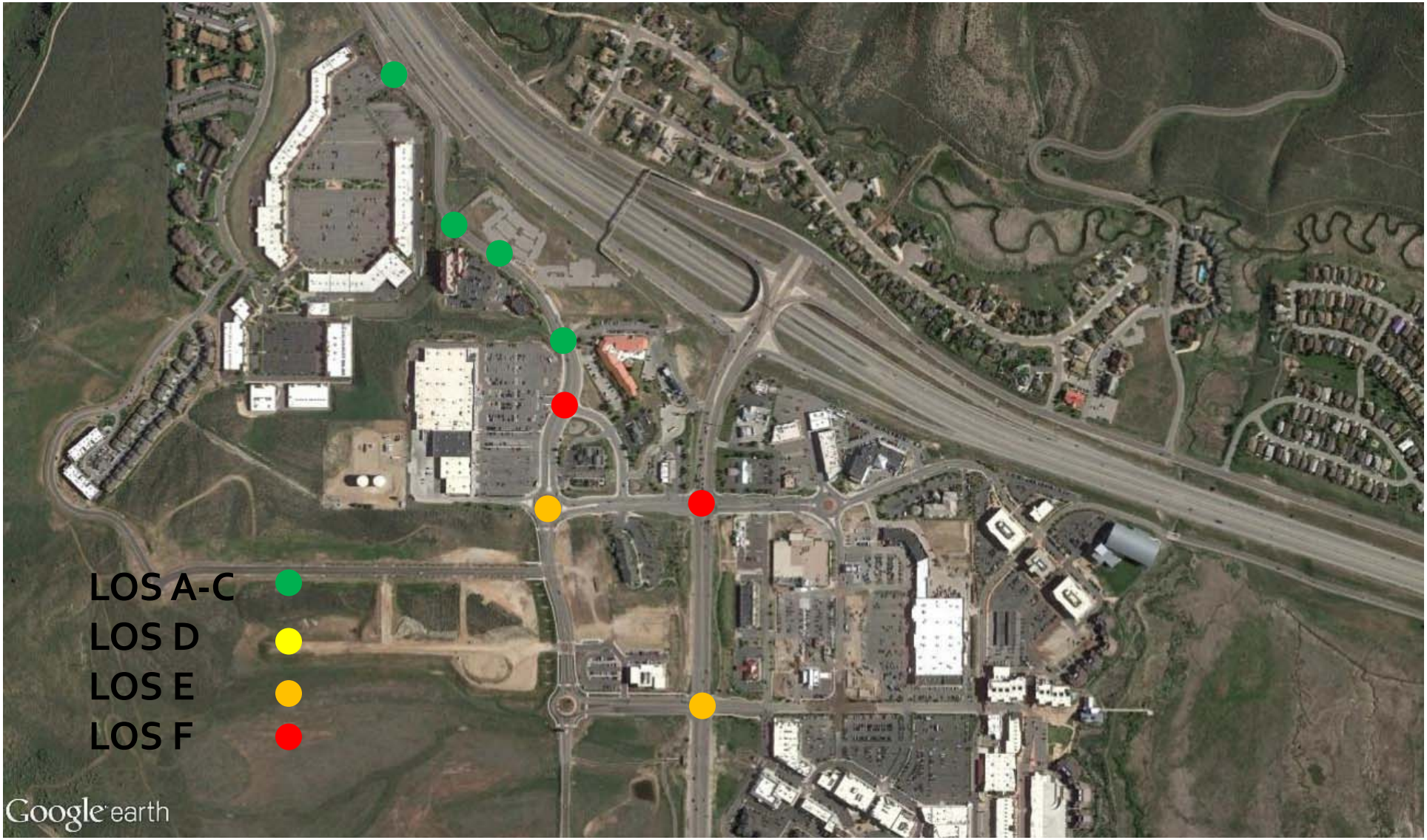
Existing Plus Project LOS



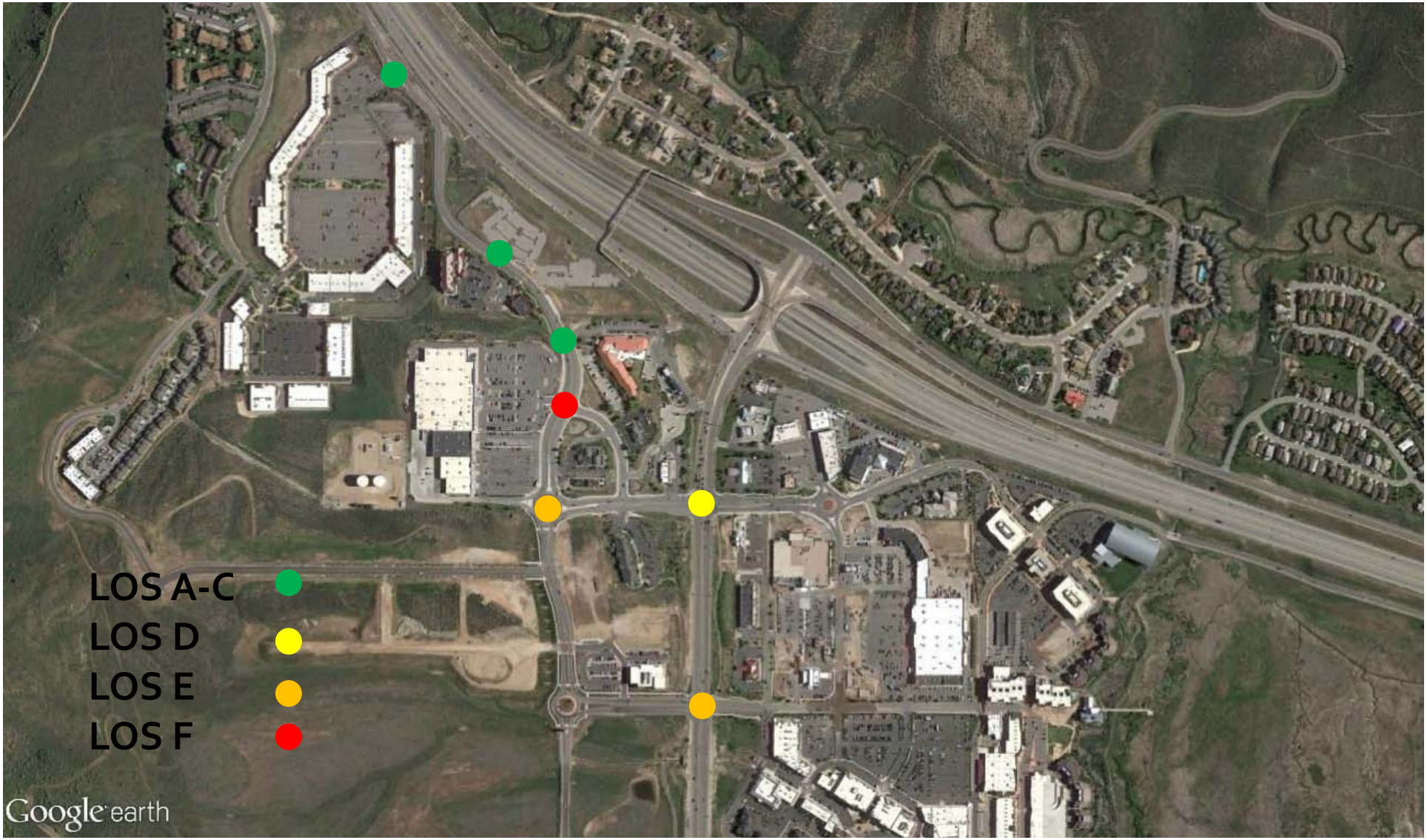
Future 2020 Conditions LOS



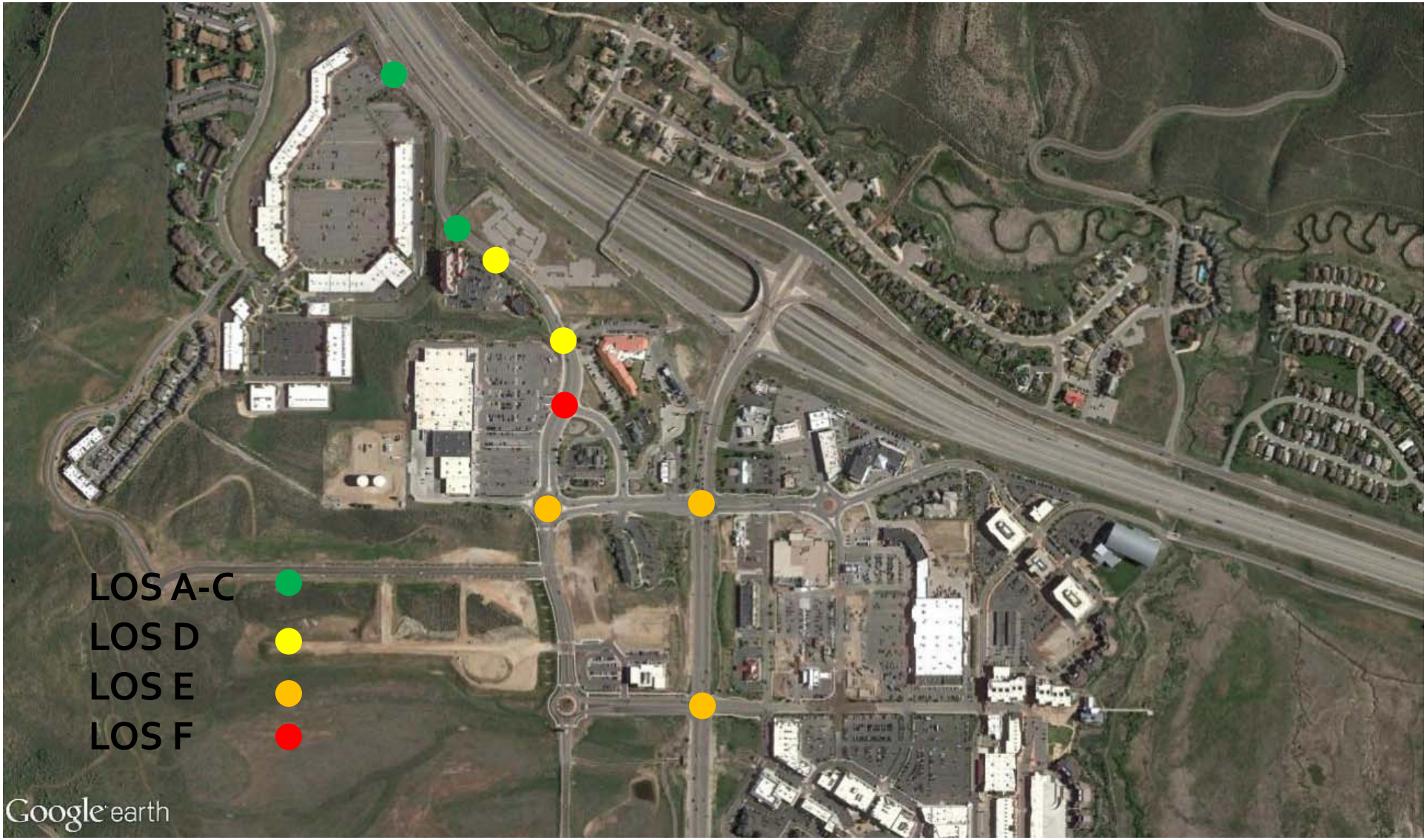
Future 2020 Plus Project LOS



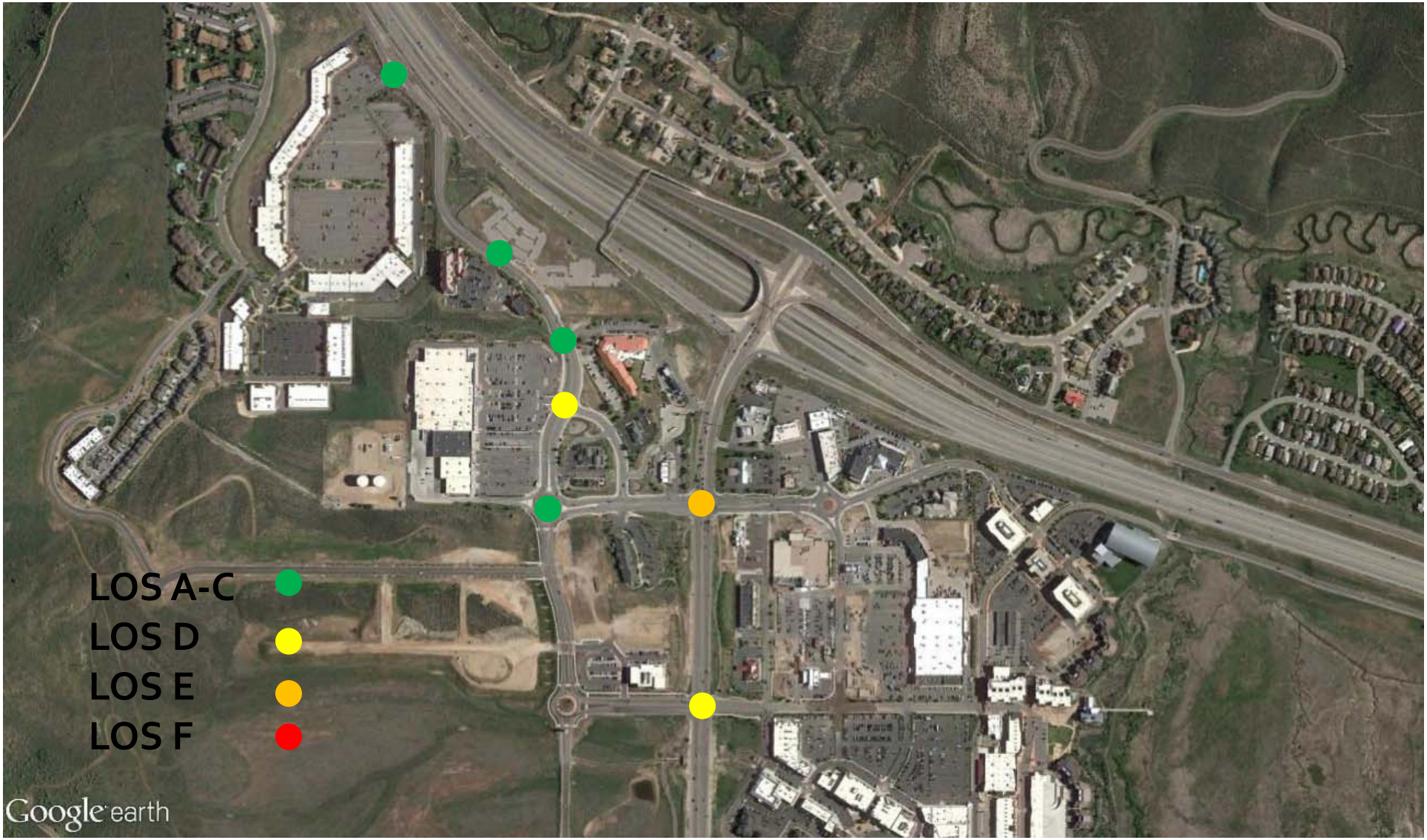
Future 2040 Conditions LOS



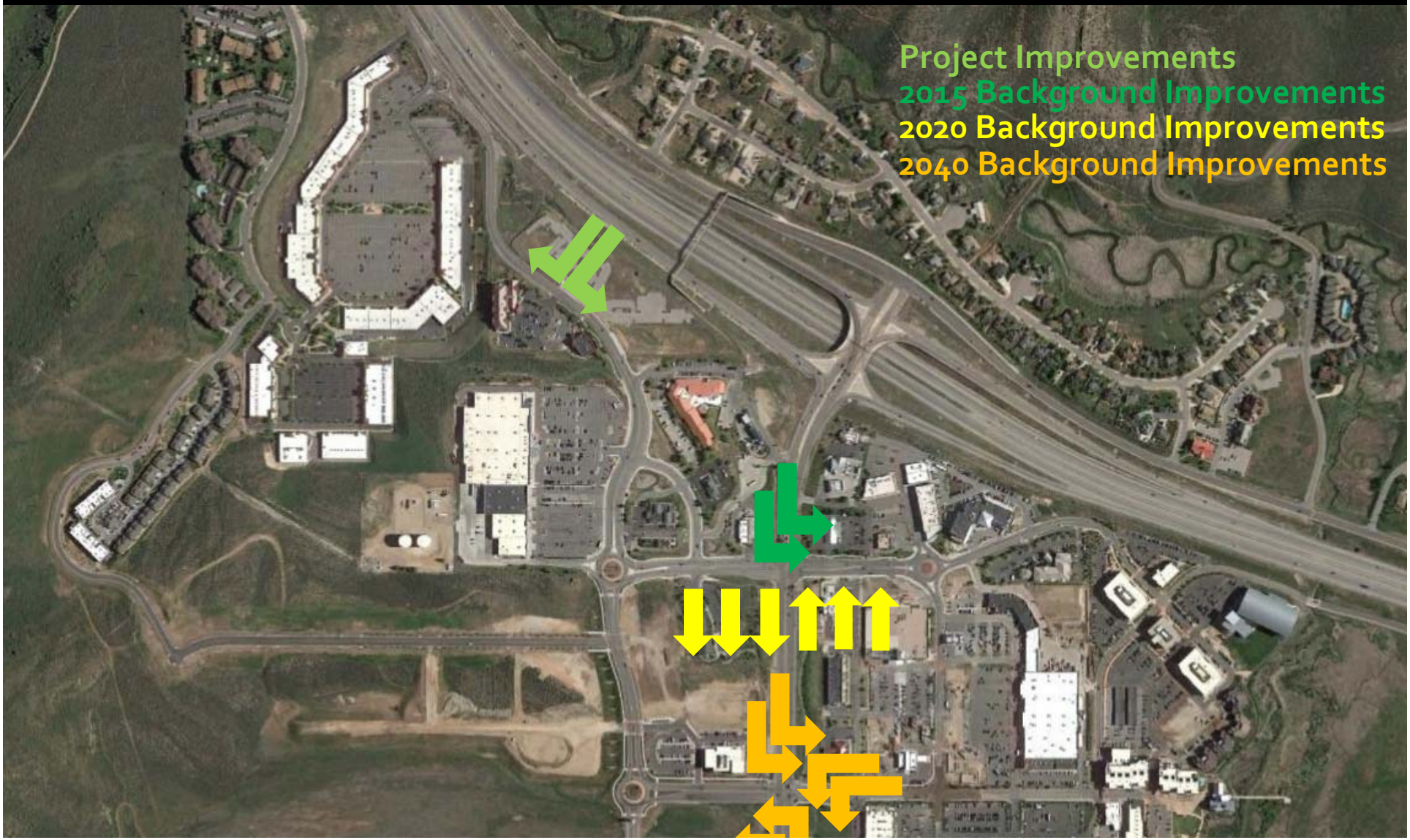
Future 2040 Plus Project LOS



Future 2040 Conditions LOS



Recommendations



Trip Generation Comparison

- Development Agreement – August 2004
  - Land uses (Shopping Center, Restaurant, 2 Banks)
    - 588 p.m. peak hour trips
      - Existing Project Access / Landmark Drive ***LOS "D" - 2040***
- Canyon Corners Site Plan
  - Supermarket (43,000 square feet)
  - Shopping Center (18,000 square feet)
  - Affordable Housing (20 units)
    - 630 p.m. peak hour trips
      - Existing Project Access / Landmark Drive ***LOS "D" - 2040***

Conclusions

- The Landmark Village approved DA land uses result in LOS D on Landmark Drive by 2040
- The Canyon Corners land uses result in LOS D on Landmark Drive by 2040
- The Proposed project includes traffic safety measures and improvements to Landmark Drive that were not offered with the Landmark Village project

Roundabout Study

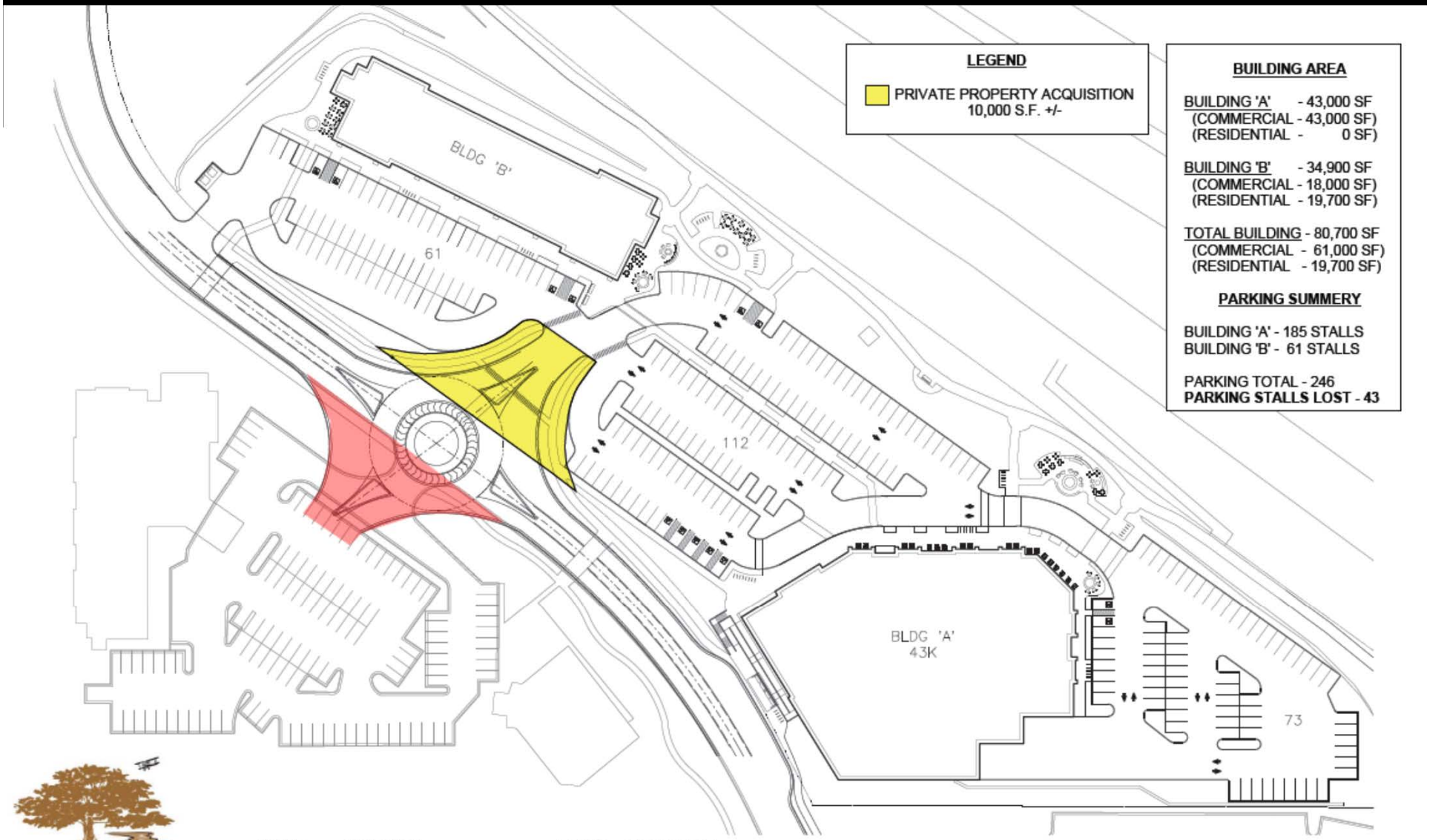
- Canyon Corners was asked to evaluate a roundabout at the existing access
- 3 criteria for development of a roundabout
  - Appropriate grades (4% or less)
  - Equal volume from each approach
  - Right of way

Roundabout Study

- A roundabout at this location will not increase capacity on Landmark Drive
  - Not a roadway capacity enhancing improvement
  - Not included within the County's long range Capital Improvement Plan
  - May improve safety, but empirical evidence shows safety will not be an issue
  - Would require extensive rework of Landmark Drive due to grades and ROW impacts
  - Cost $1M to $3M

Capacity - Roundabout

[redacted]



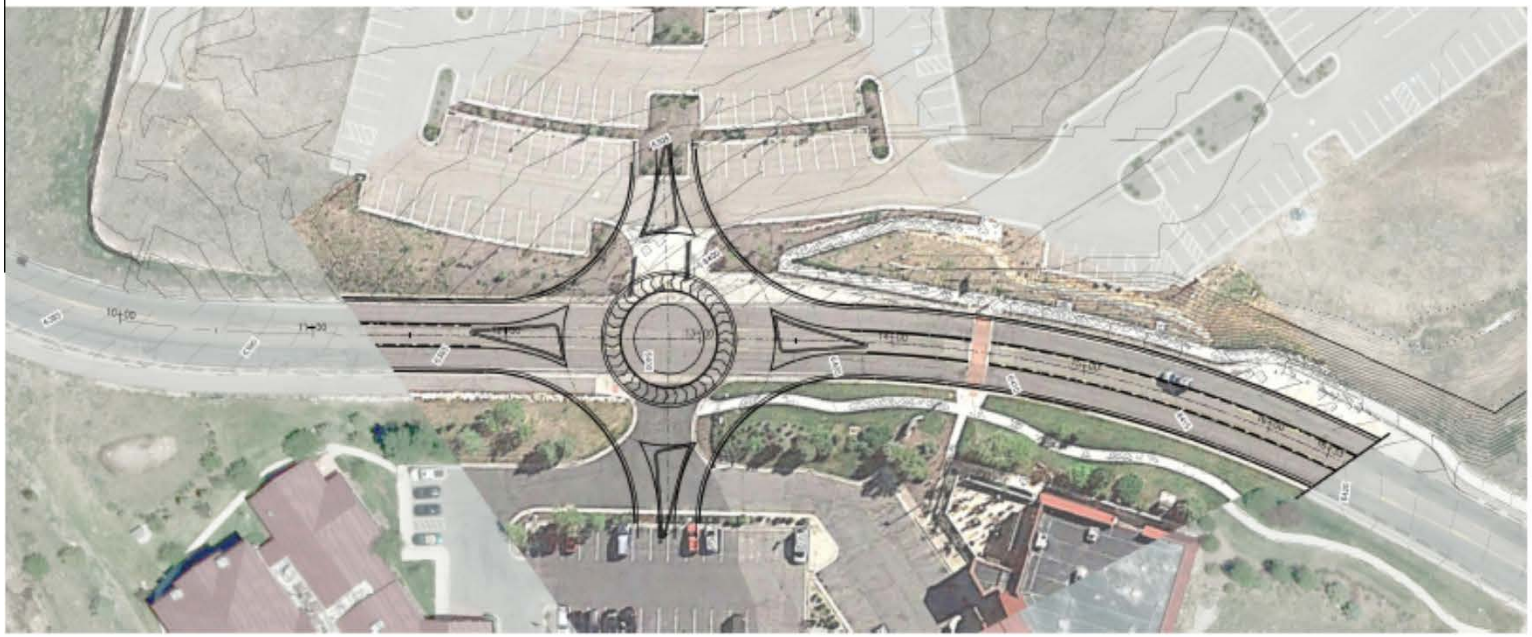
CENTERCAL PROPERTIES, LLC

CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: CLIENT REVIEW

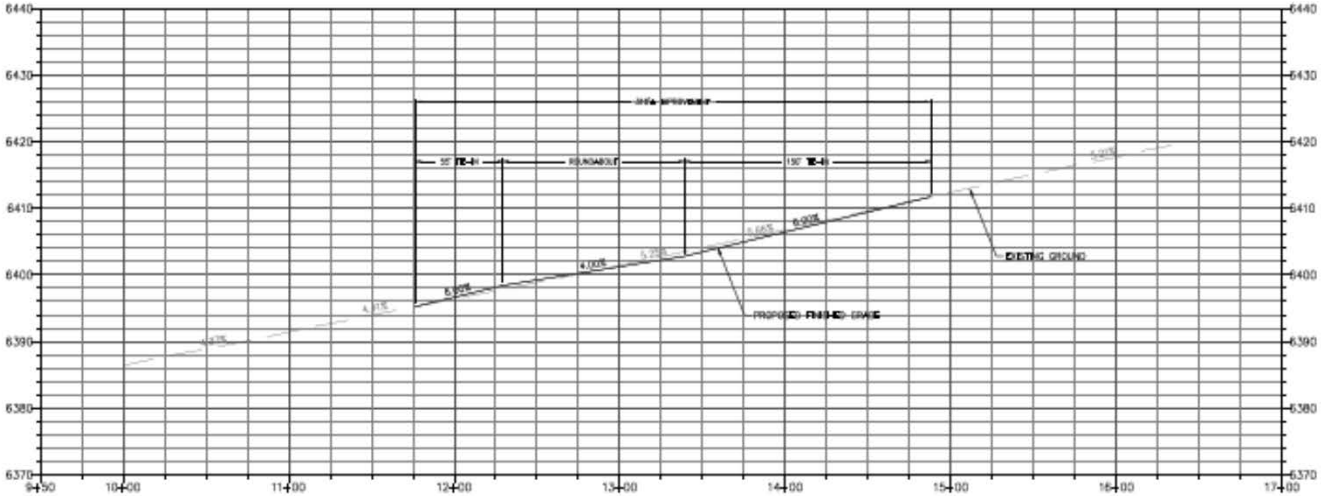
DATE: 07-30-2015
BY: JTW
PROJECT #: 14221

Roundabout Option

CSHQA



LANDMARK DRIVE
PLAN



LANDMARK DRIVE
PROFILE

SCALE OF FEET
FULL SIZE (22x34) 1"=40'

NOT FOR CONSTRUCTION

PSOMAS

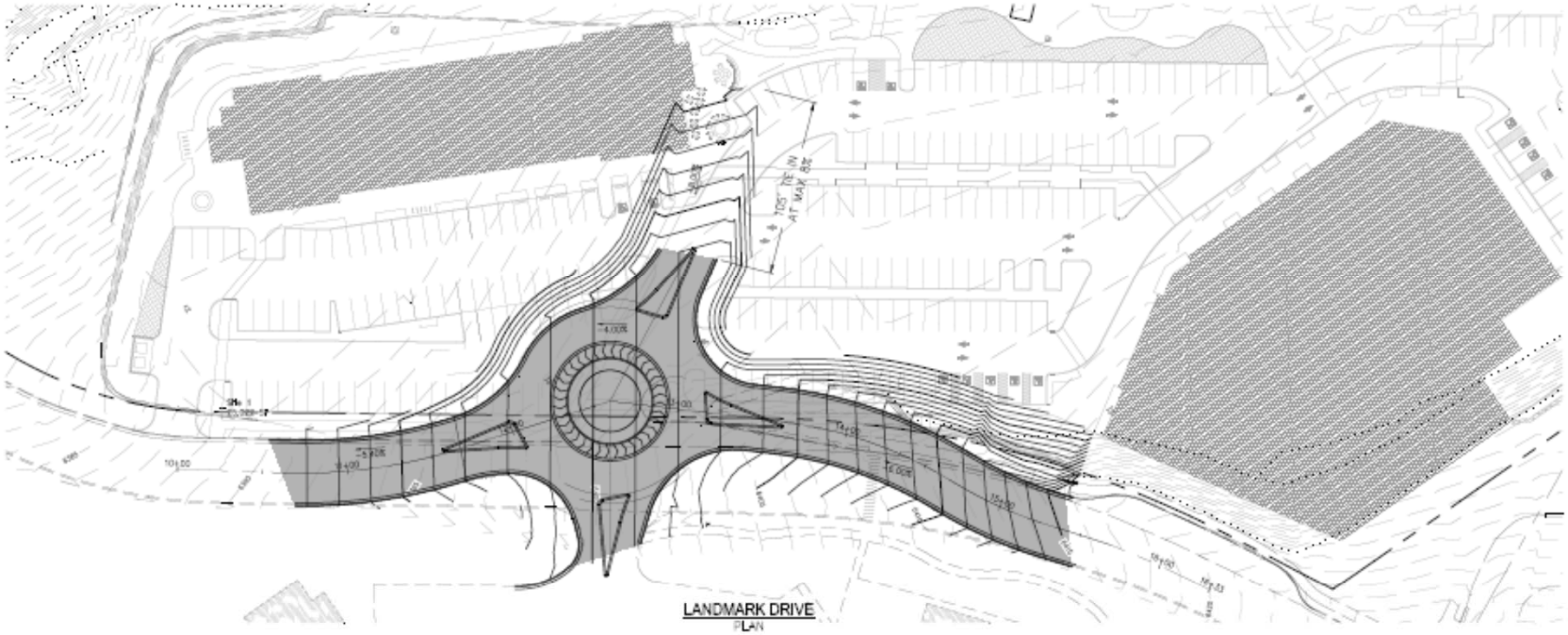
CANYON CORNERS
ROUNDABOUT GRADING

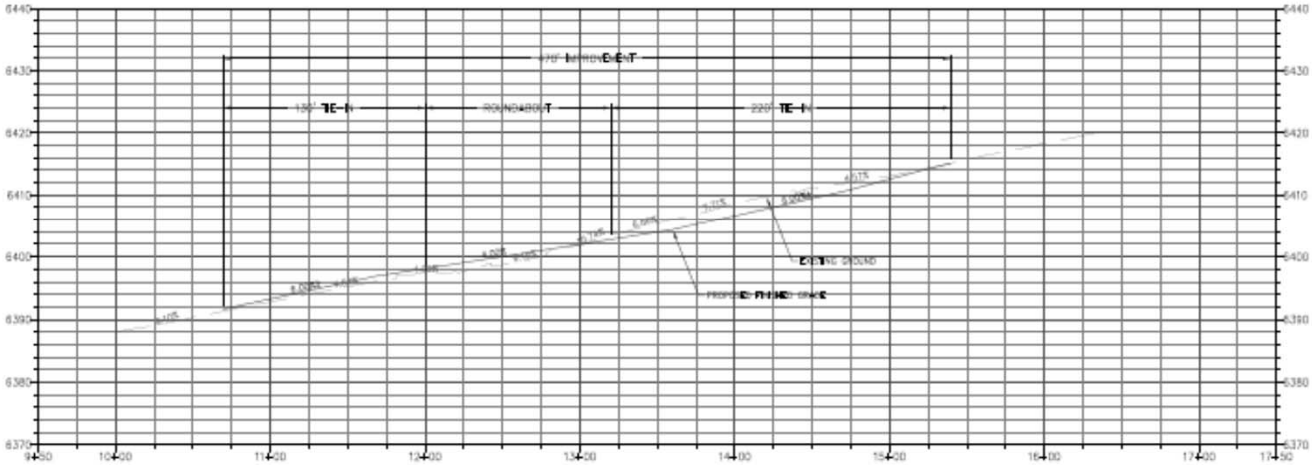
GRADING PLAN AND PROFILE

PP1

SHEET NO. 1 OF 1

OPTION 3
0
20
40
60
100
10
30
50
80
N
HALES ENGINEERING
1220 N 500 W, SUITE 202
LEHI, UT 84043
(801) 766-4343
CANYON CORNERS
SINGLE LANE ROUNDABOUT OPTION 3
HALES ENGINEERING
innovative transportation solutions
SHEET
1
OF
1





SCALE OF FEET
FULL SIZE (22x34) 1"=10'

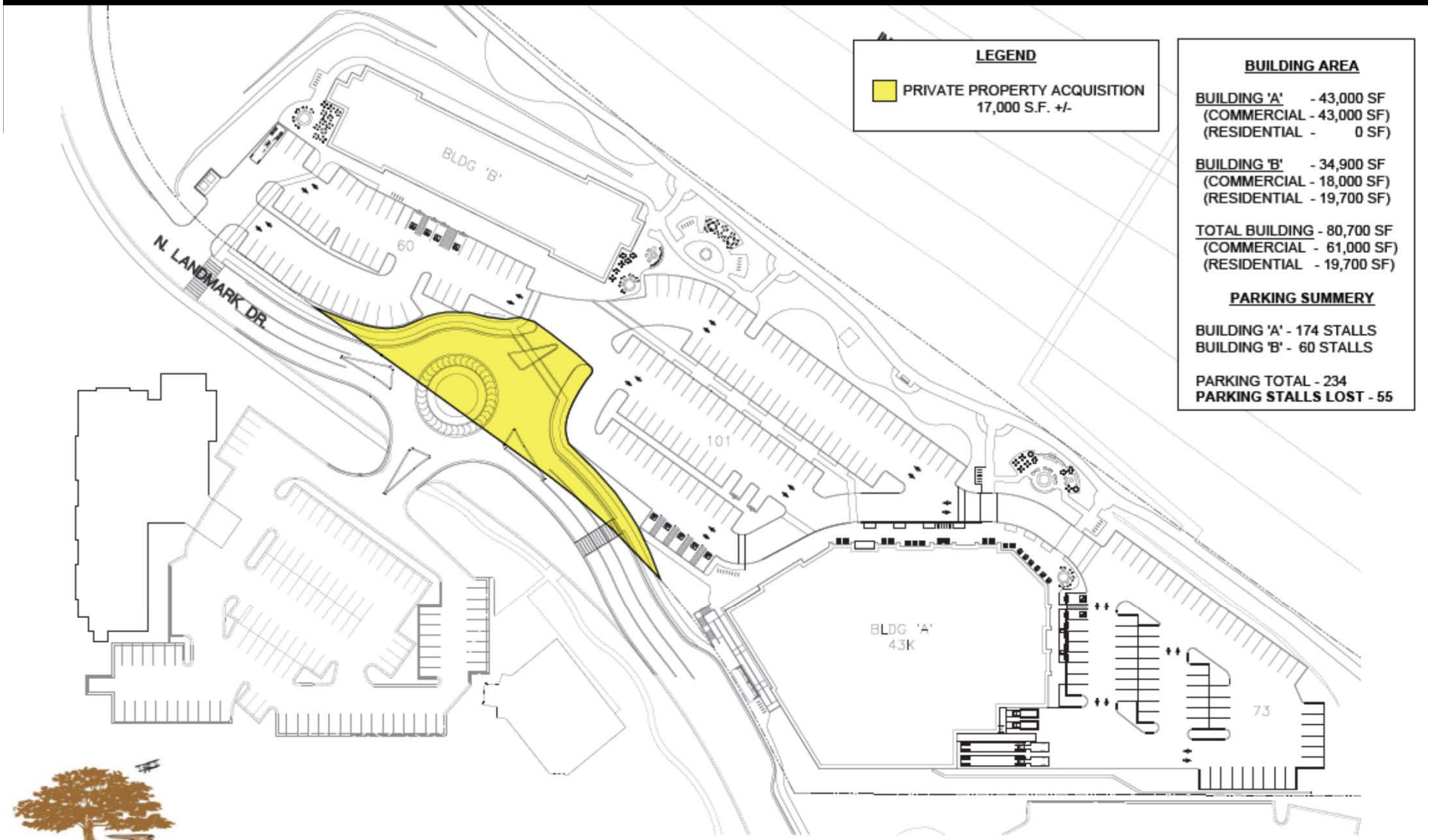
NOT FOR CONSTRUCTION

PSOMAS

CANYON CORNERS
ROUNDABOUT GRADING

PP

SHEET NO.



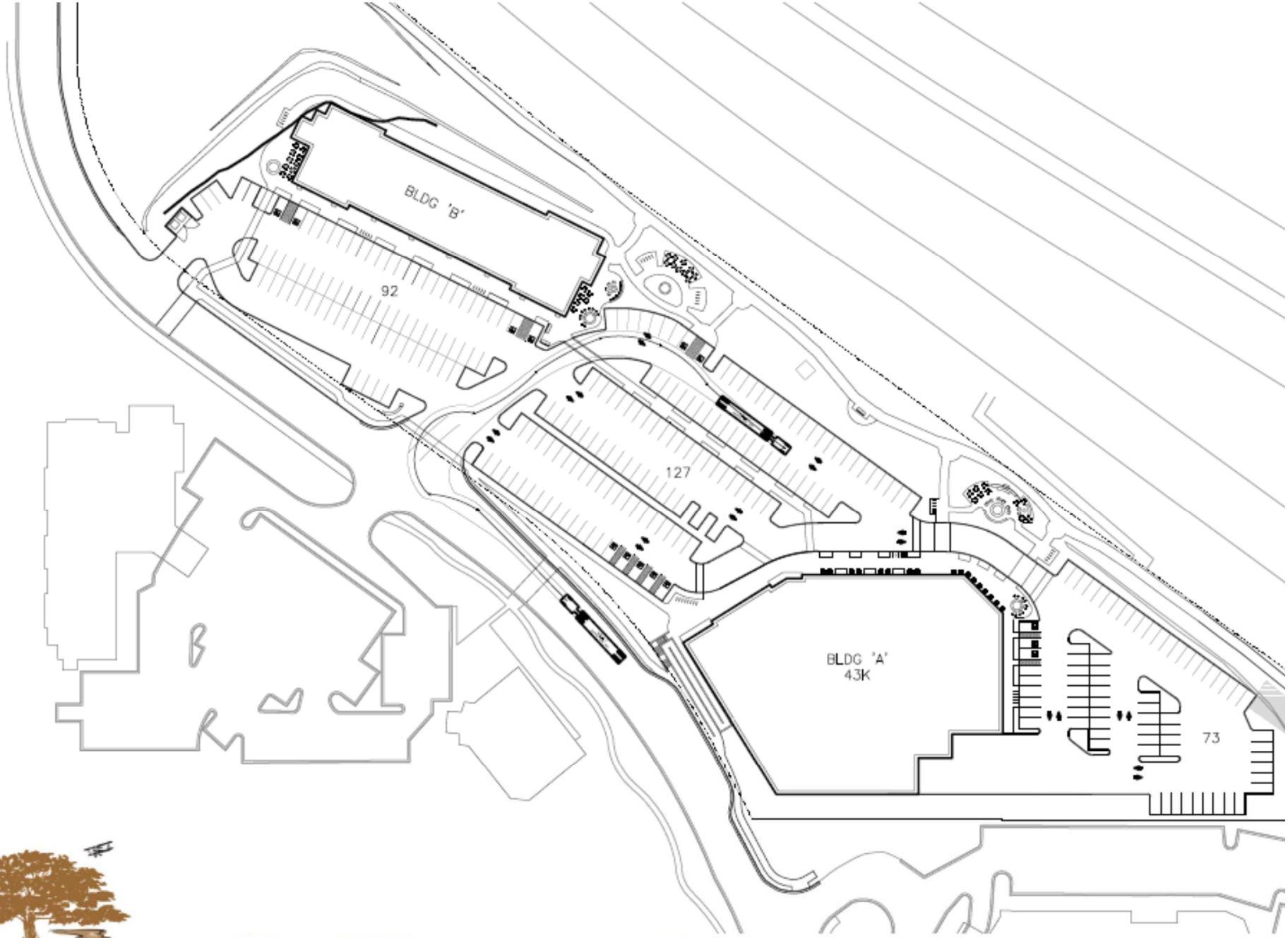
CENTERCAL PROPERTIES, LLC

CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: CLIENT REVIEW

DATE: 09-09-2015
BY: JTW
PROJECT #: 14221

Roundabout Option

CSHQA



CENTERCAL
PROPERTIES, LLC

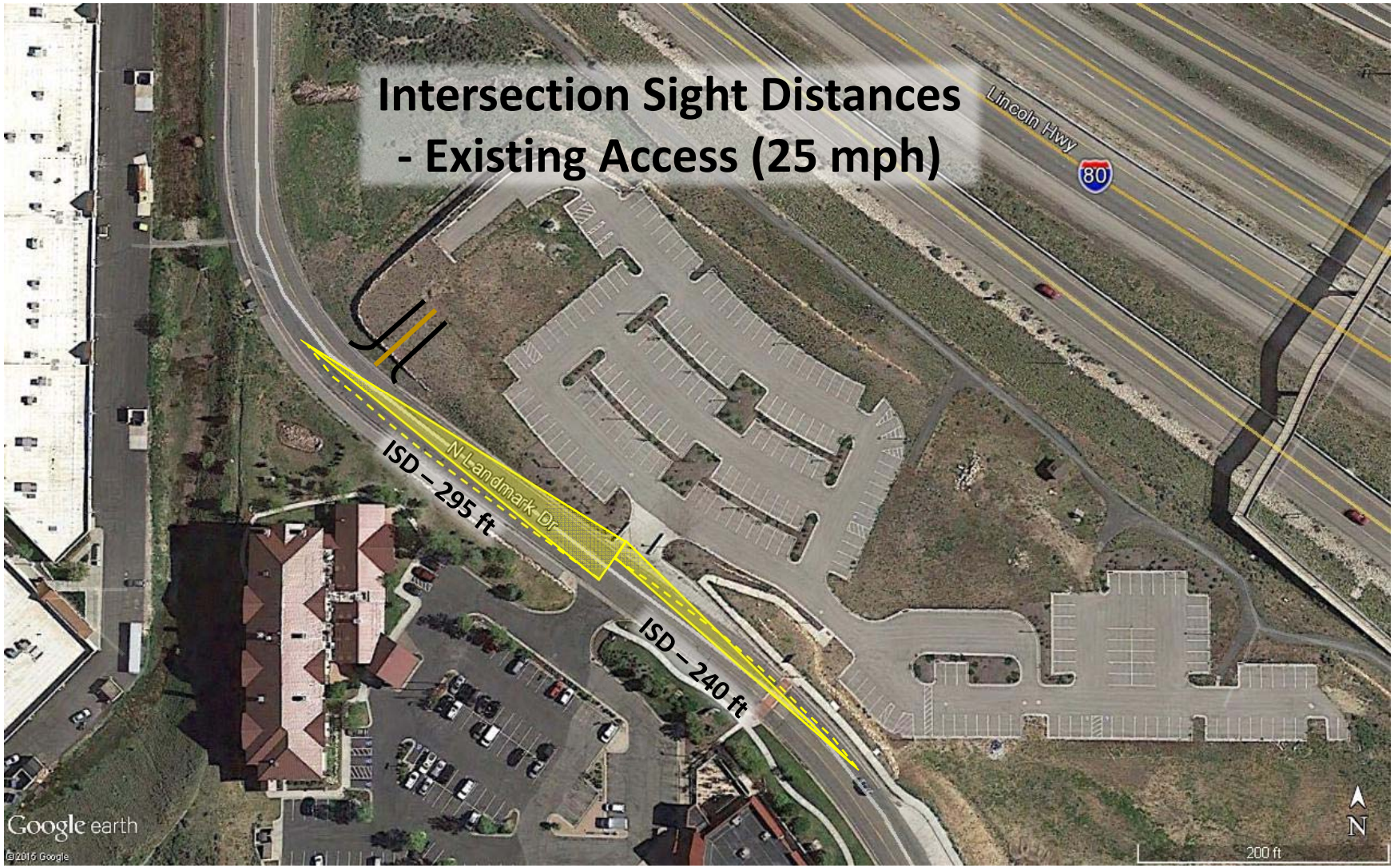
CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: HOUSING STUDIES

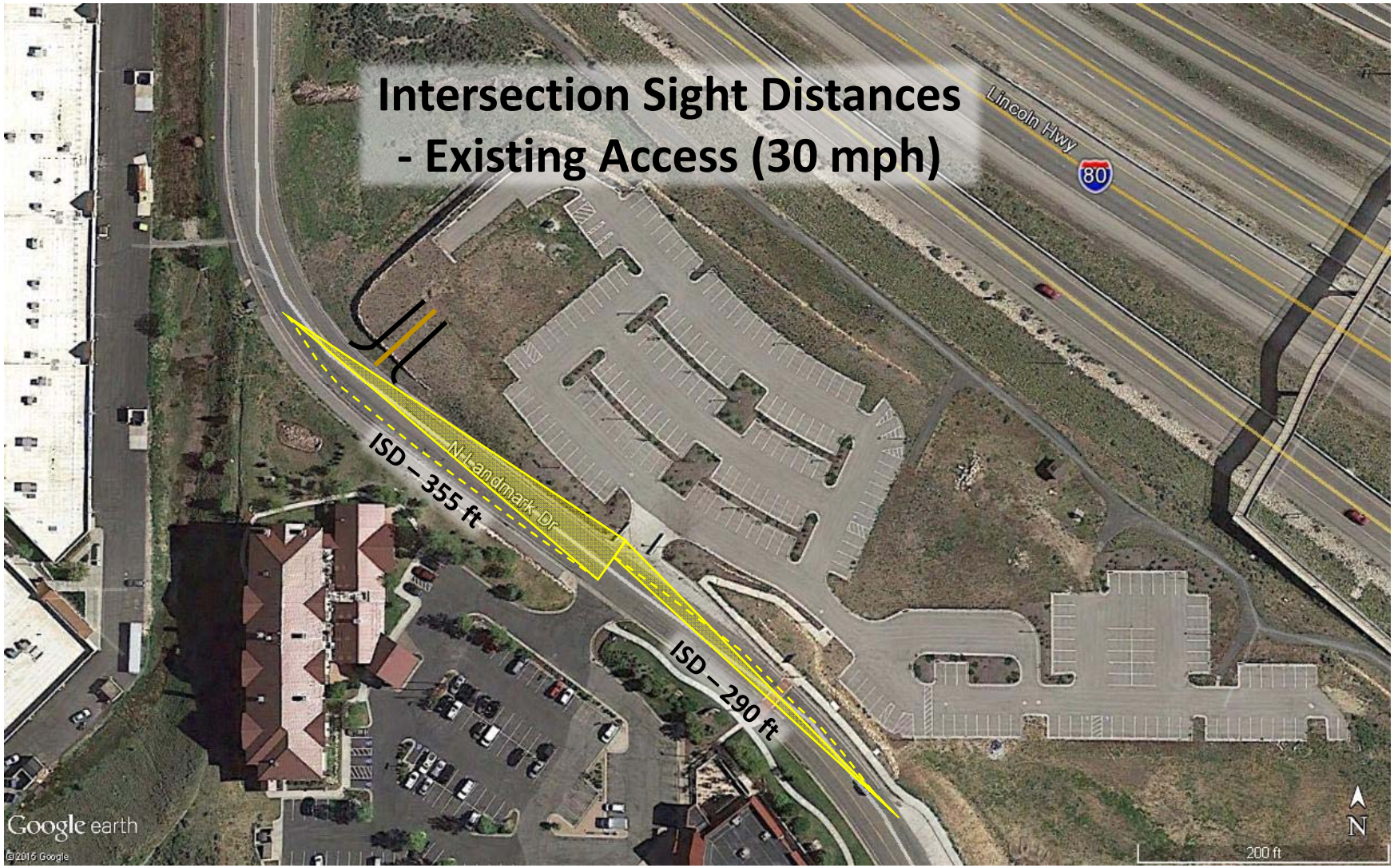
DATE: 06-05-2015
BY: JLM
PROJECT #: 14221

Site Plan

Safety - Sight Distance Calculations

- American Association of State Highway and Transportation Officials (AASHTO)
  - A Policy on the Geometric Design of Highways and Streets, 2011, 6th Edition
    - Published since 1950
    - Continually updated with new research
    - Standard for calculating design elements including Sight Distance
    - Left turn sight distance = 290 feet
    - Right turn sight distance = 240 feet


Intersection Sight Distances
- Existing Access (25 mph)
Lincoln Hwy
80
N Landmark Dr
ISD – 295 ft
ISD – 240 ft
Google earth
©2015 Google
200 ft
N


Intersection Sight Distances
- Existing Access (30 mph)
Lincoln Hwy
80
N Landmark Dr
ISD – 355 ft
ISD – 290 ft
Google earth
©2015 Google
200 ft
N

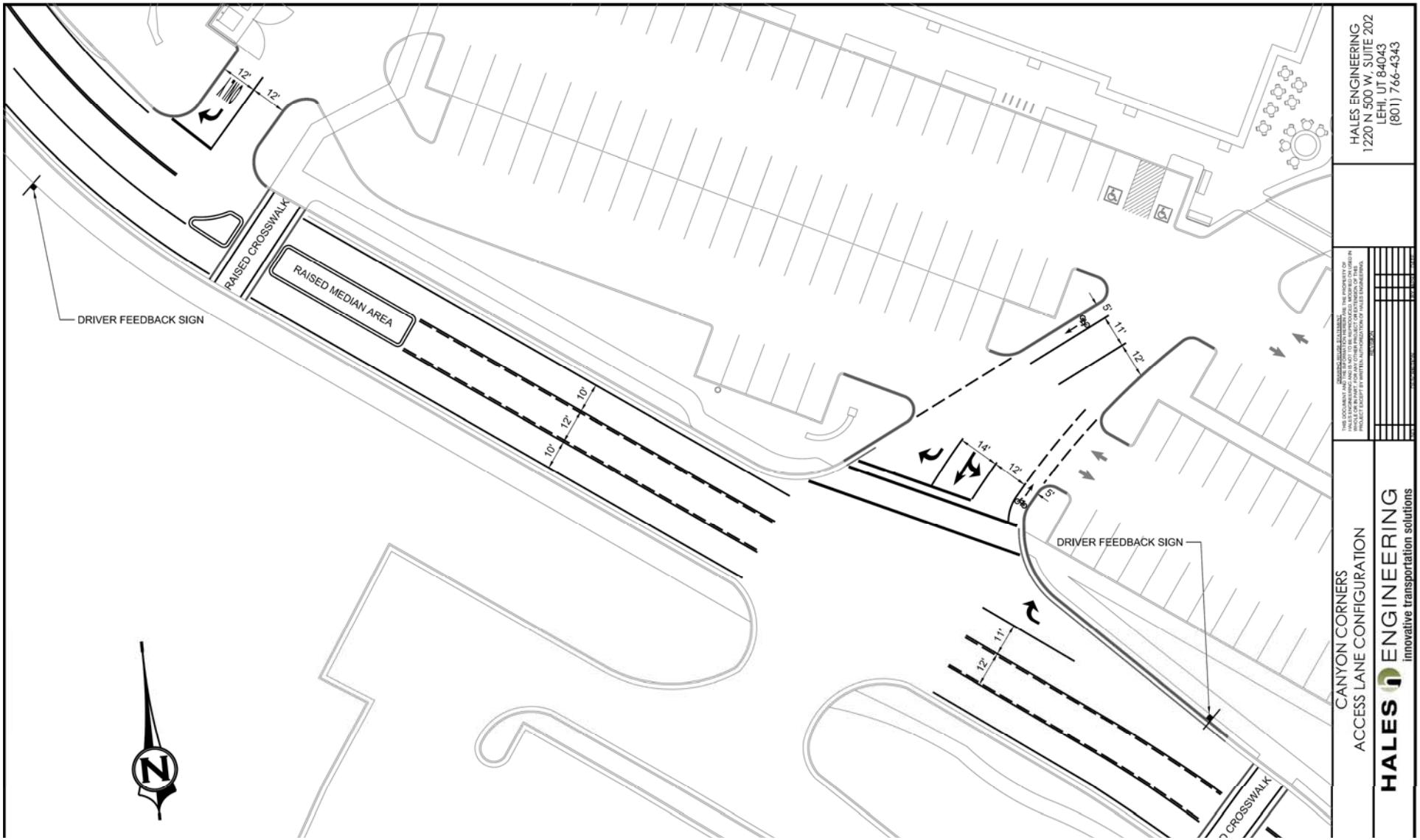
Looking Southeast on Landmark Drive
Adequate Sight Distance!
AVAILABLE

Looking Southeast on Landmark Drive
Adequate Sight Distance!

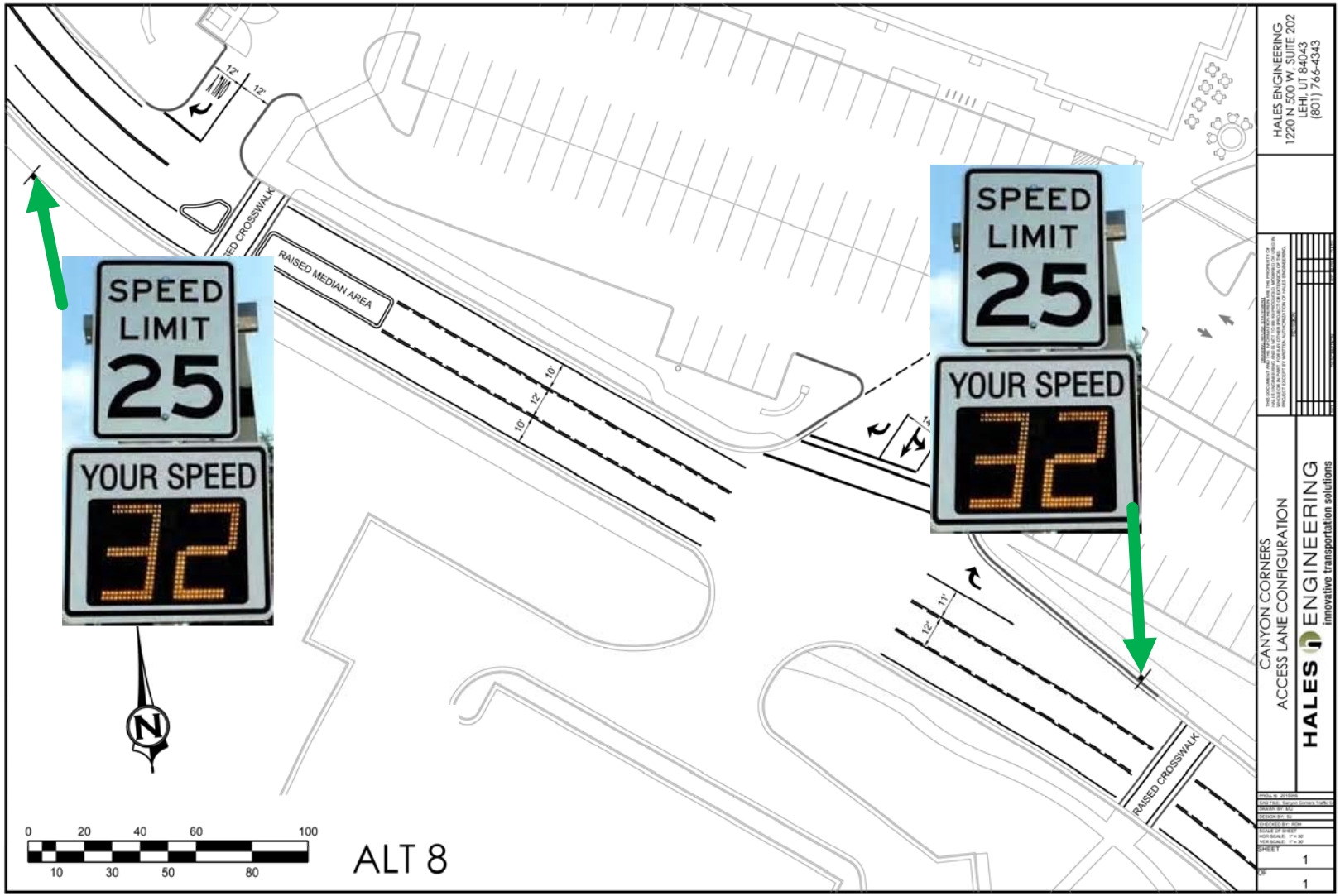
Safety – Speed Study

- Manual on Uniform Traffic Control Devices (MUTCD)
- 85th Percentile Speeds (Speed Limit)
- Landmark Drive
  - 33 mph

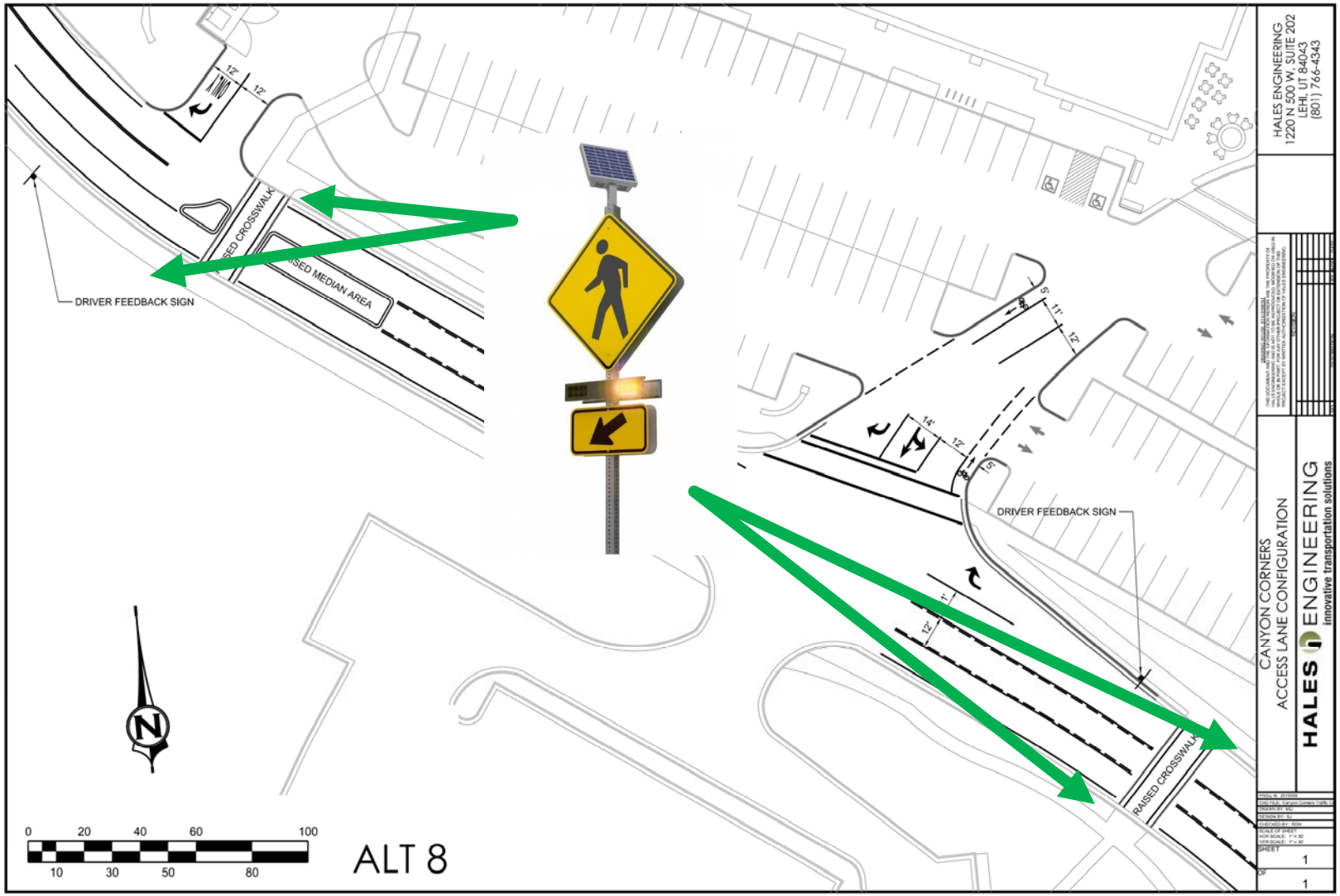
Speed Reduction Mitigations



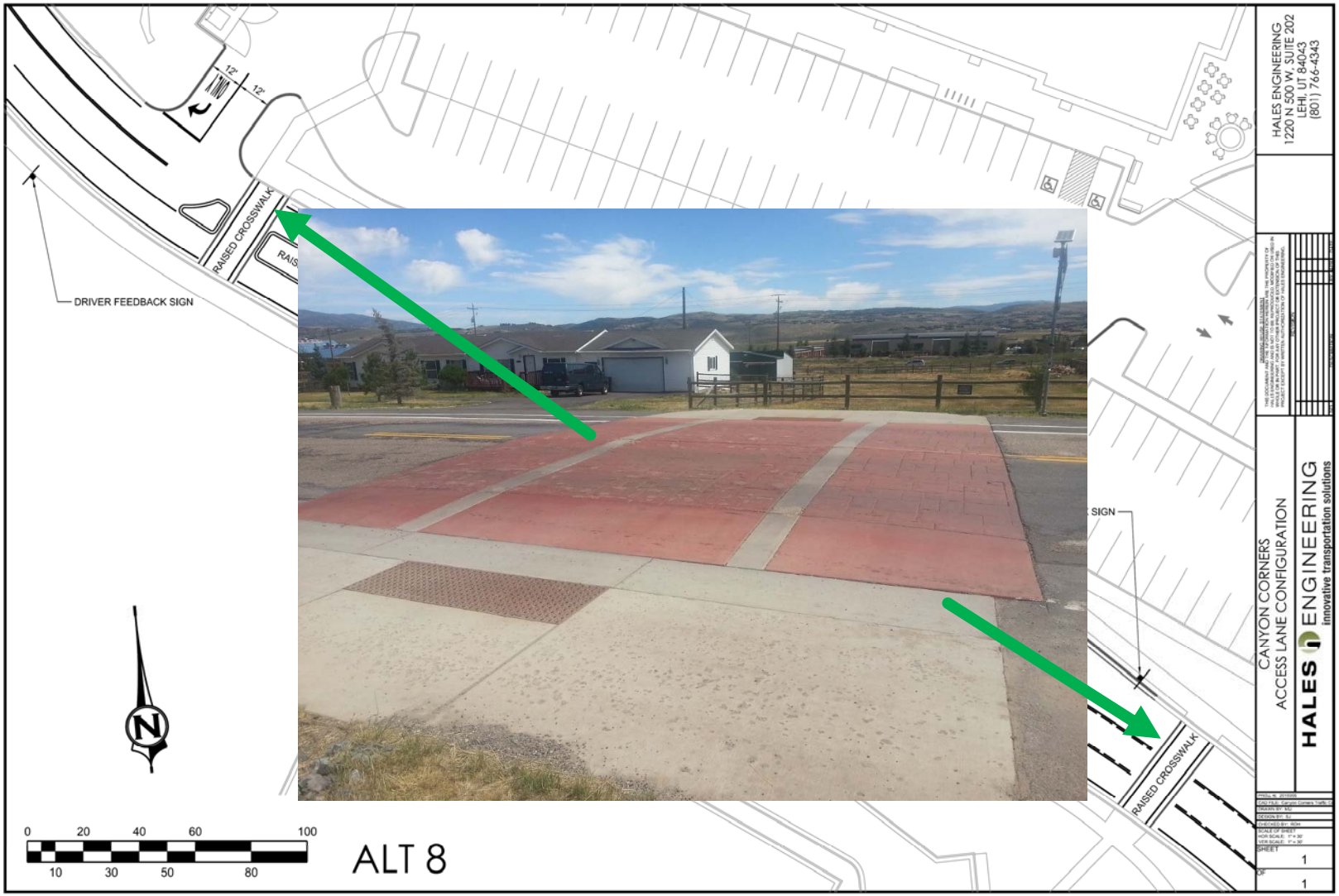
Driver Feedback Signs



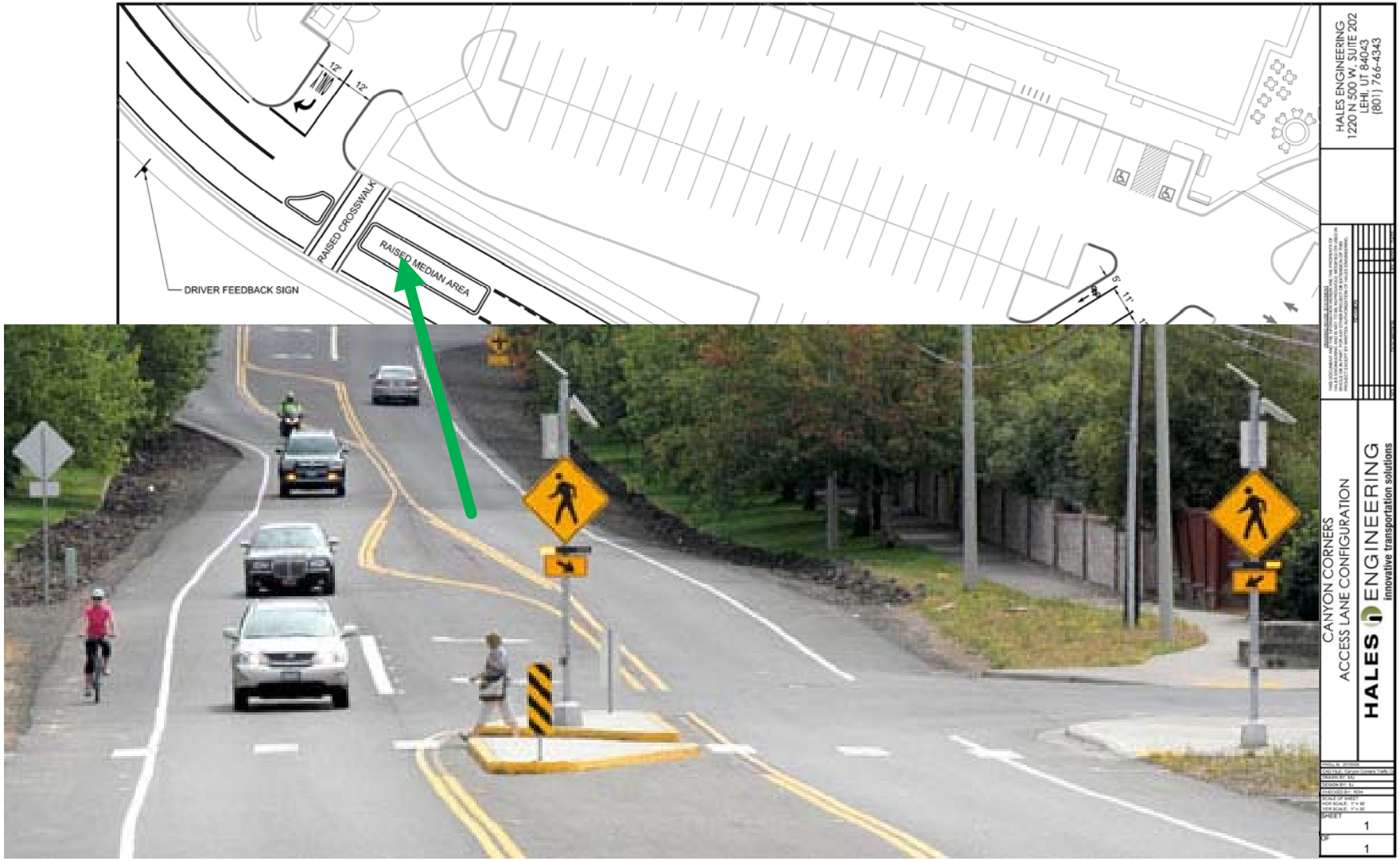
Pedestrian Push Button Activated Flashers



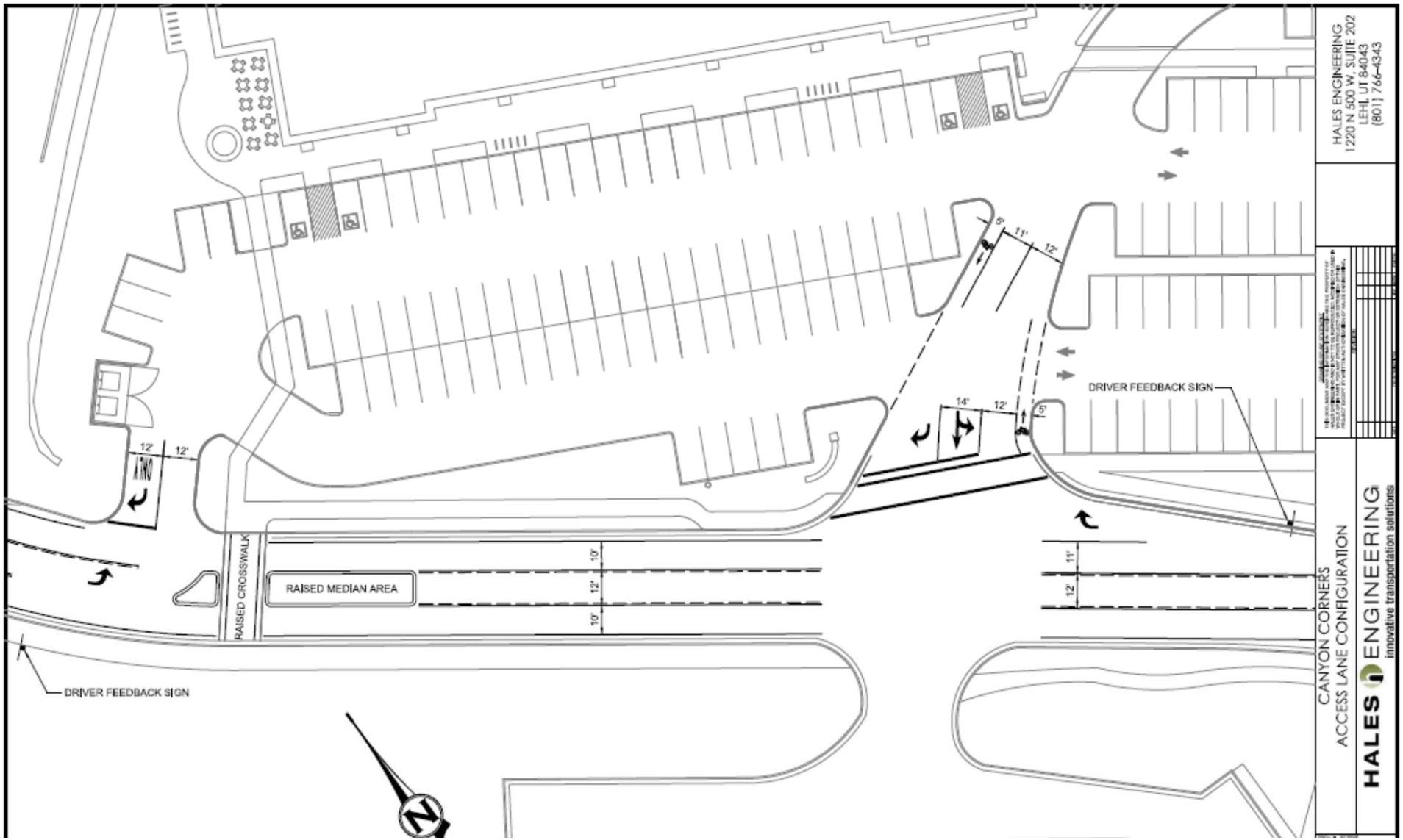
Raised Crosswalk



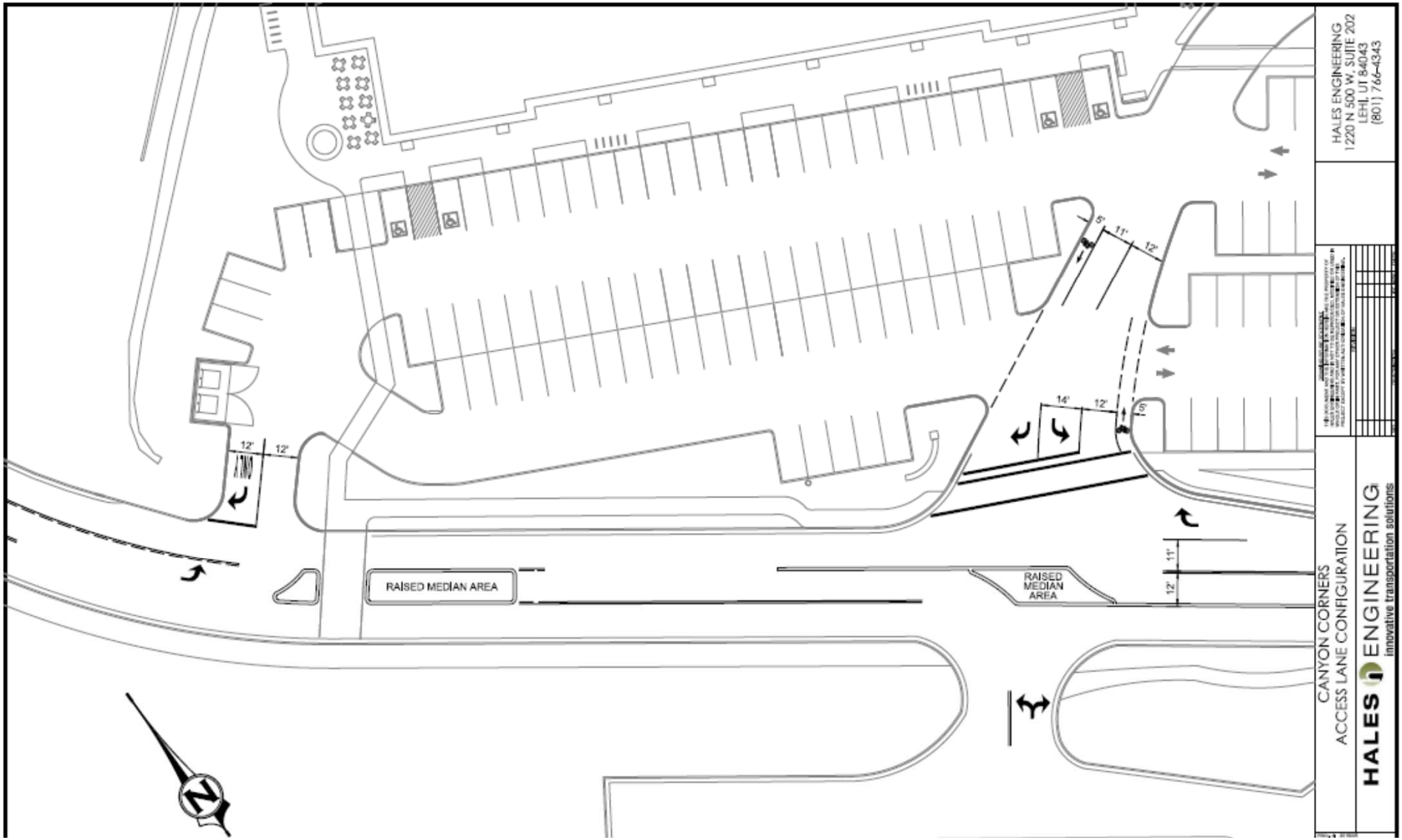
Raised Median



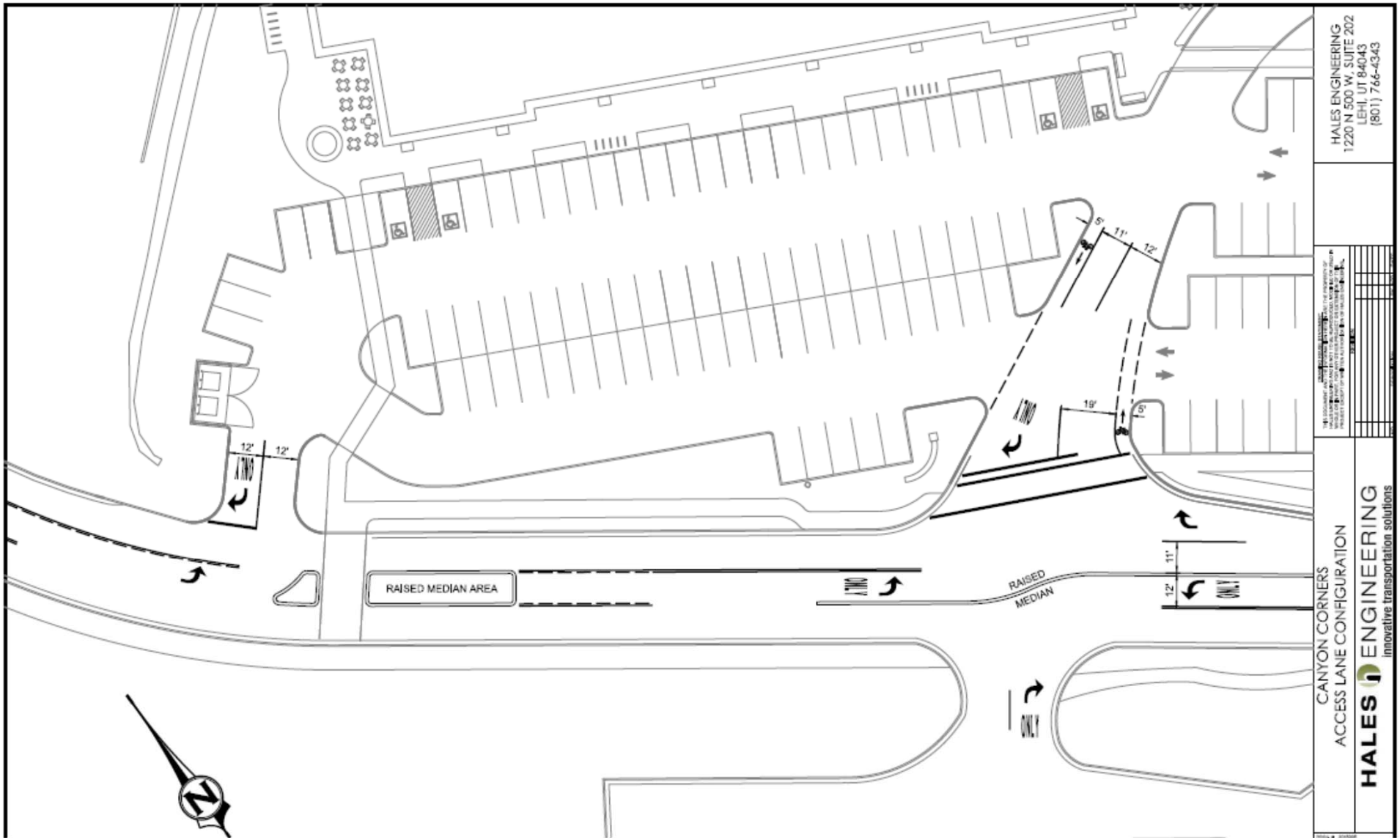
North Access – ¾ Access



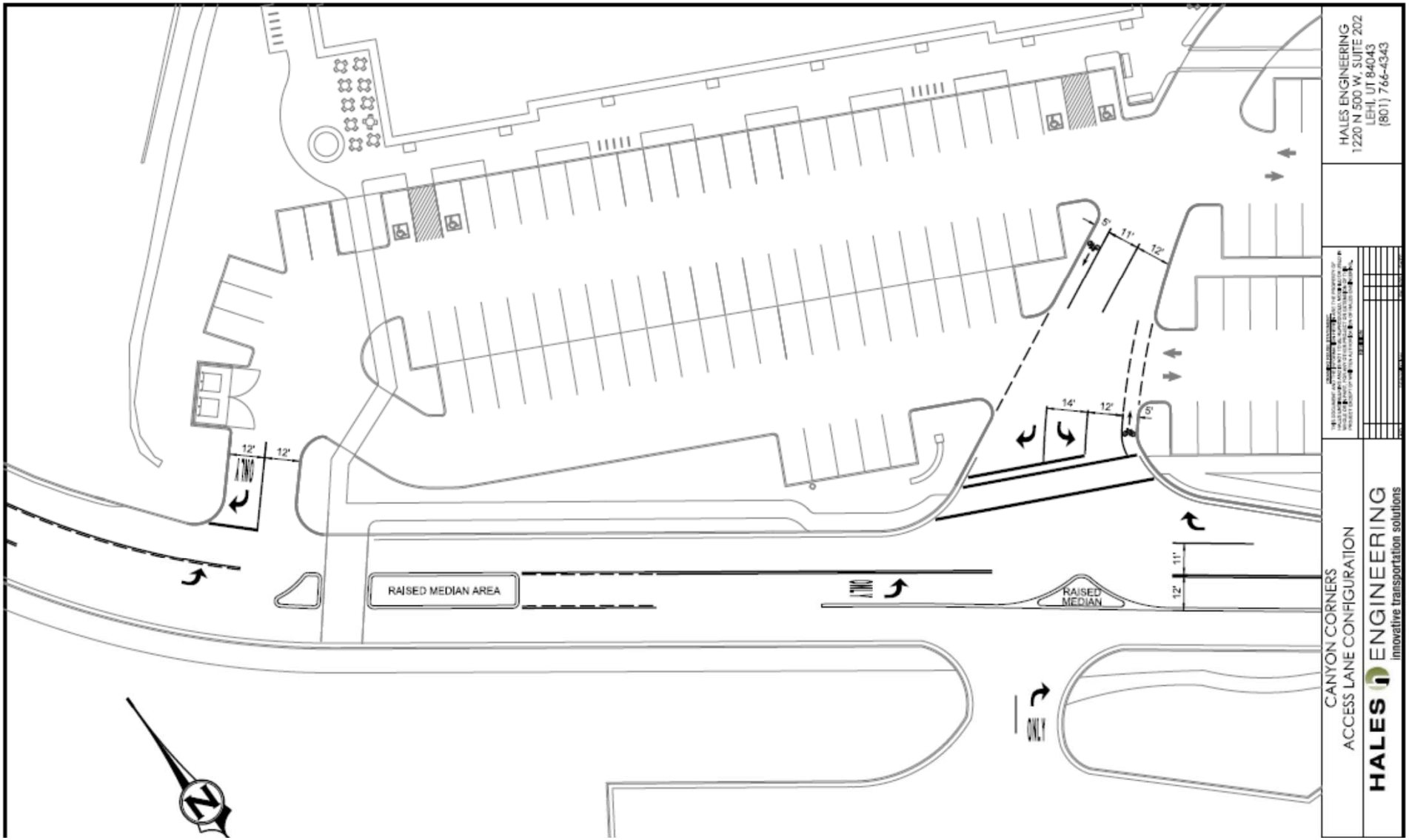
¾ Accesses (outbound left)



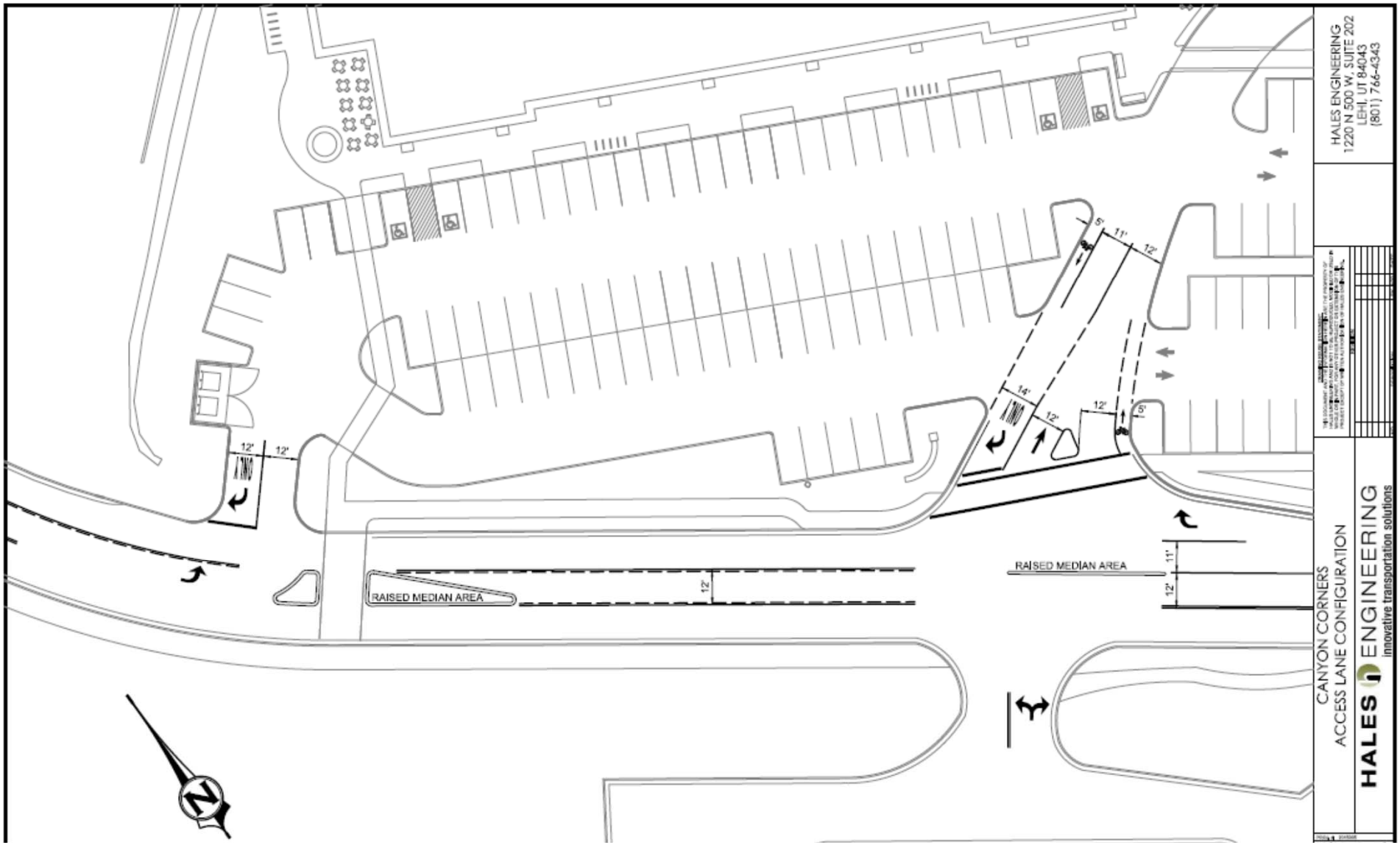
¾ Access (inbound left)



Canyon Corners Full, north ¾ access

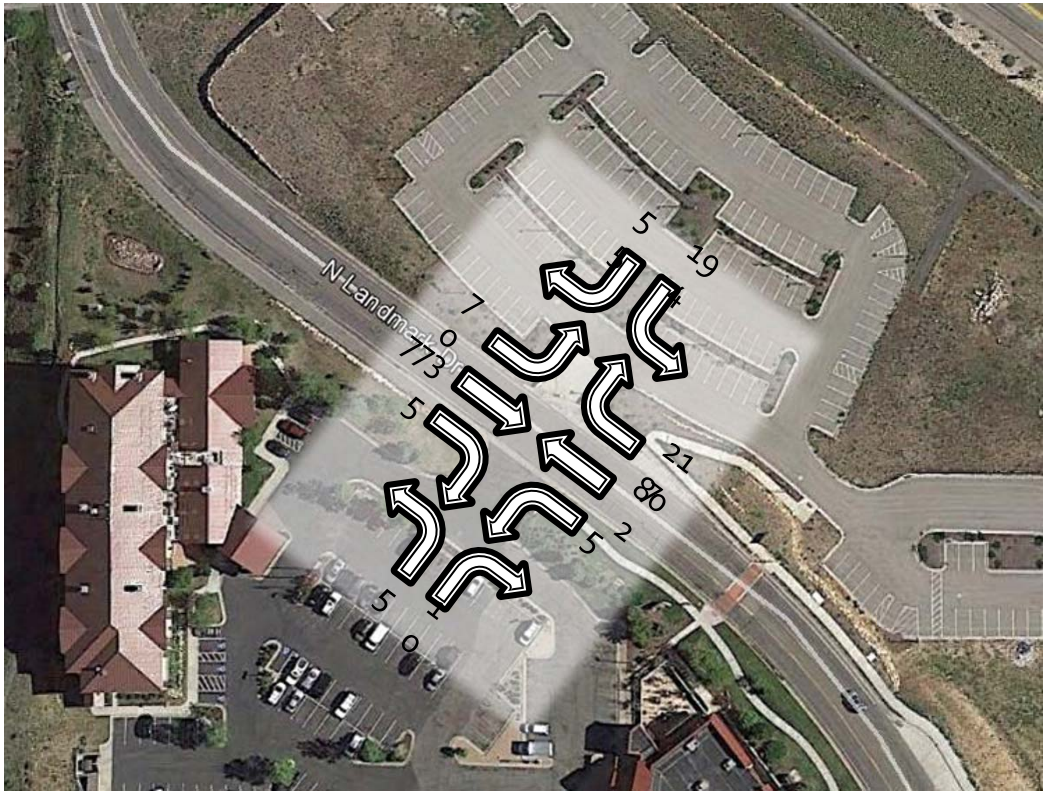


Hampton Inn Full, north ¾ access



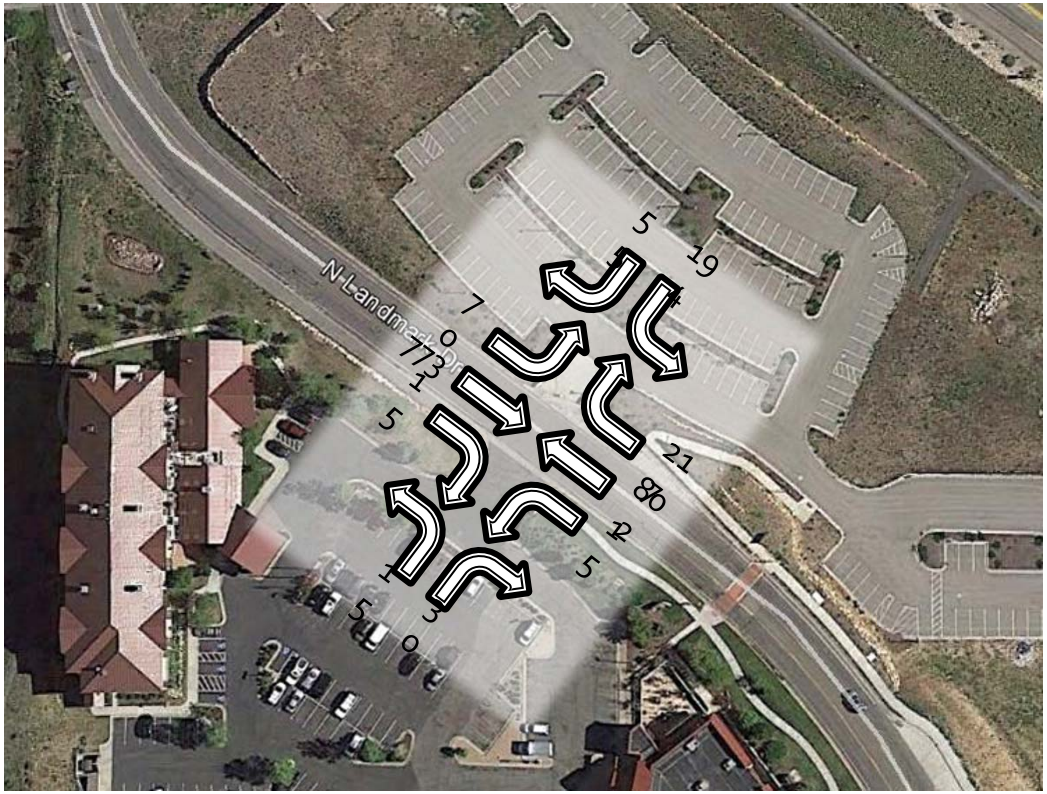
Hampton Inn Access to Landmark Drive

- Future (2040) Plus Project Conditions
  - Counted on October 30, 2014
  - Adjusted for projected growth
  - Project traffic added to roadway
  - LOS D (Whole Foods entrance controlling)



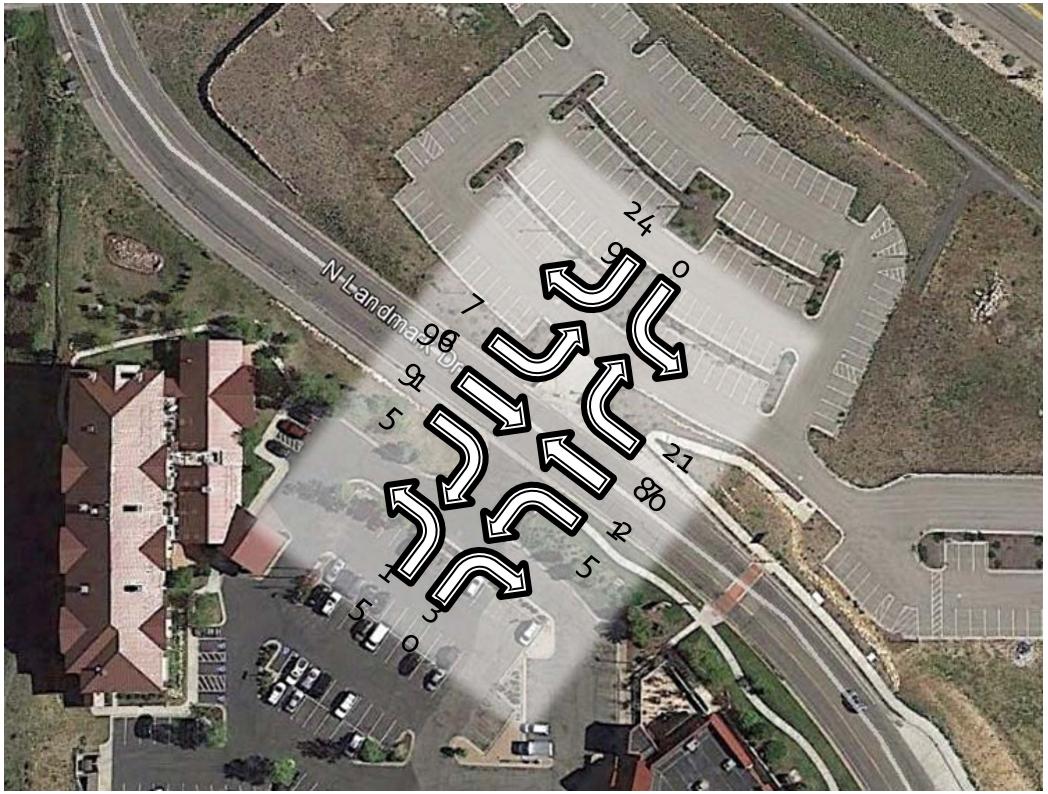
Hampton Inn Access to Landmark Drive

- Hampton Inn Concerns
  - Hotel at 30% occupancy on October 30, 2014 (24/80 rooms booked)
  - Hampton Inn reports 90% occupancy during peak season
  - Volumes on Hampton Inn access inflated to represent 90% occupancy assumption
  - LOS D



Hampton Inn Access to Landmark Drive

- Whole Foods Left-turn Egress Restricted
  - Exiting vehicles forced to turn right and reverse direction at Tanger Roundabout
  - 9% increase in traffic at Hampton Inn access
  - Tanger Roundabout deteriorates from LOS A to LOS D
  - Hampton Inn access deteriorates to LOS F



Canyon Corners - Conclusions

- Traffic Operations – Canyon Corners will function better than Landmark Village (DA)
- Safety – Canyon Corners will create a more safe environment on Landmark Drive
  - Speed reduction, channelized movements, pedestrian safety improvements, improved lighting
- Improving alternative mode accessibility
  - Participating in Kimball Junction Circulator, providing enhanced bus shelter, adding car/van pool parking near entrance, adding bike share, improved trails / walking connectivity

Questions?

SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE CANYON CORNERS SPECIALLY PLANNED AREA KIMBALL JUNCTION, SUMMIT COUNTY, UTAH

THIS SECOND AMENDMENT TO DEVELOPMENT AGREEMENT FOR THE CANYON CORNERS SPECIALLY PLANNED AREA KIMBALL JUNCTION, SUMMIT COUNTY, UTAH (the "Second Amendment") is made and entered into as of this ____ day of _____, 2015, by and between **CENTERCAL PROPERTIES, LLC** (the "Developer") and **SUMMIT COUNTY**, a political subdivision of the State of Utah, by and through its County Council (the "County"), with reference to the following facts.

RECITALS

A. Developer has agreed to purchase that certain real property commonly known as Canyon Corners SPA and located on Landmark Drive at Kimball Junction, Summit County, Utah, as legally described in Exhibit "A" attached hereto and made a part hereof, and consisting of 8.46 acres of land and certain improvements constructed thereon (the "Property").

B. The County and Kris Pollock, as developer, entered into that certain Development Agreement for the Canyon Corners Specially Planned Area Kimball Junction, Summit County, Utah, dated as of December 22, 2003, (the "Initial Development Agreement") providing the terms and conditions for the development of the Property.

C. The Initial Development Agreement was amended by the terms of that certain Amendment to Development Agreement for The Canyon Corners Specially Planned Area Kimball Junction, Summit County, Utah, dated October 2, 2013, between Summit County and William M. Wirthlin II, solely in his capacity as Personal Representative of The Estate of W. Meeks Wirthlin as successor in interest to Kris Pollock as the developer of the Property (the "Amendment"). The Initial Development Agreement as amended by the Amendment is referred to as the "Amended Development Agreement"). Unless otherwise covered by a specific defined term in this Second Amendment, all capitalized terms in this Second Amendment shall have the meaning set forth in the Development Agreement.

D. Developer and the County have agreed to amend the Amended Development Agreement in certain respects including to approve a new site configuration, uses, and other terms, all to be effective and binding on Developer and Property upon and subject to the acquisition of the Property by Developer. The Amended Development Agreement as further amended by the terms of this Second Amendment is referred to herein as the "Development Agreement").

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

1. Approval. The County, acting pursuant to its authority under Utah Code, the Code and the General Plan, has made certain determinations with respect to Canyon Corners, and, in the exercise of its legislative discretion, has elected to approve the use, density, and general

configuration pursuant to the Canyon Corners SPA, resulting in the negotiation, consideration and approval of the Development Agreement as amended by this Second Amendment to Development Agreement, after all necessary public hearings.

2. Findings. The County Council, acting in its legislative capacity, hereby reiterates the determinations and findings set forth in Section C and elsewhere in the Development Agreement with reference to the amended Corner Canyons SPA Plan set forth in this Second Amendment, including all findings of fact and conclusions of law as are necessary to make each of such determinations and findings with reference to the amended Corner Canyons SPA Plan and including all findings of fact and conclusions of law as are necessary to approve~~al~~ a modification to a SPA Plan and Development Agreement. For all purposes, the references in the Development Agreement to the Corner Canyons Plan shall be deemed to refer to the content of the Exhibits attached to this Second Amendment. Where there is a direct conflict between the terms of this Second Amendment and the Amended Development Agreement, this Second Amendment shall take precedence. Where there is a direct conflict between the Development Agreement, as amended by this Second Amendment, and the Code or General Plan or other land use laws, the Development Agreement shall take precedence; in all other circumstances, the Code, General Plan or other land use laws shall control.

3. Approval Process. Following a lawfully advertised public hearing, this Canyon Corners Second Amendment and the amended Canyon Corners SPA Plan received a recommendation for approval by action of the Planning Commission after all appropriate processes were followed. The County Council held a lawfully advertised public hearing, and during a lawfully advertised public meeting on that same date approved this Second Amendment and the amended Canyon Corners SPA Plan under the process and procedures set forth in the Code and General Plan. The terms and conditions of approval are incorporated fully into the Development Agreement. In making such approval, the County Council made such findings of fact and conclusions of law as are required as a condition to the approvals, as reflected in the staff recommendation adopted with any modifications, as reflected in the minutes of the above-referenced public meetings, and as reflected by the other enumerated findings herein.

4. Development Configuration of Canyon Corners. The provisions of Section D.4. of the Development Agreement are hereby amended and restated as follows:

> D.4. Development Configuration of Canyon Corners. The development configuration of Canyon Corners is amended to reflect the development configuration shown on Exhibit "B" attached to the Second Amendment, which shall become Exhibit "B" for purposes of the Development Agreement. The elevations for the buildings and other facilities to be constructed are included as Exhibit "C" attached to this Second Amendment, and the permitted and conditional uses and densities for such buildings are included as Exhibit "D" attached to this Second Amendment, which shall respectively become Exhibits "C" and "D" for purposes of the Development Agreement. The standards for the design and construction of all buildings, parking, landscaping, signage, lighting, and other site improvements set forth in the Exhibits attached to this Second Amendment shall constitute all standards for such improvements, which standards shall supersede any inconsistent provisions in the Code, the General Plan or other land use laws, not including standard

engineering, building, fire, and life safety requirements,. Prior to the construction of the Buildings shown on Exhibit "B" attached to this Second Amendment, a Low Impact Permit ("LIP") must be approved for architectural compliance. This review may be done in tandem with any LIP review required for the uses designated as Low Impact Uses in this Agreement, but the review for architectural compliance shall not have the right to modify or deny any uses, densities, site configuration or design standards incorporated into the Development Agreement including any Exhibits to the Second Amendment. This requirement for a LIP is in addition to the required building permit for the construction of all structures in Summit County.

5. Specific Approval Conditions. The provisions of Section D.6 of the Development Agreement are hereby amended and restated as follows:

D.6. Specific Approval Conditions. The development of Canyon Corners must be consistent with those Specific Conditions set forth in this Section, as well as those described in the attached Exhibits, which includes, among other things the final site plan, signing concepts, lighting guidelines, and landscaping guidelines. In light of the detail provided in the Exhibits, architectural design guidelines will not be required. The SPA Plan is approved subject to the following conditions, which are in addition to all other conditions specified in this Development Agreement:

(a) Approval of Final Site Plan Required. Approval of this Development Agreement shall constitute final master site plan approval in accordance with the requirements of the Code and the General Plan for the Property as indicated in the attached Exhibits. Prior to the issuance of any building, grading or other related development permit for the Project, the developer shall obtain final building plan and specific site plan approval in accordance with the provisions of this Agreement.

(b) Building Permit Required. Prior to the commencement of any additional development activity on any lot designated on a Final Site Plan, or before the commencement of construction on any structure authorized in this Development Agreement, a grading permit or Building Permit, whichever is applicable, must be obtained from the County in accordance with all applicable requirements of the Code. Failure to so comply shall be grounds for revocation of Site Plan approval or denial/revocation of Building Permits issues pursuant to a Final Site Plan or this Development Agreement.

(c) Transit District. The Property lies within the ~~recently created~~ Kimball Area Transportation Special Service ~~Transit~~ District and shall be subject to all assessments, taxes and liens imposed by the District.

(d) Financial Contribution as a Community Benefit. Developer shall be subject to all transportation impact fees. In consideration of that obligation and the other terms and conditions of this Second Amendment, Developer shall no longer be subject to the obligation in the Initial Development Agreement to make a cash

contribution of $150,000 to Summit County toward traffic related studies and/or improvements in the Kimball Junction area.

(e) Kimball Junction Circulation Bus System. Developer agrees to participate in the Kimball Junction circulation bus system by making a one-time financial contribution of $50,000. Payment shall be due upon commencement of the operation of the circulation system if prior to the issuance of a certificate of occupancy for any building located on the Project Site. If the circulation system is not in operation at the time of issuance of the certificate of occupancy, Developer may place the funds into an escrow to be held by the County or another entity designated by the County until commencement of operation of the circulation system, at which point the contribution, together with accrued interest, shall be disbursed. The contribution or disbursement from escrow shall be made to the operator of the system, which may be the County, a local district formed by the County, or a private operator if designated by a private agreement of property and business owners in the Kimball Junction Area. The contribution may be used for the purchase of capital equipment, studies, or other start-up costs in the discretion of the operator of the system. ~~Developer shall have the right to use the outside surfaces of circulation busses for advertising purposes for a period of up to two years unless the circulation bus is operated by a local government run district.~~ Developer agrees to participate in a local district if formed by the County or a private association if formed by other property and business owners for the purposes of operating the system, and shall be subject to assessments equitably imposed by the district or association on owners and businesses within the Kimball Junction area. Developer shall have no obligation to cover any operating and maintenance costs associated with the circulation bus system except to the extent equitably allocated to owners and businesses within the Kimball Junction Area by the County, a local district, or a private association operating the circulation bus system.

(f) Bicycle Sharing Program for the Project Site and Other Trip Reduction Strategies. Developer agrees to create a bicycle sharing program as described in Exhibit "J" for the Project Site and for two other sites within the Kimball Junction area and provide not less than 24 bicycles, 8 to be located on the Project Site and an additional 8 to be located on each of the two other sites. The County shall have the right to review and approve the bicycles and any other equipment to be used in the program, as well as the terms and conditions of any liability insurance policy pertaining to the program. In the event that Developer is unable to obtain the participation in the bicycle sharing program of owners of two other sites after using commercially reasonable efforts to obtain the participation of other sites in this program, Developer agrees to purchase the additional bicycles not previously installed, up to a total of 24 bicycles, and install them on the Project Site. Purchase and installation of 24 bicycles on the Project Site or at such other available locations as the Developer may have arranged shall be achieved prior to the issuance of a certificate of occupancy for any building located on the Project Site. If more than 8 bicycles are installed on the Project Site to achieve compliance with

Comment [A1]: Exhibit J provides for the "best industry practices" as requested by the Council

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this requirement, then any bicycles installed on the Project Site in excess of 8 may be relocated by Developer when alternative locations are identified. Developer shall be responsible to maintain bicycles located on the Project Site and shall provide or arrange for the maintenance of the other bicycles Developer acquires, such that the bicycles are keep in good working order and repair in accordance with the description on Exhibit "J." Further, for the three year period after the initial installation of the bicycles, Developer shall replace any of the bicycles installed by Developer that become lost or inoperable. In addition, the Project Site shall provide a minimum of two additional bike racks with a total capacity for 16 bikes. One such rack shall be located in reasonable proximity of the bus shelter.

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Developer shall provide customer van/car pool only parking spaces in the most convenient parking locations adjacent to the buildings, similar to the locations for handicap parking, with not less than 2 such spaces to be located adjacent to the Building "A" and not less than 2 such spaces located adjacent to Building "B." In addition, Developer shall provide a minimum of 4 low emission vehicle parking spaces on the Project Site.

(g) Affordable Housing. The County has determined that the Project proposed by Developer as amended by the Second Amendment is subject to ~~a requirement to provide 20.5 Affordable Unit Equivalents under~~ the policies for affordable housing in the Snyderville Basin Development Code as of the date of this Agreement (the "Affordable Housing Policies"), which Affordable Housing Policies shall be deemed vested as of the date of the Second Amendment. ~~In addition to reserving the right to comply with the Affordable Housing Policies in any other manner and with any other configuration of units allowed under the Affordable Housing Policies,~~ Developer shall satisfy the Affordable Housing Policies by~~reserves the right to~~ constructing 20 one-bedroom rental units ~~15.38 rental AUE's~~ on the Project Site within a second story to Building "B" in the ~~a one-bedroom~~ configuration shown on Exhibit "B~~,~~" to the Second Amendment and renting such units to individuals and households meeting the 50% of area median income limitation provided in the Affordable Housing Policies. The construction and operation of such rental units will provide 16 Affordable Unit Equivalents ("AUEs"), which is in excess of the project's requirement to construct 15.38 AUEs (calculated based on a 20.5 AUE requirement ~~-~~after being credited with a 25% reduction in AUEs for complying with the 50% of area median income limitation provided in the Affordable Housing Policies). ~~The design of the AUEs shall be as approved by the County and included in Exhibit "BC" to the Second Amendment.~~ Developer may retain ownership of the units constructed on the Project Site. The approval of the construction of the Affordable Unit Equivalents in the quantity and configuration set forth in Exhibit "B~~C~~" shall be subject to Developer's compliance with the operating and deed restriction provisions provided in the Affordable Housing Policies, including in Code Section 10-5-3, except to the extent a specific exception approval is reflected in the following paragraphs.

It is the public policy of Summit County to house employees as close to the workplace as possible, thereby reducing traffic congestion. In order to assure compliance with this policy, Developer shall enter into an agreement (the "Affordable Housing Agreement") with Mountainlands Community Housing Trust (MCHT) or another qualified entity approved by the County, setting forth the following priorities:

First Priority: Individuals and households meeting income limits with at least one person employed by a business located within the Project Site.

Second Priority: Individuals and households meeting the income limits with at least one person employed at a business located south of Interstate 80 and west of Highway 224 in Kimball Junction.

Third Priority: Individuals and households meeting the income limits with at least one person employed at a business located south of Interstate 80 and east of Highway 224 in Kimball Junction.

Fourth Priority: Individuals and households meeting the income limits with at least one person employed at a business located in Summit County.

Fifth Priority: Individuals and households meeting the income limits.

At the time of initial occupancy, Developer shall advertise for qualified tenants for a period of not less than fifteen days and shall thereafter fill the units in accordance with the above priorities from the list of qualified tenants then available. Upon the occurrence of a vacancy, Developer shall review its wait list of qualified tenants (and may advertise for qualified tenants if necessary to obtain a qualified tenant). If a qualified tenant for the First Priority is not located at the time of a vacancy, Developer shall accept the next highest priority potential tenant available at that time.

If a qualified tenant terminates employment which gave them a priority they may continue to occupy the apartment until the termination of their rental agreement. If there are no other potential qualified tenants available in the First, Second or Third Priorities, Developer may renew the rental agreement for a term of not more than one year. In addition, upon a showing of undue hardship on an individual or household formerly employed by a business in the First, Second or Third Priority and upon consent of MCHT or another qualified entity approved by the County, Developer may choose to renew a rental agreement for a term not to exceed one year.

~~the documentation required to qualify tenants on an annual basis,~~ The Affordable Housing Agreement shall also provide for approved rental rates, reporting and auditing to assure compliance with the conditions set forth herein. At a minimum, Developer shall provide a rent roll, setting forth tenants name, unit occupied, rent

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Comment [A2]: Mountainlands would like a 15 day wait period to obtain qualified tenants. Developer would like to simply use its wait list and advertise only if the wait list is deficient.

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charged and tenants gross income at such intervals as may be provided in the agreement. Developer shall pay to MCHT or the other approved entity annually the sum of $500 as a monitoring and stewardship fee to assure compliance. The monitoring and stewardship fee shall increase 3% annually commencing on January 1st each year beginning in 2017 and continuing until sixty (60) years from the date of the Certificate of Occupancy for the building.

In connection with the approval of the quantity and configuration of the Affordable Unit Equivalents shown in Exhibit "B~~C~~," County has made the following determinations: (i) that the design and type of the units is consistent with the character of the surrounding neighborhood and the exterior design and finishes of the balance of the improvements to be located on the Project Site; (ii) the parking provided for the Project as a whole is adequate as shown on Exhibit "B" which includes up to 24 parking spaces that will be designated for the exclusive use of the affordable housing units; (iii) the AUEs shall not offset any commercial density permitted for the Project Site or require the approval of additional density for the Project Site; (iv) in light of the construction of all units within a single structure, the units will not be required to vary in unit price, size, type, or style; and (v) the affordable units shall be entitled to building department and planning department application and permit fee waivers for 75% of the fees for targeting very low income households.

A Certificate of Occupancy shall not be issued on Building "A", as set forth in Exhibit "B", until building permits~~Certificate of Occupancies~~ have been issued and construction commenced on all AUEs within Building "B".

Comment [A3]: Staff has suggested that affordable housing unit COs be issued prior to a CO on Building "A". Developer would like the CO on Building "A" tied to issuance of affordable housing building permits.

(h) Additional Landmark Drive Improvements. Developer shall install those additional improvements to Landmark Drive described in Exhibit "H" to this Second Amendment with such adjustments to design and location as may be reasonably required by the County Engineer ("Landmark Drive Improvements"). Compliance with this requirement shall be achieved prior to the issuance of a C~~c~~ertificate of O~~o~~ccupancy for any building located on the Project Site.

A supplemental traffic analysis shall be undertaken by the Developer at the main access to the project if either of the following conditions occur within two years of receiving the final Certificate of Occupancy (either Building "A" or Building "B"):

(i) If crash records indicate that five or more crashes that involve the failure to yield the right-of-way at the intersection have been reported within a 3-year period, or that three or more such crashes have been reported within a 2-year period.

(ii) If documented complaints of excessive delays of 2 minutes or more leaving the project site, or significant congestion at the main access into the project site along Landmark Drive attributed to the main access.

The traffic analysis shall address the access safety and/or congestion and recommend solutions to one or both conditions as required by the County Engineer. The maximum extent of the Developer's obligation shall be the cost of the supplemental traffic analysis and the infrastructure required to create a "Right-In/Right-Out" for the main access to the Project Site as determined by the County Engineer.

Notwithstanding any other provision in the Development Agreement, (i) the obligation of Developer to make the ~~further~~ Landmark Drive I~~i~~mprovements described in Exhibit "H" shall be a one-time obligation to be performed within the time period set forth above; (ii) the obligation of Developer to install "Right-In/Right-Out" for the main access shall be a one-time obligation triggered by the supplemental traffic analysis set forth above; and (~~i~~ii) under no circumstance shall the Developer be responsible in the future for any additional capacity improvements, signalization, or other improvements on Landmark Drive that are not proportionally shared by all similarly situated landowners and imposed consistent with state law.

The agreement of the County with respect to the Landmark Drive I~~i~~mprovements described in Exhibit "H" shall not limit the future exercise of the police power of the County to make further modifications to the Landmark Drive right-of-way based upon traffic congestion, public safety policies, facts and circumstances. ~~meeting the compelling, countervailing public interest exception to the vested rights doctrine in the State of Utah. (Western Land Equities, Inc., v. City of Logan, 617 P.2d 388 (Utah 1980) or successor case and statutory law). Unless the County declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any such proposed change under the compelling, countervailing public policy exception to the vested rights doctrine.~~

6. Amenities and Facilities. The provisions of Section D.7. of the Development Agreement are hereby amended as follows:

D.7. Amenities and Facilities. Except for the bus stop shelter, the amenities and facilities described in Section D.7. of the Development Agreement have been completed and approved by Summit County including interior trails, Landmark Drive crosswalks, bus stop turnout, onsite detention, Landmark Drive deceleration lane, Landmark Drive sidewalk and Open Space. Developer may modify, but shall not be required to reconstruct in its entirety, any of the completed amenities and facilities to the extent shown on the development configuration contained in the exhibits~~shown in attachments~~ to the Second Amendment ~~without any obligation to reconstruct any portion of such improvements that are not so modified~~. To the extent such amenities and facilities are modified, Developer shall only be obligated to make such further modifications as may be required to integrate

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Comment [A4]: Derrick Radke proposed the trigger a supplemental traffic analysis to the standards within the Manual on Uniform Traffic Control Devises. The maximum obligation of the Developer would be a Right-In/Right-Out main access. Developer opposes this condition.

existing amenities and facilities with new improvements. The bus shelter shall be constructed prior to the issuance of the first Certificate of Occupancy for either Building "A" or Building "B" and shall be in accordance with the bus shelter design approved by the County and included as a part of Exhibit "C" to this~~as amended by the~~ Second Amendment. ~~Except as set forth in this paragraph or Section 5 of this Second Amendment, no additional amenities and facilities have been required in connection with the Second Amendment.~~

The amenities and facilities installed pursuant to this Section D.7. and the additional contributions and facilities provided pursuant to Section D.6 shall constitute all of the community facilities and benefits provided or to be provided by Developer pursuant to the terms of the Development Agreement and which justify the approval of the Development Agreement as amended by the terms of this Second Amendment.

7. Comprehensive Sign Plan Required. The provisions of Section D.8. of the Development Agreement are hereby amended and restated as follows:

D.8. Comprehensive Sign Plan Required. Any comprehensive sign plan previously submitted and approved is hereby superseded by the Amended and Restated Comprehensive Sign Plan contained in Exhibit "I" attached to this Second Amendment, which shall become Exhibit "I" and the approved comprehensive sign plan for purposes of the Development Agreement. The County finds that the Amended and Restated Comprehensive Sign Plan has substantially reduced the signage otherwise permitted under the vested sign plan.

8. Lighting Plan Required. The provisions of Section D.9. of the Development Agreement are hereby amended and restated as follows:

D.9. Lighting Plan Required. Any lighting plan previously submitted and approved is hereby superseded by the lighting plan contained in Exhibit "G" attached to this Second Amendment, which shall become Exhibit "G" and the approved lighting plan for purposes of the Development Agreement.

9. Connectivity to Adjacent Property. The provisions of Section D.10. of the Development Agreement are hereby amended and restated as follows:

D.10. Connectivity to Adjacent Property. Developer shall not be required to provide any easements across the Property in favor of adjacent property or obtain any easements across adjacent property in favor of the Property.

10. Community Trails Required. The provisions of Section D.12. of the Development Agreement are hereby amended and restated as follows:

D.12. Community Trails Required. All required community trails have been constructed and accepted as completed.

11. Construction Mitigation and Management Plan Required. The provisions of Section D.13. of the Development Agreement are hereby amended and restated as follows:

D.13. Construction Mitigation and Management Plan Required. Developer will have no further responsibilities with respect to any Construction Mitigation and Management Plan provided by a predecessor developer. A building permit will not be issued for any facility or structure within Canyon Corners until an adequate Construction Management and Mitigation Plan has been established for Canyon Corners and approved by the County Engineer, who may require changes to address any unforeseen impacts that occur during construction. The plan shall address the following matters specifically, together with any other related matters identified by the Summit County Community Development Director and the Developer.

(a) Revegetation/erosion protection/runoff control,
(b) Wetland and watershed protection; wetlands enhancement plan,
(c) Site grading,
(d) Dust and debris control,
(e) Recycling construction material waste,
(f) Damage to public roadways as a result of construction,
(g) Traffic control/construction management control,
(h) Hours of construction,
(i) Impact of noise on adjacent residential uses, and
(j) Staging and screening of construction materials and equipment.

12. Public Sidewalks Required. The provisions of Section D.14. of the Development Agreement are hereby amended and restated as follows:

D.14. Public Sidewalks Required. All required public sidewalks have been constructed and accepted as completed. Developer shall be responsible for year-round maintenance of the sidewalk, including snow removal, debris removal, and routine maintenance.

13. Approval of Development Improvements Agreement. The provisions of Section D.16. of the Development Agreement are hereby amended and restated as follows:

D.16. Approval of Development Improvements Agreement. A building, grading, or other related development permit will not be issued for any project or any structure within the Project approved in the Canyon Corners SPA until a Development Improvements Agreement, in accordance with the requirements of Chapter 6 of the Code and in a form acceptable to Summit County, has been accepted by Summit County. The Staff shall review the Developer's proposal for a Development Improvements Agreement and provide its recommendation to the County Council. Following the submission of the Staff recommendation to the County Council on the Development Improvements Agreement, the Agreement shall be placed on the Consent Agenda of the County Council for final approval. Developer will have no further responsibilities with respect to any Development Improvements Agreement provided by a predecessor developer. Developer shall enter into a Development Improvements Agreement with respect to the project set forth in this

Second Amendment and its Exhibits. Developer may utilize any available bond or other funding source provided by a predecessor developer to provide assurances under the new Development Improvements Agreements entered into by Developer.

14. Substantial Amendments. The provisions of Section D.22.(a) of the Development Agreement are hereby amended and restated as follows:

D.22. Amendments.

(a) Substantial Amendments. Subject to the Building-specific change standards referenced above, any amendment to this Agreement that alters or modifies the Term of this Agreement, permitted uses, increased density or intensity of use, deletion of any major public amenity described herein, or provisions for reservation and dedication of land, including open space dedications, shall be deemed a "Substantial Amendment" and shall require a noticed public hearing and recommendation by the Planning Commission and a noticed public hearing and decision by the County Council~~Board of County Commissioners~~ pursuant to the Equal Dignities Rule prior to the execution of such an amendment. Unless otherwise provided by law, all other amendments may be executed without a noticed public hearing or recommendation by the Planning Commission.

(b) Administrative Amendments. All amendments to this Agreement that are not Substantial Amendments shall be Administrative Amendments and shall not require a public hearing or recommendation of the Planning Commission prior to the execution by the parties of such an amendment. The Director is hereby empowered, consistent with the Code, to make all final administrative amendment decisions. Adjustments not constituting a Substantial Amendment as defined herein will be deemed approved upon the issue of the applicable building permit if not covered by a specific, separate approval.

(c) Effect of Amendment. Any amendment to this Agreement shall be operative only as to those specific portions of this Agreement expressly subject to the amendment, with all other terms and conditions remaining in full force and effect without interruption.

(d) Second Amendment and Exhibits. The Second Amendment has been approved as a substantial amendment after following all necessary procedures and making all required findings of fact and conclusions of law. For purposes of clarifying the future application of Section 22(a) of the Development Agreement, any subsequent changes to the lighting plan, landscaping plan, or comprehensive sign plan attached as Exhibits to the Second Amendment shall be administrative amendments.

15. Certain Definitions. The definition of Architectural Design Guidelines and all references to those Guidelines in the Development Agreement shall be deleted. All references to

the Board of County Commissioners shall be deemed replaced by referenced to the County Council for all purposes other than historic references to matters that predated the creation of the County Council.

16. Default. The provisions of Section G.1. of the Development Agreement are hereby deemed fully incorporated into this Second Amendment and further amended by adding the following provision:

> G.1. Default. The County confirms that there are no existing events of default under the Development Agreement as of the date of approval of the Second Amendment.

17. Termination for Inaction. The provisions of Section G.3.(a) of the Development Agreement are hereby amended and restated as follows:

> G.3.(a) Termination for Inaction. ~~By approval of the Second Amendment, the County waives any existing grounds for termination of the Development Agreement.~~ The Developer shall be required to proceed with submittal of applications in a timely manner. If no development permit application is applied for during the five (5) year period following the date of approval of the Second Amendment, then this Agreement shall be terminated by the County for inaction and all rights and obligations granted herein shall be null and void. Any development commenced under the terms of this Agreement shall be completed by the expiration of the five-year period after approval of the Second Amendment; however, in the event that construction is commenced, continuous and on-going at the time this Agreement expires, the Developer shall have the right to complete the construction so long as it remains continuous and on-going until a permanent certificate of occupancy is completed. In the event there is a pause in the construction of any one Building for twelve (12) months or longer, the right to develop shall be deemed expired and all permits previously issued shall be revoked. The foregoing shall not require all Buildings to be constructed in a single phase.

18. Duration. The provisions of Section H.4. of the Development Agreement are hereby amended and restated as follows:

> H.4. Duration. The term of this Development Agreement commenced on the original effective date of the Development Agreement. The term of the Development Agreement shall continue for a five-year period following the date of approval of the Second Amendment. Prior to the expiration of that five (5) year period and unless earlier terminated for inaction or default as set forth herein, the Developer may request one (1) additional five (5) year extension of this Agreement from the County Council. The County Council shall review the extension request to ensure that the Developer is in compliance with this Agreement and that the request does not jeopardize the health, safety and welfare of the citizens of Summit County. At the expiration of this Agreement, or the renewal period, the property shall become subject to the then existing Development Code and General Plan and all development rights vested under this Agreement shall expire.

19. Other Exhibits. Exhibits "E,""F" and "H" attached to the Development Agreement are hereby deleted. Exhibit "E" attached to this Second Amendment shall be the landscaping plan for all purposes under the Development Agreement. Exhibit "F" attached to this Second Amendment shall be an exhibit of the detention pond for the Project Site, which the County has agreed has been satisfactorily completed. Exhibit "H" shall be the plan for Landmark Drive improvements referred to in Section D.6(i) above.

20. Developer Notice Address. Section H.10. is amended to provide the following Developer notice address:

CenterCal Properties, LLC
1600 East Franklin Avenue
El Segundo, California 90245
ATTN: Jean Paul Wardy

21. No Other Amendments. Except as set forth in this Second Amendment, the Initial Development Agreement, as previously amended by the Amendment, shall remain in full force and effect and unamended.

(Signatures on following page)

IN WITNESS WHEREOF the parties have caused this Agreement to be executed as of the Effective Date.

DEVELOPER:

CENTERCAL PROPERTIES, LLC

_____

By:
Title: _____

Date:_____

SUMMIT COUNTY:

By and through its County Council:

_____

~~By:~~Kim Carson
~~Title:~~Chair

Date:_____

ATTEST:

_____

Kent Jones
County Clerk

APPROVED AS TO FORM:

_____

David L. Thomas
Chief Civil Deputy

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EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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EXHIBIT B

DEVELOPMENT CONFIGURATION OF CANYON CORNERS

EXHIBIT C

ELEVATIONS FOR THE BUILDINGS
AND OTHER FACILITIES

EXHIBIT D

PERMITTED AND CONDITIONAL USES
AND DENSITIES FOR THE BUILDINGS

EXHIBIT E

LANDSCAPING PLAN

EXHIBIT F

DETENTION AREA

EXHIBIT G

LIGHTING PLAN

EXHIBIT H

LANDMARK DRIVE IMPROVEMENTS

EXHIBIT I

COMPREHENSIVE SIGN PLAN

EXHIBIT J

BICYCLE PROGRAM DESCRIPTION

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CANYON CORNERS DEVELOPMENT AGREEMENT
AMENDED AND RESTATED EXHIBIT "D"
APPROVED USES AND DENSITIES

BUILDING "A"

Density of 43,000 square feet maximum gross density for commercial uses

Permitted Uses consisting of any of the following uses not including drive-up or drive-through facilities:

(i) Retail Sales, Food not to exceed the cumulative amount of approximately 43,000 square feet of density, and including, without limitation, full-line grocery, with bakeries, delis, service of prepared food and meals for on premises consumption and take-out service, including, without limitation, the operation of an in-store brew pub, bar, cafe and/or a delicatessen style or sit down style restaurant, including the cooking required therefor, coffee bar and/or juice bar, wine and liquor sales (for on and off premises consumption) with appropriate state licenses, vitamins, body care products, cosmetics, health care items, beauty aids, plants, flowers, books, magazines, bed sheets, towels and other household linens, clothing, medicinal herbs, naturopathic and homeopathic remedies, nutritional supplements, smoothies and/or fresh fruit drinks, and the sale of other products, merchandise, services and items typically sold in grocery stores or super markets from time to time, including, without limitation, a branch bank, cooking demonstrations and cooking classes, and providing massages, pedicures and other spa type services, and together with uses for office and other purposes ancillary to Retail Sales, Food. (The intent of the foregoing language is to approve the uses for a Whole Foods grocery store as such uses may be modified over time.) ;

(ii) Retail Sales, General, not to exceed 5,000 square feet for each use where the primary use involves the sale of home appliances, home furnishings, carpeting, floor covering, or automotive parts;

(iii) all Retail Sales, General not described in preceding item (ii);

(iv) Retail Sales, Convenience Store;

(v) Offices, Moderate;

(vi) Restaurant, Full Service not to exceed 5,000 square feet for each use if not otherwise within the uses permitted for Retail Sales, Food described in clause (i) above;

(vii) Restaurant, Deli Take-out;

(viii) Recreation and Athletic Facilities, Commercial;

(ix) Banking and Financial Services;

(x) Personal Improvement Services;

(xi) Personal Services;

(xii) Pet Services and Grooming;

(xiii) Repair Services, Consumer; and

(xiv) any other use that is substantially similar to any Permitted Use for Building "A".

Conditional Uses consisting of any of the following uses not including drive-up or drive-through facilities:

(i) any Restaurant, Full Service use that is not otherwise within the uses permitted for Retail Sales, Food described above for Building "A" and that is in excess of 5,000 square feet per use;

(ii) any other Restaurant use that is not a Permitted Use for Building "A";

(iii) Retail Sales, General, in excess of 5,000 square feet for each use where the primary use involves the sale of home appliances, home furnishings, carpeting, floor covering, or automotive parts;

(iv) Offices of any type that is not an Approved Use for Building "A"; and

(v) any other use that (a) is substantially different from a Retail Sales, Food use as described above for Building "A" and any other Permitted Use for Building "A" (b) is among the permitted, conditional, or other uses allowed within a Neighborhood Commercial District in the Snyderville Basin as of the date of the Second Amendment to the Canyon Corners Development Agreement, and (c) does not meet the requirements of a Low Impact Permit.

Low Impact Uses consisting of any use not within one of the above categories that meets Low Impact Permit requirements but not including drive-up or drive-through facilities.

BUILDING "B"

Density of 18,000 square feet maximum gross density for commercial uses and 19,700 for residential uses to be maintained as deed restricted affordable housing.

Permitted Uses consisting of any of the following uses not including drive-up or drive-through facilities:

(i) Retail Sales, General, not to exceed 5,000 square feet for each use where the primary use involves the sale of home appliances, home furnishings, carpeting, floor covering, or automotive parts;

(ii) all Retail Sales, General not described in preceding item (i);

(iii) Retail Sales, Convenience Store;

(iv) Offices, Moderate;

(v) Restaurant, Full Service not to exceed 5,000 square feet for each use;

(vi) Restaurant, Deli Take-out;

(vii) Recreation and Athletic Facilities, Commercial;

(viii) Banking and Financial Services;

(ix) Personal Improvement Services;

(x) Personal Services;

(xi) Pet Services and Grooming;

(xii) Repair Services, Consumer;

(xiii) affordable residential housing; and

(xiv) any other use that is substantially similar to any Permitted Use for Building "B".

Conditional Uses consisting of any of the following uses not including drive-up or drive-through facilities:

(i) Restaurant, Full Service, in excess of 5,000 square feet for each use;

(ii) any other Restaurant use that is not an Approved Use for Building "B";

(iii) Offices of any type that is not an Approved Use for Building "B";

(iv) Retail Sales, General, in excess of 5,000 square feet for each use where the primary use involves the sale of home appliances, home furnishings, carpeting, floor covering, or automotive parts; and

(v) any other use that (a) is substantially different from an Approved Use for Building "B," (b) is among the permitted, conditional, or other uses allowed within a Neighborhood Commercial District in the Snyderville Basin as of the date of the Second

Amendment to the Canyon Corners Development Agreement, and (c) does not meet the requirements of a Low Impact Permit.

Low Impact Uses consisting of any use not within one of the above categories that meets Low Impact Permit requirements but not including drive-up or drive-through facilities.

Roundabout Study

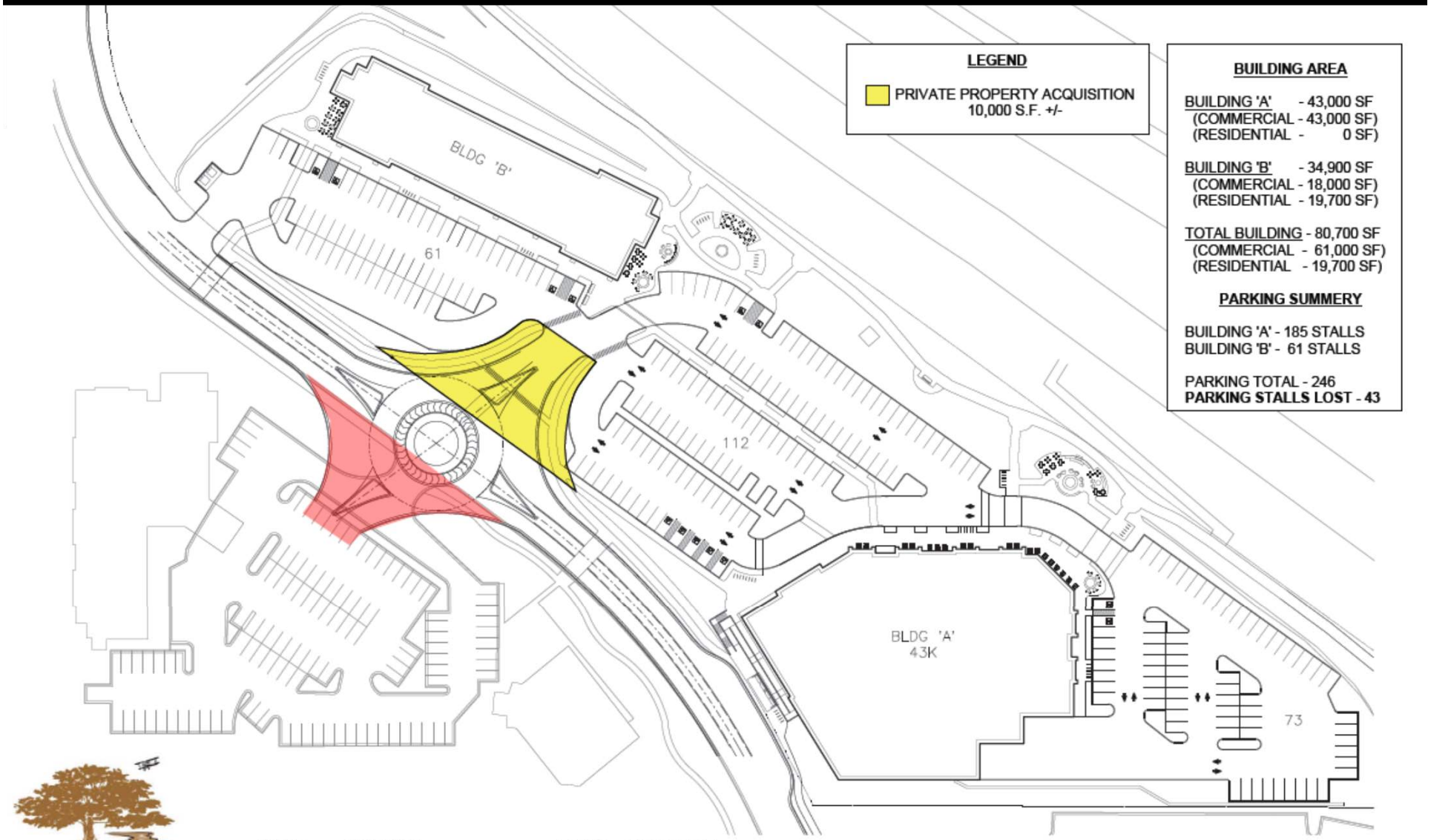
- Canyon Corners was asked to evaluate a roundabout at the existing access
- 3 criteria for development of a roundabout
  - Appropriate grades (4% or less)
  - Equal volume from each approach
  - Right of way

Roundabout Study

- A roundabout at this location will not increase capacity on Landmark Drive
  - Not a roadway capacity enhancing improvement
  - Not included within the County's long range Capital Improvement Plan
  - May improve safety, but empirical evidence shows safety will not be an issue
  - Would require extensive rework of Landmark Drive due to grades and ROW impacts
  - Cost $1M to $3M

Capacity - Roundabout

[redacted]



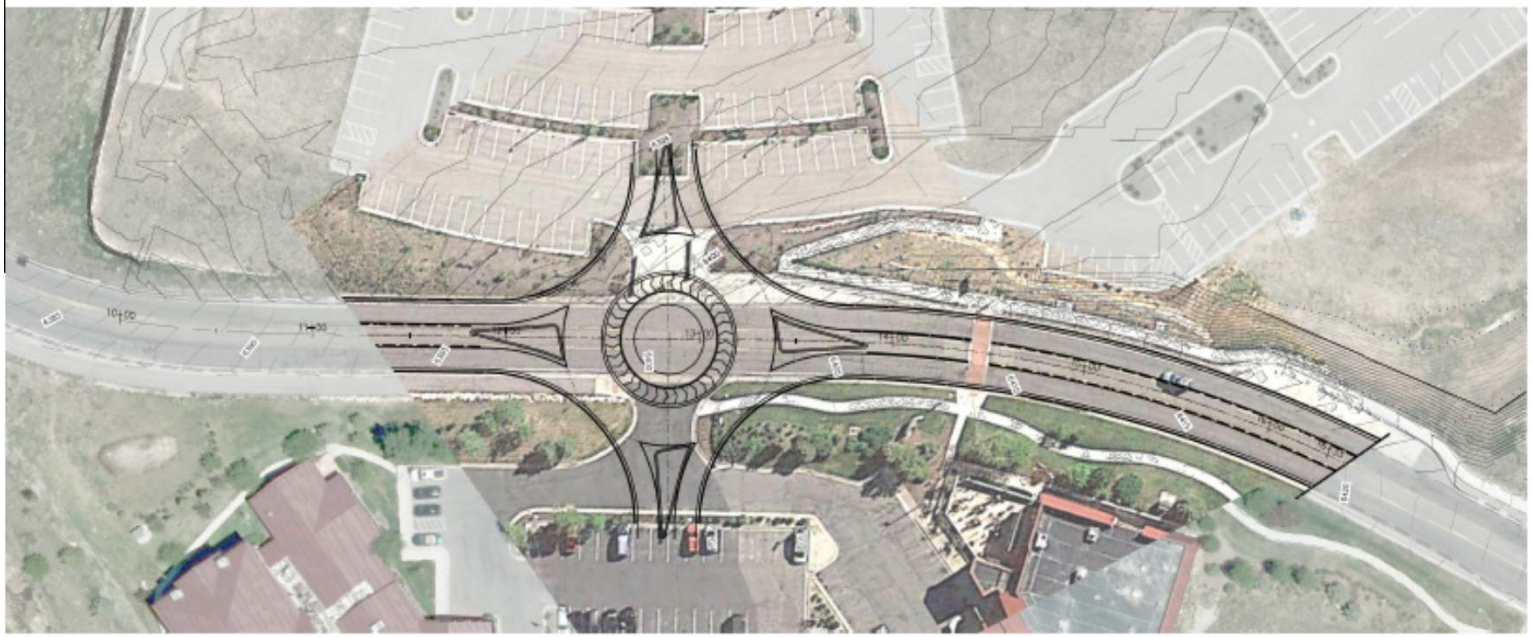
CENTERCAL PROPERTIES, LLC

CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: CLIENT REVIEW

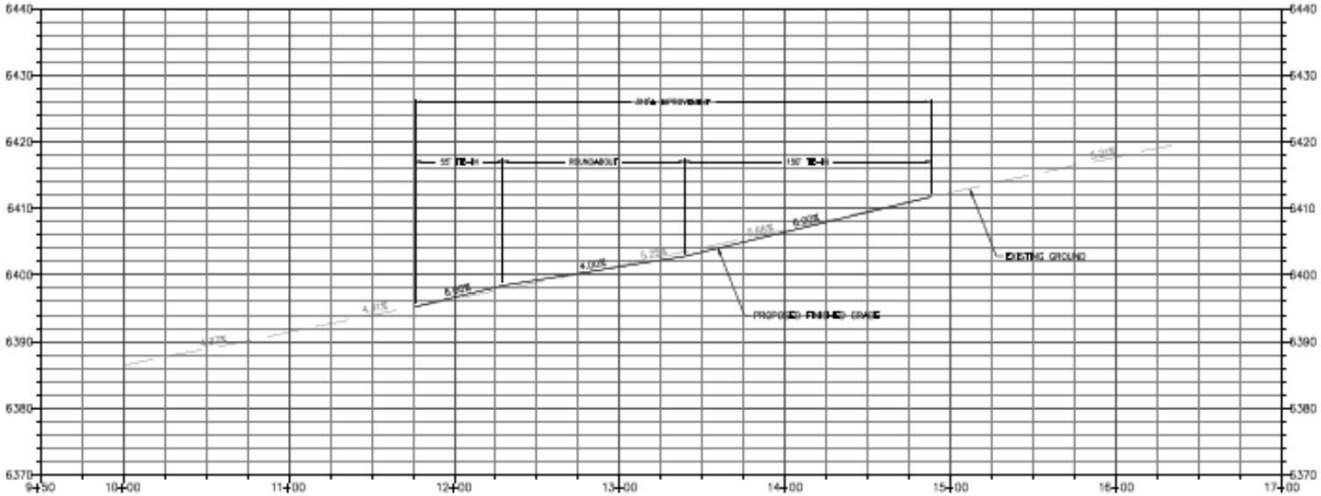
DATE: 07-30-2015
BY: JTW
PROJECT #: 14221

Roundabout Option

CSHQA



LANDMARK DRIVE
PLAN



LANDMARK DRIVE
PROFILE

SCALE OF FEET
FULL SIZE (22x34) 1"=40'

NOT FOR CONSTRUCTION

PSOMAS

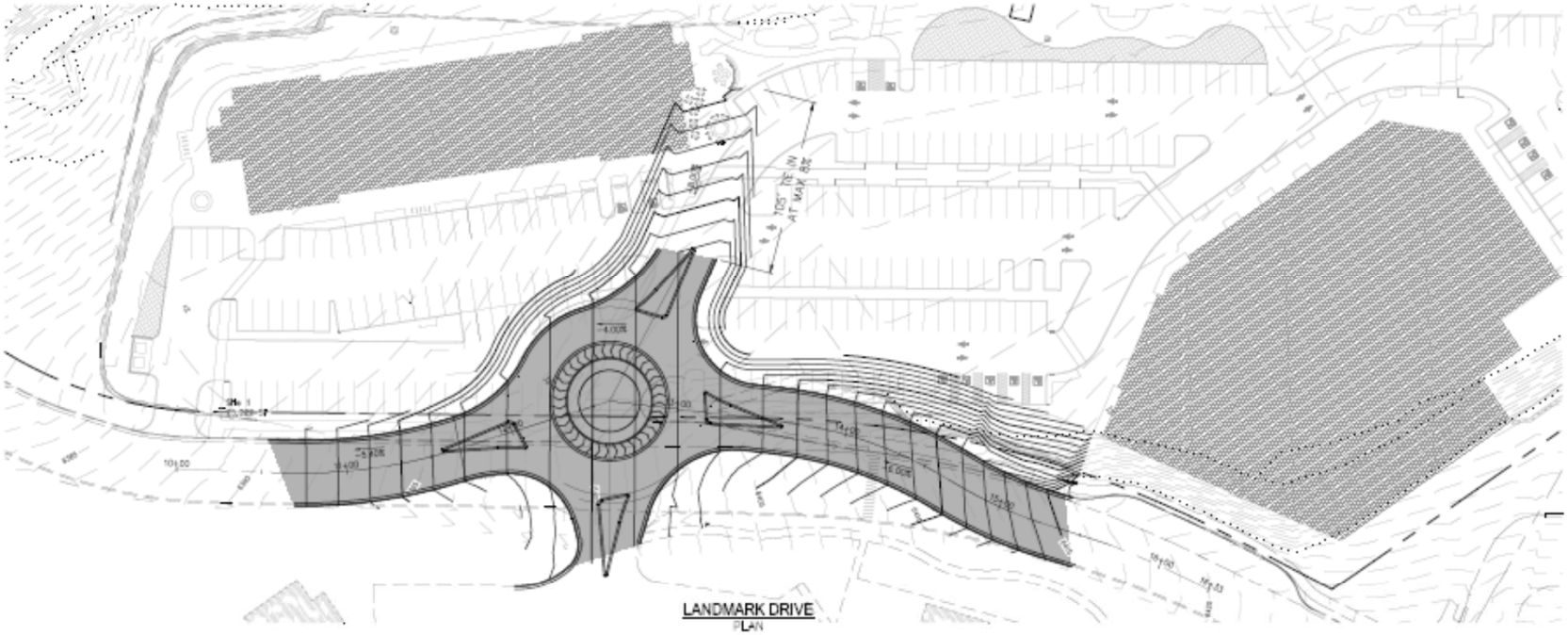
CANYON CORNERS
ROUNDABOUT GRADING

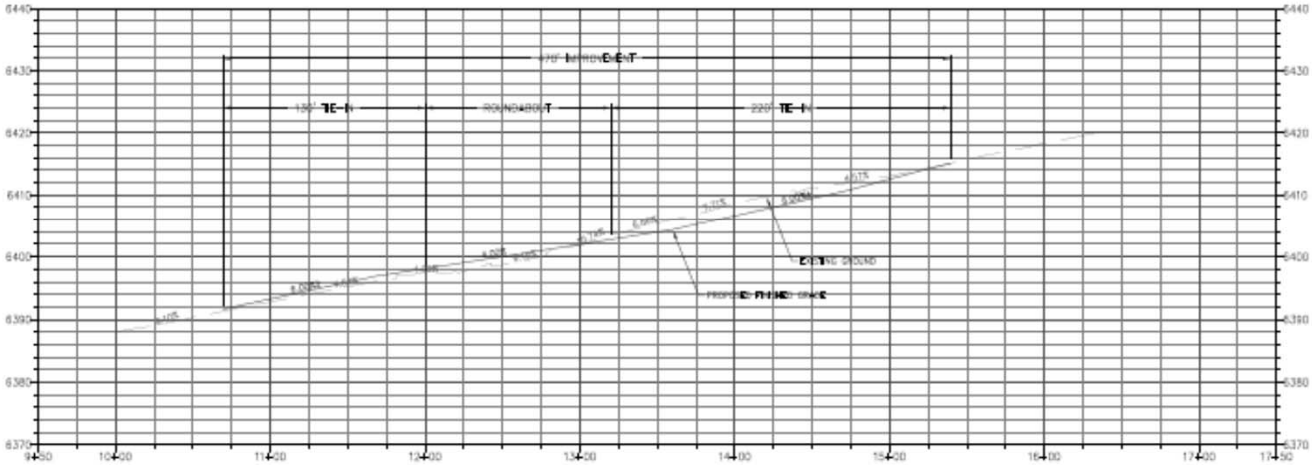
GRADING PLAN AND PROFILE

PP1

SHEET NO. 1 OF 1

OPTION 3
0
20
40
60
100
10
30
50
80
N
HALES ENGINEERING
1220 N 500 W, SUITE 202
LEHI, UT 84043
(801) 766-4343
CANYON CORNERS
SINGLE LANE ROUNDABOUT OPTION 3
HALES ENGINEERING
innovative transportation solutions
SHEET
1
OF
1





SCALE OF FEET
FULL SIZE (22x34) 1"=10'

NOT FOR CONSTRUCTION

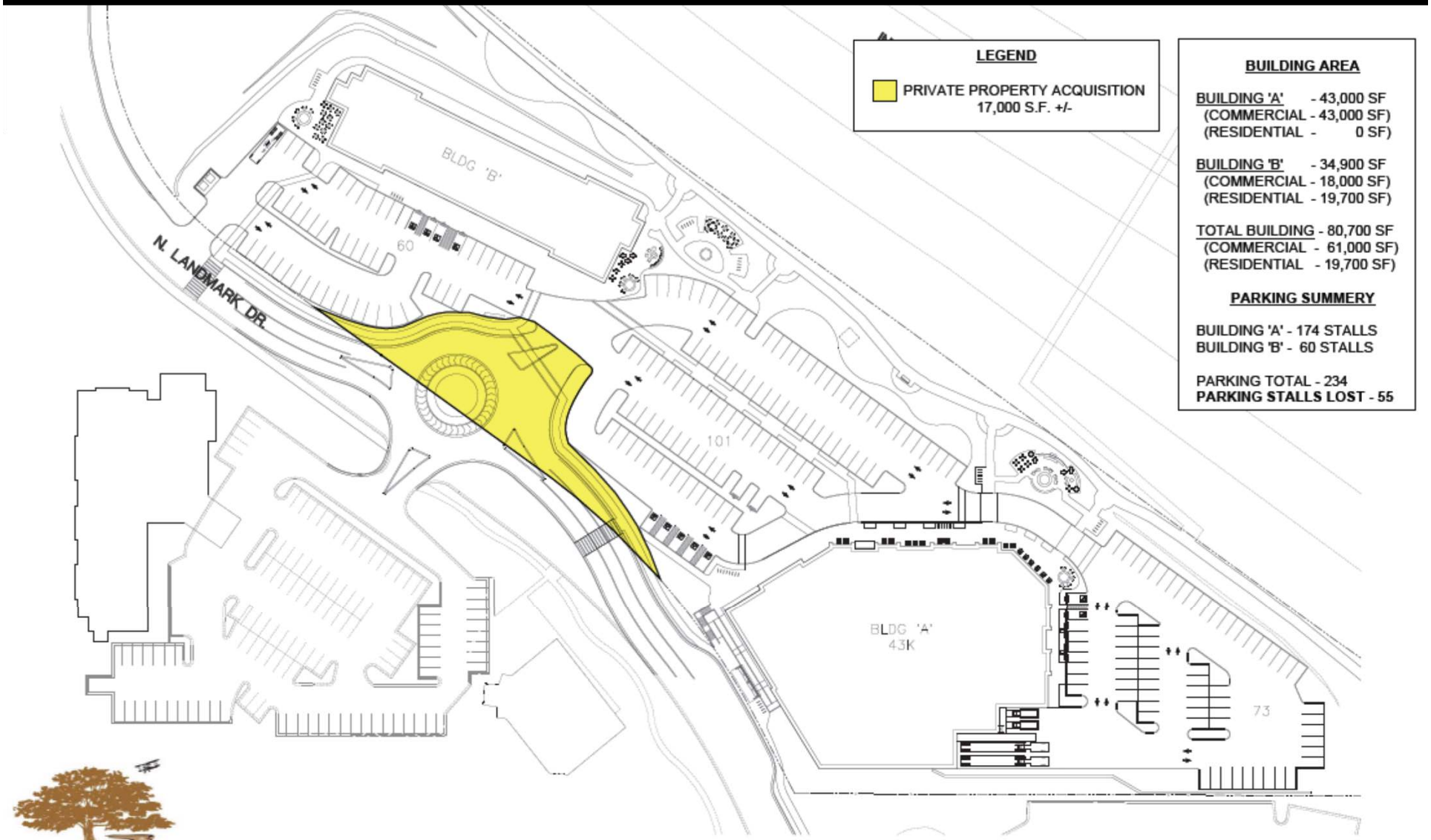
PSOMAS

CANYON CORNERS
ROUNDABOUT GRADING

PP

SHEET NO.

[redacted]



CENTERCAL PROPERTIES, LLC

CLIENT: CENTERCAL
PROJECT: CANYON CORNERS
PACKAGE: CLIENT REVIEW

DATE: 09-09-2015
BY: JTW
PROJECT #: 14221

Roundabout Option

CSHQA

September 1, 2015

The Board of County Council
Summit County, Utah
60 N. Main Street
Coalville, UT 84017

PETITION FOR ANNEXATION TO THE MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT

1. Pursuant to the provisions of Utah Code Annotated (UCA), Section 17D-1-401, as amended, the undersigned petitioner requests that the Board of County Council of Summit County, Utah, annex the property (Property) described in Exhibit A, which is attached hereto and incorporated by reference, into the boundaries of Mountain Regional Water Special Service District (District).

2. The undersigned petitioner(s) own one hundred percent of the Property to be annexed. Therefore, the notice, hearing, and protest requirements of Sections UCA 17D-1-1205, 17D-1-206, and 17D-1-207 do not apply.

3. The undersigned petitioner is desirous of receiving water service from the District for the Property and is willing to abide by all lawful adopted rules and regulations of the District as a condition of receiving water service from the District.

The undersigned petitioner has read and knows the contents of the foregoing Petition, and the fact set forth are true, accurate, and complete to the best of the undersigned petitioner's knowledge and belief.

Christine Eschenfelder Willie Eschenfelder

Dated this 1st of September, 2015.

Attached, please find Exhibit A that includes the property's TAX ID numbers, and legal property description, and map of the boundaries satisfactory to the County Recorder.

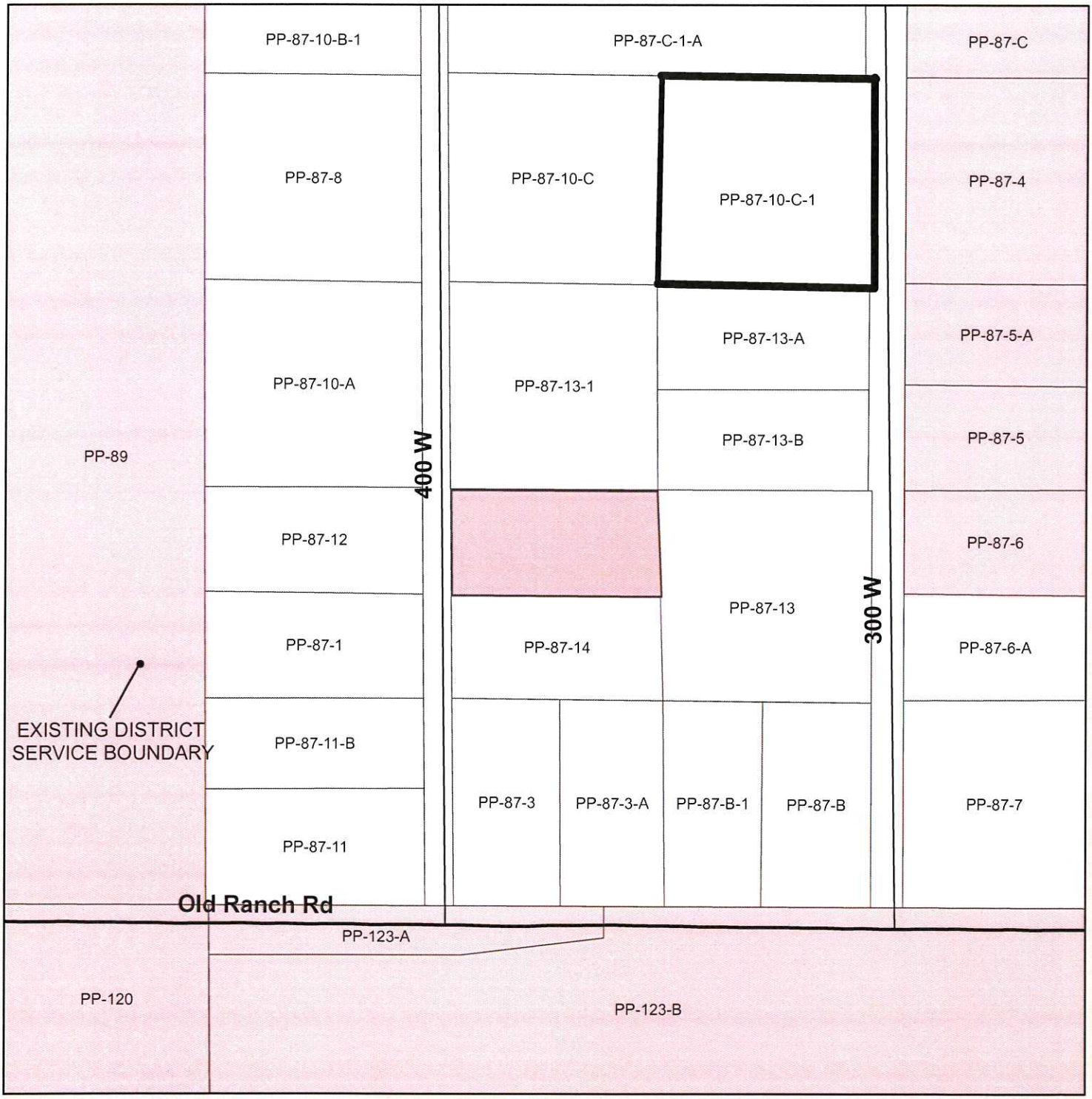
LEGAL DESCRIPTION OF ESCHENFELDER PROPERTY

Section 29 , Township 1S , Range 4E , Acres 4.50 Tax I.D. No. (s): PP-87-10-C-1

BEG AT A PT WH IS W ALONG THE SEC LINE 1713.47 FT & S PERPENDICULAR

TO SD SEC LINE 3973.97 FT FROM THE NE COR OF SEC 29 T1SR4E SLBM; TH S 89*46' E 455.0 FT TO THE W SIDE OF A 60 FT RD; TH N 0*45' WALONG SD RD 440.0 FT; TH N 89*46' W 455.0 FT; TH S 0*45' E 440.0 FT TO THE PT OF BEG CONT 4.50 AC

Map provided by email.



Mountain Regional Water
Special Service District

NORTH

0 150 300 600 900 1,200
Feet

1 inch = 300 feet

By C. Braun
Date: 9/2/2015

ANNEXATION EXHIBIT MAP

PARCEL PP-87-10-C-1

Mountain Regional Water
Resolution No. MRW 15-____

A RESOLUTION ANNEXING CERTAIN REAL PROPERTY TO THE MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT
Tax Parcel Numbers: PP-87-10-C-1

WHEREAS, the Board of Commissioners of Summit County, Utah, established a local district designated as the Mountain Regional Water Special Service District (the "District"), to provide water services within its boundaries; and,

WHEREAS, Utah Code Ann. ("UCA") §17D-1-401 provides that additional land from that specified in the resolution establishing a local district may be annexed to the district in conformance with the applicable procedures; and,

WHEREAS, UCA §17D-1-203 and UCA §17D-1-401(2) provide that the County Council of Summit County, Utah (the "Council"), may be petitioned to annex an area into the District; and,

WHEREAS, there have been numerous annexations into the District since its establishment in 1987; and,

WHEREAS, Christine & Willie Eschenfelder have petitioned the Council to annex its land **PP-87-10-C-1** into the District (the "Petition"). In the Petition, Christine & Willie Eschenfelder represented that it is they solely are the owners of the Parcel; and,

WHEREAS, the Summit County Clerk has duly certified the Petition; and,

WHEREAS, UCA §17D-1-402 provides that the notice, hearing, and protest period do not apply if a petition for annexation of additional area is filed with the signatures of all of the owners of taxable real property; and,

WHEREAS, Christine & Willie Eschenfelder have signed the Petition for annexation;

NOW, THEREFORE, BE IT RESOLVED by the Summit County Council as follows:

Section 1. **Findings**. The Council finds and determines that public health, convenience, and necessity requires that certain land situated in Summit County, State of Utah, being generally described as Tax Parcel, **PP-87-10-C-1** located in Summit County, Utah, and more particularly described in Exhibit A hereto (the "Property"), be annexed into the District.

Section 2. **Annexation**. The Property is hereby annexed into the boundaries of the Mountain Regional Water Special Service District. The Property annexed shall be governed by and become an integral part of the District. Pursuant to this annexation, the owners of the Property shall be entitled to receive the benefit of water services and facilities provided by the District, and shall be subject to the rights, powers and authority of the District, including, without limitation, the right, power and authority to promulgate rules and regulations for the operation of the District, to levy ad valorem taxes on the Property, and to impose such fees and charges as shall be necessary to pay for all or part of the commodities, facilities and services to be provided by the District and for the payment of the District's bonds and other obligations.

Section 3. **Direction**. All officers and employees of the District are hereby directed to take such action as shall be necessary and appropriate to effectuate the provisions of this Resolution and the intent expressed herein.

Section 4. **Effective Date**. This Resolution shall take effect immediately upon its approval and adoption by the Summit County Council.

APPROVED AND ADOPTED this _____ day of _____, 2015.

SUMMIT COUNTY COUNCIL
SUMMIT COUNTY, UTAH

_____
Kim Carson
Chair

ATTEST:

_____
Kent Jones
County Clerk

EXHIBIT

Staff Report

To: Summit County Council
Report Date: September 10, 2015
Meeting Date: September 16, 2015
From: Corrie Forsling & Brian Bellamy
Project Name: Amendment of Summit County Employee Chart of Positions

Type of Item: Decision

A. Background

On December 17, 2014 the Summit County Council adopted the Chart of Positions in conjunction with the 2015 budget. This request proposes a change to the current 2015 Chart of Positions. The proposal is to change one Full-time position into two Part-time positions. The employee count will increase by one, but there will be no change in the net number of FTEs.

The change is:

Treasurer Corrie Forsling requests a change in staffing from 1 Motor Vehicle Supervisor and 3 Full-Time Technicians to 1 Supervisor, 2 Full-Time Techs and 2 Part-Time Techs. She is reconfiguring the staff between the Treasurer's office and Motor Vehicle office to accommodate the temporary personal needs of a valued employee, while providing growth opportunities for others. Deputy Treasurer Erin Matheson will become a Motor Vehicle Technician. Motor Vehicle Supervisor Lynsi Stone will transfer to the Treasurer's office in the Deputy role, and Julie Keyes will be promoted to Motor Vehicle Supervisor.

B. Recommendation

Staff recommends the Council approve this change regarding the 2015 Chart of Positions.

Chart of Positions
2015 Budget Recommendations

Department	Position	2009 Fulltime	2010 Fulltime	2011 Fulltime	2012 Fulltime	2013 Fulltime	2014 Fulltime	2015 Fulltime
Animal Control	Animal Control Administrator	1	1	1				1
	Field Supervisor	1	1	1	1	1	1	1
	Animal Control Officers	5	5	4	3	3	3	4
	Kennel Tech			1	1	1	1	2
Subtotal		7	7	7	5	5	5	8
Assessor's Office	County Assessor	1	1	1	1	1	1	1
	Chief Deputy Assessor	1	1	1	1	1	1	1
	Commercial Appraiser						1	1
	Appraisal Supervisor	1	1	1				
	Assoc CommercialAppraiser	1	1					
	Appraiser/Software Spec	1	1	1	1	1	1	1
	Deputy Appraisers	5	4	4	4	4	4	4
	Assessing Tech	2	2	2	2	2	2	2
Subtotal		12	11	10	9	9	10	10
Attorney's Office	County Attorney	1	1	1	1	1	1	1
	Chief Civil Attorney	1	1	1	1	1	1	1
	Civil Attorneys	2	2	2	2	1	1	2
	Chief Prosecutor						1	1
	Prosecuting Attorneys	3	3	3	3	3	2	2
	Investigator		1	1	1	1	1	1
	Victim Advocate Director	1	1	1	1	1	1	1
	Victim Advocate	1	1					
	Paralegal	1	1	1	1	1	1	1
Subtotal		10	11	10	10	9	9	10
Auditor's Office	County Auditor	1	1	1	1	1	1	1
	Chief Deputy Auditor	1	1	1	1	1	1	1
	Financial Officer						1	
	Management Analyst						1	
	Accountant	1	1	1	1	1		
	Auditing Tech	2	2	2	2	2	2	2
Subtotal		5	5	5	5	5	6	4

Chart of Positions

2015 Budget Recommendations

Department	Position	2009 Fulltime	2010 Fulltime	2011 Fulltime	2012 Fulltime	2013 Fulltime	2014 Fulltime	2015 Fulltime
Clerk's Office	Clerk	1	1	1	1	1	1	1
	Chief Deputy Clerk	1	1	1	1	1	1	1
	Deputy Clerk	1	1	1	1	1	1	1
Subtotal		3	3	3	3	3	3	3
Community Development	Comm Development Director	1	1	1	1	1	1	1
	Office Manager	1	1	1	1	1	1	1
	Planning and Zoning Admin					1	1	1
	Project Coordinator	1	1	1	1	1		
	Administrative Specialist						1	1
	Senior Planner					1	1	1
	Special Projects Manager					1	1	1
	Principle Planner	1	1	1	1	1	1	1
	County Planners	6	5	5	5	2	2	2
	Assistant County Planner		1	1	1	1	1	1
	Code Enforcement Officer	1	1	1	1	1	1	1
	Permit Technician	1		1				
	Secretaries	3	2	2	2	2	2	2
	Chief Building Official	1	1	1	1	1	1	1
	Plan Examiner					1	1	1
	Assistant Plan Examiner							1
	Inspector/Asst Building Offic							1
	Plan Exam/Asst Building Offic	1	1	1	1			
	Building Inspectors	7	5	4	4	4	5	5
Subtotal		24	20	20	19	19	20	22
County Manager's Office	County Manager		1	1	1	1	1	1
	Assistant County Manager	1	1	1	1	1	1	1
	Special Projects Director	1	1					
	Economic Development Coord						1	1
	Sustainability Coordinator		1	1	1	1	1	1
	Comm & Pub Affairs Spec					1	1	1
	Office Manager		1	1	1	1	1	1
	Financial Officer							1
	Management Analyst							1
	Regional Transportation Plan							1
	Receptionist	1	1					
	Historian	1	1	1	1	1	1	1
	Administrative Assistant	1						
	Fair Coordinator							1
	Secretary			1	1	2	1	1
Subtotal		5	7	6	6	8	8	12

Chart of Positions
2015 Budget Recommendations

Department	Position	2009 Fulltime	2010 Fulltime	2011 Fulltime	2012 Fulltime	2013 Fulltime	2014 Fulltime	2015 Fulltime
Engineering	County Engineer	1	1	1	1	1	1	1
	Engineers	2	2	2	2	2	3	3
	Public Works Inspectors	2	2	2	2	2	2	2
	Engineering Tech							1
	Code Enforcement Tech			1	1	1	1	1
	Eng. Sec/Assistant Tech	1	1					
	Secretary					1	1	1
Subtotal		6	6	6	6	7	8	9
Facilties Department	Facilities Manager	1	1	1	1	1	1	1
	Grounds Supervisor	1	1	1	1	1	1	1
	Facilities Tech	1	1	1	1			
	Housekeeping Supervisor	1	1	1	1			
	Housekeepers	4	5	5	4	5	5	5
	Maintenance Techs		2	2	2	2	2	2
	Custodian	2			1	1	1	1
Subtotal		10	11	11	11	10	10	10
Health Department	Health Director	1	1	1	1	1	1	1
	Deputy Health Director	1	1	1	1	1	1	1
	Business Manager	1	1	1	1	1	1	1
	Emergency Response Planner	1	1	1	1	1	1	1
	Administrative Assistant	1	1	1	1	1	1	1
	WIC Director					1	1	1
	Clinical Assistant	4	4	4	4	2	3	3
	Environmental Director	1	1	1	1	1	1	1
	Environmental Hth Scientist	2	2	2	2	2	4	4
	Environmental Hlth Tech	1	1	1	1	1	0	0
	Nurse Director	1	1	1	1	1	1	1
	Nurse Practitioner	1	1	1	1	1	1	1
	Public Health Nurse	5	4	3	3	3	3	3
	Early Intervention Ser. Prov	1	1	1	1	1	1	1
	Early Intervention Interpret	1	1	1	1	1	0	0
	Registered Dietician				1	1	1	1
	Occupational Therapist					1	1	1
	Health Promotions Director	1	1	1	1	1	1	1
	Health Educator	1	1	1	1	1	1	2
Subtotal		24	23	22	23	23	24	25

Chart of Positions
2015 Budget Recommendations

Department	Position	2009 Fulltime	2010 Fulltime	2011 Fulltime	2012 Fulltime	2013 Fulltime	2014 Fulltime	2015 Fulltime
Information Technology	Administrator	1	1	1	1	1	1	1
	LAN Administrator	1	1	1	1	1	1	1
	Info Tech Specialists	4	4	4	3	3	3	3
	GIS Specialists	2	2	2	2	2	2	2
	Web Administrator				1	1	1	1
	Records Imaging Tech	1	1	1	1	1	1	1
Subtotal		9	9	9	9	9	9	9
Justice Court	Judge	1	1	1	1	1	1	1
	Court Administrator					1	1	1
	Senior Court Clerk	1	1	1	1			
	Court Clerk	3	3	3	3	3	3	3
Subtotal		5	5	5	5	5	5	5
Library	Library Director	1	1	1	1	1	1	1
	Assistant Library Director	1	1	1				
	Youth Services Librarian	1	1	1	1	1	1	1
	Technical Services Librarian	1	1	1	1	1	1	1
	Outreach Services Librarian		1	1	1	1	1	1
	Spanish Services Librarian		1	1	1	1	1	1
	Branch Librarians	2	2	2	3	3	3	3
	Administrative Assistant	1	1	1	1	1	1	1
	Library Clerks	6	5	5	6	6	6	6
Subtotal		13	14	14	15	15	15	15
Personnel	Director	1	1	1	1	1	1	1
	Benefits Administrator	1	1	1	1	1	1	1
	HR Tech	1	1	1	1	1	1	1
Subtotal		3	3	3	3	3	3	3

Chart of Positions
2015 Budget Recommendations

Department	Position	2009 Fulltime	2010 Fulltime	2011 Fulltime	2012 Fulltime	2013 Fulltime	2014 Fulltime	2015 Fulltime
Public Works	Public Works Administrator	1	1	1	1	1	1	1
	Deputy Public Works Admin	1						
	Road Superintendant	1	1	1	1	1	1	1
	Project Foreman			2	2	2	2	2
	Mechanics	2	2	2	2	2	2	2
	Secretary	1	1	1	1	1	1	1
	Weed Control Lead	1	1	1	1	1	1	1
	Equip Operator/Weed Enfor	1	2	1	1	1	1	1
	Weed Enforcement Officer			1	1	1	1	1
	Equipment Operators	15	13	11	11	12	12	12
	Equip Operator/Storm Water	3	3	3	3	3	3	3
	Transit Maintenance Tech							1
	Sign Technician		1	1	1	1	1	1
Subtotal		26	25	25	25	26	26	27
Recorder's Office	County Recorder	1	1	1	1	1	1	1
	Chief Deputy Recorder	1	1	1	1	1	1	1
	GIS Technician					1	1	1
	Senior Cadastral Mapper	1	1	1	1	1	1	1
	Deputy Recorder	8	6	4	4	3	3	3
Subtotal		11	9	7	7	7	7	7
Solid Waste	Solid Waste Manager			1	1			
	Solid Waste Superintendant	1	1	1	1	1	1	1
	Landfill Operators	6	6	6	6	6	6	6
	Landfill Spotters	2	2	2	2	2	2	2
	Gate Attendant	1	1	1	1	1	1	1
Subtotal		10	10	11	11	10	10	10
Treasurer's Office	County Treasurer	1	1	1	1	1	1	1
	Chief Deputy Treasurer	1	1	1	1	1	1	1
	Deputy Treasurer	1	2	1	1	1	1	1
	Motor Vehicle Supervisor	1	1	1	1			1
	Motor Vehicle Tech	3	3	3	3	4	4	2
Subtotal		7	8	7	7	7	7	6
USU	Secretary	1	1	1	1	1	1	1
Subtotal		1	1	1	1	1	1	1

Chart of Positions
2015 Budget Recommendations

Department	Position	2009 Fulltime	2010 Fulltime	2011 Fulltime	2012 Fulltime	2013 Fulltime	2014 Fulltime	2015 Fulltime
Sheriff's Office	Sheriff	1	1	1	1	**1**	**1**	**1**
	Chief Deputy		1	1				1
	Office Manager	1	1	1	1	1	1	1
	Secretary	3	2	2	2	2	3	3
	Captain	4	3	1	2	1	1	
	Patrol Lieutenant			1	1	1	1	1
	Patrol Sergeants	6	6	4	5	5	5	5
	Patrol Lead Deputies	4	4	5	5	4	4	
	Deputies	19	18	15	14	14	15	19
	Major Crime Lieutenant			1	1	1	1	1
	Major Crime Sergeant			1	1	1	1	1
	Major Crime Detective			1	4	3	3	3
	Special Ops Lieutenant	1	1	1	1	1	1	1
	Special Ops Sergeant				2	1	1	1
	Detective Sergeant	3	3	2				
	Detectives	8	10	8	6	7	7	7
	Evidence Tech			1	1	1	1	1
	Corrections Lieutenant	1	1	1	1	1	1	1
	Corrections Sergeant	4	4	4	4	5	5	5
	Corrections Lead Deputies	4	4	4	4	4	4	
	Corrections Officers	14	14	13	12	12	12	16
	Corrections Nurse				1	1	1	1
	Court Security Lieutenant			1	1	1	1	1
	Court Security Sergeant	1	1	1	1	1	1	1
	Court Security Lead Deputy	1	1	1	1	1	1	
	Court Security Officer	6	6	6	6	7	7	8
	Inmate Working Deputies			2	2			
	Kitchen Manager	1	1	1	1	1	1	1
	Cooks	2	2	2	2	2	2	2
	Dispatch Supervisor	1	1	1	1	1	1	1
	Lead Dispatchers	2	2	2	2	2	2	2
	Dispatchers	12	12	12	12	12	12	12
Subtotal		99	99	97	98	95	97	97
Total FTE		**290**	**287**	**279**	**278**	**276**	**283**	**293**

PURCHASE REQUISITION

TO: Tom Fisher – County Manager
FROM: Matt Jensen – Purchasing Agent
DATE: September 14, 2015
SUBJECT: Contract – Animal Control General Contractor

Attached, please find three copies of contract for construction services on the Animal Control Building expansion. Keller Construction has worked carefully with EDA Architects and County officials to present a project that meets the County's needs as well as budget considerations. This contract represents $617,401 of the $800,000 budget approved by the Council. The remaining $182,599 is comprised of architect fees, initial construction management costs, utility and other project costs, along with a contingency fund of over 5% of the total project. The project team is set to deliver the project at the prescribed budget levels.

One point of clarification, this project does not include photovoltaic solar power installation. The building is prepped for this installation but actual installation will be dealt with through the Sustainability budget requests for 2016.

As this specific contract exceeds $500,000, approval of this contract is at the County Council level. If the Council finds this contract acceptable, please have them sign and return two copies to Matt Jensen for processing.

AIA® Document A133™ – 2009

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

AGREEMENT made as of the day of in the year
(In words, indicate day, month and year.)

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

Summit County
60 North Main
P.O. Box 128
Coalville, Utah 84017

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

Keller Construction Inc.
2412 South 3400 West
Salt Lake City, Utah 84117

for the following Project:
(Name and address or location)

Summit County ~~Civil Courtroom Addition~~ ANIMAL CONTROL FACILITY EXPANSION AND REMODEL

The Architect:
(Name, legal status and address)

EDA Architects, Inc.
The Boston Building
9 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

The Owner's Designated Representative:
(Name, address and other information)

Mike Crystal
Summit County
60 North Main
P.O. Box 128
Coalville, Utah 84017

The Construction Manager's Designated Representative:
(Name, address and other information)

Mark Huber

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

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Keller Construction Inc.
2412 South 3400 West
Salt Lake City, Utah 84117

The Architect's Designated Representative:
(Name, address and other information)

Thomas Brennan
The Boston Building
9 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™–2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2007, which document is incorporated herein by reference. The term "Contractor" as used in A201–2007 shall mean the Construction Manager.

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ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

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

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager

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

§ 2.1.8 Extent of Responsibility
The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws
The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time
§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

§ 2.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

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

- **.1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- **.4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- **.5** A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

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

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

§ **2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ **2.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the ~~agreed upon~~ agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

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

§ 2.3 Construction Phase

§ 2.3.1 General

§ **2.3.1.1** For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ **2.3.1.2** The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ **2.3.2.1** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ **2.3.2.3** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a ~~cost plus~~ cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ **2.3.2.4** If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services
Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials
Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in ~~AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect,~~ the Owner – Architect Agreement, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

No Cost

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within One Hundred Twenty (120) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the

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mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable ~~upon presentation of the Construction Manager's invoice. Amounts unpaid (~~ Thirty Days (30 Day) from the date the Construction Manager's invoice is received by the Owner. Amounts unpaid Sixty (60) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. *(Insert rate of monthly or annual interest agreed upon.)*

~~%~~ 6 % Six

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

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

$34,947.00

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

Refer to Section 7.1.4 of the General Conditions

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

Refer to Section 7.1.4 of the General Conditions.

§ 5.1.4 ~~Rental rates for Construction Manager-owned equipment shall not exceed percent (%) of the standard rate paid at the place of the Project.~~

§ 5.1.5 Unit prices, if any: N/A
(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit ($0.00)

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

$781,135

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

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§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.
(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements,

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customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 ~~Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.~~

§ 6.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery ~~charges, telephone service at the site and reasonable petty cash expenses of the site office.~~charges..

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

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

§ 6.6 Miscellaneous Costs
§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

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§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 ~~Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.~~

§ 6.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~

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

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

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

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;

.2 Expenses of the Construction Manager's principal office and offices other than the site office;

.3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;

.4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.5 ~~Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;~~
;

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.6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;

.7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and

.8 ~~Costs for services incurred during the Preconstruction Phase.~~

§ 6.9 Discounts, Rebates and Refunds

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 ~~Related Party Transactions~~

§ 6.10.1 ~~For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.~~

§ 6.10.2 ~~If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.~~

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the Twentieth day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the

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Twentieth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than Forty-Five (45) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

.1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;

.2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 Add the Construction Manager's Fee, less retainage of Five percent (5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 ~~Subtract retainage of percent (%) from that portion of the Work that the Construction Manager self-performs;~~

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

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§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

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

.1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect.

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201–2007.
(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

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Type of Insurance or Bond	Limit of Liability or Bond Amount ($0.00)
Payment & Performance Bond	$617,401.00

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[X] Litigation in a court of competent jurisdiction

[ ] Other: *(Specify)*

§ 9.3 Initial Decision Maker
The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time

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of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 ~~above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.~~above,.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement

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without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- **.1** AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- **.2** AIA Document A201–2007, General Conditions of the Contract for Construction
- **.3** AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- **.4** AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- **.5** Other documents:
  (List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
(Printed name and title)	CLAY KELLER - PRESIDENT *(Printed name and title)*

Approved as to form
Summit County Attorney

By _____

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AIA® Document A133™ – 2009 Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)
ANIMAL CONTROL FACILITY EXPANSION AND REMODEL
Summit County C~~ivil Courtroom Addition~~

THE OWNER:
(Name, legal status and address)

Summit County
60 North Main
P.O. Box 128
Coalville, Utah 84017

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

Keller Construction Inc.
2412 South 3400 West
Salt Lake City, Utah 84117

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

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

ARTICLE A.1
§ A.1.1 Guaranteed Maximum Price
Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Six Hundred Seventeen Thousand Four Hundred One ($ 617,401.00), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.
(Provide below or reference an attachment.)

See attached Exhibit 'B' dated September 4, 2015

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

N/A

Init.

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§ **A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price ($0.00)
Exterior Painting Allowance	$5,850.00
Landscaping Allowance	$2,500.00
Electrical Allowance	$1,500.00

§ **A.1.1.5** Assumptions, if any, on which the Guaranteed Maximum Price is based:

Value Engineering modifications to Contract Documents as noted on Exhibit 'C' dated September 4, 2014+

§ **A.1.1.6** The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See attached Exhibit 'D'			

§ **A.1.1.7** The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
See attached Exhibit 'D'			

§ **A.1.1.8** The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)
See attached Exhibit 'E'

Number	Title	Date

§ **A.1.1.9** The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

N/A

ARTICLE A.2
§ **A.2.1** The anticipated date of Substantial Completion established by this Amendment:

January 11, 2016

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

CLAY KELLER - PRESIDENT
(Printed name and title)

Approved as to form
Summit County Attorney
By

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Exhibit B:
Guaranteed Maximum Price
Itemized Statement (6-pages)

PROJECT: SUMMIT COUNTY ANIMAL CONTROL
ADDRESS: 1745 South Hoytsville Rd

DATE: 9/4/2015
TIME:

Bid Locat:

			Liquidated damages budget		$ -
		1075	Canopy sf		$ 582,454
	BUILDING SIZE :	2196	Bldg sf	OH/P @6%	$ 34,947
	ESTIMATED TIME IN WEEKS	16	WKS	BASE BID :	$ 617,401
$281.15	COST PER SF			Prelminary Budget	$ 617,401

GROUP / DIVISION	DESCRIPTION	UNITS		AMOUNT	BID	TOTAL
GENERAL CONDITIONS						
D 01300 ADMIN REQUIREMENTS						
D 014000 QUALITY CONTROL REQUIREMENTS						
D 015000 TEMP FACILITIES AND CONTROLS						
D 016000 PRODUCT REQUIREMENTS						
D 017000 EXECUTION AND CLOSEOUT						
	Bid Bond is required.					
	Job must be done by	April 30 2013				
	CLEANING	2196	SF		$ 0.25	$ 549
	GARBAGE COLLECTION	16	WKS		$ 150	$ 2,400
	JOB OFFICE	16	WKS		$ 20	$ 320
	JOB PHONE	16	WKS		$ 70	$ -
	BUILDERS RISK INSURANCE	1	LS		$ -	$ 1,250
	PERFORMANCE & PAYMENT	1	LS		$ 6,400	$ 6,400
	PLAN CHECK / FEES	1	LS		$ -	not required
	BUILDING PERMIT	1	LS		$ -	not required
	IMPACT FEES:	1	LS		$ -	not required
	UTILITY CONNECTION FEES	1	LS		$ -	not required
	QUALITY CONTR'L TESTING / special inspection	1	LS		$ -	not required
	WINTER CONDITIONS / CONTENGENCY	3	WKS		$ 551	$ 1,653
	SUPERVISION	16	WKS		$ 1,400	$ 22,400
	Security Allowance or overtime	0	hr		$ 32	$ -
	Office Visits	5	EA.		$ 200	$ 1,000
	Misc Labor	80	HRS		$ 20	$ 1,600
	TEMP FENCING	0	LF		$ 4	$ -
	TEMP. LIGHTING	0	LS		$ -	by owner
	TEMP POWER POLE- U.P.L.	1	EA.		$ 555	$ 500
	TEMP POWER	16	WKS		$ 50	not required
	TEMP WATER	16	WKS		$ 10	not required
	TOILET	16	WKS		$ 40	$ 640

BARRICADE COST:	1	LS	$ -			$ -
PROJECT SIGN	1	EA.	$ 250			$ -
AS BUILT DRAWINGS / OPERATION AND MAINT MANUALS						$ -
REGISTERED SURVEYOR: KELLER						$ -
SPECIAL INSPECTION						by owner
Stairs Allowance						
PEPG survey bid is 2230						

SITEWORK

EXCAVATING AND SITEWORK

					$ 59,425
Boerboom	1	ls	$ 56,925.00	$ 56,925.00	
Landscape allowance	1	ls	$ 2,500.00	$ 2,500.00	
Asphalt Paving	1	ls	$ -	$ -	
Building Demolition					

CONCRETE AND MASONRY

CONCRETE / SY 3500 PSI 110
CONCRETE / SY 4000 PSI 115

BUILDING CONCRETE

Building footings 12"	927	lf	$ 6.50	$ 6,023.23	$ 29,162
Building foundations 8"	1078	sf	$ 5.75	$ 6,195.63	
Building flatwork with visqueen / expansion, etc	3244	sf	$ 3.25	$ 10,543.00	
Site Flatwork	1200	sf	$ 3.25	$ 3,900.00	
Flatwork sealer	2000	sf	$ 1.25	$ 2,500.00	
Includes rebar, pump, etc					

BUILDING MASORNY

R Block Masonry by Eldrige	1	ls	$ 59,440.00	$ 59,440.00	$ 59,440

STEEL

STEEL

Steel / Misc	1	ls	$ 1,785.00	$ 1,785.00	$ 19,049
American Building Canopy	1	ls	$ 17,264.00	$ 17,264.00	

CARPENTRY

FRAMING

Joists and Rims	1	ls	$ 6,360.00	$ 6,360.00	$ 24,166
Beams	1	ls	$ 1,850.00	$ 1,850.00	
Sheeting	1	ls	$ 2,356.00	$ 2,356.00	
Hardware / nails	1	ls	$ 950.00	$ 950.00	
Labor	1	ls	$ 12,650.00	$ 12,650.00	

CASEWORK AND TRIM

Artistic Mill	1	ls	$ 24,117.00		$ 12,000
Value Engineering to use Alpha Cabinets	1	ls	$ 12,000.00		

ROOFING, INSULATION AND CAULKING

ROOFING

Mountain West Waterproofing	1	ls	$ 37,300.00	$ 29,201.00	$ 29,201

INSULATION

Foundation Insulation	525	sf	$ 1.75	$ 918.75	$ 6,551
Atchery	1	ls	$ 5,632.00	$ 5,632.00	

DOORS AND WINDOWS

HOLLOW METAL AND WOOD DOORS

Doors and Hardware	1	ls	$ 24,851.00	$ 24,851.00	$ 32,201
Access Controls	1	ls	$ 2,100.00	$ 2,100.00	
Labor	1	ls	$ 3,200.00	$ 3,200.00	
Glass	1	ls	$ 2,050.00	$ 2,050.00	

FINISHES

DRYWALL AND ACOUSTIC CEILINGS

Office Drywall	1	ls	$ 6,820.00	$ 6,820.00	$ 11,620
Alternative Acoustics	1	ls	$ 4,800.00	$ 4,800.00	

FLOOR COVERINGS

Interiorworx	1	ls	$ 1,491.00	$ 1,491.00	$ 1,896
Base	1	ls	$ 405.00	$ 405.00	

PAINTING

Doors Exterior	1	ea	$ 135.00	$ 135.00	$ 10,525
Doors Interior	1	ea	$ 20.00	$ 20.00	
Drywall	1600		$ 0.35	$ 560.00	
Masonry	8800		$ 0.45	$ 3,960.00	
Painting Contengency for exterior paint if required	1	ls	$ 5,850.00	$ 5,850.00	

SPECIALTIES

SIGNAGE and Kennels

lockers	1	ls	2685	$ 2,685.00	$ 67,563
cat condos					
24 x 24 stainless new cat kennel	30	ea	367.2	$ 11,016.00	
24 x 24 steel cage	27	ea	367.2	$ 9,914.40	
24 x 24 steel cage	0	ea	367.2	$ -	
Previously there were 57	57	total			
Indoor Dog Runs					

48 x 72 galvanized w 23 x 68 Door and Grill Panel	13	ea	279	$	3,627.00
96 x 72 side panel, Lower 48" Color ISO w 24" Upper Grill	13	ea	495	$	6,435.00
24 x 32 Guillotine Door w Counterbalance	13	ea	225	$	2,925.00
48" Stainless steel trough cover	13	ea	100	$	1,300.00
48 x 96 Galv Grill Top Panel	13	ea	225	$	2,925.00
Outdoor Dog Runs					
48x72 Galv Kennel Run Gate and panel 23 x 68 door	13	ea	279	$	3,627.00
96x72 Outdoor side panel, lower 48 color iso with 24" upper grill, galv	13	ea	510.3	$	6,633.90
48 x 96 Galvanized Grill Top Panel	15	ea	225	$	3,375.00
Installation	1	ls	5500	$	5,900.00
Shipping	1	ls	3500	$	3,500.00
Sales Tax	1	ls	3700	$	3,700.00

MECHANICAL

ALL PLUMBING AND MECHANICAL DIVISIONS

HVAC

Mechanical	1	ls	72728	$	72,728.00	$ 74,228
Mechanical Contengency	1	ls	1500	$	1,500.00	

PLUMBING

Plumbing	1	ls	36300	$	36,300.00	$ 37,800
Plumbing contengency	1	ls	1500	$	1,500.00	

NO FIRE SPRINKLERS

ELECTRICAL

ALL ELECTRICAL DIVISIONS

ELECTRICAL

Electrical	1	ls	61985	$ 61,985.00	$ 63,485
Electrical Contingency	1	ls	1500	$ 1,500.00	

contingency for transformer and outside power $ 5,000

TRANSFORMER PAD	0	LS	$ 430	$ 430

CONTENGENCY ALLOWANCES BUDGETED			SUB TOTAL	$ 582,454
Landscaping Allowance	$ 2,500.00			
Electrical Allowance	$ 1,500.00		Overhead and Profit 6%	$ 34,947
Allowance to paint building exterior if required	$ 5,850.00		BASE BID :	$ 617,401
				$ 617,401
TOTAL CONTENGENCY	$ 9,850.00			

EXIBIT C

VALUE ENGINEERING
1 PAGE

Tom Brennan

From: Mark Huber <markhuber@kellerconstruct.com>
Sent: Friday, September 04, 2015 11:25 AM
To: Rick Espinosa
Cc: Tom Brennan
Subject: Animal control final budget
Attachments: Summit County Animal Control Preliminary Estimate 09-02-2015.pdf

Rick,

Here is the final budget for the Summit County Animal Control.

It reflects the following Value Engineering Modifications.

- Omit the Asphalt Paving, which will be done by Summit County
- All costs of power to provide a new transformer will be by Summit County.
- Provide only 57 Cat Condos
- Include a wire grid on top of all dog kennels to ensure that the animals cannot jump or climb out of the kennels.
- Simplify the millwork, but include Solid Surface for the front service counter
- Use Architectural Asphalt shingles to match existing in lieu of standing seam roof.
- Remove all existing standing seam roof, remove existing roofing to plywood, install new ice and water shield and re install metal roof at the dormer only.
- The budget also includes contingencies for the following:
    - Landscaping allowance in case we hit sprinklers, or need to add some landscape work
    - Electrical Allowance for un anticipated electrical items
    - Allowance to paint the exterior of the building in case the natural split face block color match unacceptable to Summit County.

Please review for approval and let me know if you need anything adjusted or added before you forward it to Summit County.

Note that it does not include the costs for our Pre Construction Services. So far to date I have 6.5 hours total for pre construction services, Which we would be billing to Summit County at $65.00 / hr. As I believe we are done the total cost for preconstruction services would be $422.00

Mark Huber
Estimator / Project Manager
Keller Construction
2412 South 3400 West
Salt Lake City, UT 84119

markhuber@kellerconstruct.com

office 801-972-1018
mobile 801-891-1787

EXHIBIT D
42 PAGES

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Summit County Animal Control Facility
Expansion and Remodel

THE OWNER:
~~*(Name, legal status*~~ *(Name and address)*
Summit County
60 North Main
P.O. Box 128
Coalville, Utah 84017

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

THE ARCHITECT:
~~*(Name, legal status*~~ *(Name and address)*
EDA Architects, Inc.
The Boston Building
9 Exchange Place, Suite 1100
Salt Lake City, Utah 84111

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All minor details of work which are not shown in the Contract Documents, but are necessary for the proper completion of the Work, shall be considered as incidental, and as being a part of and included with the

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Work for which prices are given in Contractor's Bid, and no extra compensation shall be allowed the Contractor for the performance thereof. If there are any conflicts or inconsistencies within or between documents comprising the Contract Documents, the Contractor shall provide the better quality or greater quantity of Work or materials, applicable unless the Owner directs otherwise in writing.

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

§ 1.2.2.1 The Contractor is responsible for assignment of work divisions, for definition of limits of scope of each subcontract or trade, and for all Subcontractual divisions of the Work. Use by the Contractor of specification section reference for Contractor's convenience in subdivision of the Work shall in no way obligate Owner, Architect or their consultants to render interpretations or decisions, nor to enter nor to be joined in arbitration pertaining to Contractor's use of specification section references.

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

§ 1.2.4 Specification section numbers cited in notes and drawings are intended for informational purposes only, and are not to be construed to be contractual divisions of the Work. The Contractor is responsible for assignment of work divisions, for definition of limits of scope of each subcontract or trade, and for all subcontractual divisions of the Work. Use by the Contractor of specification section reference for Contractor's convenience in subdivision of the Work shall in no way obligate the Owner, Architect or their consultants to render interpretations or decisions, nor to enter nor to be joined in arbitration pertaining to Contractor's use of specification section references.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have

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express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

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

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. <u>However, nothing herein shall be construed to relieve Contractor of the duty to perform the work in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations.</u>

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. <u>However, nothing herein shall be construed to relieve Contractor of the duty to perform the work in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations.</u>

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

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means,

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methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.4 LABOR AND MATERIALS

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

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

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

§ 3.4.4 The Contractor shall give preference to local material suppliers, subcontractors and labor, both skilled and unskilled, including entities with trucks and equipment to the extent that these are available, competent and competitive.

§ 3.4.5 Manufactured articles, materials, equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with manufacturer's printed directions. If specified to contrary, written notice shall be submitted to Architect.

§ 3.5 WARRANTY

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

§ 3.6 TAXES

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

§ 3.7 ~~PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS~~
PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

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

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

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

§ **3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

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

§ **3.8.2** Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 SUPERINTENDENT

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

§ **3.9.2** The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14

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days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably

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withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

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

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity ~~that~~ which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.19 OTHER CONTRACTOR REQUIREMENTS

§ 3.19.1 The Contractor will be responsible for security of the Project Site, the improvements thereon and Contractor's materials and equipment until Final Completion and Final Payment. No protection from vandalism or theft will be provided by the Owner.

§ 3.19.2 The Contractor shall not discriminate in employment on the basis of race, color, religion, sex, national origin or disabilities.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

§ **4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

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

§ **4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

§ **4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ **4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for

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installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Architect or Owner review of shop drawings and submittals does not constitute a Modification of the Contract.

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

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

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after bid opening, but in no case later than two working days after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has

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reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14-day~~ 14 day period shall constitute notice of no reasonable objection.

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

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

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

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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

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

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

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ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

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

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

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

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§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

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

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

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

§ 7.1.4 Costs for the purpose of subparagraph 7.1 shall be:

- .1 The Contractor and the Contractor's Subcontractors shall be allowed a mark-up of 15% of the amount of the cost for the overhead and profit from $0.00 to $10,000.00 and shall not exceed 10% of the amount of the cost for the overhead and profit from $10,000.00 up for work done by their forces.
- .2 The Contractor and the Contractor's Subcontractors shall be allowed a mark-up of not more than ten percent (10%) for overhead and profit on the first Five Thousand Dollars ($5,000.00) of the subcontracted portion of the changed Work, and a mark-up of not more than five percent (5%) for overhead and profit for the subcontracted portion of such changed work in excess of Five Thousand Dollars ($5,000.00).
- .3 This overhead and profit mark-up is to cover the Contractor's additional payment and Performance Bond premiums, insurance premiums and home office overhead and profit. The overhead and profit mark-up will not be paid on sales or use taxes.

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

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

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.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

.6 Cost for the purpose of Subparagraph 7.3.7: The Contractor and the Contractor's Subcontractors shall be allowed a mark-up of 15% of the amount of the cost for the overhead and profit from $0.00 to $10,000.00 and shall not exceed 10% of the amount of the cost for the overhead and profit from $10,000.00 up for work done by their forces.

.7 The Contractor and the Contractor's Subcontractors shall be allowed a mark-up of not more than ten percent (10%) for overhead and profit on the first Five Thousand Dollars ($5,000.00) of the subcontracted portion of the changed Work, and a mark-up of not more than five percent (5%) for overhead and profit for the subcontracted portion of such changed work in excess of Five Thousand Dollars ($5,000.00).

.8 This overhead and profit mark-up is to cover the Contractor's additional payment and Performance Bond premiums, insurance premiums and home office overhead and profit.

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

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

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

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

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The working day shall mean any calendar day except Saturday, Sunday and legal holidays at the place of building.

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

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

.1 Contractor shall expeditiously commence the Work within ten (10) days following and after written Notice to Proceed, from the Owner, and shall substantially complete all Work included in this Contract in a manner satisfactory to the Owner in the number of days or by the date specified in the Contract.

.2 The Contractor and the Contractor's surety shall be liable for and shall pay the Owner the sums hereinafter stipulated as liquidated damages for each calendar day of delay until the Work is substantially complete, and/or for each calendar day of delay until the Work is 100% complete, including all punch-list items.

Dollars ($250.00)/Day

.3 Should the Contractor fail to complete the Work within the time agreed upon in the Contract Documents, or within such additional time as may have been allowed by extension, there shall be deducted from any moneys due or that may become due the Contractor the sum as stated above. Such sum is fixed and agreed upon by the Owner and Contractor as liquidated damages due the Owner by reason of the inconvenience and added costs of administration, engineering, and supervision resulting from the Contractor's default, and not as a penalty.

.4 Permitting the Contractor to continue and finish the Work or any part of the Work after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner of any of his rights under the Agreement.

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§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

§8.3.4 Notwithstanding any provisions of the Contract Documents to the contrary, the Contract Time shall not be extended and the Contract Sum shall not be increased for any delay in any element of the Work:

.1 Which does not totally exhaust the "float" available to the Contractor for such element of the Work; or

.2 resulting from any acts, omissions or failures of the Contractor or its Subcontractors, Sub-subcontractors or any one directly or indirectly employed by any of them or anyone for whose acts they may be liable to carry out their respective obligations in accordance with the Contract Documents, whether or not such delay is concurrent with any delay caused by the Owner.

§8.3.5 If the Contractor's performance of the Work is delayed by reason of any cause or causes beyond the control of the Owner and the Contractor (force majeure delays), the Contractor's sole remedy shall be an extension of the Contract Time which fairly reflects any critical path delay in completion the Work. The Contractor shall not be entitled to an increase in the Contract Sum for the additional costs caused by such delays.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section ~~9.2,~~ 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. In making such progress payments, there shall be retained five percent (5%) of the requested amount until Final Completion of the entire work.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the ~~site~~ site, subject to the review of the Owner and Architect, for

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. The Owner may make payment by joint check or directly to a Subcontractor if the Owner determines that such method of payment is necessary in order to assure that the Work will be free and clear of liens, claims, security interests or encumbrances.

§ 9.4 CERTIFICATES FOR PAYMENT

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

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

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

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.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

.7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.6 PROGRESS PAYMENTS

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

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

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

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

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

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

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

§ 9.7 FAILURE OF PAYMENT

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

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§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

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

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

§ 9.8.6 Upon Substantial Completion of the entire work, Owner will pay a sum sufficient to increase the total payment to 95% of the Contract Price except that the Owner shall have the right, but is not compelled to do so nor liable for not doing so, to retain out of any payment due, an amount sufficient to pay any claim after all payments have been made; the Contractor hereby specifically covenants and agrees to refund to the Owner all money and expense that the Owner may pay or incur in discharging any lien or claim against the Contractor or the Owner on account of such work.

§ 9.8.7 Written acceptance of the Certificate by the Contractor shall warrant to the Owner that the work has been performed according to and complies with plans and specifications, that all work is performed in a good and workmanlike manner and that there are no undisclosed latent dangers in the construction.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required by the Contract Documents.
- **.4** Any Owner liability arising from defects or dangers known to Contractor that were not disclosed in writing to the Owner.

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

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ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

.4 Third parties who are invited onto the site or who may otherwise reasonably be expected access to the site.

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

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

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

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

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

.1 Contractor shall institute a safety program at the start of construction to minimize accidents, such program to continue to end of job and conform to the latest general safety orders of the State Industrial Commission as contained in the State Occupational Safety and Health Act. The manual of Accident Prevention in Construction may be used as a guideline for safety practices.

.2 The presence of an observer or other persons representing the Owner and/or the Architect and/or his representative shall not in any way be construed as to limit the Contractor's full responsibility for safety of all persons on the premises.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. In the event the Contractor becomes aware of any toxic or hazardous waste on the site, he shall notify the Owner without delay.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not

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insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

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

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

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

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

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies rated A- or better by the A.M. Best Company and lawfully authorized to do business in the jurisdiction in which the Project is located such

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insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;

.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

.4 Claims for damages insured by usual personal injury liability coverage;

.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

.6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required ~~by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.~~in subparagraph 11.1.1.2, 11.1.1.2, and 11.1.1.4 shall written for not less than the limits specified below:

§11.1.2.1 Worker's Compensation as required by subparagraph 11.1.1 shall provide the following coverage limits:

a. State statutory limits.

b. Applicable federal requirements, if applicable.

c. Employers liability: $100,000.00.

§ 11.1.2.2 Comprehensive Automobile Liability as required by subparagraph 11.1.1.6 shall provide the following limits and include coverage for all owned, hired and non-owned vehicles:

a. A combined single limit of $2,000,000 each occurrence for bodily injury.

§ 11.1.2.3 General Liability Insurance as required by 11.1.1.3, 11.1.1.4, 11.1.1.5, and 11.1.1.7 shall provide the following limits and coverage.

a. commercial General Liability Coverage form including coverage for premises-operations, independent contractors and products and completed operations with no exclusions applicable to the contractual obligations assumed under paragraph 3.18.

Limits of coverage as follows:
$2,000,000 General aggregate limit.
$1,000,000 Products-completed operations aggregate.
$1,000,000 Each occurrence (bodily injury or property damage combined).

§ 11.1.2.4 Commercial umbrella or excess liability insurance:

a. $4,000,000 Each occurrence/aggregate.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning

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reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's ~~consultants~~ Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, ~~earthquake, flood,~~ windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.1.1 The Contractor shall secure a Builders' Risk Insurance Policy.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, Architect and all consultants, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 ~~This~~ The property insurance shall cover portions of the ~~Work~~ work stored off the site, and also portions of the ~~Work~~ work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner;

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this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE
The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION
The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The ~~Owner shall have the right to require the Contractor to~~ Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder ~~as~~ or stipulated in ~~bidding requirements~~ the bidding documents or specifically required in the Contract Documents on the date of execution of the ~~Contract.~~ Contract or within seven days.

§ 11.4.1.1 Bonds shall be executed on Standard Performance Bond and Material Payment Bond Form AIA Document A312 with amount shown on each part to 100% of the total amount payable by terms of the Contract. Surety shall be a company licenses to do business in the same locality as the project and shall be acceptable to the Owner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

§ 12.3.1 No work, which may be defective in its construction, or deficient in any way of the requirements of these Contract Drawings, will be considered as accepted in consequence of the failure of the inspector connected with the Work, to point out said defects or deficiencies during construction, and the Contractor shall correct any imperfect Work, whenever discovered, before the final acceptance of the Work by the Owner, and all Work done shall be subject to the guarantee as set forth in the Agreement and Bond.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

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§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.1.1 Notwithstanding the foregoing in this paragraph 13.5.1, the Owner shall pay for tests and inspections to be performed by independent testing laboratories. All other duties of the Contractor with respect to testing, inspections and approvals remain unchanged.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

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§13.8 ADDITIONAL RESPONCIBILITIES § 13.8.1 Definition of Owner's (Project) Representative: The terms "Owner's Representative" and "Owner's Project Representative" shall be defined hereby as the person who is authorized to act on behalf of the entity identified as "Owner" in the Agreement between the Owner and Contractor. These terms shall be considered as equal and interchangeable throughout these Contract Documents.

§ 13.8.2 Owner's Responsibilities: The Contractor will be furnished, free of charge, 4 copies of the Project Manual and one digital CD of the Drawings and Project Manual. All other copies of the Drawings and Project Manual required by the Contractor are to be paid for by the Contractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead and profit on the Work not executed.~~termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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§ 15.1.3 CONTINUING CONTRACT PERFORMANCE
Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST
If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Any claim by the Contractor for an increase in the Contract time shall include a critical path method analysis demonstrating all adverse impacts of the alleged delay upon the critical path of the Work. The Claim shall include a written "cause and effect" narrative identifying all relevant events and underlying assumptions made by the Contractor in compiling its critical path method analysis.

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

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

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION
§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial

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User Notes: (1966032965)

Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The

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party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

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EXHIBIT D.1:
LIST OF SPECIFICATIONS
4 PAGES

Summit County Animal Control Building
1745 South Hoytsville Road
Coalville, Utah 84017

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Summit County Animal Control Building
1745 South Hoytsville Road
Coalville, Utah 84017

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STAFF REPORT

To:	Summit County Council
From:	Sean Lewis, County Planner
Date of Meeting:	September 16, 2015
Type of Item:	Appeal of an Administrative Decision
Process:	Judicial Review

Recommendation:

Staff recommends that the Summit County Council consider the issues outlined in this report regarding the application and vote to uphold the decision of the Community Development Director to deny the Sign Permit for the StayParkCity.com wall signage.

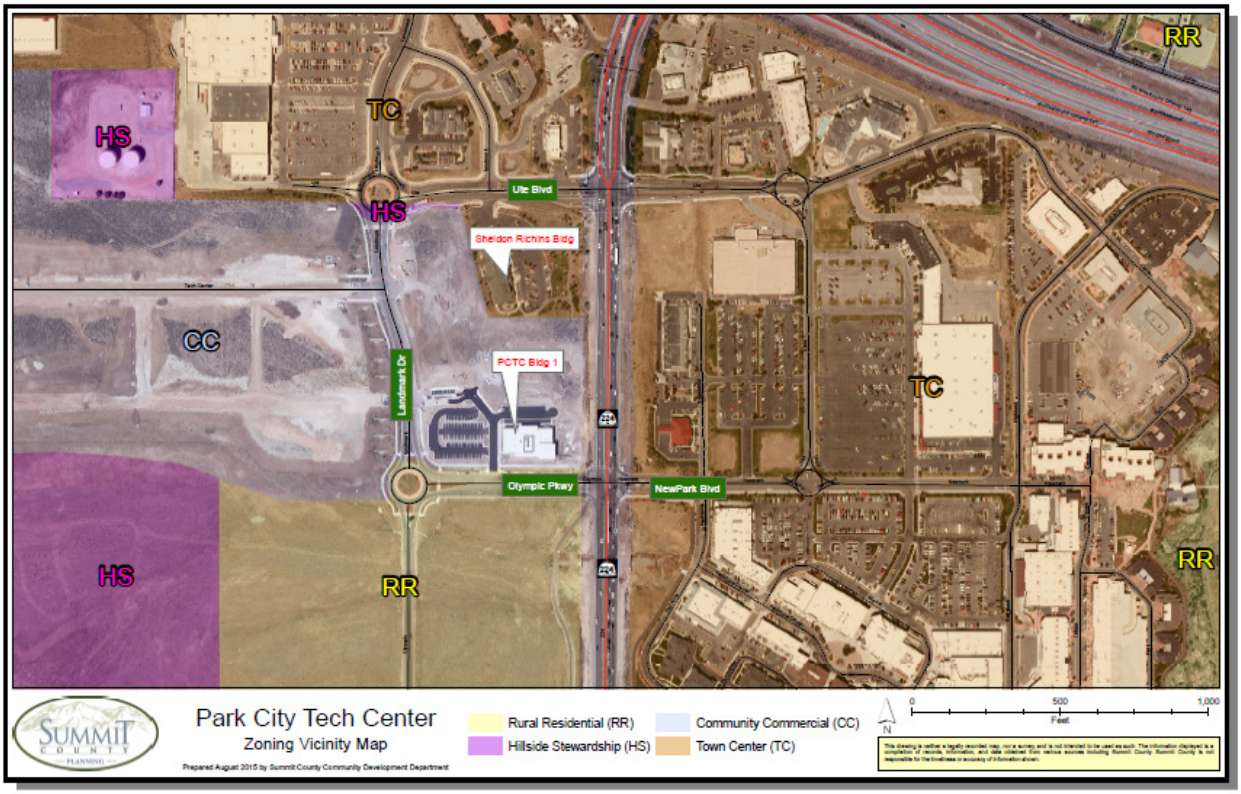
Project Description:

Project Name:	StayParkCity.com wall sign
Appellant(s):	Kenzie Coulson
Property Owner(s):	ASRL/DV LLC
Location:	1794 Olympic Parkway #4
Zone District:	Specially Planned Area (SPA) – Community Commercial (CC)
Parcel Number:	PCTCC-A-4
Type of Process:	Appeal of Adminstrative Decision – Low Impact Permit (Sign Permit)
Final Land Use Authority:	Summit County Council

Proposal:

The appellant recently applied for a sign permit to install a wall mounted sign measuring 19 feet x 3 feet (57 square feet). Staff denied the permit based upon the findings that StayParkCity.com was not considered by the Community Development Director to be a “major tenant” as required by the Park City Tech Center Comprehensive Sign Plan to qualify for a wall mounted sign (See Determination Letter, Exhibit A). The appellant is appealing that decision.

Vicinity Map:



Background:

The 30,000 square foot Park City Tech Center Building A was developed as part of the Summit Research Park Development, now known as the Park City Tech Center. The Summit Research Park Development Agreement was approved by the Summit County Board of County Commissioners via Summit County Ordinance 706 on December 10, 2008.

Building A was subdivided into a 4 unit condominium via a plat recorded as entry #951402 (Exhibit B). StayParkCity.com leases a small portion of unit 4 and is a software development firm that builds software to assist with booking hotel rooms. According to the appellant, StayParkCity.com has 3 full time employees, and 6 contract laborers (Letter to Summit County, Exhibit C).

In June 2015, a Sign Permit Application was submitted to the Community Development Department requesting a wall mounted sign measuring 19 feet x 3 feet (57 square feet). Per the Park City Tech Center Comprehensive Sign Plan (Exhibit D), wall mounted signs are limited to “major tenants”. Neither the Summit research Park Development Agreement, nor the Park City Tech Center Comprehensive Sign Plan define the term “major tenant”. Based upon the evidence provided regarding the amount of leased space and the number of employees of

StayParkCity.com, the Community Development Director concluded that StayParkCity.com did not qualify as a "major tenant" that would be eligible for a wall mounted sign.

Standard of Review:

Appeals of Decisions made by the community Development Director must be made to the County Council within ten (calendar) days of the final written decision by the Community Development Director (Director), or designated planning staff member. Pursuant to Utah Code Annotated §17-27a-705 and 707, the appellant has the burden of proving that the land use authority, i.e. the Director, erred. On appeal, the County Council shall review the matter de novo, that is, reviewing the facts and evidence "anew," and shall determine the correctness of the Director's decision in its interpretation and application of the Snyderville Basin General Plan and Section 10-8-2 of the Code governing signs.

Recommendation:

Staff recommends that the Summit County Council consider the issues outlined in this report regarding the application and vote to uphold the decision of the Community Development Director to deny the Sign Permit for the StayParkCity.com wall signage.

Findings of Fact:

1. The application submitted requested: one (1) wall mounted sign measuring 19 feet x 3 feet (57 square feet).
2. Section 10.8.2.D of the Snyderville Basin Development Code allows "uses that are subject to the provisions of a previously approved comprehensive sign plan may choose to continue the use of that sign plan…"
3. The Park City Tech Center has established a comprehensive sign plan that governs signage within the development.
4. The 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan was approved by the Summit County Manager on 15, August 2013, and is the comprehensive sign plan for the Park City Tech Center project.
5. As stated in the 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan, "The intent of the sign plan for PCTC is to provide functional signs that allow businesses and uses to be easily identified, but to also be balanced in scale and to minimize competition with and disturbance to the architectural features of the buildings."
6. The 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan states that "It is the general intent of PCTC that individual buildings will not have monument signs, particularly those buildings that are multi-tenant in nature." (emphasis added)
7. The 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan also states, "The intent of signs on buildings shall be to identify major tenants, but balance this by minimizing impact on the building frontage and appearance."
8. The applicant has indicated that Stay Park City .com has a total of three (3) employees.

9. The Summit County Community Development Department denied the application for a wall sign via letter dated June 29, 2015.
10. An application to appeal was submitted to the Community Development Department on July 9, 2015.

Conclusions of Law:

1. Based upon the number of employees and size of leased space within the Park City Tech Center Building A, Stay Park City .com is not considered to be a “Major Tenant” and therefore is not eligible for the requested wall signage.

Attachments:

Exhibit A – Determination Letter
Exhibit B – Recorded Condominium Plat
Exhibit C – Appeal Letter
Exhibit D – PCTC Comprehensive Sign Plan

SNYDERVILLE BASIN SIGN PERMIT

June 29, 2015

Jim Simmons
All Seasons Resort
1794 Olympic Parkway, Suite 200
Park City, UT, 84098 *via email: jim@asrlodging.com*

Re: Stay Park City .com Sign Permit Application

Dear Mr. Simmons,

This letter is to confirm that on June 29, 2015, the Summit County Community Development Department denied a Sign Permit for The Stay Park City .com signs. Both proposed signs are hereby denied. Staff found the application does not comply with the criteria outlined in the Park City Tech Center Comprehensive Sign Plan and Section 10-8-2 of the Snyderville Basin Development Code, as articulated in the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. The application submitted requested two signs: 1) one (1) wall mounted sign measuring 19 feet x 3 feet (57 square feet) and; 2) one (1) monument sign measuring 19 feet x 3 feet (57 square feet).
2. Section 10.8.2.D of the Snyderville Basin Development Code allows "uses that are subject to the provisions of a previously approved comprehensive sign plan may choose to continue the use of that sign plan…"
3. The Park City Tech Center has established a comprehensive sign plan that governs signage within the development.
4. The 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan was approved by the Summit County Manager on 15, August 2013, and is the current comprehensive sign plan for the Park City Tech Center project.
5. As stated in the 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan, "The intent of the sign plan for PCTC is to provide functional signs that allow businesses and uses to be easily identified, but to also be balanced in scale and to minimize competition with and disturbance to the architectural features of the buildings."
6. The 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan states that "It is the general intent of PCTC that individual buildings will **not** have monument signs, particularly those buildings that are multi-tenant in nature." (emphasis added)
7. The 2nd Amendment to the Park City Tech Center Comprehensive Sign Plan also states, "The intent of signs on buildings shall be to identify major tenants, but balance this by minimizing impact on the building frontage and appearance."
8. The applicant has indicated that Stay Park City .com has a total of two (2) employees.

Exhibit A

Conclusions of Law

1. The Summit County Community Development Department has concluded that based upon the number of employees, Stay Park City .com is not considered to be a “Major Tenant” and therefore is not eligible for the requested wall signage.
2. Monument signs are not allowed at this location.

Please be aware that this denial may be appealed to the Summit County Council within ten (10) calendar days from the date of the decision.

If you have any questions, please feel free to contact me at (435) 336-3134 or by email, slewis@summitcounty.org

Sincerely,

Sean Lewis
County Planner

Exhibit A

Elevations PROOF: Stay Park City Building Sign

5.17.15

stayparkcity.com

36in H

228in W

Location: 1794 Olympic Parkway,Park City, UT 84098

← West East →

PARK CITY SIGNS

1250 Iron Horse Drive
Park City, UT 84060
435.649.1235
info@parkcitysign.com

Client: All Seasons Resort
Contact: Jim Simmons
435-575-0420
jim@asrlodging.com

Materials: Formed Plastic Channel 3D Letters & Logo
Mounted using 4” Stud Mounts

Exhibit A

*artwork for approval- this artwork is submitted for your proposed project. It is not to be used, reproduced, copied, nor exhibited without written consent of park city signs

PARK CITY TECH CENTER BUILDING "A" CONDOMINIUM PLAT

LOCATED IN THE NORTHWEST QUARTER
OF SECTION 19,
TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

CROSS ACCESS EASEMENT DESCRIPTION

Beginning at a point on the Westerly Boundary Right-of-Way Line of the Landmark Drive, depicted on Park City Tech Center Subdivision Plat as found and on file at the Summit County Recorder's Office, Entry No. 909756 said point being South 89°43'31" East 689.21 feet along the Section Line and South 1600.15 feet from the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian; and running

thence South 82°21'00" East 7.52 feet;
thence South 89°56'00" East 23.30 feet;
thence Northeasterly 16.52 feet along the arc of a 233.50 foot radius curve to the left (center bears North 00°04'00" East and the chord bears North 88°02'23" East 16.52 feet with a central angle of 04°03'13");
thence North 86°00'47" East 68.82 feet;
thence Northeasterly 15.60 feet along the arc of a 25.50 foot radius curve to the left (center bears North 03°59'13" West and the chord bears North 68°29'03" East 15.36 feet with a central angle of 35°03'28");
thence North 50°57'20" East 11.89 feet;
thence Northeasterly 8.05 feet along the arc of a 10.00 foot radius curve to the left (center bears North 39°02'40" West and the chord bears North 27°52'53" East 7.84 feet with a central angle of 46°08'55");
thence North 61°22'18" East 21.55 feet;
thence South 39°02'40" East 117.60 feet;
thence Southeasterly 57.92 feet along the arc of a 85.00 foot radius curve to the right (center bears South 50°57'20" West and the chord bears South 19°31'20" East 56.81 feet with a central angle of 39°02'40");
thence South 123.57 feet;
thence Southeasterly 17.47 feet along the arc of a 28.00 foot radius curve to the left (center bears East and the chord bears South 17°52'27" East 17.19 feet with a central angle of 35°44'54");
thence North 89°44'53" West 40.88 feet;
thence Northeasterly 18.03 feet along the arc of a 28.00 foot radius curve to the left (center bears North 53°06'35" West and the chord bears North 18°26'43" East 17.72 feet with a central angle of 36°53'25");
thence North 122.94 feet;
thence Northwesterly 37.48 feet along the arc of a 55.00 foot radius curve to the left (center bears West and the chord bears North 19°31'20" West 36.76 feet with a central angle of 39°02'40");
thence North 39°02'40" West 70.57 feet;
thence Northwesterly 22.60 feet along the arc of a 15.00 foot radius curve to the left (center bears South 50°57'20" West and the chord bears North 82°12'40" West 20.52 feet with a central angle of 86°20'00");
thence Southwesterly 32.05 feet along the arc of a 58.50 foot radius curve to the right (center bears North 35°22'40" West and the chord bears South 70°19'04" West 31.65 feet with a central angle of 31°23'28");
thence South 86°00'47" West 68.82 feet;
thence Southwesterly 18.85 feet along the arc of a 266.50 foot radius curve to the right (center bears North 03°59'13" West and the chord bears South 88°02'24" West 18.85 feet with a central angle of 04°03'13");
thence North 89°56'00" West 21.04 feet;
thence South 81°26'43" West 9.10 feet;
thence Northwesterly 35.37 feet along the arc of a 863.51 foot radius curve to the left (center bears North 89°55'59" West and the chord bears North 01°06'23" West 35.36 feet with a central angle of 02°20'48") to the point of beginning.

Contains 14,365 Square Feet or 0.330 Acres

LEGEND

- EXISTING STREET MONUMENT
- PROPOSED STREET MONUMENT
- SECTION CORNER SET 5/8"
- ENSIGN ENG. LAND SURV. — REBAR WITH YELLOW PLASTIC CAP, OR NAIL STAMPED "ENSIGN ENG. & LAND SURV."
- PU&DE — PU&DE = PUBLIC UTILITY & DRAINAGE EASEMENT
- BOUNDARY LINE
- SECTION LINE
- CENTER LINE
- EASEMENT LINE

PLAT NOTES

1. Lot 5 are subject to the Summit Research Park Development Agreement, dated December 10, 2008, therefore all lot owners hereby consent to the further subdivision of Lot 5 as the PARK CITY TECH CENTER LOT 5 AMENDED and for the uses outlined in the development agreement.
2. Nothing in this subdivision plat shall prohibit future lot line adjustments and/or further subdivision of any parcel, in each case in compliance with applicable ordinances and the development agreement.
3. As depicted in Lots 5A and 5B, Owner is dedicating to the Snyderville Basin Special Recreation District, a special district ("SBSRD"), a perpetual non-exclusive easement 20' in width for a public trail. The specific location of this trail will be agreed to in the future by Owner and SBSRD, and are to be completed in accordance with the Summit Research Park Development Agreement and Recreation District rules at the time of Final Site Plan approvals.

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD
C1	818.51'	277.62'	19°26'00"	N9°38'59"W	276.29'
C2	928.45'	76.41'	4°42'56"	S17°53'03"E	76.39'

LINE TABLE

LINE	BEARING	LENGTH
L1	N19°21'59"W	19.53'

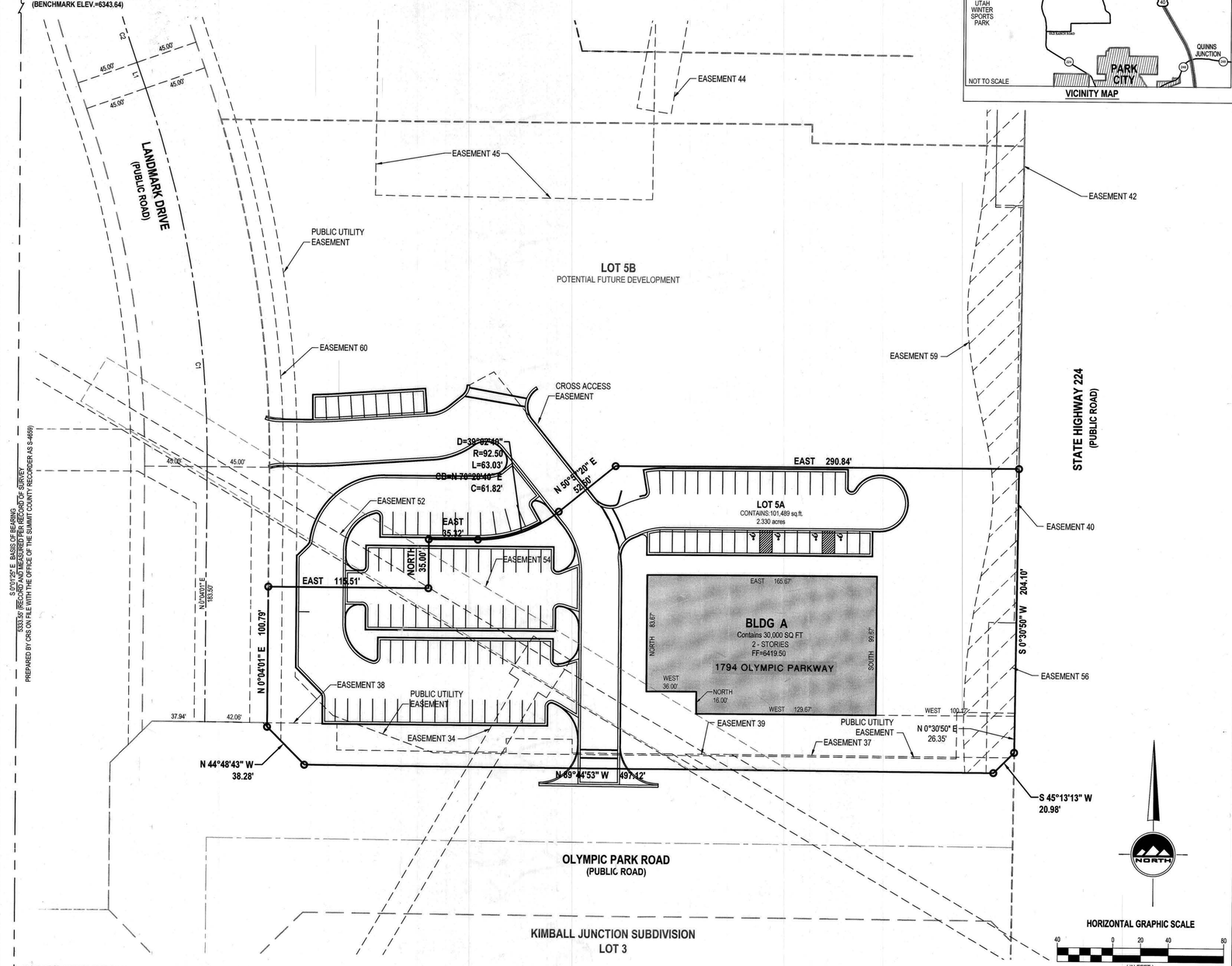
EASEMENT TABLE

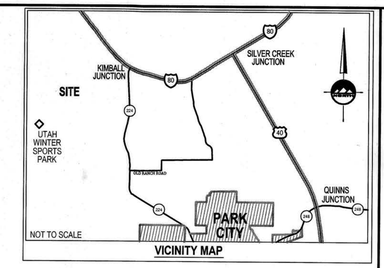
NO.	TYPE	ENTRY NO.	BOOK	PAGE	RECORDED DATE
34	16.5' EASEMENT FOR GAS PIPELINE	77995	Z	302	October 15, 1948
		564981	1318	175	May 8, 2000
37	CUT/FILL SLOPE EASEMENT	547084	1284	224	August 23, 1999
38	DRAINAGE, CUT/FILL, SLOPE EASEMENT	547082	1284	220	August 23, 1999
39	DRAINAGE, CUT/FILL, SLOPE EASEMENT	547083	1284	222	August 23, 1999
40	CONTROLLED ACCESS	626593	1463	789	August 1, 2002
42	20' SEWER LINE EASEMENT	536563	1249	689	April 20, 1999
		314853	540	153	October 25, 1989
44	25' INGRESS/EGRESS EASEMENT	395396	778	604	January 5, 1994
		618776	1449	686	May 10, 2002
45	WELL WATER LINE EASEMENT	536566	1249	695	April 20, 1999
52	16.5' EASEMENT FOR GAS PIPELINE	76761	Z	56	October 23, 1947
		77994	Z	301	October 15, 1948
		76762	Z	57	October 23, 1947
		77993	Z	300	October 15, 1948
54	GAS LINE EASEMENT	888177	2009	1068	November 12, 2009
56	SEWER LINE EASEMENT	536562	1249	687	April 20, 1999
59	PUBLIC TRAIL EASEMENT	909756	-	-	October 28, 2010
60	10' PUBLIC UTILITY EASEMENT				

ROCKY MOUNTAIN POWER NOTES:
UTILITIES SHALL HAVE THE RIGHT TO INSTALL, MAINTAIN, AND OPERATE THEIR EQUIPMENT ABOVE AND BELOW GROUND AND ALL OTHER RELATED FACILITIES WITHIN THE PUBLIC UTILITY EASEMENTS IDENTIFIED ON THIS PLAT MAP AS MAY BE NECESSARY OR DESIRABLE IN PROVIDING UTILITY SERVICES WITHIN AND WITHOUT THE LOTS IDENTIFIED HEREIN, INCLUDING THE RIGHT OF ACCESS TO SUCH FACILITIES AND THE RIGHT TO REQUIRE REMOVAL OF ANY OBSTRUCTIONS INCLUDING STRUCTURES, TREES AND VEGETATION THAT MAY BE PLACED WITHIN THE P.U.E. THE UTILITY MAY REQUIRE THE LOT OWNER TO REMOVE ALL STRUCTURES WITHIN THE P.U.E. AT THE LOT OWNER'S EXPENSE, OR THE UTILITY MAY REMOVE SUCH STRUCTURES AT THE LOT OWNER'S EXPENSE. AT NO TIME MAY ANY PERMANENT STRUCTURES BE PLACED WITHIN THE P.U.E. OR ANY OTHER OBSTRUCTION WHICH INTERFERES WITH THE USE OF THE P.U.E. WITHOUT THE PRIOR WRITTEN APPROVAL OF THE UTILITIES WITH FACILITIES IN THE P.U.E.

ROCKY MOUNTAIN POWER APPROVES THIS PLAT SOLELY FOR THE PURPOSE OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS. ROCKY MOUNTAIN POWER MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT CONSTITUTE ABROGATION OR WAIVER OF ANY OTHER EXISTING RIGHTS OBLIGATIONS OR LIABILITIES PROVIDED BY LAW OR EQUITY. THIS APPROVAL DOES NOT CONSTITUTE ACCEPTANCE, APPROVAL OR ACKNOWLEDGEMENT OF ANY TERMS CONTAINED IN THE PLAT, INCLUDING THOSE SET FORTH IN THE OWNER'S DEDICATION AND THE NOTES AND DOES NOT CONSTITUTE A GUARANTEE OF PARTICULAR TERMS OF ELECTRIC UTILITY SERVICE

QUESTAR NOTE:
QUESTAR APPROVES THIS PLAT SOLELY FOR THE PURPOSE OF CONFIRMING THAT THE PLAT CONTAINS PUBLIC UTILITY EASEMENTS. QUESTAR MAY REQUIRE OTHER EASEMENTS IN ORDER TO SERVE THIS DEVELOPMENT. THIS APPROVAL DOES NOT CONSTITUTE ABROGATION OR WAIVER OF ANY OTHER EXISTING RIGHTS, OBLIGATIONS OR LIABILITIES PROVIDED BY LAW OR EQUITY. THIS APPROVAL DOES NOT CONSTITUTE ACCEPTANCE, APPROVAL OR ACKNOWLEDGMENT OF ANY TERMS CONTAINED IN THE PLAT, INCLUDING THOSE SET IN THE OWNERS DEDICATION AND THE NOTES AND DOES NOT CONSTITUTE A GUARANTEE OF PARTICULAR TERMS OF NATURAL GAS SERVICE. FOR FURTHER INFORMATION PLEASE CONTACT QUESTAR'S RIGHT-OF-WAY DEPARTMENT AT 1-800-366-8532.





VICINITY MAP

SURVEYOR'S CERTIFICATE

I, PATRICK M. HARRIS do hereby certify that I am a Licensed Land Surveyor, and that I hold Certificate No. 286882 as prescribed under laws of the State of Utah. I further certify that by authority of the Owners, I have made a survey of the tract of land shown on this plat and the description correctly describes the land surface upon which there has been or will be constructed the Park City Tech Building "A" Condominium . I further certify that the Park City Tech Building "A" Condominium Plat is accurate and has been prepared in compliance with the provisions of the Utah Condominium Ownership Act, and that the same has been surveyed and staked on the ground as shown on this plat, and that the building dimensions are or will be as shown on this plat.

BOUNDARY DESCRIPTION

ALL OF LOT 5A PARK CITY TECH CENTER LOT 5 SUBDIVISION ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE

Contains 101,489 Square Feet or 2.33 Acres

June 12, 2012
Date

PATRICK M HARRIS
P.L.S. 286882

PROFESSIONAL LAND SURVEYOR No. 286882 PATRICK M. HARRIS STATE OF UTAH
6-12-12

OWNER'S DEDICATION

Known all men by these presents that I / we, the undersigned owner (s) of the above described tract of land, having caused a survey to be made and the condominium plat to be prepared, hereafter known as the

PARK CITY TECH CENTER BUILDING "A" CONDOMINIUM PLAT

do hereby consent to the recordation of this Plat in accordance with the Utah Condominium Ownership Act.
In witness whereof I / we have hereunto set our hand (s) this 13 day of June A.D., 2012

By: By:
By: By:

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF UTAH
County of Salt Lake)S.S.

On the 13th day of June A.D., 2012, personally appeared before me, the undersigned Notary Public, in and for said County of Salt Lake in the State of Utah, who after being duly sworn, acknowledged to me that He/She is the Manager of Boyer Snyderville Junction I, L.C. a Limited Liability Company and that He/She signed the Owner's Dedication freely and voluntarily for and in behalf of said Limited Liability Company for the purposes therein mentioned and acknowledged to me that said Corporation executed the same.

MY COMMISSION EXPIRES: April 4, 2016
NOTARY PUBLIC RESIDING IN Salt Lake COUNTY.

NOTARY PUBLIC State of Utah My Commission Expires on: April 4, 2016 Comm. Number: 654881

LENDER'S CONSENT

KNOWN ALL MEN BY THESE PRESENTS:
That we, the undersigned lender on the above described tract of land hereby acknowledges that said land is to be subdivided into lots and streets to be hereafter known as PARK CITY TECH CENTER BUILDING 'A' CONDOMINIUM PLAT, as set forth on this plat and, the undersigned lender does hereby consent to and approve said dedication, as set forth in this plat, for the purposes and uses therein stated.

Dated this 25TH day of JUNE A.D., 2012

By:
Name: Erik Bengtzen
Its: Vice President

LENDERS ACKNOWLEDGMENT

STATE OF UTAH
County of Salt Lake)S.S.

On the 25th day of JUNE A.D., 2012 Erik Bengtzen personally appeared before me, the undersigned Notary Public, in and for said County of SLC in the State of Utah, who after being duly sworn, acknowledged to me that He/She is the Vice President of Wells Fargo Bank and that the above instrument was duly acknowledged and said Plat was authorized for recordation and was signed in behalf of said Corporation by authority of a resolution of its Board of Directors for the purposes therein mentioned and acknowledged to me that said Corporation executed the same.

MY COMMISSION EXPIRES: 10/15/2015
NOTARY PUBLIC RESIDING IN Salt Lake COUNTY.

Notary Public State of Utah Expires: Oct 15, 2015

DEVELOPER
BOYER SNYDERVILLE JUNCTION LC
90 SOUTH 400 WEST, SUITE 200
SALT LAKE CITY, UT 84101-1365

UTILITY EASEMENT APPROVALS:
ROCKY MOUNTAIN POWER DATE 7-16-12
QUESTAR DATE 7/18/2012

COUNTY ASSESSOR
REVIEWED AND ACCEPTED BY THE SUMMIT COUNTY ASSESSOR THIS 2 DAY OF August 20 12
COUNTY ASSESSOR

PARK CITY TECH CENTER BUILDING "A" CONDOMINIUM PLAT
LOCATED IN THE NORTHWEST QUARTER
OF SECTION 19,
TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE & MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

ENSIGN
SALT LAKE CITY: 45 W. 10000 S. Suite 500, Sandy, UT 840470, Phone: 801.255.0529, Fax: 801.255.4449
LAYTON: Phone: 801.547.1100
CEDAR CITY: Phone: 435.865.1453
TOOELE: Phone:435.843.3590
WWW.ENSIGNUTAH.COM

SHEET 1 OF 3
PROJECT NUMBER : 5113A
MANAGER : RQE
DRAWN BY : BBG
CHECKED BY : PMH
DATE : 5/17/12

SUMMIT WATER DISTRIBUTION COMPANY APPROVAL
WE ARE THE SUMMIT WATER DISTRIBUTION COMPANY. REVIEW FOR CONFORMANCE TO SUMMIT WATER DISTRIBUTION STANDARDS AND ACCEPTED THIS 13th DAY OF June 20 12
GENERAL MANAGER

SNYDERVILLE BASIN WATER RECLAMATION DISTRICT
REVIEWED FOR CONFORMANCE TO SNYDERVILLE BASIN WATER RECLAMATION DISTRICT THIS 13th DAY OF June 20 12
BY:

SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT
APPROVED AND ACCEPTED THIS 13TH DAY OF June 20 12
DISTRICT ADMINISTRATOR

PARK CITY FIRE PROTECTION DISTRICT APPROVAL
APPROVED AND ACCEPTED THIS 13th DAY OF JUNE 20 12
FIRE MARSHAL

LAND USE AUTHORITY
APPROVED AND ACCEPTED ON BEHALF OF THE SUMMIT COUNTY COUNCIL BY THE SUMMIT COUNTY MANAGER PER THE SUMMIT RESEARCH PARK DEVELOPMENT AGREEMENT THIS 2 DAY OF August 20 12
COUNTY MANAGER

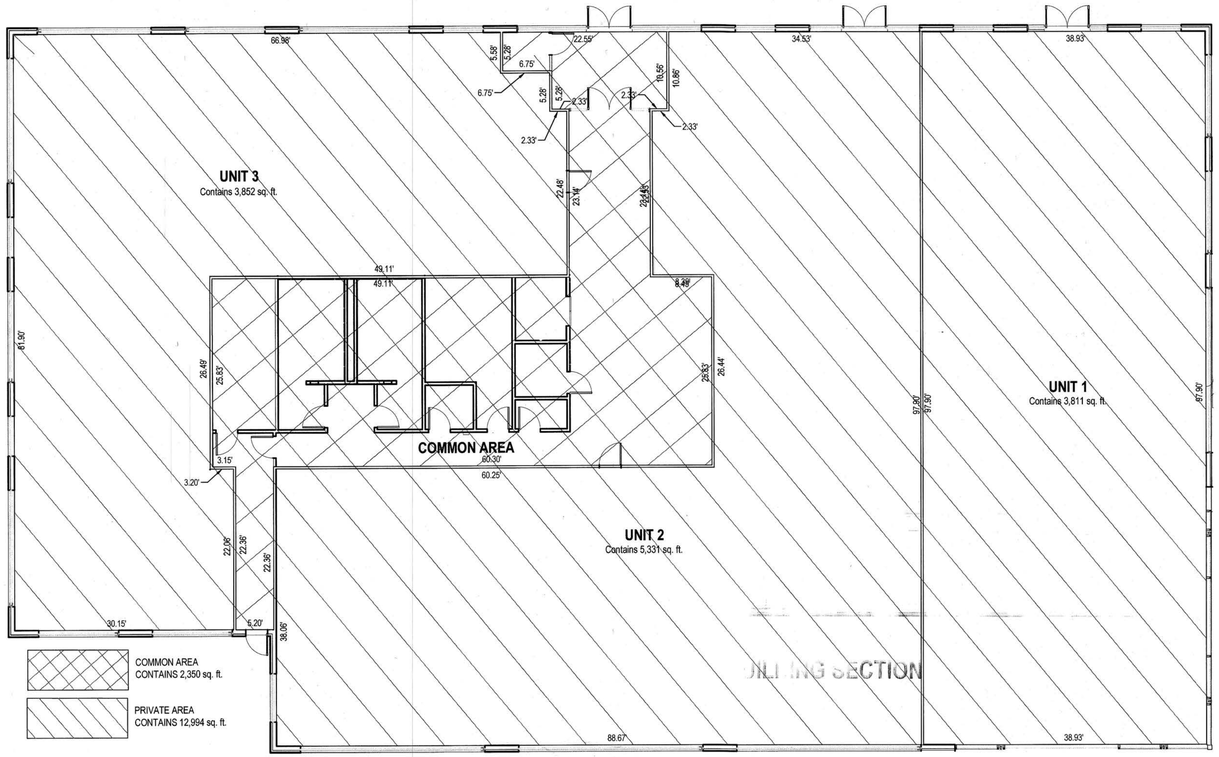
COUNTY ENGINEER
I HEREBY CERTIFY THAT I HAVE HAD THIS PLAT EXAMINED BY THIS OFFICE AND IT IS CORRECT IN ACCORDANCE WITH INFORMATION ON FILE IN THIS OFFICE.
DATE 7/31/12
COUNTY ENGINEER

SNYDERVILLE BASIN PLANNING COMMISSION
APPROVED AND ACCEPTED BY THE SNYDERVILLE BASIN PLANNING COMMISSION THIS 31st DAY OF JULY 20 12
CHAIRPERSON

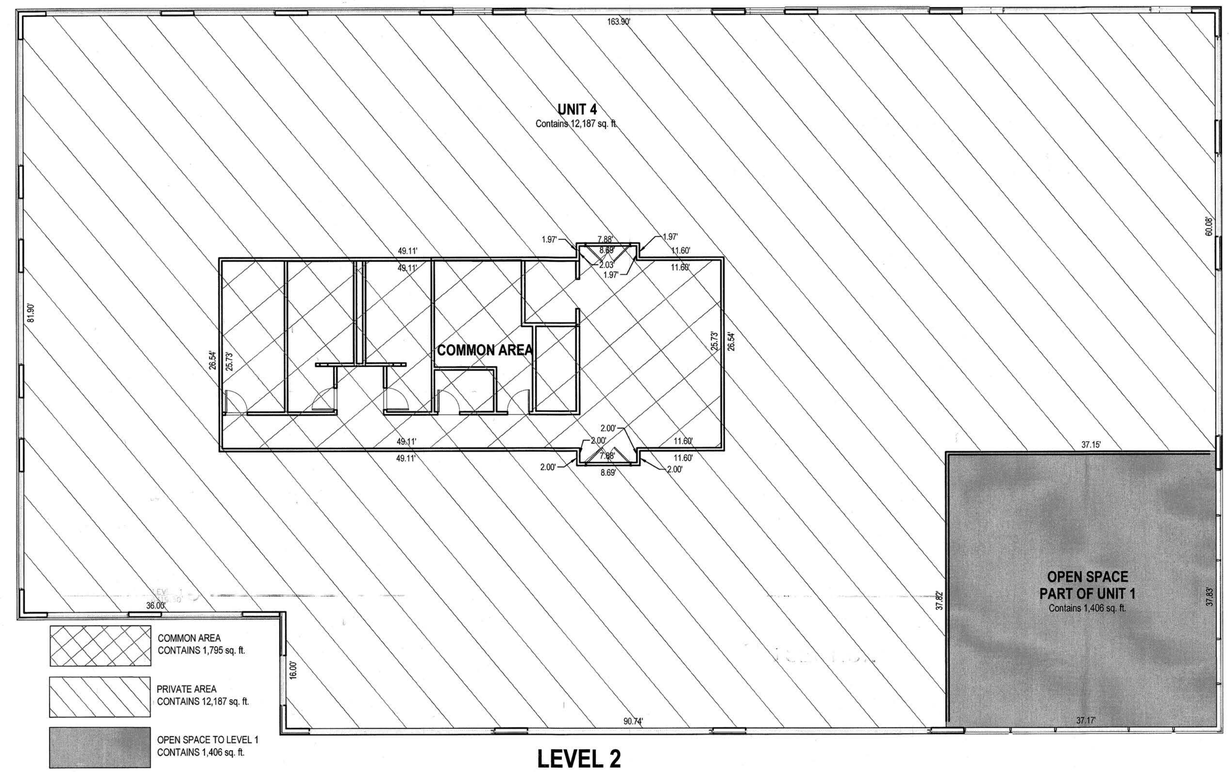
APPROVAL AS TO FORM
APPROVED AS TO FORM THIS 15th DAY OF August 20 12
COUNTY ATTORNEY

RECORDED # 951402
STATE OF UTAH, COUNTY OF SUMMIT, RECORDED AND FILED AT THE REQUEST OF: BOYER SNYDERVILLE I LC
DATE: 8/16/12 TIME: 3:50 pm BOOK: — PAGE: —
FEES $793.00
C. Tillotsky - deputy
SUMMIT COUNTY RECORDER

Exhibit B



LEVEL 1



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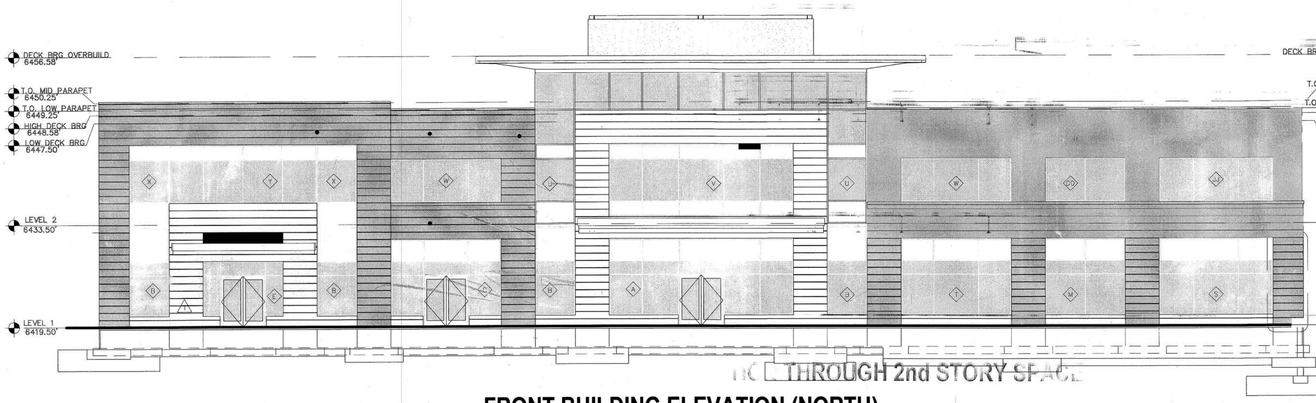
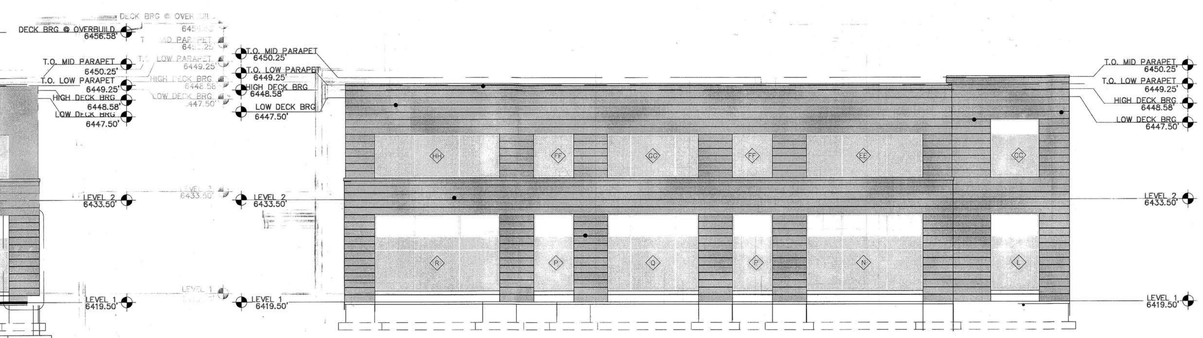


FRONT BUILDING ELEVATION (NORTH)



SIDE BUILDING ELEVATION (WEST)

HORIZONTAL GRAPHIC SCALE

10 0 5 10 20

(IN FEET)
ROOT: 1 inch = 10 ft.

Exhibit B

DEVELOPER
BOYER SNYDERVILLE JUNCTION LC
90 SOUTH 400 WEST, SUITE 200
SALT LAKE CITY, UT 84101-1365

SHEET 2 OF 3

PROJECT NUMBER : 5113
MANAGER : RQE
DRAWN BY : BBG
CHECKED BY : PMH
DATE : 5/17/12

ENSIGN

SALT LAKE CITY
45 W. 10000 S. Suite 500
Sandy, UT 840470
Phone: 801.255.0529
Fax: 801.255.4449

LAYTON
Phone: 801.547.1100

CEDAR CITY
Phone: 435.865.1453

TOOELE
Phone:435.843.3590

WWW.ENSIGNUTAH.COM

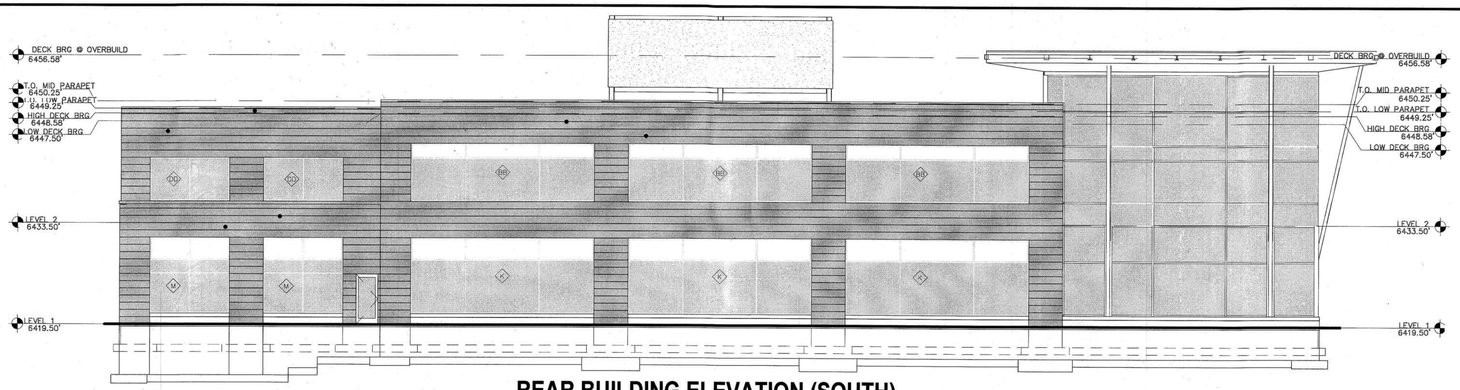
PARK CITY TECH BUILDING "A" CONDOMINIUM PLAT

LOCATED IN THE NORTHWEST QUARTER OF SECTION 19,
TOWNSHIP 1 SOUTH, RANGE 4 EAST, AND THE NORTHEAST QUARTER OF SECTION 24,
TOWNSHIP 1 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

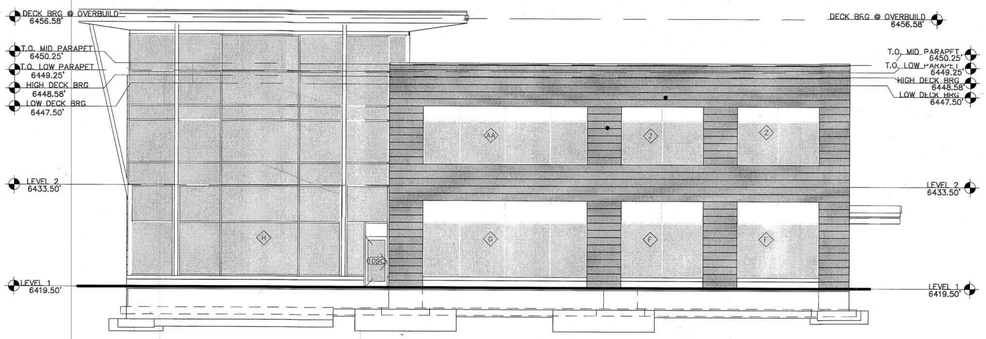
RECORDED # 951402

STATE OF UTAH, COUNTY OF SUMMIT, RECORDED AND FILED AT THE
REQUEST OF : BOYER SNYDERVILLE LLC

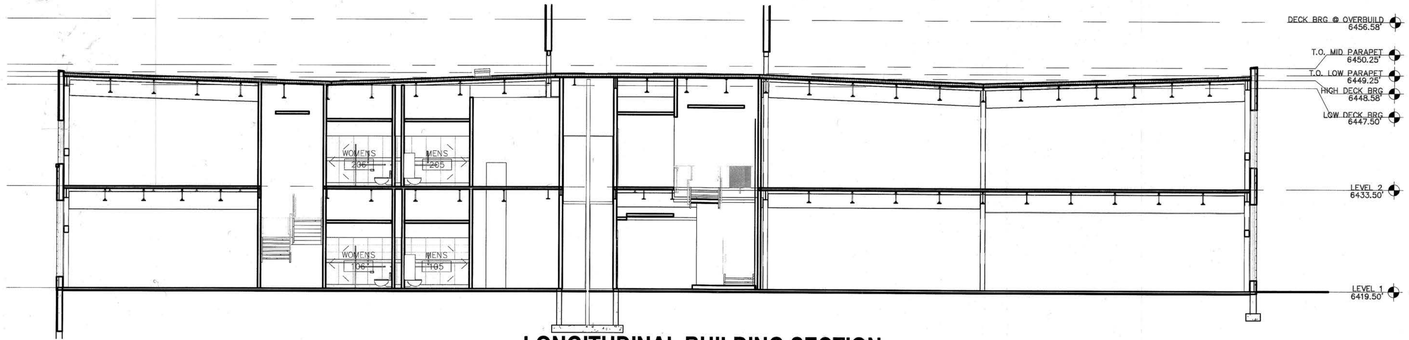
DATE: 8/16/12 TIME: 3:50 pm BOOK: — PAGE: —
$93.00 C. Willoughby - deputy
FEES SUMMIT COUNTY RECORDER



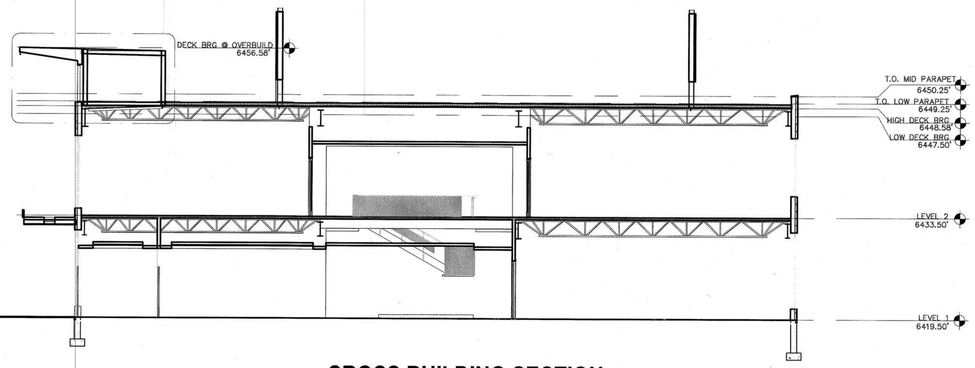
REAR BUILDING ELEVATION (SOUTH)



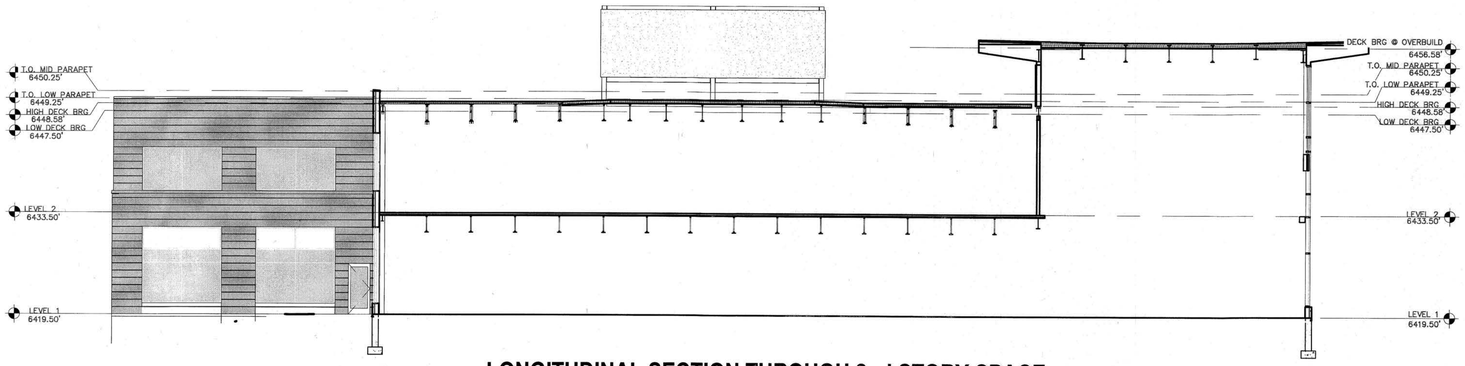
SIDE BUILDING ELEVATION (EAST)



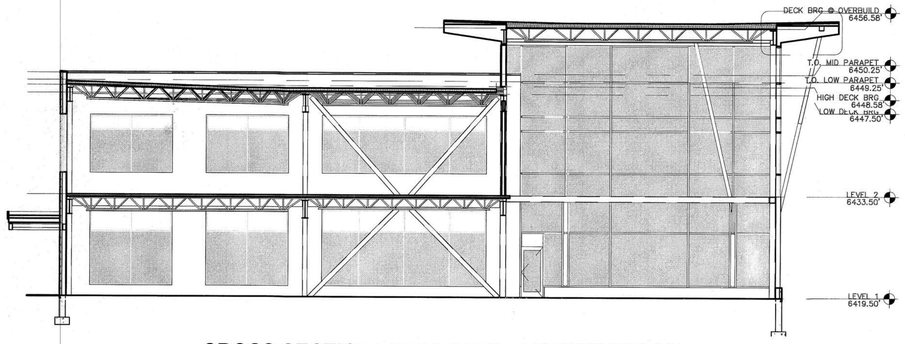
LONGITUDINAL BUILDING SECTION



CROSS BUILDING SECTION



LONGITUDINAL SECTION THROUGH 2nd STORY SPACE



CROSS SECTION THROUGH 2nd STORY SPACE

PROFESSIONAL LAND SURVEYOR
9-12-12
PATRICK M. HARRIS
STATE OF UTAH

PARK CITY TECH BUILDING "A" CONDOMINIUM PLAT

LOCATED IN THE NORTHWEST QUARTER OF SECTION 19,
TOWNSHIP 1 SOUTH, RANGE 4 EAST, AND THE NORTHEAST QUARTER OF SECTION 24,
TOWNSHIP 1 SOUTH, RANGE 3 EAST, SALT LAKE BASE & MERIDIAN
PARK CITY, SUMMIT COUNTY, UTAH

RECORDED # 951402

STATE OF UTAH, COUNTY OF SUMMIT, RECORDED AND FILED AT THE
REQUEST OF: BOYER SNYDERVILLE I LC.
DATE: 9/16/12 TIME: 3:50 pm BOOK: — PAGE: —
$ 93.00 FEE$ C. Willoughby - deputy
SUMMIT COUNTY RECORDER

HORIZONTAL GRAPHIC SCALE

10 0 5 10 20

(IN FEET)
HORZ: 1 inch = 10 ft.

DEVELOPER
BOYER SNYDERVILLE JUNCTION LC
90 SOUTH 400 WEST, SUITE 200
SALT LAKE CITY, UT 84101-1365

SHEET 3 OF 3

PROJECT NUMBER : 5113
MANAGER : RQE
DRAWN BY : BBG
CHECKED BY : PMH
DATE : 5/17/12

ENSIGN

SALT LAKE CITY
45 W. 10000 S. Suite 500
Sandy, UT 840470
Phone: 801.255.0529
Fax: 801.255.4449

LAYTON
Phone: 801.547.1100

CEDAR CITY
Phone: 435.865.1453

TOOELE
Phone:435.843.3590

WWW.ENSIGNUTAH.COM

Exhibit B

July 9, 2015

Sean Lewis
Community Development Department – Planning Division
60 North Main Street
Coalville, UT 84017

Re: Stay Park City.com Sign Permit Appeal

Dear Mr. Lewis,

This letter is to appeal the denial of the signage permit for a StayParkCity.com wall mounted sign to be located at the address of 1794 Olympic Parkway, Park City, UT, 84098.

The stated reasons for denial are as follows:

1. The Summit County Community Department has concluded that based upon the number of employees, Stay Park City.com is not considered to be a "Major Tenant" and therefore is not eligible for the requested wall signage.
2. Monument signs are not allowed at this location.

The Summit County Community Department has concluded that due to the number of full time employees, StayParkCity.com could not qualify as a "Major Tenant" of the building. I'd like to clarify that we have an immense footprint, both inside and outside of the building. We have three full time employees (President, Director and Lead Software Engineer), CEO and six additional contracted laborers located within the Tech Center, and four local Board members. We pay All Seasons Resort Lodging 10% of gross revenues to share labor (the six contracted laborers mentioned), office space and office supplies. When you add up the true usage of square footage in the building, we're using approximately 3500 square feet.

In addition to our footprint within the Tech Center, we have an even larger footprint in Summit and Wasatch Counties, with vendor partnerships with over sixty local hotels and property management companies. Our software powers some of the largest travel sites in the state, including the Sundance Film Festival, KSL Last Minute Travel, Utah.com, and the Park City Extreme Soccer Tournament. Our Sundance lodging software generates over $2,500,000 in annual revenue, revenue that would otherwise leave the community to national sites like Expedia. We work collaboratively with Sundance and all Park City hotels in order to strategically create a better booking experience for both hotels and guests of Park City. Our B2B accounts include a rev share with the participating organization. For example, we share half of our booking commissions with Sundance for Sundance-related transactions. We do this in order to be good partners, but also because Sundance is using our technology to power the service, and meanwhile they do their own marketing in order to funnel guests to the booking channel.

Exhibit C

stayparkcity

As a growing technology business, we must contract labor efficiently. In addition to our shared labor resources with All Seasons Resort Lodging, we most recently collaborated with Spigot Design, located in Pinebrook, for our recent website build, which included a cost over $70,000. In addition to our on-site lead software engineer, we contract additional development resources with a local independent engineer and a Salt Lake based agency as needed to flex to our project demands. Technology companies do not always fit the typical mold of a tenant.

Upon signing a lease, I was told that no other building tenants were interested in an exterior wall-mounted sign. Because Ryantech had a sign and has since moved out of the building, I was offered their sign space on the southeast corner of the building. Because I am the only technology company in the technology building, it would never occur to me that I'd be dismissed as unqualified. Let me state, however, that I understand All Seasons Resort Lodging does not reserve the right to grant that usage, a decision that is controlled by the County. It's been my understanding that that County has had interest in attracting, growing, and retaining technology companies in this building in particular.

I'd like to also clarify the second reason for denial, which is that monument signs are not allowed at this location. It was never our intent to apply for a monument sign. This portion of the application was entirely a mistake and miscommunication. When I paid the County staff for the application fee, I was surprised to find out about the monument sign and consequently was advised to only pay for a single sign at a cost of $100. It was clear in my conversation that I was paying $100 for consideration of one sign. I request that the monument sign be eliminated from consideration, as it was entirely a mistake.

Thank you for considering my request for appeal. In conclusion, I'm the only tech company in the Tech Center. No other Technology tenant would like to apply for a sign. My footprint and outreach far exceeds some of the business in the Tech Center, which negates a comment that I'm not a "Major Tenant." I humbly request your support of a local and growing technology endeavor in Summit County.

Sincerely,

Kenzie Coul

Kenzie Coulson
Stay Park City
1794 Olympic Parkway, Ste 200
Park City, UT 84098

Exhibit C

Park City Tech Center Comprehensive Sign Plan

This comprehensive sign plan is intended to regulate signs for all uses within the Park City Tech Center ("PCTC"). Due to the scale and scope of this project, Section 4.11 of the Development Agreement for PCTC, dated December 10, 2008, outlined the need for a comprehensive sign plan that includes some modifications to the general Snyderville Basin Development Code as attached to the Development Agreement (the "Code"). The intent of the sign plan for PCTC is to provide functional signs that allow businesses and uses to be easily identified , but to also be balanced in scale and to minimize competition with and disturbance to the architectural features of the buildings. Where any conflict exists between this sign plan and the Code, this plan governs. Where provisions are not addressed in this plan, the Code governs.

Entryway Signs.

As a major project in the Snyderville Basin, an appropriate entryway sign is justified to help identify the overall project, as well as direct traffic off Highway 224 as quickly as possible to help traffic flow. PCTC shall be allowed one principle entryway sign to be located on the corner of Highway 224 and Olympic Parkway. This sign shall not exceed 45 square feet and the top of the sign shall not exceed 8' in height, as measured from finished grade directly beneath the sign. Finished grade shall be as shown on the landscaping plan and Final Site Plan previously approved for Building A of the PCTC (the intent being that "finished grade" as used herein shall mean a grade that is consistent with and integrated into the surrounding landscaping and grading, not a built up mound).

While a second entryway sign is not envisioned at this point, if it becomes necessary in the future to help guide traffic and/or identify the location of PCTC, a second entryway sign shall be allowed in the vicinity of the Landmark Drive and Ute Boulevard round about. This sign shall not exceed 27 square feet and the top of the sign shall not exceed 8' in height, as measured from the finished grade directly beneath the sign (finished grade meaning the a grade that is consistent with and integrated into the surrounding landscaping and grading as approved on any Final Site Plan for the parcel upon which the sign is to be placed).

Exhibit D

Freestanding/Monument Signs

All other freestanding signs shall be allowed as governed by the Code. It is the general intent of PCTC that individual buildings will not have monuments signs, particularly those buildings that are multi-tenant in nature. However, it is recognized that in some instances it may be necessary to identify a particular building or major tenant.

Wall Mounted Signs (façade mounted signs) – Primary

The intent of signs on buildings shall be to identify major tenants, but balance this by minimizing impact on the building frontage and appearance. Wall mounted signs shall not exceed four (4) principle signs per building (regardless of the number of tenants), and no more than two (2) signs per any one (1) façade. Two of these principle signs up to fifty (50) square feet will be allowed and two up to forty (40) square feet will be allowed.

No more than one primary sign will be allowed to face Highway 224 (the east side of a building) for any building located east of Landmark Drive, and this sign shall be limited to thirty five (35) square feet.

Signs must be located a minimum of one foot below the roof line of the building (measured at sign location).

Wall Mounted Signs (façade mounted signs) – Entryway Signs:

For tenants having a separate primary entry from the main building entry, a small sign not to exceed fifteen (15) square feet will be allowed above the entry doorway as needed for directing visitors. These signs shall be placed at a minimum height of eight feet (8') and a maximum height of fifteen feet (15'). There shall not be more than four (4) on any one building. In addition, these signs shall be limited to tenants that do not have a principle sign on the same façade. For buildings located east of Landmark Drive, these signs may not be placed on the façade most directly facing SR 224 (east).

Dave 4/2/13 3:02 PM

Deleted: two (2) such signs on any on any one façade and no more than

Exhibit D

Address Numbers

Address numbers shall not count as a wall mounted sign and shall be approved for each building based on the goal of allowing easy identification of the building; address numbers shall be located on the façade most directly facing the road from which access is obtained. Address numbers shall not exceed 24" in height.

Window Signs

Primary window signs are limited to 25% of the window area. A tenant can combine the window area for all windows that are contiguous, but still limited to 25% of that total. Contiguous shall be defined as windows that are not separated by more than one foot (1') or more of non-glass material. No more than two (2) primary window signs shall be allowed on any one building and no more than one (1) on any facade. The materials of window signs shall be wood, metal, fabric, plastic, or similar permanent style material; paper and vinyl sticker type signs are prohibited.

Secondary window signs - in addition, for retail establishments only, customary pedestrian level window signs as allowed under the Code will be allowed (example: a sign saying the store is open or closed, or credit cards accepted).

All windows signs shall be installed on the inside of the window. For buildings located east of Landmark Drive, no window signs shall be located on the façade most directly facing SR 224 (east).

Construction/Development Signs

Construction Site Signs (names of contractors, subs, architects, etc…) are limited to the Code size of twenty (20) square feet and cannot exceed 8' in height. No more than two master developer development leasing signs are allowed in the project at any one time and each sign shall not exceed thirty (32) square feet in size and eight feet (8') in height; individual building leasing and sales signs are subject to the 2008 Code.

Hours of Operation

Lighting on signs shall be turned off by 11:30 p.m.

Materials and Construction

- HDU (high density urethane) - allowed, minimum fifteen pound (15lb) density, coated on all sides with resin coating with UV inhibitors, applied in a flush surface to reduce the potential for rot to develop between the building wall and sign material.
- Lexan or plastic material signs may be allowed interior to the project, but shall not be allowed to face 224, Landmark Drive, or Olympic Park Boulevard. This exception will only be allowed in limited circumstances and only with the approval of the County Manager.
- Any studs or other methods used to secure signs shall be of a non-corrosive material.
- All letter depths on a single sign shall have uniform thickness.
- If not otherwise permitted in this sign plan, material limitations as outlined in the Code shall govern.

RECORDATION

August 15, 2013

Per Section 4.11 of the Summit Research Park Development Agreement, the Chief Executive of Summit County (County Manager), has approved an amended Comprehensive Sign Plan for the Park City Tech Center, located in Kimball Junction in Summit County.

The only amendment is to the Section entitled "Wall Mounted Signs (Façade Signs) – Entryway Signs", to remove the limitation to two (2) signs per any one (1) façade.

The sign plan shall be recorded against all of the Park City Tech Center Subdivision and it's amendments according to the Official Plats on file in the Summit County Recorder's Office, and also against all of the Park City Tech Center Building "A" Condominium Plat on file in the Summit County Recorder's Office.

Community Development Department
Planning Division
Summit County Courthouse, 60 N. Main St., P.O. Box 128, Coalville, Utah 84017

Exhibit D

MEMORANDUM:

Date: September 16, 2015
To: Council Members
From: Annette Singleton
Re: Summit County Restaurant Tax Advisory Committee

Appoint Teri Whitney to the Summit County Restaurant Tax Advisory Committee; she is the member recommended by the Park City Area Lodging Association. Teri's term to expire July 31, 2018.

Memorandum:

Date: September 16, 2015
To: Council Members
From: Tom Fisher
Re: Recommendation to appoint member to the Public Arts Program and Advisory Board

Advice and consent of County Manager's recommendation to appoint Jane Riley to the Public Arts Program and Advisory Board. Jane's term to expire July 31, 2018.

MINUTES

SUMMIT COUNTY

BOARD OF COUNTY COUNCIL
WEDNESDAY, AUGUST 12, 2015
SUMMIT COUNTY COURTHOUSE
60 NORTH MAIN STREET, COALVILLE, UTAH

PRESENT:

Kim Carson, *Council Chair*
Roger Armstrong, *Council Vice Chair*
Claudia McMullin, *Council Member*
Chris Robinson, *Council Member*
David Ure, *Council Member*

Tom Fisher, *Manager*
Anita Lewis, *Assistant Manager*
Robert Hilder, *Attorney*
David Thomas, *Deputy Attorney*
Kent Jones, *Clerk*
Karen McLaws, *Secretary*

CLOSED SESSION

Council Member Armstrong made a motion to convene in closed session to discuss litigation and property acquisition. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

The Summit County Council met in closed session for the purpose of discussing litigation and property acquisition from 3:25 p.m. to 4:45 p.m. Those in attendance were:

Kim Carson, *Council Chair*
Roger Armstrong, *Council Vice Chair*
Claudia McMullin, *Council Member*
Chris Robinson, *Council Member*
David Ure, *Council Member*

Tom Fisher, *Manager*
Anita Lewis, *Assistant Manager*
David Thomas, *Deputy Attorney*
Jami Brackin, *Deputy Attorney*
Patrick Putt, *Community Development Director*
Lisa Yoder, *Sustainability Coordinator*
Rena Jordan, *Snyderville Basin Recreation*

Council Member Armstrong made a motion to dismiss from closed session and to convene in work session. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

WORK SESSION

Chair Carson called the work session to order at 4:50 p.m.

- **Interview applicant for vacancy on the Hoytsville Cemetery Maintenance District**

The County Council interviewed Deborah Spader to fill a vacancy on the Hoytsville Cemetery Maintenance District.

CONVENE AS THE GOVERNING BOARD OF THE MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT

DISCUSSION AND POSSIBLE APPROVAL OF MOUNTAIN REGIONAL WATER GENERAL MANAGER EMPLOYMENT CONTRACT DATED JULY 21, 2015, BETWEEN MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT AND ANDREW W. ARMSTRONG

Council Member McMullin made a motion to convene as the Governing Board of the Mountain Regional Water Special Service District and to table this item. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

The meeting of the Governing Board of the Mountain Regional Water Special Service District was called to order at 5:10 p.m.

Chair Carson explained that there was a misunderstanding regarding the original document, and it has been sent back to the Administrative Control Board to be sure they understand the parameters of the contract.

Board Member Armstrong stated that he has some comments on the agreement, which he will discuss with Deputy County Attorney Dave Thomas.

DISMISS AS THE GOVERNING BOARD OF THE MOUNTAIN REGIONAL WATER SPECIAL SERVICE DISTRICT

Board Member Armstrong made a motion to dismiss as the Governing Board of the Mountain Regional Water Special Service District. The motion was seconded by Board Member Robinson and passed unanimously, 5 to 0.

The meeting of the Governing Board of the Mountain Regional Water Special Service District adjourned at 5:15 p.m.

CONVENE AS THE GOVERNING BOARD OF THE SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT

Council Member Ure made a motion to convene as the Governing Board of the Snyderville Basin Special Recreation District. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

The meeting of the Governing Board of the Snyderville Basin Special Recreation District was called to order at 5:15 p.m.

DISCUSSION AND POSSIBLE APPROVAL OF EXCHANGE AGREEMENT BY AND AMONG SUMMIT COUNTY, SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT, AND ROCKY MOUNTAIN POWER; DAVE THOMAS, CHIEF CIVIL ATTORNEY

Deputy County Attorney Dave Thomas explained that Rocky Mountain Power approached the County and the Recreation District about potentially expanding their existing substation. They would have to acquire an acre of property owned by the County and the Recreation District, amend the plat, and get a Conditional Use Permit. They agreed to enter into an exchange agreement with a closing date in the future, and in order to close, Rocky Mountain Power would have to go through the process to get a Conditional Use Permit. This one acre of property would be exchanged for a 3.25-acre parcel adjacent to the Run-A-Muk dog park and about $100,000 in cash for improvements to that park. The County will provide an easement for the substation if it is approved and require a restoration bond to be sure the property is returned to its natural state.

Board Member Armstrong confirmed with Mr. Thomas that a release would be required from The Boyer Company. Mr. Thomas reported that he has contacted The Boyer Company, and they are waiting to see what happens with the permit process. He noted that the release has been signed by Rocky Mountain Power and County Manager Tom Fisher.

Board Member Ure made a motion to approve the exchange agreement by and among Summit County, the Snyderville Basin Special Recreation District, and Rocky Mountain Power. The motion was seconded by Board Member McMullin and passed unanimously, 5 to 0.

DISMISS AS THE GOVERNING BOARD OF THE SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT AND RECONVENE AS THE SUMMIT COUNTY COUNCIL

Board Member Robinson made a motion to dismiss as the Governing Board of the Snyderville Basin Special Recreation District and to reconvene as the Summit County Council. The motion was seconded by Council Member Armstrong and passed unanimously, 5 to 0.

The meeting of the Governing Board of the Snyderville Basin Special Recreation District adjourned at 5:25 p.m.

REGULAR MEETING

Chair Carson called the regular meeting to order at 5:25 p.m.

- **Pledge of Allegiance**

COUNCIL COMMENTS

Council Member McMullin commented that she hoped everyone read the letter to the editor regarding the Ice House program and the great job Jeff Jones has been doing.

Council Member Ure commended Public Works for the work they did to drain and clear up the arena after the rainstorm. He believed this was one of the best County Fairs they have ever had, but the rainstorm proved the importance of finding a new fairground location. He felt it was fortunate that no one was hurt. He noted that several people who were opposed to moving the fairgrounds have spoken to him in the last few days saying that the fairground should be moved, because they know it was pushed past its capacity this year. He requested that the Zipper ride be moved to the back rather than at the main entrance to the carnival because of the number of people who became ill on the ride.

Council Member Armstrong thanked North Summit Fire for getting the fire truck for the Council Members to ride on in the Fair parade and acknowledged Mayor Trever Johnson for the excellent barbecue.

Council Member Robinson commented on the livestock sales and all the work that goes into getting the animals ready. He agreed that they need a bigger facility.

Chair Carson thanked Travis English and the Fair Board for their excellent work and stated that she enjoyed the opportunity to visit with the royalty. She reported that she received a call from Bill Rock explaining the school program being offered at Park City to provide five free days of skiing for Grades K through 5. She stated that the Tour of Utah was a great success. She reported on meetings with Service Area 3 to get them the information they need to function well and be educated as to what they can and cannot do. She has been invited to a meeting with the Governor to talk about concerns going into this legislative session.

DISCUSSION AND POSSIBLE ADOPTION OF PROCLAMATION NO. 2015-2 DECLARING THE LAST SATURDAY IN SEPTEMBER "SUMMIT COUNTY NEIGHBOR DAY," MELLIE OWEN, LEADERSHIP PARK CITY CLASS

Mellie Owen from Leadership Park City acknowledged the Council Members' leadership roles in the County. She requested that the Council designate the fourth Saturday in September as Summit County Neighbor Day. Will Pratt with the leadership class explained that they have discussed how people have lost touch with their neighborhoods, and they wanted to do something to help people reconnect with their neighbors. They are tailoring specific events to each neighborhood and starting fund raising to prepare for that day.

Council Member Armstrong asked how the neighborhoods have responded to this idea. Mr. Pratt replied that they have generally been interested, but some neighborhoods in eastern Summit County would prefer to do their own thing.

Ms. Owen discussed the benefits of doing this, which include celebrating the County, networking that might result in carpooling, becoming aware of the elderly and their needs, and creating a positive environment for youth so they feel they are part of a community. Their goal is to get at least 500 residents to participate in some kind of event on September 25. They are asking people to meet at least three neighbors they may not know or deepen relationships with neighbors. They believe people will be more willing to get involved if they know the Council stands behind this.

Mr. Pratt explained that they hope this will become an annual event if it is successful this year.

Council Member Armstrong made a motion to adopt Proclamation 2015-2 declaring the last Saturday in September Summit County Neighbor Day. The motion was seconded by Council Member Ure and passed unanimously, 5 to 0.

MANAGER COMMENTS

County Manager Tom Fisher reported that he traveled to the Sevier County Fair along with Council Members Carson and Ure, Anita Lewis, and Jeff Jones last week to look at their fairgrounds that were recently redeveloped. He described the facilities and commented that they did a great job with a small budget. It was good to see how the facilities function while in use.

APPROVAL OF MINUTES

JULY 29, 2015

Council Member Armstrong made a motion to approve the minutes of the July 29, 2015, Summit County Council meeting as written. The motion was seconded by Council Member Robinson and passed unanimously, 5 to 0.

PUBLIC INPUT

Chair Carson opened the public input.

There was no public input.

Chair Carson closed the public input.

The County Council meeting adjourned at 6:00 p.m.

_____ _____

Council Chair, Kim Carson ***County Clerk,*** Kent Jones