**NOTICE OF REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF ST. GEORGE, WASHINGTON COUNTY, UTAH**

**Public Notice**

Public notice is hereby given that the City Council of the City of St. George, Washington County, Utah, will hold a regular meeting in the City Council Chambers at the St. George City Offices located at 175 East 200 North, St. George, Utah, on Thursday, May 5, 2022, commencing at 3:00 p.m.

The agenda for the meeting is as follows:

Call to Order
Invocation
Flag Salute

**1. Comments from the public.**

The Open Comment Period provides an opportunity to address the Mayor and City Council regarding concerns or ideas on any item not on the agenda or likely to be on a future agenda. To be considerate of everyone at this meeting, public comment will be limited to three minutes per person. Participants are to state their names for the record. Comments which cannot be made within these limits should be submitted in writing to the City Recorder at christina.fernandez@sgcity.org.

The Mayor and City Council encourage civil discourse for everyone who participates in the meeting.

Comments pertaining to an agenda item that includes a public hearing or public input should be given as that item is being discussed during the meeting.

**2. Consent Calendar.**

**a. Consider approval of a Purchase and Sale Agreement between the City of St. George and The Church of Jesus Christ of Latter-day Saints for property located at 85 South 400 East,**

BACKGROUND and RECOMMENDATION: This item is for the purchase of a former The Church of Jesus Christ chapel on the corner of 100 South and 400 East for a new Fire Station to replace the current station on 1000 East. Staff recommends approval.

**b. Consider approval of a Real Property transfer and Road Cost Sharing Agreement between the City of St. George and The Dixie Foundation.**

BACKGROUND and RECOMMENDATION: The City of St. George and the Dixie Foundation currently own (as tenants-in-common) approximately 12.61 acres of land located near the hospital facilities, which was granted to them jointly by the Foremaster family. The Foundation now seeks to monetize a 1.89-acre parcel known as Lot 4 and is asking the City to quitclaim their interest in that parcel to the Foundation. The City is seeking reimbursement from the Foundation for a portion of the extension of 1450 East to its connection with 900 South. This agreement sets forth the terms and conditions of the property exchange and road reimbursement. Staff recommends approval.

c. **Consider approval of a Purchase Agreement with Big T Recreation to purchase nine (9) shade structures for the tennis courts at Tonaquint Park.**

BACKGROUND and RECOMMENDATION: This agreement is for replacement shade structures for the tennis courts at Tonaquint Park. These structures are being purchased through State Contract ID MA3408. Staff recommends approval in the amount of $53,500.

d. **Consider approval of a professional services agreement renewal with Avenue Consulting for traffic signal troubleshooting and consulting services in the amount of $90,000.**

BACKGROUND and RECOMMENDATION: This professional services agreement with Avenue Consulting covers traffic signal troubleshooting and consulting services throughout the City. Staff recommends approval.

e. **Consider approval of a reimbursement agreement with David Adams for the extension of a sewer line located at 1140 North 1100 West.**

BACKGROUND and RECOMMENDATION: This agreement sets forth the terms and conditions for property located at 1140 North 1100 West to discontinue use of a private septic tank and connect to the City's sewer system. Staff recommends approval.

f. **Consider approval of a Car Rental Concession & Lease Agreement between the City of St. George and Amplificare, LLC dba Vroom.Me for space at the St George Regional Airport.**

BACKGROUND and RECOMMENDATION: The airport is currently serviced by rental car companies Enterprise, Avis/Budget, Hertz and Rabbit Rentals. This is a request to add Vroom.Me Car Rentals to the rental car options. Vroom Me will utilize Unit #4 leasehold area shared with Rabbit Rentals and will occupy five (5) parking stalls. Staff recommends approval.

g. **Consider approval of Amendment No. 1 to the Professional Services Agreement between the City of St George and Jviation, A Woolpert Company for the design of the "Reconstruct and Expand Terminal Apron Project" - AIP-43.**

BACKGROUND and RECOMMENDATION: The City of St George and Jviation, A Woolpert Company entered into a Professional Services Agreement on September 23, 2021 for engineering services at the St George Regional Airport. This is the 1st Amendment to this agreement for the design of the "Reconstruct and Expand Terminal Apron Project" - AIP-43. This project will be paid for with federal airport grant revenues. An application was submitted on February 24, 2022 and is still pending. Staff recommends approval.

h. **Consider approval of a deed of dedication for public right-of-way for Snow Canyon Parkway, north of the intersection of Snow Canyon Parkway and Dixie Downs Road.**

BACKGROUND and RECOMMENDATION: The deceleration lane from Snow Canyon Parkway to Dixie Downs Road was constructed a number of years ago but the dedication of the deceleration lane as public right-of-way did not occur when the lane was constructed. With the development of the proposed Maverik at the northwest

corner of the intersection of Dixie Downs Road and Snow Canyon Parkway, Staff requests that the deceleration lane be dedicated as public right-of-way. Maverik has agreed to dedicate the right-of-way and has prepared the deed of dedication. Staff recommends approval.

**i. Consider acceptance of a municipal utility easement for a culinary water booster pump station in the Divario development.**

BACKGROUND and RECOMMENDATION: In order to develop a portion of the Divario development, a culinary water booster pump is required to provide the necessary water pressure. The booster pump was constructed by the developer and turned over to the City to own, operate, and maintain. The parcel of land that the booster pump occupies was not included in the final plat of the subdivision where the site is located. The pump station site will be included in the final plat of an adjacent and subsequent phase of the development. Until then, we have asked the developer to provide a municipal utility easement of the pump station site. In the near future, the site will be included in a final plat and deeded to the City. Staff recommends approval.

**j. Consider approval of a quitclaim deed quitclaiming 50% of City ownership of a portion of 3000 East to Washington County.**

BACKGROUND and RECOMMENDATION: The Council of Governments (COG) is made up of local elected officials and is managed by the Washington County Commission. The COG manages funds appropriated by the State of Utah to purchase right-of-way for major future roads within the city. When funds are approved by the COG to purchase right-of-way, their rules require that the ownership be placed 50% in Washington County's name and 50% in the City until construction is complete. The simplest way to accomplish this is for the city to purchase the property in the city's name using appropriated COG funds, and then quitclaim 50% interest back to Washington County. Staff recommends approval.

**k. Consider approval of a Memorandum of Understanding between the City of St. George and G-Six Investments, LLC (the Glendenning family) regarding property located at 76 Tabernacle Street.**

BACKGROUND and RECOMMENDATION: G-Six Investments, LLC is seeking to remodel and rehabilitate a building next to the City-owned Electric Theater on Tabernacle Street. In so doing, repairs and changes to the City's building(s) regarding eave overhangs and water drainage are required. G-Six has agreed to make those repairs at their cost. G-Six also seeks to bury the current overhead powerlines to that building and seeks to work with the Energy Services department to contribute to the costs associated with burying those lines. In addition, the Theater was expanded across a pedestrian easement granted to the former owner and the City has agreed to relocate that easement on the west side of the Theater building. The applicant has also asked for a temporary construction easement on City owned property while they remodel. Staff recommends approval.

**l. Consider approval of a hangar lease with the Division of Facilities Construction and Management and Department of Public Safety.**

BACKGROUND and RECOMMENDATION: The State, through the Department of Public Safety and the Division of Facilities Construction and Management, desires to lease hangar space to house and operate a helicopter to be used for emergency transport. Because this is a benefit to the City, the agreement requires only a nominal rent. In addition to the lease, the State desires to construct improvements to the hangar to

include office space. The City is agreeing to hire and pay the contractor to be reimbursed by the State in the amount of $198,500. Staff recommends approval subject to review and approval of the agreement by the Legal Department.

3. **Consider approval of a resolution accepting and adopting the Preliminary Fiscal Year 2022-2023 Budget of the City of St. George and to set the dates for the required public hearings.**

BACKGROUND and RECOMMENDATION: State Law requires the recommended budget to be presented to the Mayor & City Council on or before the first regular meeting in May of each year and to adopt the final budget on or before June 30th of each year. Staff recommends approval of the resolution to accept and adopt the Preliminary Fiscal Year 2022-2023 Budget and to set the public hearing dates for the final budget as June 2nd and June 16th, 2022.

4. **Consider approval of a resolution entering into an Interlocal Agreement with Washington County for the Little Valley Soccer Artificial Turf Fields project.**

BACKGROUND and RECOMMENDATION: This interlocal agreement is for funding of the artificial turf fields at the Little Valley Soccer complex. This project will replace the existing turf grass fields with artificial turf grass. Washington County has agreed to help fund this project by contributing $1.5 million from Transient Room Tax (TRT) funds. Staff recommends approval.

5. **Consider approval of a resolution entering into an Interlocal Agreement with Washington County for the Little Valley Pickleball expansion project.**

BACKGROUND and RECOMMENDATION: This interlocal agreement is for funding nine (9) additional courts at the Little Valley Pickleball Complex. The County has agreed to contribute $1 million of Transient Room Tax (TRT) funds to the project. Staff recommends approval.

6. **Consider approval of an ordinance amending Section 10-13E-4 of City Code for designating a landmark site and to amend the allowed conditional uses for landmarks. The proposed amendments would extend the required age of the structure to 100 years old and remove the option to use the landmark site as a short-term rental. Reference No. 2022-ZRA-001**

BACKGROUND and RECOMMENDATION: The landmark criterion was first established in 2006. At that time, the structure was required to be a minimum of 50 years old. In 2019 that qualification was changed to being built before 1970. This current proposal changes the age of the structure to be at least 100 years old. The last time a change was made to the conditional use portion of this chapter was in 2006 when the second, third, and fourth conditions were created. This proposal will remove the option to use the landmark site as a short-term rental. At their meeting held on April 12, 2022, the Planning Commission held a public hearing and recommended approval.

7. **Consider approval of an ordinance amending and extending the hillside overlay zone in order to include additional approximately 24 acres located generally north and west of the Red Hills Parkway and Middleton Drive intersection known as Hillside Overlay Amendment. Reference No. 2022-ZC-013**

BACKGROUND and RECOMMENDATION: These properties meet the criteria for inclusion in the hillside overlay zone. The Hillside Review Board met on site and held a meeting ultimately forwarding a positive recommendation for the application. At their meeting

held on April 12, 2022, the Planning Commission then held a public hearing on the proposed change and recommended approval.

8. **Consider approval of an ordinance amending the Desert Color Planned Development Residential (PD-R) zone in order to construct 100 units to be known as Sage Haven Plat C Phase 12 on approximately 4.90 acres located on the northeast corner of Silver Birch Drive and Emerald Point Drive. Reference No. 2022-ZCA-017**

BACKGROUND and RECOMMENDATION: Surrounding phases of Sage Haven were reviewed and approved in 2021. At their meeting held on April 12, 2022, the Planning Commission held a public hearing and recommended approval.

9. **Consider approval of an ordinance amending the Desert Color Planned Development zone to allow the addition of pickleball and bocce ball courts and gathering areas to the amenities to be known as Desert Color Recreation Area on approximately 1.49 acres located generally between Akoya Pearl Road and Lagoon Parkway at approximately 800 West. Reference No. 2022-ZCA-016**

BACKGROUND and RECOMMENDATION: The Resort area was part of the initial approval when Desert Color was approved in 2018. As part of that initial approval, the developer constructed the clubhouse, swimming pool, and lagoon amenities which are up and usable to most residents of Desert Color. Part of the plan was to add additional amenities in the general clubhouse area. This application will fulfil that desire to add more amenities. No residential units are under review with this application. At their meeting held on March 22, 2022, the Planning Commission held a public hearing and recommended approval.

10. **Consider approval of an ordinance amending the Desert Color Planned Development zone to allow an amenity area for Regency at Desert Color to be known as Regency at Desert Color Amenity Area on approximately 7.85 acres located generally at the northeast corner of the future Canyon Wash Drive and Alder Grove Drive intersection. Reference No. 2022-ZCA-015**

BACKGROUND and RECOMMENDATION: Regency Plat 'A' was approved by City Council in August of 2021 and included 175 single and two-family units and is part of the overall Desert Color association which entitled them to use of the existing (and future) amenities such as the lagoon, clubhouse, swimming pool, pickleball and bocce ball courts, etc. At their meeting held on March 22, 2022, the Planning Commission held a public hearing and recommended approval.

11. **Consider approval of an ordinance amending the Humane Society Planned Development Commercial (PD-C) zone to allow construction of a medical clinic and pet resource center on approximately 2.35 acres located on the northwest corner of 2860 East and 850 North Street. Reference No. 2022-ZCA-018**

BACKGROUND and RECOMMENDATION: The Humane Society Planned Development Commercial zone was approved on July 15, 2021. This proposal is to allow for construction of a medical clinic and pet resource center. This project may be completed in two phases. The underlying general plan land use map is Commercial (COM). At their meeting held on April 12, 2022, the Planning Commission held a public hearing and recommended approval.

12. **Consider approval of an ordinance amending the Atkinville Planned Development Commercial (PD-C) zone to allow construction of two new commercial buildings on approximately 9.41 acres located at 4400 South Desert Color Parkway. Reference No. 2022-ZCA-012**

BACKGROUND and RECOMMENDATION: The Atkinville Interchange Area Zone Plan was approved in 2007 and at this location allows uses that are permitted in the C-2 zone. This proposal is to allow for two new commercial buildings. The underlying general plan is Visitor Commerce Commercial (VC2) and Employment (E). At their meeting held on March 8, 2022, the Planning Commission held a public hearing and recommended approval with conditions.

13. **Consider approval of an ordinance amending the Rim Rock Commercial Planned Development Commercial (PD-C) zone to allow the extension of drive-up parking stalls including covered stalls for Target on approximately 8.71 acres located at 275 South River Road for a project to be known as Target Drive Up. Reference No. 2022-ZCA-014**

BACKGROUND and RECOMMENDATION: The applicant is requesting to amend the Rim Rock Commercial (Target/Lowes) Planned Development Commercial (PD-C) zone for the purpose of converting 16 parking stalls to drive-up parking stalls designated for online shoppers only. In addition to the new designated parking, the applicant would also like to add a covering for 12 of the stalls. There are currently eight drive-up parking stalls designated for online shoppers, and the applicant would like to add four more stalls to the west of the existing ones and then put a shade structure over those stalls. They would also like to add 12 additional stalls in the parking row to the north of the existing ones. Please refer to the exhibit provided by the applicant for the location of the rows. At their meeting on March 22, 2022, the Planning Commission held a public hearing and recommended approval with the condition that all drive-up parking stalls, including the existing ones, be moved and added to the north side of the store.

14. **Consider approval of the preliminary plat for Divario (PA-18), a 1-lot residential subdivision located within the Divario development.**

BACKGROUND and RECOMMENDATION: As part of the development agreement between the City and Divario, the developer is required to plat each planning area prior to selling the property to a third party. At their meeting held on April 26, 2022, the Planning Commission recommended approval.

15. **Consider approval of the preliminary plat for Divario Open Space, which is to create eight (8) open space parcels located at the intersection of Sunbrook Drive and Gap Canyon Drive within the Divario development.**

BACKGROUND and RECOMMENDATION: As part of the development agreement between the City and Divario, the developer is to dedicate certain areas as shown on the master plan for the project as open space parcels, which are to remain as natural areas. The preliminary plat shows the 8 open space parcels which will be created with the recording of the final plat. At their meeting held on April 26, 2022, the Planning Commission recommended approval.

16. **Consider approval of the preliminary plat for Glenview, a 4-lot residential subdivision located at 2262 South and 2100 East.**

BACKGROUND and RECOMMENDATION: The subject property is zoned R-1-10 and the General Plan is LDR which matches the proposed preliminary plat. At their meeting held

on April 26, 2022, the Planning Commission recommended approval. The developer will be required to dedicate right-of-way for a future roadway that will provide access to the properties to the west.

**17. Consider approval of the preliminary plat for Staybridge, a 2-lot commercial subdivision located at approximately 1301 South Sunland Drive.**

BACKGROUND and RECOMMENDATION: The General Plan land use designation for this property is commercial and the zoning is C-3, which matches what is shown on the preliminary plat. When the Staybridge Hotel was constructed, the owner left a portion of the property undeveloped for a possible future commercial building. At their meeting held on April 26, 2022, the Planning Commission recommended approval. The owner will be required to provide cross utility and access easement with the final plat between the two parcels for utility and vehicle access at the two existing driveway locations to Sunland Drive and the private drive between Staybridge Hotel and the hotel to the northeast.

**18. Appointments to Boards and Commissions of the City.**

**19. Reports from Mayor, Councilmembers, and City Manager.**

**20. Request a closed session to discuss litigation, property acquisition or sale or the character and professional competence or physical or mental health of an individual.**

Christina Fernandez, City Recorder

April 29, 2022
Date

REASONABLE ACCOMMODATION: The City of St. George will make efforts to provide reasonable accommodations to disabled members of the public in accessing City programs. Please contact the City Human Resources Office, 627-4674, at least 24 hours in advance if you have special needs.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2a

**Subject:**

Consider approval of a Purchase and Sale Agreement between the City of St. George and The Church of Jesus Christ of Latter-day Saints for property located at 85 South 400 East,

**Item at-a-glance:**

Staff Contact: Shawn Guzman

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

85 South 400 East

**Item History (background/project status/public process):**

This item is for the purchase of a former The Church of Jesus Christ chapel on the corner of 100 South and 400 East for a new Fire Station to replace the current station on 1000 East.

**Staff Narrative (need/purpose):**

The Fire Department has outgrown the capacity of the original Fire Station #1 on 1000 East. Increased traffic on 1000 East due to the growth of the university also makes access to/from the current station difficult. The more centralized downtown location of the new 400 South station will better balance the service area coverage between stations, resulting in reduced call times and better fire insurance ratings for residents and businesses and allow for safer egress/ingress for fire trucks to and from the fire station.

**Name of Legal Dept approver:** Tani Downing

**Budget Impact:**

Cost for the agenda item: $1,100,000

Amount approved in current FY budget for item: $1.100,000

If not approved in current FY budget or exceeds the budgeted amount, please explain funding source:

TBD

Description of funding source:

TBD

**Recommendation (Include any conditions):**

Staff recommends approval.

**PURCHASE AND SALE AGREEMENT**

**FOR PROPERTY LOCATED AT 85 SOUTH 400 EAST**

**BETWEEN THE CITY OF ST. GEORGE AND**

**THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS**

(Property Number: 505-0944)

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is effective as of the Effective Date, by and between THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole ("**Seller**"), and CITY OF ST. GEORGE ("**Buyer**").

## RECITALS

A. Seller is the owner of certain real property located at approximately 85 South 400 East, City of St. George, County of Washington, State of Utah, as generally described and depicted on Exhibit A attached hereto (the "**Real Property**"), together with those items included in the definition of "**Property**" below.

B. Buyer desires to purchase from Seller, and Seller is willing to sell to Buyer, the Property upon the covenants, terms, conditions, and provisions set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the promises, covenants, representations, and warranties hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **DEFINITIONS**. The following terms shall have the following meanings when used in this Agreement:

1.1 **Agreement** – This Purchase and Sale Agreement, including all exhibits and schedules attached hereto.

1.2 **Business Day** – A day other than a Saturday, Sunday, or day on which banking institutions in Utah are authorized or required by law or executive order to be closed.

1.3 **Buyer's Consultants** – The attorneys, lenders, and consultants of Buyer that are specifically working with Buyer on the Purchase and Sale Transaction.

1.4 **Cash** – United States currency represented by certified or cashier's check, wire transfer or other readily available funds.

1.5 **Closing or Close of Escrow** – The closing and consummation of the Purchase and Sale Transaction, as evidenced by the delivery of all required funds to Seller and the recording of the Deed.

1.6 **Closing Date** – On or before the date which is fifteen (15) calendar days after the expiration of the Feasibility Review Period.

1.7 **Current Knowledge** – With respect to Seller shall mean the current, actual knowledge of the Seller Representatives, and with respect to Buyer shall mean the current, actual knowledge of Buyer.

1.8 **Effective Date** – The later of the date that Buyer or Seller acknowledges receipt of a fully executed Agreement, as evidenced by Buyer's or Seller's signatures and the date inserted following their signatures on the signature page herein.

1.9 **Escrow** – The escrow created with the Escrow Agent pursuant to this Agreement.

1.10 **Feasibility Review Period** – The period of time from the Effective Date until 5:00 pm, Mountain Standard Time, on the date which is sixty (60) calendar days after the Effective Date.

1.11 **Hazardous Materials** – Any (i) hazardous, harmful, dangerous, or toxic waste, item, substance, material, or product (including, without limitation, any and all asbestos or petroleum-based products) as presently defined by any federal, state, or local environmental and/or health law, act, edict, directive, decree, rule, statute, ordinance, or regulation, including without limitation, (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et. seq., (b) the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 5101, et. seq., (c) the Resource Conversation and Recovery Act, 42 U.S.C.A. Section 6901, et. seq., (d) the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et. seq., (e) the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et. seq., (f) all state or local environmental laws, and (g) any and all regulations related to any of the foregoing; or (ii) other item, substance, material, or product prohibited, limited, or regulated by or under any of the laws, acts, edicts, directives, decrees, rules, statutes, ordinances, or regulations described above.

1.12 **Opening of Escrow** – The date of delivery to and acceptance by Escrow Agent of a fully executed original of this Agreement.

1.13 **Permitted Exceptions** – All taxes and assessments against the Property which are not yet due and payable as of the Closing Date, all then-current zoning laws and restrictions relating to the Property, any patent claims and/or reservations, and all other matters affecting title to the Property contained in the Title Report or shown on the Survey as are accepted by Buyer pursuant to the provisions of Section 6.2 of this Agreement.

1.14 **Intentionally Deleted**.

1.15 **Property** – The Real Property, together with (i) all buildings, structures and improvements currently included thereon; (ii) any and all easements, rights of way, and appurtenances running with or pertaining thereto, including without limitation any rights to use adjacent streets or alleyways; and (iii) applicable water rights, energy, and mineral rights.

1.16 **Purchase and Sale Transaction** – The purchase of all of the Property by Buyer, and the sale of all of the Property by Seller, all as contemplated by this Agreement.

2. **Purchase Agreement**. Seller hereby agrees to sell to Buyer, and Buyer hereby agrees to purchase from Seller, the Property. The Property shall be purchased in accordance with, and subject to, the terms, conditions, and provisions fully set forth below.

3. **Purchase Price**. The Purchase Price for the Purchase and Sale Transaction shall be as follows:

3.1 **Purchase Price**. The purchase price of the Property (the "**Purchase Price**") shall be One Million One-hundred Thousand and No/100 Dollars ($1,100,000.00).

3.2 **Earnest Money**. Buyer shall deposit the following amounts (collectively with any and all interest accrued thereon, the "**Earnest Money**") in accordance with the following provisions:

3.2.1 Twenty-Five Thousand and No/100 Dollars ($25,000.00) in Cash deposited with Escrow Agent within three (3) Business Days after the delivery to Escrow Agent of a fully executed original of this Agreement. In the event that the Earnest Money is not timely delivered by Buyer to Escrow Agent, then this Agreement shall be null and void in all respects and neither party shall have any obligations of any kind except to the

extent the obligations by their terms expressly survive any termination of this Agreement.

3.3 **Balance of the Purchase Price**. The Purchase Price, less the Earnest Money, shall be paid by Buyer to Seller at the Closing of the Purchase and Sale Transaction.

4. **Disposition of Earnest Money**. Seller and Buyer hereby instruct Escrow Agent to hold the Earnest Money, if any, and to disburse the Earnest Money as follows:

4.1 **Distribution of Earnest Money to Buyer**. If the Purchase and Sale Transaction for the Property is not consummated due to (i) the timely termination of this Agreement by Buyer pursuant to an existing termination right under this Agreement in which the express terms of such termination right provide that Buyer is granted the right to receive the Earnest Money; or (ii) the termination of this Agreement by Buyer due to a material Seller Default under this Agreement, then all portions of the Earnest Money shall be paid and disbursed immediately to Buyer.

4.2 **Distribution of Earnest Money to Seller**. If the Purchase and Sale Transaction for the Property is not consummated due to (i) any termination of this Agreement by any party for any reason other than as expressly set forth in Subsections 4.1 above; or (ii) a Buyer Default under this Agreement, all portions of the Earnest Money shall be paid and disbursed immediately to Seller.

4.3 **Application of the Earnest Money to Purchase and Sale Transaction**. If the Purchase and Sale Transaction is consummated, the Earnest Money shall be applied at the Closing to the Purchase Price in accordance with Section 3.3 above and shall be paid to Seller.

5. **Feasibility Review Period**. During the Feasibility Review Period, Buyer shall have the right to inspect the Property and to conduct, review and approve any investigations, tests, analyses, studies or other matters deemed necessary by Buyer to determine the condition and fitness of the Property and the feasibility and desirability of acquiring the Property (the "**Feasibility Review**"), all in accordance with the terms and provisions of this Section 5.

5.1 **Feasibility Review**. Seller hereby grants to Buyer and Buyer's employees, contractors and agents, upon reasonable notice, a nonexclusive right and license to enter upon the Property, at Buyer's sole risk, to conduct the Feasibility Review, and other inspections during the Feasibility Review Period. Notwithstanding the foregoing, Buyer shall not have the right to perform an invasive or intrusive testing at, in, on or under the Property without the additional prior written consent of Seller, which consent may be withheld in Seller's sole discretion. In all events, Buyer shall use its best and most diligent efforts to minimize any inconvenience or disturbance of any and all tenants in connection with Buyer's entry onto, or Feasibility Review of, the Property.

5.1.1 **Damage; Repairs**. Buyer will immediately repair any damage to the Property resulting from such entry upon, or testing of, the Property to the same or better condition that existed prior to such entry upon or testing of the Property.

5.1.2 **Indemnification**. Buyer shall indemnify, defend, save and hold Seller harmless from any losses, costs, expenses, damages, injuries, deaths, causes of action, liens, penalties, fines, and liabilities of any and all kinds whatsoever (including, without limitation, reasonable attorneys' fees and costs) caused by, or in any way related to, the acts or omissions of Buyer and its employees, contractors and agents during and in connection with the Feasibility Review. The obligations of Buyer set forth above in the preceding sentence shall expressly survive any cancellation, termination, or expiration of this Agreement.

5.1.3 **Insurance Requirements**. Buyer shall obtain a Commercial General Liability Insurance Policy with a limit of not less than $2,000,000 each occurrence, covering the activities of Buyer and its employees, contractors, and agents while on the Property, and naming Seller as an additional insured, which policy shall be non-cancelable without thirty (30) days' prior written notice to Seller. A certificate evidencing such insurance and Seller as an additional insured shall be delivered to Seller prior to any entry by Buyer or Buyer's employees, contractors and/or agents onto any portion of the Property.

5.1.4 **Termination**. If the results of Buyer's Feasibility Review are unsatisfactory to Buyer for any reason, then Buyer may terminate this Agreement prior to the expiration of the Feasibility Review Period by giving Seller written notice of termination (a "**Termination Notice**"), whereupon all portions of the Earnest Money shall be returned to Buyer in accordance with Section 4 of this Agreement, and neither Buyer nor Seller shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination. In the event Buyer does not timely terminate this Agreement prior to the expiration of the Feasibility Review Period, then Buyer (i) shall be deemed to have waived its right to terminate under this Section 5.1.4 and to have approved the condition of the Property in all respects (subject to the satisfaction of all conditions set forth herein); and (ii) Buyer and Seller shall continue to consummate the Purchase and Sale Transaction subject to all other terms and conditions set forth herein. Notwithstanding anything contained herein to the contrary, any amount deposited by Buyer with the Escrow Agent in connection with this Purchase and Sale Transaction shall become automatically non-refundable upon the expiration of the time period to which such deposit applied.

5.2 **Inspection Materials**.

5.2.1 **Inspection Materials Defined**. Seller, within a reasonable period after the Opening of Escrow, shall make available the following materials to Buyer to the extent same are in Seller's possession or control (collectively, the "**Inspection Materials**"):

(A)The most recent survey of the Real Property, if any; and

(B) A title commitment with respect to the Real Property issued by the Escrow Agent and committing to issue a standard owner's policy of title insurance with respect to the Property, together with copies of all instruments referred to on Schedule "B" of such report (collectively, the "**Title Report**")

5.2.2 **No Warranties for Inspection Materials**. In no event shall Seller be required to provide to Buyer any materials or documentation that are attorney work product or attorney-client privileged. All Inspection Materials are furnished to Buyer "AS IS" with no warranty or representations of any kind whatsoever from Seller.

5.3 **Confidentiality of Inspection Materials, Feasibility Review Results, and All Other Terms of this Agreement**. All Inspection Materials (whether provided to Buyer prior to, on or after the Effective Date), the results of any Feasibility Review (whether received by Buyer prior to, on or after the Effective Date), and all other terms and provisions of this Agreement (including the existence thereof and/or any negotiations that have occurred and/or will occur between Seller and Buyer) shall be kept and maintained strictly confidential by Buyer and same shall not be disclosed to any other party; provided, however, such Inspection Materials, and the results of any Feasibility Review, may be disclosed to Buyer's Consultants to the limited extent necessary to allow Buyer (i) to review and approve the condition of the Property in connection with its purchase of the Property; and (ii) to consummate the Purchase and Sale Transaction specifically contemplated by

this Agreement. In the event any Inspection Materials, the results of any Feasibility Review, and/or any terms and provisions of this Agreement (including the existence thereof and/or any negotiations that have occurred and/or will occur between Seller and Buyer) are disclosed to any Buyer's Consultants, Buyer shall cause Buyer's Consultants to agree in writing to keep and maintain the Inspection Materials and the results of any Feasibility Review confidential in the same manner as set forth above. The terms and conditions related to this confidentiality provision shall expressly survive any termination or cancellation of this Agreement. Buyer shall indemnify, defend, save, and hold Seller harmless (and all of its affiliates, parent companies, members, managers, directors, employees, representatives, agents, and/or representatives) from all liabilities of any kind relating to any disclosures by Buyer or Buyer's Consultants in breach of this Section 5.3. In addition, Buyer shall be responsible and liable for any and all damages of Seller with respect to any such breach. The terms and provisions of this Section 5.3 shall survive any cancellation, termination, or expiration of this Agreement.

5.4 **Return of Inspection Materials and Other Documentation**. Should this Agreement be terminated for any reason, Buyer shall furnish to Seller within ten (10) days thereafter: (i) copies of any and all Inspection Materials furnished to or obtained by Buyer; and (ii) copies of any surveys, reports and test results of any kind obtained by Buyer with respect to the Property. The terms and provisions of this Section 5.4 shall survive any cancellation, termination, or expiration of this Agreement.

6. **Survey and Title Review**.

6.1 **Survey**. Buyer may, at Buyer's expense, during the Feasibility Review Period obtain an ALTA survey for the Property by obtaining a new survey. In all events, the most recent survey for the Property, as may be updated or obtained by Buyer, shall be referred to herein as the "**Survey**." If Buyer elects to obtain a Survey, then such Survey shall be certified to both Seller and Buyer.

6.2 **Title Review**. Buyer shall have until the expiration of the Feasibility Review Period to review any easements, liens, encumbrances, or other exceptions or matters disclosed in or shown on the Survey and work together with the Escrow Agent to obtain such title insurance coverages. In the event that Buyer is unable to obtain any and all applicable title coverages, or if Buyer otherwise does not approve the condition of title to the Property, then Buyer shall have the right on or before the expiration of the Feasibility Review Period to terminate this Agreement by delivering a Termination Notice to Seller, whereupon all portions of the Earnest Money shall be returned to Buyer in accordance with Section 4 of this Agreement, and neither Buyer nor Seller shall have any further right, liability, duty or obligation under this Agreement, except for agreements or covenants that specifically survive termination. In the event Buyer does not timely terminate this Agreement prior to the expiration of the Feasibility Review Period, then (i) Buyer shall be deemed to have waived its right to terminate under this Section 6.2 and all items, exceptions, and conditions shown on the then-current Title Report and the Survey shall be deemed approved as "**Permitted Exceptions**" to the title of the Property; and (ii) Buyer and Seller shall continue to consummate the Purchase and Sale Transaction subject to all other terms and conditions set forth herein.

6.3 **Title Policy**. At the Closing, Escrow Agent shall issue to Buyer, at Seller's expense, a standard owner's policy of title insurance ("**Title Policy**") in the amount of the Purchase Price insuring Buyer as the fee owner of the Property, subject to all Permitted Exceptions and standard exceptions relating to a standard owner's policy of title insurance. Buyer may, at its expense, obtain extended coverage and/or such endorsements for the Property as Buyer may reasonably request or require. Obtaining extended coverage and/or any endorsements shall not be a condition or contingency of the Closing.

7. **Entitlements**. Buyer, at its sole cost and expense, shall have until the expiration of the Feasibility Review Period to determine the suitability of the Property for Buyer's intended purposes. In no event shall Buyer cause to occur any action or matter that would cause a final change to the plat, or legal description of the Property, including, without limitation, final plat approval, final subdivision approval, the recording of any subdivision plat or boundary line agreement, or any other similar non-legislative governmental action. Buyer acknowledges that such actions and filings may not occur until after Closing. In the event Buyer causes to occur any action or matter that results in a final change to the Property in connection with the entitlements prior to Closing, then Buyer shall become irrevocably obligated and committed to the purchase of the Property and Seller shall have the right of specific performance to enforce said obligation. Seller will reasonably cooperate with Buyer's entitlement efforts, provided that no entitlements or permits shall become finalized prior to Closing.

8. **Closing**.

8.1 **Time and Place**. The Closing for the Purchase and Sale Transaction shall take place in the offices of Escrow Agent on the Closing Date.

8.2 **Seller's Closing Deliveries**. At the Closing, Seller shall deliver, or cause to be delivered, to Escrow Agent and Buyer, as applicable:

8.2.1 A special warranty deed, or its equivalent in the state where the Real Property is located (the "**Deed**"), on Seller's approved form in substantially the same form as Exhibit B attached hereto, fully executed and properly acknowledged by Seller. The Real Property contains church-built meetinghouse(s) or building(s) formerly used for religious purposes. As such, the Deed shall contain certain use restrictions, as set forth in Exhibit B. Further, Buyer acknowledges that Seller has informed Buyer that the premises described in the Deed and the structures located thereon have been tested for asbestos, and as such, the Deed shall contain certain release and indemnification language regarding said asbestos, as set forth in Exhibit B.

8.2.2 An affidavit on Seller's approved form, fully executed and properly acknowledged by Seller, as required by Internal Revenue Code Section 1445(b)(2);

8.2.3 A settlement statement signed by Seller, which is reasonably acceptable to Seller and accurately reflects the payments, credits and prorations required herein; and

8.2.4 Such other funds, instruments and documents as may be reasonably requested by Buyer or Escrow Agent or reasonably necessary to effect or carry out the purposes of this Agreement; provided, however, that such funds, instruments and documents shall be subject to Seller's prior approval thereof, which approval shall not be unreasonably withheld.

8.3 **Buyer's Closing Deliveries**. At the Closing, Buyer shall deliver to Escrow Agent

8.3.1 Notice of Interest (defined below) fully executed and properly acknowledged by Buyer;

8.3.2 A settlement statement signed by Buyer, which is reasonably acceptable to Buyer and accurately reflects the payments, credits and prorations required herein;

8.3.3 Any funds required under this Agreement for closing costs, prorations, title policies, and/or other fees and expenses related to the Closing; and

8.3.4 Such other funds, instruments and documents as may be reasonably requested by Seller or Escrow Agent, or reasonably necessary to effect or carry out the purposes of this

Agreement (which funds, instruments and documents shall be subject to Buyer's prior approval thereof, which approval shall not be unreasonably withheld).

8.4 **Prorations and Closing Costs**.

8.4.1 Except as expressly set forth in this Agreement, each party must bear its own costs (including attorneys' fees) in connection with its negotiation, due diligence investigation and conduct of the Purchase and Sale Transaction. Seller shall pay the premium for standard coverage in connection with the Title Policy for the Closing. Buyer shall pay the cost of the Survey and any extended coverage and/or endorsements that Buyer desires in connection with the Title Policy. Any and all recording fees, escrow fees and other customary closing costs shall be allocated between Seller and Buyer in the manner customary for commercial real estate transactions in the county in which the Property is located.

8.4.2 All real property taxes and assessments accrued for the current year shall be prorated between the parties as of Closing.

8.4.3 Payments to any and all utility and other service providers related to the Property shall be prorated between the parties as of Closing.

8.4.4 All transfer, proceeds, or other taxes (not including general state and federal income taxes of Seller, if any) imposed upon this transaction by any state or local entity shall be paid by Buyer.

8.5 **Possession**. Buyer shall be entitled to possession of the Property at Closing.

9. **Representations and Warranties**.

9.1 **Seller Representations**. Seller, to Seller's Current Knowledge, as of the Effective Date and again at the Closing, represents and warrants to Buyer that:

9.1.1 **Organization and Standing**. Seller is duly formed, validly existing and in good standing under the laws of the State of its formation. Seller has full power and authority to enter into and perform this Agreement and all documents, instruments and agreements entered into by Seller pursuant to this Agreement, and to carry out the transactions contemplated hereby and thereby. This Agreement has been executed, and such other documents, instruments and agreements have been or will be executed, by a duly authorized representative of Seller.

9.1.2 **Binding Agreement**. Upon Seller's execution of this Agreement, this Agreement shall be binding and enforceable against Seller in accordance with its terms, and upon Seller's execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Seller in accordance with their terms.

9.1.3 **No Condemnation**. Seller has not received any written notice of condemnation or eminent domain proceedings with respect to the Property, and no condemnation or eminent domain proceedings or negotiations have been commenced in connection with the Property.

9.1.4 **No Litigation**. There are no current actions, suits, or proceedings at law or in equity before any judicial body or governmental agency affecting or involving the Property.

The warranties and representations by Seller set forth in this Section 9.1 shall merge with the Deed and shall not survive Closing.

9.2 **Buyer's Representations**. Buyer, to Buyer's Current Knowledge, as of the date of this Agreement and again at Closing, represents and warrants to Seller that:

9.2.1 **Organization and Standing**. Buyer is duly formed, validly existing and in good standing under the laws of the State of its formation. Buyer has full power and authority to enter into and perform this Agreement and all documents, instruments and agreements entered into by Buyer pursuant to this Agreement, and to carry out the transactions contemplated hereby and thereby. This Agreement has been executed, and such other documents, instruments and agreements have been or will be executed, by a duly authorized representative of Buyer.

9.2.2 **Binding Agreement**. Upon Buyer's execution of this Agreement, this Agreement shall be binding and enforceable against Buyer in accordance with its terms, and upon Buyer's execution of the additional documents contemplated by this Agreement, they shall be binding and enforceable against Buyer in accordance with their terms.

The warranties and representations by Buyer set forth in this Section 9.2 shall merge with the Deed and shall not survive Closing.

10. **"AS IS" Purchase**.

10.1 **Disclaimer**. Except as expressly set forth in Section 9.1 above, Seller has not made, and Buyer acknowledges that Seller has not made, any warranty, certification, or representation, express or implied, written or oral, statutory or otherwise, concerning the Property, any portion thereof, or the Inspection Materials. Without limiting the generality of the foregoing, Seller has not made, and Buyer acknowledges that Seller has not made, any warranty, certification, or representation related to: (i) the condition of title to the Property; (ii) the nature, physical condition or any other aspect of the Property; (iii) the existence of Hazardous Materials in, on, about, under or affecting the Property; (iv) the compliance of the Property with any federal, state or local laws, ordinances, statutes, rules, codes or regulations (including, without limitation, any environmental laws or any zoning codes); (v) the size, dimensions or square footage of the Property; (vi) the fitness of the Property for any particular purpose (including without limitation the current or any future use thereof); or (vii) the completeness, adequacy, truthfulness, or accuracy of the Inspection Materials.

10.2 **Acceptance**. SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, BUYER ACKNOWLEDGES FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS THAT BUYER WILL BE ACQUIRING THE PROPERTY BASED SOLELY UPON BUYER'S OWN INVESTIGATION AND INSPECTION THEREOF. SELLER AND BUYER AGREE THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 9.1, THE PROPERTY SHALL BE SOLD AND BUYER SHALL ACCEPT TITLE TO AND POSSESSION OF THE PROPERTY ON THE CLOSING DATES "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET OFF OR REDUCTION IN THE PURCHASE PRICE, AND THAT EXCEPT AS SET FORTH IN SECTION 9.1, SUCH SALE SHALL BE WITHOUT REPRESENTATION, CERTIFICATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND SELLER DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION, CERTIFICATION OR WARRANTY.

10.3 **General Release**. Buyer, on behalf of itself and its successors, assigns and representatives, does hereby release Seller and Seller's employees, officers, directors, agents, representatives, managers, members, affiliates, parent companies, and the successors and assigns of each of the foregoing from

any and all claims, actions, causes of action, demands, liabilities, damages, costs, expenses, or compensation whatsoever, including attorneys' fees, whether direct or indirect, known or unknown, foreseeable or unforeseeable, which Buyer may have at Closing Date or which may arise in the future on account of or in any way arising out of or connected with this Agreement. Buyer understands the significance of executing this Agreement and the general release of claims set forth above.

10.4 **ENVIRONMENTAL RELEASE**. BUYER EXPRESSLY ASSUMES THE RISK THAT ANY HAZARDOUS MATERIALS ARE OR HEREAFTER MAY BE LOCATED ON THE PROPERTY. FROM AND AFTER THE CLOSING, BUYER HEREBY AGREES TO FOREVER ACQUIT, RELEASE AND DISCHARGE, AND WAIVE, ALL RIGHTS AND CLAIMS TO CONTRIBUTION FROM, SELLER, AND SELLER'S AFFILIATES AND THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS, FROM AND AGAINST ANY AND ALL JUDGMENTS, CLAIMS, EXPENSES (INCLUDING ATTORNEYS' AND OTHER CONSULTANTS' REASONABLE FEES AND COSTS), CAUSES OF ACTION, DAMAGES, LIABILITIES, INCLUDING WITHOUT LIMITATION, ALL FORESEEABLE AND ALL UNFORESEEABLE CONSEQUENTIAL DAMAGES, DIRECTLY OR INDIRECTLY ARISING OUT: (I) OF THE USE, GENERATION, STORAGE, DISPOSAL, RELEASE OR THREATENED RELEASE OF HAZARDOUS MATERIALS ON THE PROPERTY; AND (II) THE COST OF ANY REASONABLY NECESSARY INVESTIGATION, REPAIR, CLEANUP, REMEDIATION OR DETOXIFICATION OF THE PROPERTY AND OTHER AFFECTED PROPERTY AND THE PREPARATION OF ANY CORRECTIVE ACTION, CLOSURE OR OTHER REQUIRED PLANS OR REPORTS TO THE FULL EXTENT THAT SUCH ACTIONS ARE ALLEGED TO BE ATTRIBUTABLE, DIRECTLY OR INDIRECTLY, TO THE PRESENCE OR USE, GENERATION, STORAGE, RELEASE, THREATENED RELEASE, OR DISPOSAL OF HAZARDOUS MATERIALS BY ANY PERSON AND RELATED TO OR INVOLVE THE PROPERTY. THE TERMS AND CONDITIONS OF THIS SECTION SHALL NOT MERGE WITH THE DEED AND SHALL SURVIVE THE CLOSING AND THE DELIVERY OF THE DEED.

10.5 **Material Inducement**. Buyer hereby agrees and acknowledges that the terms and conditions of this Section 10 are a material inducement to Seller's sale of the Property, and that Seller would not sell or transfer all or any part of the Property to Buyer without Buyer's express agreement to the terms and conditions of this Section 10. All terms and provisions of all portions of this Section 10 shall survive the Closing and the recording of the Deed.

11. **Risk of Loss**.

11.1 **Risk of Loss**. Subject to the provisions of this Section 11 set forth below, the risk of loss with respect to the Property will be upon Seller with respect to any executory period related to this Agreement.

11.2 **Condemnation**. If a portion of the Property becomes the subject of condemnation proceedings, Seller shall notify Buyer of such proceedings, and this Agreement shall not terminate, but shall remain in full force and effect. In such event, at Closing (i) Seller shall pay to Buyer all condemnation awards or proceeds from any such proceedings or actions in lieu thereof received by Seller to the date of Closing; (ii) Seller shall assign to Buyer all of Seller's rights to defend such proceedings or actions in lieu thereof; and (iii) Buyer shall take the Property subject to any such proceedings. The Purchase Price shall not be adjusted or reduced for any such proceedings or for any land taken by condemnation, but rather the acreage for purposes of such calculation shall be the acreage of the Property prior to the condemnation. As used herein, the phrase "becomes the subject of condemnation proceedings" shall mean the service upon Seller of a formal notice of

condemnation by a governmental authority with the power of eminent domain, specifying that all or a portion of the Property is subject to such proceeding or action.

11.3 **Casualty**.

11.3.1 **Minor Casualty**. If the Property shall be damaged by any casualty prior to Closing, and the loss in value to the Property because of such casualty (the "**Casualty Loss Value**"), as estimated by Seller in Seller's sole but reasonable discretion, is less than or equal to five percent (5%) of the Purchase Price, then this Agreement shall continue in full force and effect and the Closing shall occur as otherwise provided herein, without any adjustment to the Purchase Price.

11.3.2 **Major Casualty**. If the Property shall be damaged by any casualty prior to Closing, and the Casualty Loss Value, as estimated by Seller in Seller's sole but reasonable discretion, is more than five percent (5%) of the Purchase Price, then either Seller or Buyer may elect to terminate this Agreement, by written notice to the other party given not more than ten (10) days after receipt of written notice from Seller to Buyer of Seller's estimate of the valuation loss, which estimate notice Seller shall give within thirty (30) days after the casualty. If neither party elects to so terminate this Agreement, then this Agreement shall continue in full force and effect and the Closing shall occur as otherwise provided herein, without any adjustment to the Purchase Price.

12. **Broker's Commission**. Except as disclosed below in Section 15, Buyer and Seller represent and warrant that they have not dealt with any broker or finder in connection with this Agreement or the Purchase and Sale Transaction. Buyer and Seller shall and do hereby each indemnify the other against, and agree to hold the other harmless from, any claim, demand or suit for any brokerage or real estate commission, finder's fee or similar fee or charge with respect to this Agreement or the Purchase and Sale Transaction based on any act by or agreement or contract with the indemnifying party asserted by anyone, and for all losses, obligations, costs, expenses and fees (including reasonable attorneys' fees) incurred by the other party on account of or arising from any such claim, demand or suit. Any brokerage agreement between Buyer and Seller with their respective broker(s) shall be memorialized by separate agreement; no brokerage fees or commissions shall be based on this Agreement.

**13. Remedies and Termination**

13.1 **Seller's Remedies**. In the event Buyer defaults in any of its agreements, covenants, representations, warranties or other obligations under this Agreement ("**Buyer's Default**"), Seller shall give Buyer written notice of such default and thereafter Buyer shall have ten (10) Business Days to cure such default (or such longer period if such is reasonably necessary in order to cure the default, not to exceed thirty (30) days, and then only if Buyer commences such cure within the initial ten (10) Business Day period, and thereafter, diligently pursues the cure to completion). Notwithstanding the foregoing, all time periods set forth herein in which Buyer must satisfy any condition, perform any act, or otherwise complete any task are not subject to any cure period. In the event that Buyer fails to timely cure Buyer's Default, Seller may: (i) waive the effect of such default and proceed to consummate the Purchase and Sale Transaction; (ii) cancel this Agreement and retain the Earnest Money, if any, in accordance with Section 4 of this Agreement; (iii) bring an appropriate action for specific performance of this Agreement; and/or (iv) otherwise seek any other right or remedy available at law or in equity.

13.2 **Buyer's Remedies**. In the event Seller materially defaults in any of its agreements, covenants, representations, warranties or other obligations under this Agreement ("**Seller's Default**"), Buyer shall give Seller written notice of such default and thereafter Seller shall have ten (10) Business Days to cure such default (or such longer period if such is reasonably necessary in order to cure the

default, not to exceed thirty (30) days, provided that Seller commences such cure within the initial ten (10) Business Day period and thereafter diligently pursues the cure to completion). In the event that Seller fails to cure Seller's Default within the cure period, Buyer may, as Buyer's sole remedies for such Seller's Default: (i) waive the effect of such default and proceed to consummate the Purchase and Sale Transaction; (ii) cancel this Agreement in accordance with Section 13.3 below; or (iii) bring an appropriate action for specific performance of this Agreement. All rights and remedies contained in this Section 13.2 shall be non-cumulative and exclusive. In no event shall Buyer be entitled to any punitive, special, or consequential damages of any kind.

13.3 **Termination**. If Buyer or Seller elects to terminate this Agreement pursuant to a right granted herein, the terminating party shall give written notice of the termination to the other party and Escrow Agent. Upon termination by notice as set forth in the preceding sentence, or upon an automatic termination in accordance with the terms of the Agreement, Escrow Agent shall disburse the Earnest Money, if any, in accordance with Section 4 above and return all documents deposited in the Escrow to the party who supplied the documents. Upon delivery of money and documents, this Agreement and the Escrow will be deemed terminated, and except as expressly provided in this Agreement, neither party will have any further liability or obligation under this Agreement. Upon termination of the Agreement because of a default by a party, the defaulting party shall be liable for and shall pay any escrow termination fees or costs; otherwise, upon any termination Seller and Buyer shall each pay half of any such fees and costs.

14. **Attorneys' Fees**. If there is any litigation between Seller and Buyer to enforce or interpret any provisions or rights under this Agreement, the unsuccessful party in such litigation, as determined by the court, shall pay to the successful party, as determined by the court, all costs and expenses, including but not limited to reasonable attorneys' fees, incurred by the successful party, such fees to be determined by the court sitting without a jury.

15. **Notices**. Except as otherwise required by law, any notice, demand, or request given in connection with the Purchase and Sale Transaction and this Agreement shall be in writing and shall be given by (i) personal delivery; (ii) recognized, national overnight courier service; (iii) United States certified mail, return receipt requested, postage or other delivery charge prepaid; or (iv) electronic mail. In all events, notice shall only be deemed given if properly addressed to Seller or Buyer as applicable, at the following addresses (or at such other address as Seller or Buyer or the person receiving copies may designate in writing given in accordance with this Section):

| | |
|---|---|
| **SELLER**<br>THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole<br><br>Attention: Real Estate Services Division<br>Address: 50 East North Temple Street, 12th Floor<br>Salt Lake City, Utah 84150<br>Phone: 801-353-1268<br>Email: robertsjd@churchofjesuschrist.org | **SELLER'S BROKER**<br>N/A<br><br>**WITH A COPY TO**<br>Kirton McConkie<br>Address: 50 E. South Temple<br>Salt Lake City, Utah 84111<br>Attention: Parker Jenkins<br>Email: pjenkins@kmclaw.com |
| **BUYER**<br>City of St. George<br><br>Attention: Shawn Guzman<br>Address: 175 East 200 North<br>St. George, Utah 84770 | **BUYER'S BROKER**<br>N/A |

| | |
|---|---|
| Phone: 435-627-4600<br>Email: shawn.guzman@sgcity.org | |
| **TITLE COMPANY**<br>Backman Title Services<br>Address: 382 South Bluff St. #100<br>St. George, UT 84770<br>Attn: David Johnson<br>E-mail: DJ@backmantitle.com<br>Phone: 435-229-8176 | **ESCROW COMPANY**<br>Backman Title Services<br>Address: 382 South Bluff St. #100<br>St. George, UT 84770<br>Attn: David Johnson<br>E-mail: DJ@backmantitle.com<br>Phone: 435-229-8176 |

Notice shall be deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery or electronic mail, on the date of delivery to the overnight courier service, if such a service is used, and on the date of deposit in the mail, if mailed. Notice shall be deemed to have been received on the date on which the notice is actually received or delivery is refused. Copies of all notices given to Seller or Buyer shall be given to Escrow Agent (provided, however, any omission on the part of either party to provide a copy of the applicable notice to Escrow Agent shall not affect the effectiveness of the notice if properly provided to the other parties as described above).

16. **Additional Acts**. The parties agree to promptly execute and deliver such other documents and perform such other acts as may be reasonably necessary to carry out the purposes and intent of this Agreement.

17. **Governing Law; Jurisdiction**. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah.

18. **Business Days**. If this Agreement requires any act to be done or action to be taken on a date which is not a Business Day, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding Business Day.

19. **Waiver**. The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

20. **Survival**. Only where specifically so provided herein shall any of the covenants, agreements, representations, warranties, and indemnities set forth in this Agreement survive the Closing. Any such matters that survive Closing pursuant to the terms of this Agreement shall be subject to any time limitations set forth herein, and shall not merge into any deed, assignment or other instrument executed or delivered pursuant hereto. All claims for breach of the covenants, agreements, or warranties or for material misrepresentation and indemnity made in writing during the applicable time period limitation shall survive such period.

21. **Counterparts**. The parties may sign this Agreement in multiple identical counterparts, all of which taken together shall constitute one and the same agreement. Further, the parties shall treat a copy of an original signature to this Agreement for all purposes as an original signature. The parties shall consider a copy of the signed Agreement for all purposes as an original of the Agreement to the maximum extent permitted by law, and no party to this Agreement shall have any obligation to retain a version of this Agreement that contains original signatures in order to enforce this Agreement, or for any other purpose.

22. **Successors and Assigns**. Seller shall have the right to assign its rights and obligations under this Agreement to any entity to which it transfers the Property prior to Closing, provided such entity assumes

Seller's obligations under this Agreement and thereafter notice of such assignment is given to Buyer. Buyer shall not have the right to assign, transfer or convey any of its rights, interests or obligations under this Agreement to any other person or entity, without Seller's prior written consent, which consent Seller may grant or withhold in Seller's sole discretion. Notwithstanding the preceding sentence, Buyer may designate a different entity to take title to the Property at Closing. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

23. **Entire Agreement/Amendment**. This Agreement sets forth the entire understanding of the parties with respect to the matters set forth herein as of the date hereof, and supersedes all prior oral and written agreements, discussions, and understandings of the parties hereto as to the matters set forth herein and cannot be altered or amended except pursuant to an instrument in writing signed by both Buyer and Seller.

24. **Construction**. This Agreement is the result of negotiations between the parties, neither of whom has acted under any duress or compulsion, whether legal, economic, or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Seller and Buyer hereby waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that provides in effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same.

25. **Interpretation**. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any document, instrument or other agreement executed in connection herewith or in furtherance hereof, including any exhibits hereto, the same shall be consistently interpreted in such manner as to give effect to the general purposes and intentions as expressed in this Agreement, which shall be deemed to prevail and control.

26. **Headings**. The headings in this Agreement are for reference only and shall not limit or define the meaning of any provision of this Agreement.

27. **No Third-Party Beneficiary**. No term or provision of this Agreement or the exhibits hereto is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation, or other entity not a party hereto (including, without limitation, any broker), and no such other person, firm, corporation, or entity shall have any right or cause of action hereunder.

28. **Severability**. If any provision of this Agreement or any portion of any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not alter the remaining portion of such provision, or any other provision hereof, as each provision of this Agreement shall be deemed severable from all other provisions hereof so long as removing the severed portion does not materially alter the overall intent of this Agreement.

29. **Confidentiality**. Buyer and Seller acknowledge and agree that the parties do not desire any publicity with respect to this transaction, and therefore each party hereto agrees, for itself and its employees, contractors and agents (including specifically real estate brokers and agents), that no publication of this transaction shall be made and no information with respect to this transaction shall be given to any media. Each party shall instruct any broker working with that party of this requirement and obtain the signed agreement of that broker to abide by the terms of this Section 29. The provisions of this Section 29 shall survive any termination of this Agreement.

30. **Time of the Essence**. With respect to all dates and time periods set forth in this Agreement, time is of the essence and such dates and time periods shall be strictly enforced.

31. **Relationship Disclosure**. Buyer hereby warrants and represents that it:

☒ does not have a personal, business, or other relationship to the Seller or affiliated corporations or groups other than the sale of the Property; or

☐ does have a relationship to Seller and is: (mark as applicable):

☐ a currently serving ecclesiastical leader of a unit of The Church of Jesus Christ of Latter-day Saints (the "**Church**") where the Property is located;

☐ an employee of the Seller or any Church entity;

☐ a relative of an employee of Seller or of any other Church entity; and/or

☐ a hired agent of the Seller or any Church entity.

**Buyer's Initials**: _____

The truth of the foregoing representations and warranties on and as of the Effective Date and on and as of the Closing Date shall be a condition precedent to Seller's obligations to sell the Property and otherwise perform under this Agreement. All representations and warranties by Buyer set forth in this Section shall survive the execution and delivery of this Agreement, the recording of the Deed and the Closing.

32. **Special Provisions**. Notwithstanding any provision in this Agreement to the contrary, to the extent there are any conflicts with the provisions of this Section 32, the provisions of this Section 32 shall prevail and govern:

32.1 Asbestos; Demolition. At its sole cost and expense and within one hundred eighty (180) days of Closing, Buyer agrees to remove and abate the asbestos from the buildings, in accordance with applicable laws, codes and requirements, and demolish the buildings on the Property. The parties agree that Seller will file and record a notice of interest in connection with Buyer's post-closing removal, abatement and demolition obligations, the form of which is attached hereto as Exhibit C (the "**Notice of Interest**") against the Property to ensure that asbestos removal and demolition occurs in a timely fashion. Seller agrees to remove the Notice of Interest within fourteen (14) days of written confirmation from Buyer that demolition has been completed, subject to the review and approval of Seller. This Section, the Notice of Interest and the obligations contained therein will survive Closing.

32.2 Decommissioning. Prior to Closing, Seller reserves the right to enter the Property and perform its decommissioning process which may include, but not be limited to: the removal of any and all personal property, the removal of any and all signage, the removal of the steeple and/or font as applicable, and the removal of any other items deemed necessary by the Seller.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date.

**SELLER:**

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole

By: _____

Name: _____

Its: Authorized Agent

Date: _____

**BUYER:**

CITY OF ST. GEORGE

By: _____

Name: _____

Its: _____

Date: _____

**ATTEST:**

_____

Christina Fernandez, City Recorder

## ESCROW AGENT ACCEPTANCE

This Purchase and Sale Agreement (the "**Agreement**"), and the Earnest Money, are accepted and the Escrow is opened this ____ day of _____, 2022. Escrow Agent hereby agrees to act as the Escrow Agent, as defined in the Agreement, and to perform its duties in accordance with the provisions of the Agreement. Further, Escrow Agent agrees to act as "the person responsible for closing" the Purchase and Sale Transaction within the meaning of Section 6045(a) of the Internal Revenue Code of 1986, as amended, and to file all forms and returns required thereby.

ESCROW AGENT: BACKMAN TITLE SERVICES

By: _____

Name: _____

Title: _____

**LIST OF EXHIBITS**

| | | |
|---|---|---|
| Exhibit A | - | Real Property Description and Depiction |
| Exhibit B | - | Deed |
| Exhibit C | - | Notice of Interest |

# EXHIBIT A

REAL PROPERTY DESCRIPTION AND DEPICTION

That certain real property located in St. George, Washington County, Utah, described as follows:

PARCEL 1:
Beginning on the West line of Lot 4, Block 61, Plat "B", St. George City Survey, at a point South 26.0 feet from the Northwest corner of said Lot 4, and running thence South 40.0 feet; thence at right angles East 243.0 feet, more or less, to the East line of Lot 3 in said Block 61; thence at right angles North 66.0 feet, to the Northeast corner of said Lot 3; thence West along North line 132.0 feet to the Northwest corner of said Lot 3; thence South 26.0 feet; thence at right angles West 111.0 feet, more or less, to the point of beginning, being a portion of Lots 3 and 4 in said Block 61.

Excepting therefrom:

Beginning at a point South 0 deg. 08'44" West 26.00 feet along the East lot line from the Northeast corner of Lot 4, Block 61, Plat "B" of the St. George City Survey and running thence South 0 deg. 08'44" West 3.00 feet along said East lot line; thence North 89 deg. 51'16" West 111.00 feet to a point on the East right of way of 400 East Street; thence North 0 deg. 08'44" East 3.00 feet; thence South 89 deg. 51'16" East 111.00 feet to the point of beginning.

Tax ID No.: SG-1178-A-2

PARCEL 2:
The South one-half of the North one-half of Lots 3 and 4, Block 61, Plat "B", St. George City Survey, more particularly described as follows: Beginning at a point on the West boundary line of said Lot 4, which point is South 4 rods from the Northwest corner of said Lot, and running thence East 243 feet, more or less, to the East boundary line of said Lot 3; thence South along the East boundary line of said Lot 3 a distance of 4 rods; thence at right angles West 243 feet, more or less, to the West boundary line of said Lot 4; thence North 4 rods, more or less, to the point of beginning.

Tax ID No.: SG-1178-B

PARCEL 3:
A part of Lots 3 and 4, Block 61, Plat "B", St. George City Survey, as platted on the official map of said survey on file in the office of the county recorder of Washington County, Utah and more particularly described as follows, to-wit: Beginning at the Southwest corner of said Lot 4 and running thence East on the South boundary line of said Lot 3 and 4 a distance of 9 rods; thence at right angles North a distance of 8 rods; thence at right angles West a distance of 9 rods, more or less, to the West boundary line of said Lot 4; thence at right angles South on said West boundary line a distance of 8 rods, more or less, to the point of beginning.

Tax ID No.: SG-1177

PARCEL 4:

Beginning at a point on the South boundary line of Lot 3, Block 61, Plat "B" of the St. George City Survey, as platted on the official map of said survey on file in the office of the recorder of Washington County, Utah, which said point is East 37.5 feet from the Southwest corner of said Lot 3, and running thence East along the South boundary line of said Lot and the South boundary line of Lot 2 in said Block, a distance of 160.5 feet; thence at right angles North 264 feet, more or less, to the North boundary line of Lot 2 in said Block; thence West along the North boundary line of said Lot 2 a distance of 66 feet, more or less, to the Northwest corner of said Lot 2; thence South along the West boundary line of said Lot 2, a distance of 132 feet; thence at right angles West 94.5 feet; thence at right angles South 132 feet, more or less, to the point of beginning.

Tax ID No.: SG-1176

PARCEL 5:
All of the East one-half (E ½) of Lot 2, Block 61, Plat "B", St. George City Survey, as platted on the official map thereof on file in the office of the recorder of Washington County, State of Utah.

Tax ID No.: SG-1175

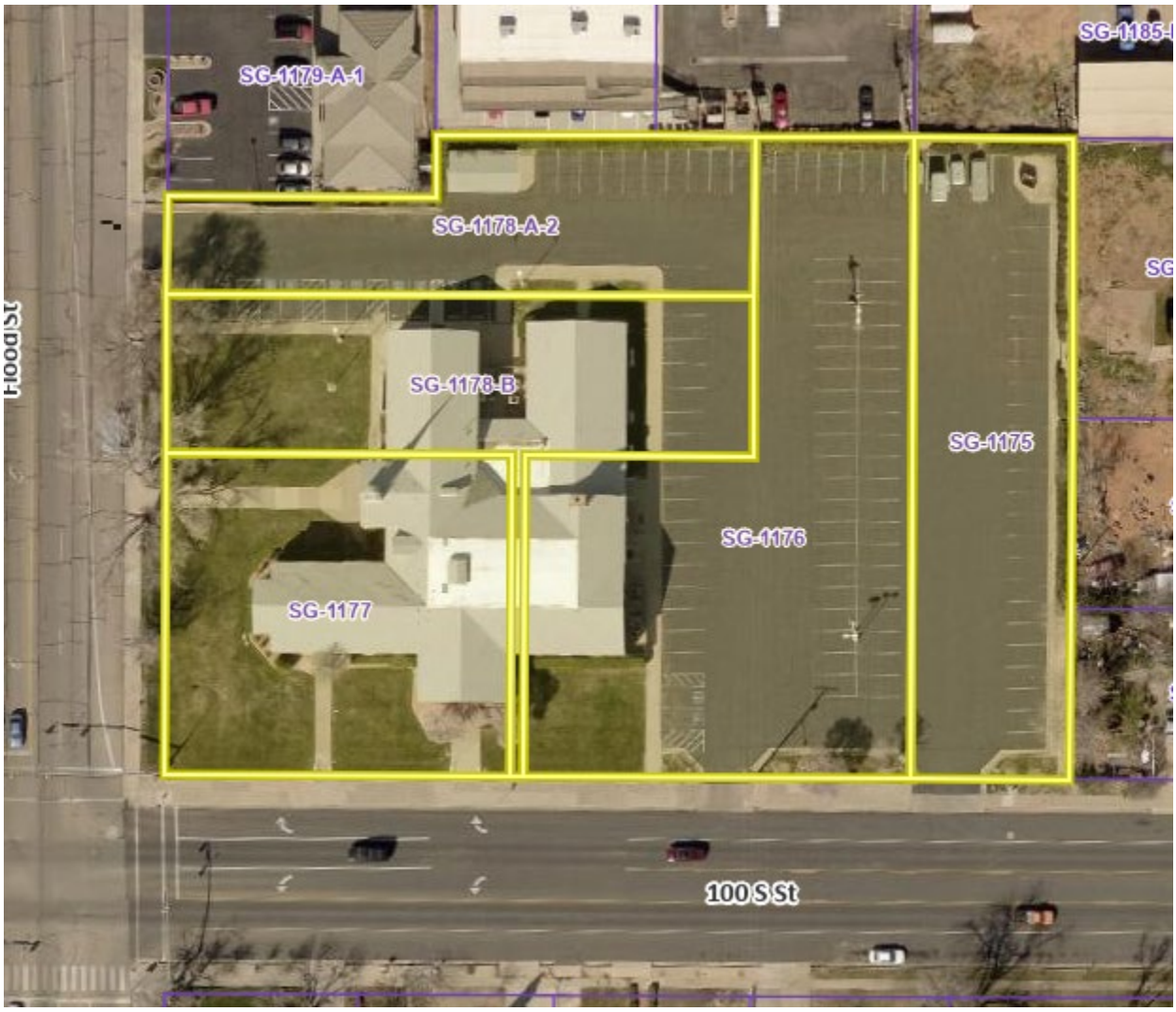


**EXHIBIT B**

DEED

****DRAFT ONLY – NOT FOR EXECUTION****

Property #:**505-0944**

**SPECIAL WARRANTY DEED**

**THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole**, GRANTOR, of Salt Lake City, County of Salt Lake, State of Utah, hereby conveys and warrants against all claiming by, through or under it, and against acts of itself, to **CITY OF ST. GEORGE**, GRANTEE, of _____, _____, _____, for the sum of Ten and No/l00 Dollars ($10.00) and other good and valuable consideration, the following parcel of land, situated in the County of **Washington**, State of **Utah**, and more particularly described as follows:

PARCEL 1:

Beginning on the West line of Lot 4, Block 61, Plat "B", St. George City Survey, at a point South 26.0 feet from the Northwest corner of said Lot 4, and running thence South 40.0 feet; thence at right angles East 243.0 feet, more or less, to the East line of Lot 3 in said Block 61; thence at right angles North 66.0 feet, to the Northeast corner of said Lot 3; thence West along North line 132.0 feet to the Northwest corner of said Lot 3; thence South 26.0 feet; thence at right angles West 111.0 feet, more or less, to the point of beginning, being a portion of Lots 3 and 4 in said Block 61.

Excepting therefrom:

Beginning at a point South 0 deg. 08'44" West 26.00 feet along the East lot line from the Northeast corner of Lot 4, Block 61, Plat "B" of the St. George City Survey and running thence South 0 deg. 08'44" West 3.00 feet along said East lot line; thence North 89 deg. 51'16" West 111.00 feet to a point on the East right of way of 400 East Street; thence North 0 deg. 08'44" East 3.00 feet; thence South 89 deg. 51'16" East 111.00 feet to the point of beginning.

Tax ID No.: SG-1178-A-2

PARCEL 2:

The South one-half of the North one-half of Lots 3 and 4, Block 61, Plat "B", St. George City Survey, more particularly described as follows: Beginning at a point on the West boundary line of said Lot 4, which point is South 4 rods from the Northwest corner of said Lot, and running thence East 243 feet, more or less, to the East boundary line of said Lot 3; thence South along the East boundary line of said Lot 3 a distance of 4 rods; thence at right angles West 243 feet, more or less, to the West boundary line of said Lot 4; thence North 4 rods, more or less, to the point of beginning.

Tax ID No.: SG-1178-B

PARCEL 3:

A part of Lots 3 and 4, Block 61, Plat "B", St. George City Survey, as platted on the official map of said survey on file in the office of the county recorder of Washington County, Utah and more particularly described as follows, to-wit: Beginning at the Southwest corner of said Lot 4 and running thence East on the South boundary line of said Lot 3 and 4 a distance of 9 rods; thence at right angles North a distance of 8 rods; thence at right angles West a distance of 9 rods, more or less, to the West boundary line of said Lot 4; thence at right angles South on said West boundary line a distance of 8 rods, more or less, to the point of beginning.

Tax ID No.: SG-1177

PARCEL 4:

Beginning at a point on the South boundary line of Lot 3, Block 61, Plat "B" of the St. George City Survey, as platted on the official map of said survey on file in the office of the recorder of Washington County, Utah, which said point is East 37.5 feet from the Southwest corner of said Lot 3, and running thence East along the South boundary line of said Lot and the South boundary line of Lot 2 in said Block, a distance of 160.5 feet; thence at right angles North 264 feet, more or less, to the North boundary line of Lot 2 in said Block; thence West along the North boundary line of said Lot 2 a distance of 66 feet, more or less, to the Northwest corner of said Lot 2; thence South along the West boundary line of said Lot 2, a distance of 132 feet; thence at right angles West 94.5 feet; thence at right angles South 132 feet, more or less, to the point of beginning.

Tax ID No.: SG-1176

PARCEL 5:

All of the East one-half (E ½) of Lot 2, Block 61, Plat "B", St. George City Survey, as platted on the official map thereof on file in the office of the recorder of Washington County, State of Utah.

Tax ID No.: SG-1175

**Subject to easements, rights, rights-of-way, reservations, conditions, restrictions, covenants and taxes and assessments of record or enforceable in law or equity.**

**Grantee acknowledges that Grantor has informed Grantee that the premises described in this Deed have been tested for and thus can be confirmed to contain asbestos. Grantee acknowledges**

**receipt of a copy of the asbestos test report. Grantee releases Grantor from any liability to Grantee with regard to asbestos on said premises following the date of this Deed, and Grantee further agrees that Grantee will indemnify and save and hold Grantor harmless from any injury or damage to persons or property caused by or resulting from contact, directly or indirectly, with asbestos on the above-described premises following the date of this Deed. In the case of renovation, demolition or other occurrence requiring handling, repair or removal of asbestos or materials containing asbestos, Grantee agrees to remove, cover or repair said materials at Grantee's sole cost and expense and to comply at its own expense with the requirements pertaining to asbestos on the said premises as law may from time to time require.**

**Provided, however, that this conveyance is made and accepted on each of the following conditions and restrictions (the "Conditions"):**

1. **Grantee, their successors and assigns shall not manufacture, keep for sale, or sell on the subject property any drugs, tobacco products, alcoholic beverages or intoxicating liquors.**
2. **Grantee, its successors and assigns shall not operate a place of public entertainment or amusement (as defined by local statutes) on the subject property.**
3. **Grantee, its successors and assigns shall not permit on the subject property a nuisance or offensive activity which is an annoyance or a nuisance to a church or private dwelling located nearby.**

**The foregoing Conditions shall be binding upon all persons now having or hereafter acquiring any right, title or interest in the property conveyed herein (the "Subject Parcel"), or any part thereof. In the event that Grantee or any of Grantee's heirs, successors or assigns sells or transfers the Subject Parcel, Grantee shall cause the Conditions to be included in the deed to the grantee in that transaction.**

**In the event of breach of any of the Conditions, Grantor shall have the right to obtain an injunction enforcing the Conditions and shall be entitled to reasonable attorneys' fees and costs from Grantee incurred in the enforcement thereof.**

**A breach of any of the Conditions, or injunctive relief obtained by Grantor by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Subject Parcel or any part thereof, but the Conditions shall be binding upon, and effective against, any owner whose title to the Subject Parcel or any part thereof, is acquired by foreclosure, trustee's sale or otherwise.**

**All and each of the Conditions shall in all respects terminate, expire and end and be of no further effect either legal or equitable and shall not be enforceable if: (1) Grantee or Grantee's heirs, successors or assigns, demolish all of Grantor's buildings on the Subject Parcel; or (2) a period of 50 years expires from the date of the recording of this conveyance.**

**IN WITNESS WHEREOF**, the said Grantor has hereto subscribed its name by its authorized agent, this _____ day of _____, 2022.

**THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS,** a Utah corporation sole

**[EXHIBIT ONLY – NOT FOR EXECUTION]**

By: _____
Authorized Agent

STATE OF UTAH )
:ss
COUNTY OF SALT LAKE )

On this ____ day of _____, 2022, personally appeared before me _____, personally known to me to be the Authorized Agent of THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, who acknowledged before me that he signed the foregoing instrument as Authorized Agent for THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS; and that said instrument is the free and voluntary act of said Corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument on behalf of said Corporation and that said Corporation executed the same.

WITNESS my hand.

_____
Notary Public for the
State of Utah

**EXHIBIT C**

NOTICE OF INTEREST

RECORDING REQUESTED BY &
WHEN RECORDED, MAIL TO:

The Church of Jesus Christ of Latter-day Saints
Attn: Real Estate Services Division [Prop. No. 505-0944]
50 E. North Temple, 12th Floor
Salt Lake City, Utah 84150

Tax ID Nos.: SG-1178-A-2; SG-1178-B; SG-1177; SG-1176; and SG-1175

*(Space Above for Recorder's Use)*

## NOTICE OF INTEREST

THIS NOTICE OF INTEREST (the "Notice") is made as of _____, 2022, by _____, a _____ of _____ ("**Owner**"), in favor of THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, a Utah corporation sole, having an address of 50 E. North Temple, 12th Floor, Salt Lake City, Utah 84150 ("**CHC**") in relation to that certain real property described on Exhibit A, attached hereto and incorporated herein by this reference (the "**Property**").

Concurrent with the execution and recording of this Notice, Owner acquired the Property from CHC pursuant to a Purchase and Sale Agreement between Owner and CHC (the "**Sale Transaction**"). As partial consideration for the Sale Transaction, Owner agreed that, at its sole cost and expense and no later than one hundred eighty (180) days after the date of this Notice, Owner shall demolish and remove (including the proper removal and disposal of any asbestos located therein) the existing religious meetinghouse building and related improvements (the "**Building**") located on the Property. Owner acknowledges that until removal of the Building, CHC shall continue to hold a beneficial interest in the Property. Within fourteen (14) days of receipt of written confirmation from Owner, to the reasonable satisfaction of CHC, that the Building was removed and the asbestos properly abated, CHC shall deliver to Owner a release of this Notice.

If Owner fails to perform its obligations under this Notice within fourteen (14) days following delivery of notice of such default from CHC to Owner, then CHC shall be entitled to all remedies permitted under law and equity, including specific performance, to compel removal of the Building and abatement of the asbestos, and to recover all costs and damages arising from such default from Owner. Additionally, CHC shall be entitled to cure such default by removing the Building itself, subject to reimbursement for all costs and expenses arising therefrom. Promptly following demand from CHC, Owner shall reimburse CHC for all actual costs and expenses

(together with interest thereon at the highest lawful rate) incurred by CHC in connection with the cure of such default. CHC shall be deemed to have been granted a license by Owner to enter onto the Property to exercise its right to cure such default.

In the event that Owner or CHC shall institute legal proceedings to enforce or construe any of the terms, provisions, covenants, conditions or restrictions set forth in this Notice, the prevailing party in such legal proceedings shall be entitled to recover its reasonable attorneys' fees, litigation expenses and court costs from the non-prevailing party.

*[Signature and Acknowledgement Follow]*

**OWNER:**

_____,
a _____

By: _____
Name: _____
Its: _____

STATE OF UTAH )
:ss
COUNTY OF _____)

On ____ day of _____ 2022, personally appeared before me _____, personally known to me to be the _____ of _____, a _____, who acknowledged before me that he/she signed the foregoing instrument in such capacity for said entity; that said instrument is the free and voluntary act of said entity for the uses and purposes therein mentioned; and on oath stated that he/she is authorized to execute said instrument on behalf of said entity and that said entity executed the same.

WITNESS my hand and official seal.

_____
Notary Public

# EXHIBIT A

(Legal Description of the Property)

That certain real property located in St. George, Washington County, Utah, described as follows:

PARCEL 1:
Beginning on the West line of Lot 4, Block 61, Plat "B", St. George City Survey, at a point South 26.0 feet from the Northwest corner of said Lot 4, and running thence South 40.0 feet; thence at right angles East 243.0 feet, more or less, to the East line of Lot 3 in said Block 61; thence at right angles North 66.0 feet, to the Northeast corner of said Lot 3; thence West along North line 132.0 feet to the Northwest corner of said Lot 3; thence South 26.0 feet; thence at right angles West 111.0 feet, more or less, to the point of beginning, being a portion of Lots 3 and 4 in said Block 61.

Excepting therefrom:

Beginning at a point South 0 deg. 08'44" West 26.00 feet along the East lot line from the Northeast corner of Lot 4, Block 61, Plat "B" of the St. George City Survey and running thence South 0 deg. 08'44" West 3.00 feet along said East lot line; thence North 89 deg. 51'16" West 111.00 feet to a point on the East right of way of 400 East Street; thence North 0 deg. 08'44" East 3.00 feet; thence South 89 deg. 51'16" East 111.00 feet to the point of beginning.

Tax ID No.: SG-1178-A-2

PARCEL 2:
The South one-half of the North one-half of Lots 3 and 4, Block 61, Plat "B", St. George City Survey, more particularly described as follows: Beginning at a point on the West boundary line of said Lot 4, which point is South 4 rods from the Northwest corner of said Lot, and running thence East 243 feet, more or less, to the East boundary line of said Lot 3; thence South along the East boundary line of said Lot 3 a distance of 4 rods; thence at right angles West 243 feet, more or less, to the West boundary line of said Lot 4; thence North 4 rods, more or less, to the point of beginning.

Tax ID No.: SG-1178-B

PARCEL 3:
A part of Lots 3 and 4, Block 61, Plat "B", St. George City Survey, as platted on the official map of said survey on file in the office of the county recorder of Washington County, Utah and more particularly described as follows, to-wit: Beginning at the Southwest corner of said Lot 4 and running thence East on the South boundary line of said Lot 3 and 4 a distance of 9 rods; thence at right angles North a distance of 8 rods; thence at right angles West a distance of 9 rods, more or less, to the West boundary line of said Lot 4; thence at right angles South on said West boundary line a distance of 8 rods, more or less, to the point of beginning.

Tax ID No.: SG-1177

PARCEL 4:
Beginning at a point on the South boundary line of Lot 3, Block 61, Plat "B" of the St. George City Survey, as platted on the official map of said survey on file in the office of the recorder of Washington County, Utah, which said point is East 37.5 feet from the Southwest corner of said Lot 3, and running thence East along the South boundary line of said Lot and the South boundary line of Lot 2 in said Block, a distance of 160.5 feet; thence at right angles North 264 feet, more or less, to the North boundary line of Lot 2 in said Block; thence West along the North boundary line of said Lot 2 a distance of 66 feet, more or less, to the Northwest corner of said Lot 2; thence South along the West boundary line of said Lot 2, a distance of 132 feet; thence at right angles West 94.5 feet; thence at right angles South 132 feet, more or less, to the point of beginning.

Tax ID No.: SG-1176

PARCEL 5:
All of the East one-half (E ½) of Lot 2, Block 61, Plat "B", St. George City Survey, as platted on the official map thereof on file in the office of the recorder of Washington County, State of Utah.

Tax ID No.: SG-1175

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2b

**Subject:**

Consider approval of a Real Property transfer and Road Cost Sharing Agreement between the City of St. George and The Dixie Foundation.

**Item at-a-glance:**

Staff Contact: Jami Brackin

Applicant Name: The Dixie Foundation

Reference Number: n/a

Address/Location:

878 South 1450 East, St. George, Utah

**Item History (background/project status/public process):**

The City of St. George and the Dixie Foundation currently own (as tenants-in-common) approximately 12.61 acres of land located near the hospital facilities, which was granted to them jointly by the Foremaster family. The Foundation now seeks to monetize a 1.89-acre parcel known as Lot 4 and is asking the City to quitclaim their interest in that parcel to the Foundation. The City is seeking reimbursement from the Foundation for a portion of the extension of 1450 East to its connection with 900 South. This agreement sets forth the terms and conditions of the property exchange and road reimbursement. Staff recommends approval.

**Staff Narrative (need/purpose):**

The City of St. George and the Dixie Foundation currently own (as tenants-in-common) approximately 12.61 acres of land located near the hospital facilities, which was granted to them jointly by the Foremaster family. The Foundation now seeks to monetize a 1.89-acre parcel known as Lot 4 and is asking the City to quitclaim their interest in that parcel to the Foundation. The City is seeking reimbursement from the Foundation, for a portion of the road extension extending 1450 East and connecting it with 900 South. This agreement sets forth the terms and conditions of the property exchange and road reimbursement.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Staff recommends that the Council review the attached Agreement and if acceptable, make a motion approving the agreement and authorizing the Mayor to sign.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2c

**Subject:**

Consider approval of a Purchase Agreement with Big T Recreation to purchase nine (9) shade structures for the tennis courts at Tonaquint Park.

**Item at-a-glance:**

Staff Contact: Shane Moore

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

1851 South Dixie Drive

**Item History (background/project status/public process):**

This agreement is for replacement shade structures for the tennis courts at Tonaquint Park. These structures are being purchased through State Contract ID MA3408.

**Staff Narrative (need/purpose):**

The original shade structures are 25 years old and are failing and in need of replacement. The replacement shade structures are powder coated steel with metal roofs. These structures are expected to last for 20+ years and minimal maintenance is needed.

**Name of Legal Dept approver:** Collin Simonsen

**Budget Impact:**

Cost for the agenda item: $53,500

Amount approved in current FY budget for item: $45,000

If not approved in current FY budget or exceeds the budgeted amount, please explain

funding source:

The price for the shade structures is $8,500 more that what was budgeted as the price of steel has increased significantly since the original price quote. Savings in the department's general fund budget will be used to offset the increased cost for the structures.

Description of funding source:

General Fund

**Recommendation (Include any conditions):**

Staff recommends approval.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2d

**Subject:**

Consider approval of a professional services agreement renewal with Avenue Consulting for traffic signal trouble shooting and consulting services in the amount of $90,000.

**Item at-a-glance:**

Staff Contact: Cameron Cutler

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

St. George Ctiy

**Item History (background/project status/public process):**

This professional services agreement with Avenue Consulting covers traffic signal troubleshooting and consulting services throughout the City. Staff recommends approval.

**Staff Narrative (need/purpose):**

The renewal of the Avenue Consulting blanket professional services agreement will continue to simplify the payment process as services are provided for traffic signal trouble shooting and consulting services.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Recommend approval

**CITY OF ST. GEORGE BLANKET PROFESSIONAL SERVICES AGREEMENT FOR ENGINEER SERVICES WITH** AVENUE CONSULTANTS, INC.

This Agreement is made and entered into this _____ by and between the City of St. George, a municipal corporation, with offices at 175 East 200 North, St. George, Utah 84770 (hereinafter called the "CITY"), and Avenue Consultants, Inc., with offices at 113 East 200 North Suite 3, St. George, Utah 84770 (hereinafter called "CONSULTANT").

WITNESSETH THAT:

WHEREAS, CITY desires professional services to be performed and has solicited CONSULTANT to provide engineering services on various projects from time to time on an as needed basis (hereinafter called the PROJECT); and

WHEREAS, CONSULTANT has submitted a proposal, which outlines the general scope of services to be provided and the hourly rate for the PROJECT; and

WHEREAS, CITY selected CONSULTANT to perform the services for the PROJECT;

NOW, THEREFORE, for the consideration hereinafter set forth, the parties hereto do mutually agree as follows:

1. **EMPLOYMENT OF CONSULTANT.**
   a. CONSULTANT is a professional Engineer licensed by the State of Utah and the City of St. George. CONSULTANT has all licenses, permits, and approvals that are legally required for CONSULTANT to practice its profession and shall keep them in effect at all times during the term of this Agreement.
   b. CONSULTANT states that it has the necessary knowledge, experience, abilities, skills and resources to perform its obligations under this Agreement and agrees to perform its obligations under this Agreement in a professional manner, consistent with prevailing industry standards and practices as observed by competent practitioners of the profession in which CONSULTANT and its subcontractors or agents are engaged.
   c. CONSULTANT certifies that it does not and will not during the performance of this contract knowingly employ, or subcontract with any entity which employs workers in violation of 8 USC § 1324a. CONSULTANT agrees to require all subcontractors at the time they are hired for this project to sign a Certification of Legal Work Status and submit the Certification to CITY prior to any work being performed by the subcontractors. CONSULTANT agrees to produce, at CITY'S request, documents to verify compliance with applicable State and Federal laws. If CONSULTANT knowingly employs workers or subcontractors in violation of 8 USC § 1324a, such violation shall be cause for unilateral cancellation of the contract between

CONSULTANT and CITY. In addition, CONSULTANT may be suspended from participating in future projects with CITY for a period of one (1) year. In the event this contract is terminated due to a violation of 8 USC § 1324a by CONSULTANT or a subcontractor of CONSULTANT, CONSULTANT shall be liable for any and all costs associated with such termination, including, but not limited to, any damages incurred by CITY as well as attorney fees. For purposes of compliance, CITY requires CONSULTANT and subcontractors to use E-Verify or other federally accepted forms of verification to verify the employment eligibility of all employees as allowed by law and the E-Verify procedures. CONSULTANT and subcontractors must maintain authorized documentation of the verification.

d. CONSULTANT shall not, either during or after the term of this Agreement, make public any reports or articles, or disclose to any third party any confidential information relative to the work of City or the operations or procedures of CITY without the prior written consent of CITY.
e. CONSULTANT further agrees that it shall not, during the term of this Agreement, take any action that would affect the appearance of impartiality or professionalism.
f. CONSULTANT, by execution of this Agreement, certifies that it does not discriminate against any person upon the basis of race, color, creed, national origin, age, sex, disability or marital status in its employment practices.
g. CONSULTANT expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve CONSULTANT from any obligation to comply with all applicable requirements of CITY during the term of this Agreement including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of CITY, except as modified or waived in this Agreement.
h. CONSULTANT shall comply with all applicable federal, state, and local laws, regulations, and ordinances that affect those employees or those engaged by CONSULTANT on the PROJECT, and will procure all necessary licenses, permits and insurance required.
i. CITY acknowledges that CONSULTANT may employ various specialized subcontractors for up to 15% of the services provide herein. CONSULTANT shall give written notice to CITY at least seven (7) days prior to CONSULTANT'S employment of the subcontractors to perform portions of the work provided for in this Agreement. It shall be solely CONSULTANT's responsibility to ensure that any of CONSULTANT'S subcontractors perform in compliance with the terms of this Agreement. Subcontractors may not be changed without ten (10) days prior written notice to CITY.

2. **PROJECT SERVICES DESCRIPTION.**

a. CITY makes no guarantee as to the total volume of work, if any, that will be needed under this Agreement. CONSULTANT will provide the services on an as needed basis as described in the attached Scope of Work (Exhibit A) which is made a part of this Agreement by this reference. As services are needed, CITY shall provide CONSULTANT with a description of the work needed which shall be known as a "Work Order" and CONSULTANT will provide CITY with a specific scope of work and cost for the Work Order, which if accepted by the CITY shall become part of this

Agreement binding both parties. CITY may at any time, as the need arises, order changes within the scope of the services without invalidating the Agreement. If such changes increase or decrease the amount due under the Agreement, or in the time required for performance of the work, an equitable adjustment shall be authorized by change order.

b. CONSULTANT shall furnish all the material, supplies, tools, transportation, equipment, labor, subcontractor services and other services necessary for the completion of the work described in Exhibit A or in subsequent Work Orders.

c. CONSULTANT shall provide services in compliance with all applicable requirements of federal, state, and local laws, codes, rules, regulations, ordinances, and standards.

3. **TERM OF AGREEMENT.**

a. This Agreement shall be effective as of the date executed by all parties and shall continue for one year unless otherwise terminated as set forth in this Agreement. If a Work Order was started during this term but not completed, the terms of this Agreement shall continue through completion of the Work Order.

b. CONSULTANT agrees to perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the PROJECT. CONSULTANT shall perform the services in a timely manner according to the schedule approved by CITY.

c. CONSULTANT shall perform its services upon notice from CITY to proceed and in accordance with the schedule approved by CITY. In the event performance of its services is delayed by causes beyond the reasonable control of CONSULTANT, and without the fault or negligence of CONSULTANT, the time for the performance of the services shall be equitably adjusted by written amendment to reflect the extent of such delay. CONSULTANT shall provide CITY with written notice of delay, including a description of the delay and the steps contemplated or taken by CONSULTANT to mitigate the effect of such delay.

4. **COMPENSATION**

For the performance of the services and completion of PROJECT set forth herein, CITY shall pay CONSULTANT as agreed in Exhibit "A" and each Work Order. The aggregate total of all Work Orders shall not exceed ninety thousand dollars, $90,000. Each individual Work Order shall not exceed Signal Coordination, fifteen thousand $15, 000 per corridor or Traffic Studies, $4,000.00 per study.

5. **INVOICING, PAYMENT, NOTICES.**

a. CONSULTANT shall submit invoices, no more frequently than monthly, for the services rendered during the preceding period; invoices shall describe the services performed, list all subcontractors used and the amount owed or paid to them, list all suppliers used and the amount owed or paid to them, list the contract amount, list the current invoice amount based on percentage of task complete, list the previous invoice amount, list total invoices to date, and list the contract balance.

b. In executing the request for payment, CONSULTANT shall attest that subcontractors involved with prior requests for payment have been paid, unless CONSULTANT provides a detailed explanation why such payments have not occurred.

CONSULTANT shall also sign a "Conditional Waiver and Release Upon Progress Payment" and a Certificate of Legal Work Status and submit them with each request for payment. CONSULTANT shall require each subcontractor to sign a "Conditional Waiver and Release Upon Progress Payment" and a Certificate of Legal Work Status at the time subcontractor is paid and shall provide a copy of the both documents to CITY. CONSULTANT shall also sign a "Conditional Waiver and Release Upon Progress Payment" and a Certificate of Legal Work Status and submit them with each request for payment.

c. A "Waiver and Release Upon Final Payment" signed by CONSULTANT attesting that all subcontractors, laborers and material suppliers involved with prior requests for payment have been paid, and that all subcontractors, laborers and material suppliers upon which the final payment is based will be paid immediately unless CONSULTANT provides a detailed explanation why such payments have not occurred or will not occur. CONSULTANT shall also require each subcontractor to sign a "Waiver and Release Upon Final Payment" and a Certificate of Legal Work Status at the time subcontractor is paid its final payment and shall provide a copy of both documents to CITY.
d. If such liens, claims, security interests or encumbrances remain unsatisfied after payments are made, CONSULTANT shall refund to CITY all money that CITY may be compelled to pay in discharging such liens, including all costs and reasonable attorneys' fees.
e. All invoices for reimbursable costs shall be taken from the books of account kept by CONSULTANT, and CONSULTANT shall maintain copies of payroll distribution, receipted bills, and other documents. CITY shall have the right to review all books and records kept by CONSULTANT and any subcontractors concerning the operation and services performed under this Agreement. CITY shall withhold payment for any expenditure not substantiated by CONSULTANT'S or subcontractor's books and records.
f. In the event CITY has made payment for expenditures that are not allowed, as determined by CITY'S audit, CONSULTANT shall reimburse CITY the amount of the un-allowed expenditures. If additional money is owed to CONSULTANT, the reimbursement may be deducted from the additional money owed.
g. CITY shall make no payment for any services not specified in this Agreement unless such additional services and the price thereof are agreed to in writing, prior to the time that such additional services are rendered.
h. Invoices shall be paid to CONSULTANT within thirty (30) days of presentation to CITY.
i. CITY may withhold 5% of billed amount as retention. Retention held shall be included in the final invoice after the contract is complete.

6. **CHARGES AND EXTRA SERVICE.**

a. CITY may make changes within the general scope of this Agreement. If CONSULTANT is of the opinion a proposed change causes an increase or decrease in the cost and/or the time required for performance of this Agreement, CONSULTANT shall notify CITY of that fact. An agreed-upon change will be reduced to writing signed by the parties hereto and will modify this Agreement

accordingly. CONSULTANT may initiate such notification upon identifying conditions which may change the services agreed to on the effective date of this Agreement, as set forth in Exhibit "A". However, CONSULTANT represents that to the best of its knowledge that it is not aware of any such conditions on the date hereof. Any such notification must be provided within thirty (30) days from the date of receipt by that party of the other party's written notification of a proposed change.

b. CITY may request CONSULTANT to perform extra services not covered by Exhibit "A", and CONSULTANT shall perform such extra services and will be compensated for such extra services when they are reduced to a writing mutually agreed to and signed by the parties hereto amending this Agreement accordingly.
c. CITY shall not be liable for payment of any extra services nor shall CONSULTANT be obligated to perform any extra services except upon such written amendment.

7. **TO BE FURNISHED BY CITY.** Resources to be furnished by CITY to CONSULTANT, at no cost to CONSULTANT, consist of CITY staff assistance for oversight and meetings to help perform the services. CONSULTANT shall verify accuracy of the information provided, unless otherwise stated in the contract documents.

8. **INSPECTIONS.** All work shall be subject to inspection and approval of CITY or its authorized representative.

9. **ACCURACY AND COMPLETENESS.**
   a. CONSULTANT has total responsibility for the accuracy and completeness of its investigations, calculations, reports, plans and related designs, specifications and estimates prepared for the PROJECT and shall check all such material accordingly.
   b. The plans will be reviewed by CITY for conformity with PROJECT objectives and compliance with CITY Standards.
   c. Reviews by CITY do NOT include the detailed review or checking of major design components and related details or the accuracy with which such designs are depicted on the plans.
   d. The responsibility for accuracy and completeness remains solely with CONSULTANT and shall be performed consistent with the standard of care.

10. **INDEPENDENT CONTRACTOR.**
   a. CITY retains and employs CONSULTANT, as an independent contractor, to act for and represent it in all matters involved in the performance of services on the PROJECT, subject to the terms, conditions and stipulations as hereinafter stated.
   b. It is understood and agreed that CONSULTANT will provide the services without supervision from CITY. CONSULTANT is an independent contractor and is not an employee, officer, or agent of CITY for any purposes related to the performance of this Agreement and is not an employee of CITY and is not entitled to any benefits from CITY.
   c. Nothing in this agreement shall create nor be construed to constitute a partnership or joint venture between CONSULTANT and CITY.
   d. CONSULTANT is advised to obtain and maintain in effect during the term of this Agreement medical insurance and disability insurance for all related work performed

under this Agreement.

e. CONSULTANT acknowledges that CITY will not withhold any federal, state, or local taxes, including FICA, nor will CITY provide any unemployment compensation or worker's compensation coverage. As an independent contractor, CONSULTANT shall be responsible for all taxes, worker's compensation coverage and insurance coverage, and shall hold CITY harmless and indemnify CITY from and against any and all claims related to taxes, unemployment compensation, and worker's compensation.
f. CONSULTANT shall secure, at its own expense all personnel required in performing the services under this Agreement. The employees of CONSULTANT shall not be considered employees of CITY nor have any contractual relationship with CITY. CONSULTANT and its employees shall not hold themselves out as, nor claim to be officers or employees of CITY by reason of this Agreement. The employees of CITY shall not be considered employees of CONSULTANT.
g. Neither party has the right to bind or obligate the other in any way. CONSULTANT shall not use the name, trademarks, copyrighted materials, or any information related to this Agreement in any advertising or publicity without CITY'S prior written authorization.

11. **INSURANCE.**

a. GENERAL: CONSULTANT shall secure and maintain insurance as required by laws and regulations and the terms of this agreement to protect against any liability, loss or expense which occurs or arises as a result of the performance of the services provided pursuant to this agreement or as changed as provided herein. CONSULTANT'S insurer must be authorized to do business in Utah and must have an A.M. Best rating of A VIII or better at the time this contract is executed.
b. COMMENCEMENT OF WORK: Neither CONSULTANT, his Suppliers nor any subcontractors shall enter the site of the work or commence work under this contract before CITY has received and accepted Certificate(s) of Insurance and Insurance Endorsements and has issued the Notice to Proceed.
c. INSURANCE CERTIFICATES AND COVERAGE: Insurance certificates shall be issued on all policies required under this contract and shall be signed by an authorized representative of the insurance company. The insurance certificate or the coverage required shall include the following:
    i. The name and address of the insured.
    ii. CITY shall be named as a Certificate Holder.
    iii. CITY shall be named as an additional primary insured on the General Liability Certificate with CITY listed as non-contributory on the General Liability certificate.
    iv. The location of the operations to which the insurance applies.
    v. The number of the policy and the type or types of insurance in force thereunder on the date borne by the certificate.
    vi. The expiration date of the policy and the limit or limits of liability thereunder on the date borne by the certificate.
    vii. A statement that all coverage is on an occurrence basis rather than a claims basis except for the Professional Errors and Omissions Malpractice Insurance coverage.
    viii. A provision that the policy or policies will not be cancelled, denied renewal, or

reduced in coverage until at least 30 days after written notice has been received by CITY.

ix. Name, address, and telephone number of the insurance company's agent of process in Utah.

x. Other information to demonstrate compliance with additional requirements stipulated for the various types of insurance coverage.

d. COMPENSATION INSURANCE: CONSULTANT shall take out and maintain Worker's Compensation Insurance as required by the Labor Code for all its employees at the site of the work during the life of this contract. Coverage must be provided by a company authorized by the State of Utah to provide Worker's Compensation Insurance. The insurance shall include:

i. Insurance certificates shall provide a waiver of subrogation by the carrier to Certificate Holder.

ii. CONSULTANT shall require each subcontractor to provide Workers Compensation Insurance for its employees unless such employees are covered by CONSULTANT.

iii. In the event any class of employees engaged in hazardous work under this contract is not protected by the Worker's Compensation Statute, CONSULTANT shall provide, and shall cause its subcontractors to provide, special insurance for the protection of such employees not otherwise protected.

e. COMMERCIAL GENERAL LIABILITY INSURANCE:

i. CONSULTANT shall procure and maintain commercial general liability insurance for the duration of the contract against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. The insurance shall remain in effect during the term of this agreement and such that claims reported beyond the date of substantial completion of this agreement are covered and during the warranty period, to the extent that it relates to the activities covered by this Agreement, in such manner and amounts as set forth herein.

ii. The Insurance Endorsement shall evidence such provisions.

iii. The minimum commercial general liability insurance shall be as follows:

1. Comprehensive general liability insurance for injuries, including accidental death, to any one person in any one occurrence in an amount not less than $1,000,000.00 Dollars.
2. Comprehensive general liability insurance for injuries, including accidental death, to two or more persons in any one occurrence in an amount not less than $3,000,000.00 Dollars.
3. Broad form property damage insurance in an amount not less than $300,000.00 Dollars.

iv. Such policy shall include each of the following coverages:

1. Comprehensive form.
2. Premises - operations.
3. Explosion and collapse hazard.
4. Underground hazard.
5. Product/completed operations hazard.

6. Contractual insurance.
7. Broad form property damage, including completed operations.
8. Independent contractors for vicarious liability.
9. Personal injury.
10. Cross liability or severability of interest's clause shall be included unless a separate policy covering CITY is provided.

f. PROFESSIONAL LIABILITY ERRORS AND OMISSIONS INSURANCE:
   i. CONSULTANT shall carry and maintain Professional Liability Errors and Omissions Insurance in an amount not less than $3,000,000.00 Dollars for all work performed under this Agreement.
   ii. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONSULTANT, his agents, representatives, employees or subcontractors. With respect to General Liability, Professional liability coverage should be maintained for a minimum of five (5) years after contract completion.
   iii. If Professional Liability coverages are written on a claims-made form:
      1. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work.
      2. Insurance must be maintained, and evidence of insurance must be provided, for at least five (5) years after completion of the contract of work.
      3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the CONSULTANT must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.
      4. A copy of the policy must be submitted to CITY for review.

g. BUSINESS AUTOMOBILE COVERAGE:
   i. CONSULTANT shall carry and maintain business automobile insurance coverage on each vehicle used in the performance of the work in an amount not less than $1,000,000.00 Dollars for one person and $3,000,000.00 Dollars for more than one person and for property damage resulting from any one occurrence which may arise from the operations of CONSULTANT in performing the work.
   ii. Such business automobile insurance shall include each of the following types:
      1. Comprehensive form, including loading and unloading.
      2. Owned.
      3. Hired.
      4. Non-owned.

12. **INDEMNITY AND LIMITATION.**

a. CONSULTANT shall indemnify, defend, and hold harmless CITY, its elected officials, officers, employees, and representatives against any and all claims, suits, causes of action, demands, losses, costs, and damages and liability of every kind including but not limited to all fees and charges of attorneys and other professionals and all court or other dispute resolution costs for:
   i. death or injuries to persons or for loss of or damage to property which directly or indirectly, in whole or in part are caused by, resulting from, or arising out of the

intentional, reckless, negligent, or wrongful acts, errors or omissions, or other liability imposed by law of CONSULTANT, its officers, employees, agents, or representatives in the performance of services under this Agreement or any subcontractor, any supplier, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work;

ii. CONSULTANT's failure or refusal, whatever the reason, to pay subcontractors or suppliers for Work performed under the Agreement;

iii. claims by any employee of the CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, CONSULTANT'S indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONSULTANT or any subcontractor under workmen's compensation acts, disability benefit acts or other employee benefits acts.

b. CITY shall give CONSULTANT prompt written notice of any such claims or suits filed against CITY arising out of the services provided under this Agreement. CONSULTANT agrees to defend against any claims brought or actions filed against CITY arising out of the services provided under this Agreement. If CITY'S tender of defense, based upon the indemnity provision, is rejected by CONSULTANT or CONSULTANT'S insurer, and CONSULTANT is later found by a court of competent jurisdiction to have been required to indemnify the CITY, then, in addition to any other remedies the CITY may have, CONSULTANT shall pay the CITY'S reasonable costs, expenses and attorney's fees incurred in obtaining such indemnification, defending themselves or enforcing the indemnification provision.

c. The insurance requirements in this agreement shall not be construed as limiting CONSULTANT'S liability. Irrespective of the requirements for CONSULTANT to carry insurance as provided herein, insolvency, bankruptcy or failure of any insurance company to pay all claims accruing shall not be held to relieve CONSULTANT of any obligations under this agreement.

13. **DOCUMENTS.**

a. All data used in compiling CONSULTANT's work, and the results of any tests or surveys, as well as all photographs, drawings, electronically stored records of work performed, renderings, specifications, schedules, CONSULTANT's work, data processing output, computations, studies, audits, research, reports, models and other items of like kind prepared by CONSULTANT, and its employees, shall be the sole and exclusive property of CITY, and CITY shall own all intellectual property rights thereto whether the specific work project for which they are made is undertaken or not. CONSULTANT may retain reproducible copies of all the foregoing documents for information and reference and customary marketing and public relations. The originals of all the foregoing documents shall be delivered to CITY promptly upon completion thereof. This provision may be enforced by an order of specific performance and is independent of any other provision of this Agreement. Compliance by CONSULTANT with this paragraph shall be a condition precedent to CITY's obligation to make final payment to CONSULTANT. If CITY has specific requirements on the information and manner the documentation is collected, CITY shall provide those specifics to CONSULTANT in writing.

b. Plans, specifications, maps and record drawings prepared or obtained under this Agreement shall be provided to CITY in a format approved by CITY which shall generally be a hard copy and an electronic copy, and shall become the property of CITY whether the work for which they are prepared is executed or not.
c. The basic survey notes and sketches, charts, computations, and other data prepared under this Agreement shall be made available upon request to CITY without restriction or limitation on their use.
d. CITY shall have the right to use reports, designs, details or products developed as part of this Agreement for purposes of maintenance, remodeling or reconstruction of existing facilities or construction of new facilities without additional compensation to CONSULTANT or without restriction or limitation on its use even if documents are considered copyrighted material.
e. CITY will hold harmless CONSULTANT for any use or reuse of these reports, designs, or details for purposes other than the project associated with this Agreement unless CITY obtains validation of that use or reuse from CONSULTANT.

14. **RECORDS.**
a. CONSULTANT shall maintain records, books, documents and other evidence directly pertinent to the performance of services under this Agreement in accordance with generally accepted accounting principles and practices.
b. CONSULTANT agrees to keep proper books of records and accounts in which complete and correct entries will be made of payroll costs, travel, subsistence, and field expenses.
c. Said books shall, at all times, be available for at least three (3) years after final payment for reasonable examination by CITY.

15. **TERMINATION.**
a. CITY may terminate this Agreement by providing fourteen (14) days written notice prior to the effective termination date to CONSULTANT.
b. In the event of such termination, CITY shall pay CONSULTANT for all services actually rendered up to and including the date of termination.
c. CONSULTANT shall deliver to CITY copies of all drawings, reports, analyses, documents and investigations, whether completed or not, that were prepared or were being prepared under the provisions of this Agreement.

16. **CONFLICT BETWEEN DOCUMENTS.** In the event of a conflict between this Agreement and any other documents with CONSULTANT, this Agreement shall govern.

17. **CONFLICT OF INTEREST.**
a. CONSULTANT certifies that it has disclosed to CITY any actual, apparent or potential conflicts of interest that may exist relative to the services to be provided pursuant to this Agreement.

b. CONSULTANT agrees to advise CITY of any actual, apparent or potential conflicts of interest that may develop after the date of execution of this Agreement.
c. CONSULTANT further agrees to complete any statements of economic interest required by either CITY ordinance or State law.

18. **NON WAIVER.** No failure or waiver or successive failures or waivers on the part of either party hereto, their successors or permittee assigns, in the enforcement of any condition, covenant, or Article of this Agreement shall operate as a discharge of any such condition, covenant, or Article nor render the same invalid, nor impair the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

19. **NOTIFICATION.** All notices required or permitted to be made by either party in connection with this Agreement shall be in writing, and shall be deemed to have been duly given: (a) five (5) business days after the date of mailing if sent by U.S. mail, postage prepaid, (b) when transmitted if sent by facsimile, provided a confirmation of transmission is produced by the sending machine and a copy of such facsimile is promptly sent by another means specified in this Section; or (c) when delivered if delivered personally or sent by express courier service. All notices shall be sent to the other party at its address as set forth below unless written notice is given by either party of a change of address:

| | | | |
|---|---|---|---|
| CITY: | City of St. George<br>175 East 200 North<br>St. George, Utah 84770 | CONSULTANT: | Avenue Consultants, Inc<br>113 East 200 North<br>St. George, Utah 84770 |
| Attention: | Jay Sandberg | Attention: | Mel Bodily |

20. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court for the State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction. The parties shall have all rights and remedies provided under applicable Federal or State law for a breach or threatened breach of this Agreement. These rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies. Each party agree that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof and the respective rights and obligations of the parties hereunder shall be enforceable by specific performance, injunction, or other equitable remedy. Nothing in this Agreement shall be construed to waive the sovereign immunity of the government parties.

21. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and

expenses includes, without limitation, all costs, and expenses, including reasonable attorney's fee including appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.

22. **MODIFICATION OF AGREEMENT.** CITY specifically reserves the right to modify or amend this Agreement and the total sum due hereunder either by enlarging or restricting the scope of the Work. All modifications shall be in writing and executed by both parties. Each Work Order adopted under this Agreement shall incorporate the terms and conditions of this Agreement and shall constitute a modification to this contract. A Work Order may amend the terms and conditions of this Agreement only as they apply to that particular Work Order and shall not have any general effect on this Agreement.

23. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by CITY in enacting zoning, subdivision, development, transportation, environment, open space, and related land use plans, policies, ordinances, and regulations after the date of this Agreement, but which shall not be retroactively applied to or modify this Agreement.

24. **SUCCESSORS AND ASSIGNS.** CONSULTANT shall not assign, sublet, sell, transfer, or otherwise dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of CITY. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

25. **NO JOINT VENTURE, PARTNERSHIP OR THIRD PARTY RIGHTS.** It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture, or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

26. **INTEGRATION.** This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature between CITY and CONSULTANT and supersedes and replaces all terms and conditions of any prior agreements, arrangements, negotiations, or representations, written or oral, with respect to this PROJECT.

27. **SEVERABILITY.** If any part or provision of this Agreement shall be determined to be unconstitutional, invalid or unenforceable by a court of competent jurisdiction, then such a decision shall not affect any other part or provision of this Agreement except that specific provision determined to be unconstitutional, invalid or unenforceable. If any condition, covenant or other provision of this Agreement shall be deemed invalid due to its scope or

breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

28. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this agreement.

29. **SURVIVAL.** It is expressly agreed that the terms, covenants, and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

30. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

31. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.

32. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated and that this Agreement constitutes a valid and binding Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the CITY and CONSULTANT effective from the day and year first written above.

| | |
|---|---|
| CITY: CITY OF ST. GEORGE | CONSULTANT: AVENUE CONSULTANTS, INC |
| _____ | _____ |
| Michele Randall, Mayor | Mel Bodily |
| Attest: | Approved as to form: |
| _____ | _____ |
| Christina Fernandez, City Recorder | Jami R. Brackin, Deputy City Attorney |

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2e

**Subject:**

Consider approval of a reimbursement agreement with David Adams for the extension of a sewer line located at 1140 North 1100 West.

**Item at-a-glance:**

Staff Contact: Scott Taylor

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

1140 North 1100 West

**Item History (background/project status/public process):**

This agreement sets forth the terms and conditions for property located at 1140 North 1100 West to discontinue use of a private septic tank and connect to the Citys sewer system. Staff recommends approval.

**Staff Narrative (need/purpose):**

A few areas of town are still connected to a private sewer septic system. These areas tend to be areas that were annexed into the City in the past (Bloomington, Middleton, Dixie Downs). Our current sewer service policy requires a homeowner to connect to the City sewer collection system if their private sewer septic system fails and they are within 400 feet of a sewer line. Since 2018, the City has budgeted some funds each year for assist homeowners in extending a sewer line if the property is further than 400 feet from an existing sewer line. Our practice is that the City will provide the engineering design and participate in 50% of the construction costs to extend the sewer system to the property in order for the homeowner to connect to the City sewer collection system, rather than replace and continue using a private septic system.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:**

Cost for the agenda item: $41,680

Amount approved in current FY budget for item: $75,000

If not approved in current FY budget or exceeds the budgeted amount, please explain

funding source:

N/A

Description of funding source:

N/A

**Recommendation (Include any conditions):**

Staff recommends approval

**CITY OF ST. GEORGE REIMBURSEMENT AGREEMENT**
**FOR 1100 WEST SEWER EXTENSION WITH DAVID ADAMS**
*(Developer Construct-City Reimburse Developer)*

THIS AGREEMENT is entered into this ____ of April, 2022, by and between the City of St. George, a Utah municipal corporation, ("CITY"), and David Adams, a Individual("Developer"). City and Developer are herein collectively referred to as the "Parties."

**RECITALS**

WHEREAS, Developer owns property at 1140 North 1100 West, St. George, Utah (the "Property"); and

WHEREAS, Developer has contacted his neighbors and desires to construct a sewer line extension and desires the City participation; and

WHEREAS, project includes 2 manholes and 600' of sewer with laterals; and

WHEREAS, the City historically participates 50% of the cost in these projects to provide sewer to existing houses that are currently on septic tanks; and

WHEREAS, City, acting pursuant to its authority under Utah Code Annotated, Section 10-9a-101, et. seq., and in furtherance of its land use policies, goals, objectives, ordinances, resolutions, and regulations has determined this Agreement is in the best interest of the citizens of the City of St. George, and, in the exercise of its legislative discretion, has elected to approve this Agreement.

**AGREEMENT**

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

1. **THE PROJECT**. The project includes the installation of 600' of sewer and associated appurtenances including asphalt replacement, manholes, laterals, trenching, backfill as necessary to install a functioning sewer. The developer will contract with a contractor to complete the work and the City's only responsibility will be the Engineering(already complete) and reimbursement of 50% of the total costs.

2. **REIMBURSEMENT**. Upon completion of the Project to City's satisfaction, Developer shall

request reimbursement from City in writing. The request for reimbursement shall be accompanied by a detailed description of the costs of the Project. City may request more information from Developer regarding the actual costs and management of the Project, and Developer shall comply with any such request. Within a reasonable time of the receipt of the request for reimbursement and any requested additional information, City will reimburse Developer in the amount of 50% of the total cost of $83,360 not to exceed $41,680. The amount of City's obligation for reimbursement shall not increase due to an increase in the costs of construction without the express written consent of City.

3. **REPRESENTATIVES**. The representative for the City for this Project will be Kade Bringhurst. The representative for Developer will be David Adams.

4. **EXHIBITS**. All exhibits attached hereto are incorporated as part of this Agreement.

5. **DESIGN AND CONSTRUCTION STANDARDS**. All design, construction, inspection, and testing associated with the Project shall comply with the City of St. George Standard Specifications for Design and Construction. It shall be the responsibility of Developer to ensure compliance with the standard specifications, and no reimbursement shall be made under this Agreement until City determines that the Project is in compliance with the standard specifications.

6. **COMPLIANCE WITH APPLICABLE LAWS**. Developer expressly acknowledges and agrees that nothing in this Agreement shall be deemed to relieve Developer from any obligation to comply with all applicable requirements of City including the payment of fees and compliance with all other applicable ordinances, resolutions, regulations, policies and procedures of City, except as modified, waived or declared in this Agreement.

7. **INTEGRATION**. This Agreement contains the entire Agreement with respect to the subject matter hereof and integrates all prior conversations, discussions or understanding of whatever kind or nature and may only be modified by a subsequent writing duly executed by the parties hereto. In the event of a conflict between this Agreement and any other documents with Developer, this Agreement shall govern.

8. **RESERVED LEGISLATIVE POWERS.** Nothing in this Agreement shall limit the future exercise of the police power by the City in enacting zoning, subdivision, development, transportation, environmental, open space and related land use plans, policies, ordinances and regulations after the date of this agreement. This Agreement is not intended to and does not bind the St. George City Council in the independent exercise of its legislative discretion with respect to such zoning regulations.

9. **INDEMNITY AND LIABILITY.** Developer shall indemnify City against all claims, demands, causes or action, suits or judgments, including but not limited to all claims, demands, causes of action, suits or judgments for death or injuries to persons or for loss of or damage to property, arising out of or in connection with the Project to the extent that it relates to performance of construction or injury or damage related to the acts of Developer or its

agents or assigns. In the event of any such claims made or suits filed against the City, City shall give Developer prompt written notice. Developer agrees to defend against any claims brought or actions filed against City, whether such claims or actions are rightfully or wrongfully brought or filed. In case a claim should be brought or an action filed with respect to the subject of indemnity herein, Developer agrees that City may employ attorneys of its own selection to appear and defend the claim or action on its own behalf at the expense of Developer. Said attorney fees shall be reasonable and subject to review by Developer. Developer shall be responsible for all costs associated with any claim, demand, action, suit or judgment including attorney fees for which they indemnify or defend City.

10. **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this Agreement is intended to, or shall be deemed to be a waiver of the City's governmental immunity as set forth in applicable statutory and case law.

11. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the laws of the State of Utah. The parties agree that jurisdiction and venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Fifth District Court, Washington County, State of Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.

12. **LEGAL FEES.** Should any party default on any of the covenants or agreements contained herein, the defaulting party shall pay all costs and expenses, including reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing a lawsuit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney's fee including appeals and bankruptcy proceedings. If either party commences legal action to interpret any term of this agreement, the prevailing party shall be entitled to recover all reasonable attorneys' fees, court costs, and any other costs incurred in connection with such action.

13. **NOTICES.** All notices required herein, and subsequent correspondence in connection with this agreement shall be mailed to the following:

| | | | |
|---|---|---|---|
| CITY: | City of St. George<br>175 East 200 North<br>St. George, Utah 84770 | OWNER: | David Adams<br>1140 North 1100 West<br>ST. George, Utah 84770 |
| Attention: | Kade Bringhurst | Attention: | David Adams |

Such notices shall be deemed delivered following the mailing of such notices in the United States mail. Adequate notice shall be deemed given at the addresses set forth herein unless written notice is given by either party of a change of address.

14. **SUCCESSORS AND ASSIGNS.** Developer shall not assign, sublet, sell, transfer, or otherwise

dispose of any interest in this Agreement without assigning the rights and the responsibilities under this Agreement and without the prior written approval of City. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns, but shall not inure to the benefit of any third party or other person.

15. **NO JOINT VENTURE, PARTNERSHIP OR THIRD-PARTY RIGHTS**. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between the parties. No term or provision of this Agreement is intended to or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

16. **SEVERABILITY.** If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the remaining provisions shall not to be affected, and shall remain in full force and effect.

17. **CONSTRUCTION.** Each of the parties hereto has had the opportunity to review this agreement with counsel of their choosing and the rule of contracts requiring interpretation of a contract against the party drafting the same is hereby waived and shall not apply in interpreting this agreement.

18. **SURVIVAL.** It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

19. **HEADINGS.** The section and other headings in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

20. **COUNTERPARTS.** This Agreement may be executed in counterparts each of which shall be an original and shall constitute one and the same agreement.

21. **AUTHORITY OF PARTIES.** The parties executing this Agreement hereby warrant and represent that they are duly authorized to do so in the capacity stated.

**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

| | |
|---|---|
| CITY: CITY OF ST. GEORGE | OWNER: David Adams |
| _____ | _____ |
| Michele Randall, Mayor | David Adams |

Attest:

Christina Fernandez, City Recorder

Approved as to form:

Jami Brackin, Deputy City Attorney

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2f

**Subject:**

Consider approval of a Car Rental Concession & Lease Agreement between the City of St. George and Amplificare, LLC dba Vroom.Me for space at the St George Regional Airport.

**Item at-a-glance:**

Staff Contact: Richard Stehmeier

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

4508 South Airport Pkwy #1

**Item History (background/project status/public process):**

The airport is currently serviced by rental car companies Enterprise, Avis/Budget, Hertz and Rabbit Rentals. This is a request to add Vroom.Me Car Rentals to the rental car options. Vroom Me will utilize Unit #4 leasehold area shared with Rabbit Rentals and will occupy five (5) parking stalls.

**Staff Narrative (need/purpose):**

This is to provide a touch-less options for our rental car customers. This business model is similar to Rabbit Rentals in that our customers can go on-line via an app to rent a car without having to see a service representative. This allows late arriving customers to rent vehicles without an agent onsite. Currently, only Rabbit Rentals and Vroom.me will have this capability.

**Name of Legal Dept approver:** Collin Simonsen

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Staff recommends approval

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# CAR RENTAL CONCESSION AND LEASE AGREEMENT

**BETWEEN**

**CITY OF ST. GEORGE**

**AND**

**AMPLIFICARE, LLC DBA VROOM.ME**

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# CAR RENTAL CONCESSION AND LEASE AGREEMENT

THIS CAR RENTAL CONCESSION AND LEASE AGREEMENT (which, as amended from time to time, is defined herein as the "Agreement") is entered into as of the 19th day of April, 2022 by and between the City of St. George, Utah, a Utah municipal corporation, (the "City") and Amplificare, LLC dba Vroom.Me, a company, ("Tenant") to operate the following car rental brand or brands on the terms provided in this Agreement: Vroom.me

## RECITALS

WHEREAS, City operates a municipal airport located at 4550 S. Airport Parkway, St. George, Utah 84790 (the "Airport"); and

WHEREAS, Tenant is qualified to provide car rental services to the public and desires to lease certain real property at the Airport for the purpose of operating a car rental concession on the terms provided in this Agreement for the car rental brand or brands stated herein;

NOW, THEREFORE, in consideration of the payment of TEN AND NO/100 DOLLARS ($10.00), the foregoing recitals and the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

## 1. Agreement to Lease and Operate Concession

**A. Agreement to Lease Premises and License Specified Areas.** City hereby leases to Tenant and Tenant hereby leases from City that certain real property within the Airport's terminal building that is described in Exhibit A, together with the improvements constructed thereon by City (the "Leasehold Area"). City further grants to Tenant a license to use, on an exclusive basis, such exterior parking spaces and areas as may be designated by City in writing from time to time for use in connection with operating the concession granted to Tenant in this Agreement, and City may so designate (or remove) any such spaces or areas, or condition rights to use such facilities, without amending this Agreement (the "License Area"). City also grants to Tenant a license to use, on a non-exclusive basis, such areas as may be designated by City in writing from time to time for washing cars in connection with operating the concession granted to Tenant in this Agreement, and City may so designate (or remove) any such areas, or condition rights to use such facilities, without amending this Agreement (the "Car Wash License Area") (the Leasehold Area, the License Area, and the Car Wash License Area are referred to herein as the "Premises"). Tenant's initial License Area consists of ## parking spaces. City shall determine all uses within the Premises. Tenant agrees to accept the Premises "as is," and City makes no warranty as to the condition of the Premises or their suitability for any particular purpose.

**B. Construction of Tenant Improvements.** Tenant shall not construct any improvements on the Premises except as authorized in advance in writing by City from time to

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time. Any improvements so authorized shall be constructed in accordance with the terms set forth in Exhibit B (the "Tenant Improvements").

**C. Grant of Concession and Purpose of Agreement.** Tenant agrees that it shall have the right, privilege, and obligation to use the Premises for the following purposes (and no other purposes): the non-exclusive operation of a full service car rental concession for the brand or brands specified in this Agreement providing, at a minimum, the rental of passenger vehicles to the public and customary services associated with such business, including, but not limited to, the sale of personal accident insurance and collision damage waivers, the rental of ancillary equipment such as cell phones or infant carriers, and rental vehicle storage; provided, however, that no vehicle washing, fueling, or repair shall be permitted on the Premises except as set forth in this Agreement or authorized by City in advance in writing. All services provided by Tenant in connection with this concession and the Premises are subject to City's prior written authorization in City's sole and absolute discretion. If City determines (in accordance with applicable Laws and Regulations, as such term is defined in Section 4.B) to provide any service on an exclusive basis, or City exercises any right to implement Airport programs as provided in Section 5.D, City may require that Tenant cease engaging in substantially similar activities after ninety (90) days prior written notice.

**D. Access.** City agrees that if Tenant is not in breach of this Agreement, Tenant and Tenant's employees, officers, directors, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("Tenant's Associates") may ingress and egress across the Airport (in the areas designated by City and as permitted by applicable Laws and Regulations) on a non-exclusive basis and to the extent reasonably necessary for Tenant's use, occupancy, and operations at the Premises.

**E. Right of Flight and Other Reserved Rights.** This Agreement conveys only a leasehold interest in the Leasehold Area and specified licenses in connection with a grant of concession on the terms and for the purposes provided herein, and it conveys no other rights, titles, or interests of any kind. Among the rights reserved to City, City reserves in the Premises a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, and rights in water, minerals, oil, and gas.

**F. Enjoyment of Rights.** Subject to Tenant's complete performance of the payment and other obligations contained in this Agreement, Tenant shall enjoy the rights, uses, and privileges stated in this Agreement.

## 2. Term

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**A. Term and Options to Extend**. The term of this Agreement shall commence on April 19, 2022 (the "Commencement Date") and shall continue thereafter for an initial term of two (2) years until April 18, 2024 (the "Initial Term"). Upon the expiration of the Initial Term, this Agreement shall remain in effect for three (3) additional periods of one (1) year each (each being an "Annual Term") unless either party delivers a written notice of termination to the other party at least ninety (90) days before the expiration of the Initial Term or any Annual Term then in effect. The date on which this Agreement expires as provided in this Section 2.A is the "Expiration Date."

**B. Refurbishment.** Within a six (6) month period prior to the Expiration Date, Tenant shall refurbish all improvements in the Leasehold Area to a like new condition, such as by repairing and repainting walls within the Leasehold Area, cleaning carpets and replacing worn carpet in such area, and other similar activities. Tenant shall submit a refurbishment plan and schedule to City for City's prior written authorization, and City may approve such plan or require reasonable modifications to the same in City's sole and absolute discretion. Construction work shall be subject to the requirements set forth at Exhibit B. City may impose other commercially reasonable conditions on Tenant in connection with such refurbishment.

## 3. Rent

**A. Rent.** For Tenant's lease of the Leasehold Area, Tenant covenants to pay to City without set-off or deduction the rent provided in Exhibit C commencing on the Commencement Date, and payment shall be subject to the terms stated in Exhibit C.

**B. Additional Rent.** Any sum (other than the rent required in Section 3.A) that Tenant is obligated to pay to City arising from or relating to this Agreement or Tenant's use, occupancy, or operations at the Airport constitutes additional rent, which may include, but is not limited to, fees, fines, civil penalties, damages, claims, interest, charges, expenses, utility charges, and any customer facility charge or charges (or other similar charges) that City may impose. Additional rent shall be subject to the terms stated in Exhibit C in addition to the matters stated below.

i. Parking Space Fee. For every parking space that Tenant uses pursuant to this Agreement, Tenant shall pay a charge of Twenty dollars ($20.00) per month commencing on the Commencement Date. The charge for any space used for a fraction of any month shall be prorated. Such charges shall be payable monthly in arrears without notice or demand by the tenth ($10^{th}$) day of the following month, and payment shall be subject to the terms stated in Exhibit C. If requested by City, Tenant shall submit with each payment a statement listing the number of parking spaces used during the month, and for any spaces used for a fraction of the month, providing the dates when such spaces were used.

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ii. Customer Facility Charges. If City determines to impose a customer facility charge of any kind, Tenant agrees to collect, administer, and remit such charge in accordance with City's requirements.

## 4. Tenant's Use of Premises and Airport

**A. No Interference.** Tenant and Tenant's Associates shall not use the Premises or the Airport in any manner that City believes (in City's sole and absolute discretion) interferes with any operation at the Airport or decreases the Airport's effectiveness. Tenant shall immediately notify City of any use that creates such interference or decrease in effectiveness and remedy the same to City's sole satisfaction. When Tenant conducts operations in areas where City has authorized other users to be present, Tenant and Tenant's Associates shall cooperate with all such users and shall not interfere with the operations of others.

**B. Comply with All Laws.** Tenant and Tenant's Associates shall comply at all times, at Tenant's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to Tenant's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law including, but not limited to, the Airport Rules and Regulations and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements (including, but not limited to, the Airport Security Plan); and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements. Upon request by City, Tenant will verify, within a reasonable time frame, compliance with any Laws and Regulations.

**C. No Unauthorized Use.** Tenant and Tenant's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that Tenant does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; the use of automobile parking areas in a manner not authorized by City; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

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**D. Permits and Licenses.** Tenant shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with Tenant's use, occupancy, or operations at the Premises or the Airport. In the event that Tenant receives notice from any governmental authority that Tenant lacks, or is in violation of, any such permit or license, Tenant shall provide City with timely written notice of the same.

**E. Taxes and Liens.** Tenant shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to Tenant's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for any Tenant Improvements). Within ten (10) days, Tenant shall remove any such lien that may be created or commence a protest of such lien by depositing with City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, Tenant shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

**F. Damage to Property and Notice of Harm.** In addition to Tenant's indemnification obligations set forth in Article 6, Tenant, at Tenant's sole cost, shall repair or replace (to City's sole satisfaction) any damaged property that belongs to City or City's other tenants to the extent that such damage arises from or relates to an act or omission of Tenant or Tenant's Associates. Tenant shall promptly notify City of any such property damage. If Tenant discovers any other potential claims or losses that may affect City, Tenant shall promptly notify City of the same.

**G. No Alterations or Improvements.** Tenant shall not make or cause to be made any alteration or improvement to the Premises or to other areas of the Airport without City's prior written consent, which may be given or withheld in City's sole and absolute discretion.

**H. Signage and Advertising.** Tenant shall not install or operate any signage on the Premises or at the Airport except with the prior written approval of City (which may be given or withheld in City's sole and absolute discretion). Any approved signage shall be at Tenant's expense and shall comply with Laws and Regulations (including, but not limited to, City's Airport signage policies and standards and City's ordinance and permit requirements). Except as expressly permitted by this Agreement, Tenant shall not advertise or permit others to advertise at the Airport by any means, whether or not such advertising is for profit.

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**I. Security.** Tenant is responsible to comply (at Tenant's sole cost) with all security measures that City, the United States Transportation Security Administration, or any other governmental authority having jurisdiction may require or approve in connection with the Airport, including, but not limited to, any access credential requirements, any decision to remove Tenant's access credentials, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by Tenant or Tenant's Associates. Tenant agrees that City has the right to impose any Airport security requirements. Tenant further agrees that Airport access credentials are the property of City and may be suspended or revoked by City in its sole and absolute discretion at any time. Tenant shall pay all fees associated with such credentials, and Tenant shall immediately report to the Airport Manager any lost credentials or credentials that Tenant removes from any employee or any of Tenant's Associates. Tenant shall protect and preserve security at the Airport.

**J. Maintenance, Repair, Utilities, and Storage.** Tenant's use, occupancy, and operations at the Premises shall be without cost or expense to City. Tenant shall be solely responsible to install any Tenant Improvements and to maintain, repair, refurbish, and operate the Premises and the Tenant Improvements at Tenant's sole cost and expense, including, but not limited to, all utility services, janitorial services, and waste disposal, except that City shall be responsible for the following to the extent that damage is not caused by Tenant or Tenant's Associates: (i) structural repair and periodic preventive maintenance for pavements in the License Area, the Car Wash License Area, and for the City Equipment (as defined in Section 4.L); (ii) structural repair for City-owned improvements in the Leasehold Area; and (iii) repair and maintenance for centralized systems that provide service to the Leasehold Area. Tenant shall at all times maintain the Premises in good repair and in a clean, safe, and sanitary condition and perform all work in accordance with Laws and Regulations, in a good and workmanlike manner, and in accordance with the standard of work performed by the City elsewhere at the Airport. City has sole and absolute discretion to determine the quality of the work. Tenant shall promptly remedy any condition that fails to meet this standard. Among other things, Tenant shall not store on the Premises any inoperable equipment, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of the Premises for storage; and shall store any outdoor trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 7.

**K. Operations.** Tenant's operations shall comply with the following:

i. Airport Operations. Tenant shall occupy the Premises at all times, shall operate during scheduled business hours as approved by City, and shall operate in a manner that promotes effective airport operations. Among other things, Tenant shall (a) immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; (b) refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; (c) not engage

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in discriminatory business practices; (d) promptly respond to City's requests for information and reasonable assistance in connection with planning and other operational matters at the Airport; (e) provide a sufficient number of current model autos, vans, and utility vehicles to meet the reasonable demand of the public; (f) provide sufficient personnel to adequately service demand; (g) maintain vehicles in a condition that is clean and in good repair; (h) operate Tenant's License Area in a clean and orderly manner; and (i) provide for all employee parking on Tenant's License Area.

ii. Concession Service Standard. Tenant's concession shall provide high quality services and facilities (that are required by or authorized by City) in a good and proper manner to effectively meet the needs of the public and City and to maximize concession revenues. The privilege to operate this car rental concession shall exist only so long as the character of Tenant's facilities and services are consistent with such standard. Among other things, Tenant shall provide reasonable staffing at Tenant's car rental counter to meet the public demand from arriving flights. From time to time, City may (but is not required to) implement programs to audit or review Tenant's performance and service levels (and Tenant agrees to participate in the same). City reserves the right to implement car rental concession service standards in addition to those set forth in this Section 4.K.ii (including, but not limited to, by developing and requiring compliance with specific performance measures), and City shall give Tenant thirty (30) days' written notice before City implements a new policy containing uniform concession service standards for car rental concessions at the Airport. Nothing herein shall be interpreted to prevent City from requiring prompt compliance with any Laws and Regulations and any provision of this Agreement, including, but not limited to, the concession service standard stated in this Section 4.K.ii.

iii. Business Practices. Tenant shall operate using only the brand name or names accepted by City as provided in this Agreement, and the use of such brands is part of the consideration to City under this Agreement. Tenant shall operate in accordance with Tenant's business plan accepted by City, and City may (but is not required to) request that Tenant update such plan and incorporate additional measures to serve the public and generate revenue. Tenant shall provide such update within thirty (30) days of City's written request.

iv. Complaints. Tenant shall respond in a prompt manner to questions and complaints regarding Tenant's operations when raised by Airport users or by City, and Tenant shall provide a timely resolution of such questions and complaints.

v. Emergencies. If City determines for any reason that emergency conditions exist at the Airport, Tenant shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

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vi. Safety. Tenant shall maintain a safety program at the Premises that includes, at a minimum, the following: periodic training for Tenant's employees and, as appropriate, Tenant's Associates regarding safety in connection with Tenant's operations; making available Material Safety Data Sheets to City and, as appropriate, others for any chemicals used on the Premises at least ten (10) days prior to their use; participating in City's safety-related programs (such as risk management, security, and environmental management); and maintaining at all times functional fire extinguishers (including, but not limited to, an equipment testing program). City may, but is not obligated to, stop tenant's operations if safety Laws and Regulations or other safe work practices are not being observed.

vii. Personnel. Tenant shall control the conduct, demeanor, and appearance of its employees and Tenant's Associates so that they do not annoy, disturb, or impair Airport customers, tenants, or employees, and among other things, Tenant's personnel shall be courteous and professional to the public; refrain from public disputes or conflicts; refrain from using abrasive language or conduct; refrain from eating, drinking, smoking, or sleeping in the public view; and refrain from using pressure sales tactics. Tenant's employees shall possess adequate training and qualifications to carry out their assigned duties (including, but not limited to, retail service skills training), shall be knowledgeable about Tenant's products and services, and shall be familiar with the Airport's general layout, services, and amenities. Tenant shall employ a full-time, experienced manager who has authority to act for Tenant and is available at the Airport during regular business hours and a duly authorized subordinate employee who shall be available in the manager's absence.

viii. Deficiencies. Without limiting or waiving any other remedies available to City, City's remedies shall include the following in connection with deficiencies in Tenant's operations:

a. Propose and Implement Cure. Tenant shall meet with the Airport Manager as he or she may request regarding the quality of Tenant's operations, whether or not in connection with a specific complaint. Tenant shall propose curative measures in response to City's determinations regarding deficiencies in Tenant's operations and shall implement as expeditiously as possible measures that are approved by City.

b. Remove Employees and Associates. City shall have the right to require that Tenant remove from the Airport any employee or any of Tenant's Associates that City reasonably determines to be in violation of Section 4.K.vii or otherwise detrimental to City's interests at the Airport.

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c. Termination. City shall have the right to terminate this Agreement in connection with any deficiency in Tenant's operations and in connection with repeated deficiencies (where City notifies Tenant of three or more deficiencies in a twelve (12) month period, whether or not cured).

**L. Use of City-Owned Common Use Equipment**. If Tenant is not in breach of this Agreement, Tenant shall have the right to use equipment that City owns and provides for use in common as follows:

i. City Equipment. Tenant shall have the non-exclusive right to use the "City Equipment" as provided in this Agreement, meaning equipment that City provides for washing cars in the Car Wash License Area. City reserves the right to add additional City-owned common use systems or equipment to the City Equipment (or to delete any of the same) upon delivering written notice of such addition or deletion to Tenant and to charge a fee in connection with any such additional equipment. Tenant shall comply with all City requirements in connection with the City Equipment.

ii. Tenant Operations. Tenant shall have the right to operate the City Equipment using employees of Tenant who receive recurrent training in such operations when such training is satisfactory to City and meets the recommendations of applicable manufacturers and installers. Tenant shall provide to City, upon City's request, records of such recurrent training and similar documentation. Tenant shall be solely responsible to conduct operations safely, in accordance with industry standards and Laws and Regulations, and in a manner that protects the City Equipment from damage or misuse. Tenant shall secure the City Equipment in a safe and inoperable condition when it is not actively being used by Tenant. Tenant shall not use any City Equipment that is damaged or inoperable. Tenant shall work cooperatively with City and with other authorized users of the City Equipment to provide for proper operations, accommodate the access needed by all such users in an orderly and convenient manner, and prevent a disruption to Airport operations.

iii. Service Calls and Alterations. If any of the City Equipment becomes damaged, inoperable, or in need of service, Tenant shall promptly contact the Airport Manager or his or her designee and report such conditions. Tenant shall not make any changes to the City Equipment.

## 5. City's Rights and Obligations

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**A. Airport Maintenance.** City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair.

**B. Access to Premises.** City for itself and its employees, officers, directors, agents, contractors, subcontractors, suppliers, invitees, volunteers and other representatives ("City's Associates") reserves the right to enter the Premises at any time without notice for any purpose relating to the Airport (including, but not limited to, in order to conduct inspections, determine compliance with the Agreement, investigate or remediate any potential threats or hazards, conduct Airport work, and for emergency purposes), provided that they shall not unreasonably interfere with Tenant's use of the Premises. Tenant agrees to allow City to interview any of Tenant's employees to discuss any matters pertinent to Tenant's use, occupancy, or operations at the Premises and the Airport. City shall retain keys to all areas within the Premises. City and City's Associates shall not be deemed guilty of trespass upon the Premises or to have violated any of Tenant's rights hereunder by reason of any entrance into the Premises.

**C. City's Right to Work Within, Alter, or Recover Premises**. City has the right at the Airport to perform or cause to be performed any work (including, but not limited to, constructing improvements, surveying, performing environmental testing, removing any hazard or obstruction, and implementing any plan, program, or action), that City (in its sole and absolute discretion) determines to be in City's best interests, including, but not limited to, within the Premises. City may elect to pursue any such work without recovering the Premises from Tenant, in which case City shall exercise reasonable care to minimize disruptions to the Premises. City also has the right to recover all or any portion of the Premises from Tenant in connection with any such work (with or without relocating Tenant) as City may determine in its sole and absolute discretion, and the following shall apply:

i. Recovery. If City determines to recover all or any portion of the Premises, City shall provide Tenant with ninety (90) days prior written notice specifying what areas will be recovered.

ii. Relocation. If City elects to relocate Tenant, City shall pay the reasonable costs that Tenant actually incurs to relocate to a new location (chosen by City) any movable property associated with Tenant's permitted uses under this Agreement (but not any vehicles).

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iii. Adequacy of Premises. Upon receiving notice of any recovery or relocation of Tenant's Premises, Tenant shall promptly notify City if Tenant believes the same will be inadequate to conduct Tenant's concession operations.

iv. No Waiver. Nothing under this Section 5.C shall be construed to waive City's right to pursue any remedy for a breach of this Agreement arising from or relating to Tenant's use, occupancy, or operations at any portion of the Premises or at the Airport.

**D. City's Right to Implement Airport Programs.** City has the right to implement any lawful, reasonable, and nondiscriminatory program at the Airport as City may determine in its sole and absolute discretion, and to require Tenant to participate in or comply with any such program. Such programs may include, but are not limited to, providing common arrangements for trash disposal, utilities, or other Airport functions; providing revenue-generating activities at the Airport by City or its designee (including, but not limited to, vending machines, advertising, wireless communications, and utility services whether on or off of the Premises); designating approved vendors and service providers at the Airport; establishing central locations and security procedures for delivering goods or materials to the Airport; and establishing green building and other programs to benefit the environment and conserve energy.

**E. City Charges.** City has the right to impose rates and charges in connection with any matter at the Airport in a manner consistent with Laws and Regulations.

**F. City Directives.** City is the owner and proprietor of the Airport, and City has the right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

**G. Governmental Acts.** City is a government entity, and City has all rights, powers, and privileges afforded to it under Laws and Regulations. Tenant agrees that Tenant is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

## 6. Indemnity, Insurance, and Letter of Credit

**A. Indemnity by Tenant.** Tenant agrees to indemnify, hold harmless, and defend City and it officers and employees from and against losses of every kind and character (including, but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees,

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court or dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) this Agreement; (ii) any use, occupancy, or operations at the Premises or the Airport by Tenant or Tenant's Associates; or (iii) any wrongful, reckless, or negligent act or omission of Tenant or Tenant's Associates. Tenant shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require Tenant to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are found to be true.

**B. Waiver.** Tenant assumes all risk of the use of the Premises and the Airport, and Tenant hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption) against City and its officers, employees, and volunteers arising from or relating to Tenant's use, occupancy, or operations at the Premises or the Airport.

**C. Insurance.** At Tenant's cost, Tenant shall procure the following insurance coverage prior to entering the Premises, and Tenant shall maintain its insurance coverage in force at all times when this Agreement is in effect in compliance with and subject to City's insurance requirements as they exist from time to time (including, but not limited to, the terms provided in Exhibit D):

i. Commercial General Liability. Commercial general liability coverage that includes premises liability, mobile equipment, products, completed operations, and employment practices liability coverage with a combined single limit for bodily injury and property damage of not less than one million dollars ($1,000,000) per occurrence including, but not limited to, contractual liability coverage for Tenant's performance of the indemnity agreement set forth in Section 6.A.

ii. Automobile. Comprehensive automobile liability coverage for claims and damage due to bodily injury or death of any person or property damage arising out of Tenant's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than one million dollars ($1,000,000) single combined limit "per accident" for bodily injury and property damage.

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iii. Pollution. Pollution legal liability insurance of not less than two hundred fifty thousand dollars ($250,000) per occurrence and aggregate liability for environmental clean-up costs, transportation of wastes or products, and claims for bodily injury and property damage arising from losses due to pollution conditions covering all aspects of the Premises and Tenant's use, occupancy, and operations at the Airport.

iv. Workers Compensation. Workers' compensation coverage in the amounts and form required by the state of Utah.

v. Business Interruption. Business interruption insurance in amounts sufficient to pay Tenant's rent obligations under this Agreement based on Tenant's average rental payment during the twelve (12) months prior to the date of interruption. Tenant is solely responsible for all costs of business interruption, however incurred.

**D. Performance Security.** Prior to entering the Premises, Tenant shall provide to City a performance security equal to three (3) months estimated rent (as determined by City) in the form of an irrevocable letter of credit or a performance bond (in a form that complies with City's requirements) as security for Tenant's faithful performance under this Agreement. City may (but is not required to) apply all or any part of such performance security to the payment of any monetary obligation due under this Agreement (including, but not limited to, City's expenses to recover and relet the Premises). Tenant shall restore any portion so applied, and shall fully maintain in effect such performance security throughout the term of this Agreement. Upon any expiration or termination of this Agreement, if Tenant has fully complied with Tenant's obligations under this Agreement City shall return to Tenant any remaining portion of such performance security.

## 7. Hazardous Materials

**A. No Violation of Environmental Laws.** Tenant shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Premises or the Airport by Tenant or Tenant's Associates in violation of applicable Environmental Laws. Tenant is responsible for any such violation as provided by Section 6.A of this Agreement.

**B. Response to Violations.** Tenant agrees that in the event of a release or threat of release of any Hazardous Material by Tenant or Tenant's Associates at the Airport, Tenant shall

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provide City with prompt notice of the same. Tenant shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that Tenant conduct reasonable testing and analysis (using qualified independent experts acceptable to City) to show that Tenant is complying with applicable Environmental Laws. City may conduct the same at Tenant's expense if Tenant fails to respond in a reasonable manner. Tenant shall cease any or all of Tenant's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If Tenant or Tenant's Associates violate any Environmental Laws at the Airport (whether due to the release of a Hazardous Material or otherwise), Tenant, at Tenant's expense, shall have the following obligations, which shall survive any expiration or termination of this Agreement: (i) promptly commence and pursue to completion a remediation of such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan in connection therewith, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide to City copies of all documents pertaining to any environmental concern that are not subject to Tenant's attorney-client privilege.

**C. Obligations Affecting Permits.** To the extent that Tenant is a co-permittee with City in connection with any permit relating to the environment at the Airport, or to the extent that any of Tenant's operations in connection with this Agreement or otherwise may impact City's compliance with any such permit, Tenant shall work cooperatively with City and other tenants and take all actions necessary to ensure permit compliance, and minimize the cost of such compliance, for the benefit of Airport operations.

**D. Obligations upon Termination and Authorized Transfers.** Upon any expiration or termination of this Agreement (and this obligation shall survive any such expiration or termination), and upon any change in possession of the Premises authorized by City, Tenant shall demonstrate to City's reasonable satisfaction that Tenant has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing.

## 8. Assignment and Subleasing

**A. Assignment.** Tenant shall not assign any of its rights under this Agreement (whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this

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Agreement (or any document or interested relating thereto), and shall not delegate any performance under this Agreement, except with the prior written consent of City to any of the same. City may withhold consent to such assignment, encumbrance, or delegation for any or no reason in its sole and absolute discretion. Regardless of City's consent, Tenant shall not be released from any obligations for matters arising during the time when this Agreement was in effect. Any purported assignment or encumbrance of rights or delegation of performance in violation of this Section 8.A is void. This Agreement is binding on Tenant's successors or assigns that have been authorized pursuant to this Section 8.A.

**B. Subleasing.** Tenant shall not sublease any part of the Premises.

## 9. Damage, Destruction, and Condemnation

**A. Damage or Destruction of Premises.** If any portion of the Premises is damaged in any manner that renders such portion untenantable, City, in its sole and absolute discretion, may determine to (i) repair the Premises at City's expense (and Tenant shall pay to repair any Tenant Improvements); (ii) relocate Tenant to other Premises that City determines to be reasonably suitable to conduct Tenant's concession business (on a temporary or permanent basis); or (iii) terminate this Agreement upon giving Tenant ten (10) days' notice. Tenant shall not receive any abatement of Tenant's rent obligations.

**B. Condemnation.** In the event of any condemnation proceeding in which all or any part of the Premises is taken (by a condemnor other than City), all compensation from such proceeding shall be paid to City except that Tenant may pursue a claim against the condemnor for the value of the Tenant Improvements and Tenant's leasehold interest. If City determines in its sole and absolute discretion that all or a material portion of the Premises will be (or has been) rendered untenantable as a result of such taking, and if City determines not to provide substitute Premises to Tenant, City may terminate this Agreement by giving Tenant a written notice of termination, and this Agreement shall terminate at the time specified in the notice (which shall not be less than thirty (30) days after the date of such notice).

## 10. Default

**A. Tenant's Default.** The occurrence of any of the following events shall constitute a default by Tenant under this Agreement: (i) Tenant fails to timely pay any installment of rent or any additional rent; (ii) Tenant ceases to provide any service that Tenant is required to provide

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under this Agreement for a period of seven (7) consecutive days; (iii) Tenant violates any requirement under this Agreement and fails to cure the same within twenty (20) days following written notice of such violation from City (except that in the case of insurance coverage required to be maintained, such period shall be five (5) days); (iv) Tenant assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (v) Tenant files a petition in bankruptcy, becomes insolvent, or has a petition filed against Tenant in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (vi) Tenant petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vii) Tenant is in breach of this Agreement (including, but not limited to, operational deficiencies pursuant to Section 4.K.viii) three (3) or more times during a twelve (12) month period (whether or not cured).

**B. Remedies.** Upon any default by Tenant under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in Tenant's stead any obligation that Tenant has failed to perform, and Tenant shall promptly pay to City all costs incurred by City for such performance, together with interest and service fees for any past due amounts (as provided in Section 10.C) and an administrative charge equal to ten percent (10%) of the cost incurred by City (which the parties agree is a reasonable estimate of and liquidated damages for City's overhead expenses associated with such performance); (ii) terminate Tenant's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). Tenant shall pay all costs and damages arising out of Tenant's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and reletting the Premises (including, but not limited to, any real estate broker fees or marketing costs), and attorneys' fees and costs. Notwithstanding any termination or re-entry, Tenant shall remain liable to pay the rent and additional rent required under this Agreement for the remaining term of this Agreement (as further provided in Exhibit C), and Tenant shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides Tenant with a written notice expressly stating that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by Tenant under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

**C. Past Due Amounts.** If Tenant fails to pay when due any amount required to be paid by Tenant under this Agreement, such unpaid amount shall bear interest at the rate of eighteen percent (18%) from the due date of such amount to the date of payment in full, with interest. In addition, City may also charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable estimate of and liquidated damages for City's additional

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costs for billing and collection arising from Tenant's failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent or additional rent, and shall be paid without abatement, deduction, offset, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

**D. Default by City.** City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within twenty (20) days after written notice by Tenant to City. If the nature of City's obligation is such that more than twenty (20) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such twenty (20) day period and thereafter diligently prosecutes the same to completion. In no event may Tenant terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

**E. Survival.** The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

## 11. Expiration or Termination

**A. Surrender of Premises.** Upon any expiration or termination of this Agreement, Tenant, at Tenant's sole cost, shall (i) promptly and peaceably surrender to City the Premises "broom clean" and in good order and condition; (ii) repair in a good and workmanlike manner any damage to the Premises or the Airport that arises from or relates to Tenant's use, occupancy, or operations under this Agreement (including, but not limited to, while removing any property upon expiration or termination); (iii) deliver to City all keys and access credentials relating to the Airport; (iv) perform Tenant's environmental obligations as provided in Section 7; and (v) remove all movable personal property, Tenant Improvements, and trade fixtures (including signage) that are not owned by City, (except that Tenant must obtain City's prior written consent to remove any such property if Tenant is in default under this Agreement or if such removal may impair the structure of any building). Upon any expiration or termination of this Agreement or abandonment of the Premises, all property that Tenant leaves on the Premises shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by City without notice to, and without any obligation to account to, Tenant or any other person. Tenant shall pay to City all expenses incurred in connection with the disposition of such property in excess of any amount received by City from such disposition. Tenant shall not be released from Tenant's obligations under this Agreement in connection with surrender of the Premises until City has inspected the Premises and delivered to Tenant a written acceptance of such surrender.

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**B. Holding Over.** If Tenant remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with state law. During such occupancy, Tenant shall comply with all provisions of this Agreement that are applicable to an at-will tenancy, including, but not limited to, the payment of rent.

**C. Survival.** The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

## 12. General Provisions

**A. General Provisions.** This Agreement is subject to the General Provisions set forth at Exhibit E.

**B. Notices.** Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or UPS), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows:

If to City:

Airport Manager
St. George Municipal Airport
175 E. 200 N.
St. George, Utah 84770

If to Tenant:

Sam Seymour
416 E Rocco Road
Washington, UT 84780

with a required, simultaneous copy to:

City Attorney
City of St. George
175 E. 200 N.
St. George, Utah 84770

with a required, simultaneous copy to:

Either City or Tenant may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.B and

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delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

**C. Incorporation.** All exhibits referred to in this Agreement, as they may be amended from time to time, are incorporated in and are a part of this Agreement. Any proposal materials submitted by Tenant in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement. Tenant hereby acknowledges receiving Exhibits A – E to this Agreement.

**D. Binding Obligation.** Tenant warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of Tenant.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

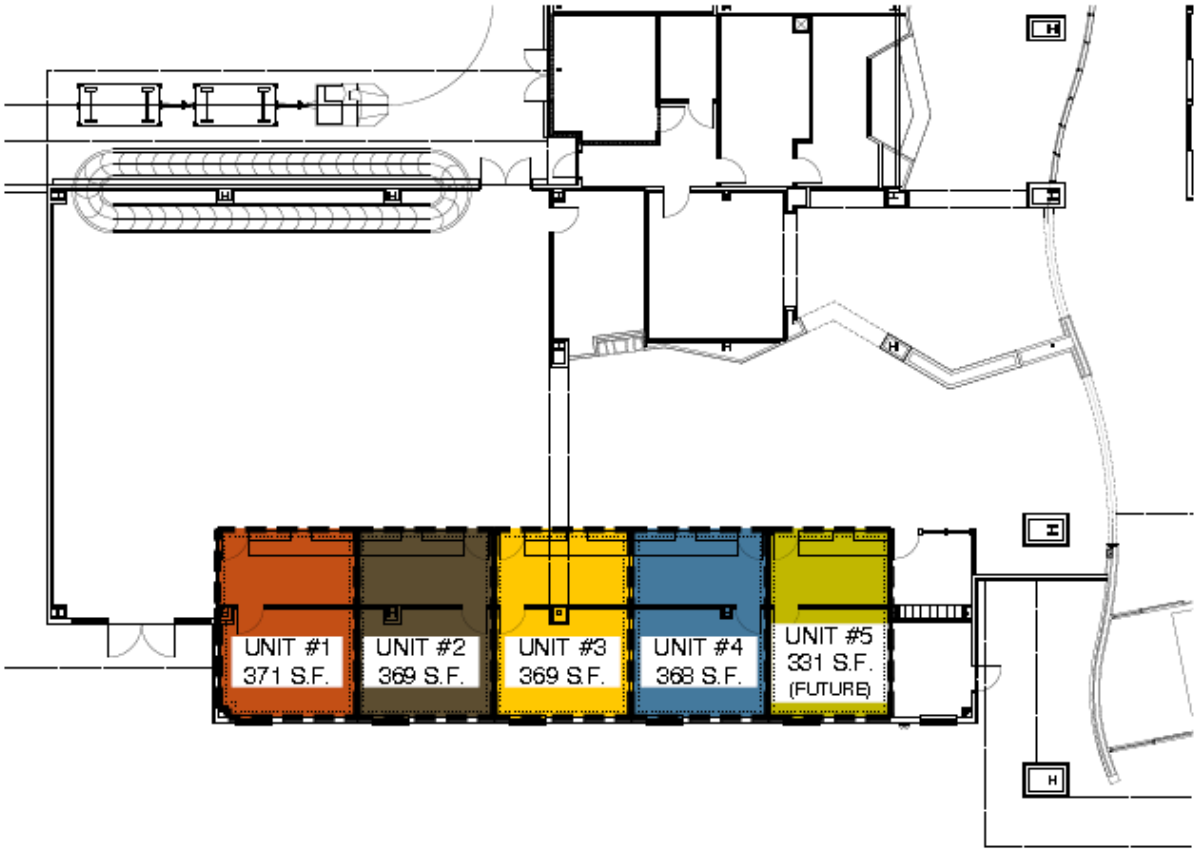
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|---|---|
| CITY OF ST. GEORGE | AMPLIFICARE, LLC/VROOM.ME |
| | DocuSigned by: Sam Seymour 51317D9855F64C3... |
| Michele Randall, Mayor | By: Samuel Seymour<br>Its: Owner |
| Attest: | Approved as to form: |
| Christina Fernandez, City Recorder | Collin Simonsen, City Attorney |

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# EXHIBIT A

## PREMISES

**A.1 Leasehold Area.** Tenant's Leasehold Area is Unit # 4 on the Airport terminal's Car Rental Concession Space Map (depicted below).



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# RENTAL CAR PARKING 2021

TOTAL LOTS PER COMPANY

ENTERPRISE =95

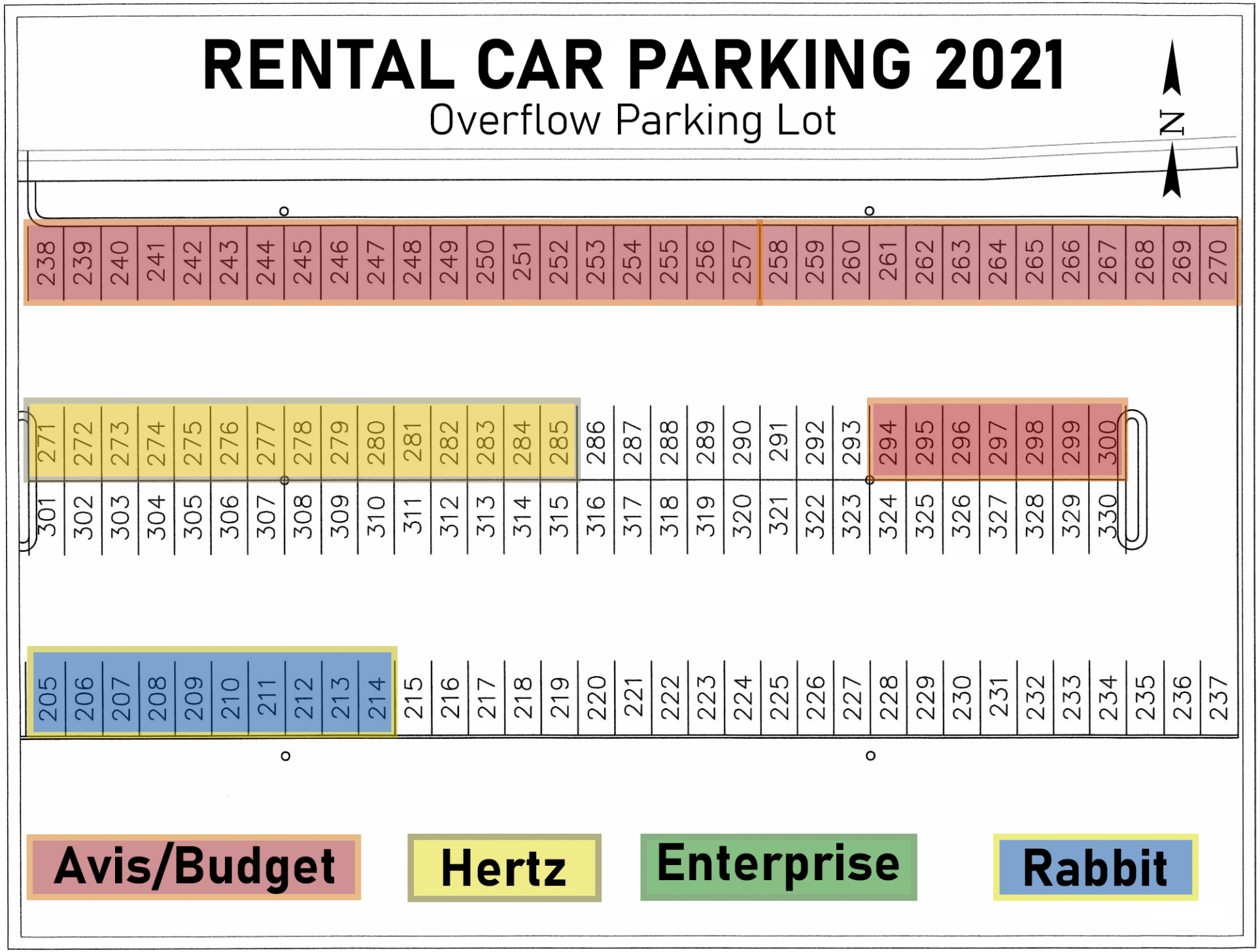
AVIS / BUDGET = 86

HERTZ = 71

RABBIT RENTALS = 10

*See parking lot maps for lot numbers and locations.

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# EXHIBIT B

## TENANT CONSTRUCTION REQUIREMENTS

**B.1 Authorization**. Tenant shall not commence any construction or installation work on the Premises without the City's prior written consent for all work to be conducted. When making such request, Tenant shall submit to City plans, a schedule, a budget, or other information as requested by City. City may request modifications, consent to, or deny Tenant's proposal in City's sole and absolute discretion. For any authorized project, Tenant shall coordinate the work with City and provide information to City as reasonably necessary to keep City informed of the progress of the work. Tenant shall make no changes to the work without City's prior written consent.

**B.2 Standard**. All work shall be performed in a good and workmanlike manner and shall be equal to or greater than the quality of the original materials, workmanship, and appearance of similar work performed by Tenant or by City elsewhere at the Airport. Work shall be performed by qualified and properly licensed personnel. All work shall conform to Laws and Regulations. Work shall be performed in a safe manner, and City shall have the right, but not the duty, to stop any work until safe conditions can be investigated and implemented. The work site shall be secured consistent with industry standards at Airports during the performance of the work.

**B.3 Coordination**. Tenant shall coordinate all work with Airport activities, and shall minimize any disruption to Airport activities, tenants, and users. City shall have the right, but not the duty, to direct that Tenant and Tenant's Associates cease activities or revise work plans to avoid disruption. Tenant and Tenant's Associates shall meet with City as requested by City as the work progresses and provide the City with information as City may require. City may require Tenant to comply with other measures that are in the City's interests in connection with any construction activities.

**B.4 Indemnification, Insurance, and Bonds**. If requested by City, Tenant shall cause Tenant's Associates who are performing any work relating to constructing improvements to provide the following:

**a. Indemnity.** Tenant shall require such associates to indemnify City in connection with City's interests consistent with the indemnity obligation of Section 6.A.

**b. Insurance**. Tenant shall provide or shall require such associates to provide builder's risk coverage to insure the improvements constructed on the Premises to the extent of not less than one hundred percent (100%) of such improvements' full insurable value using the all risk form of protection, as well as general liability, auto, and workers compensation insurance coverage as set forth in Section 6 to cover such work. Tenant shall also require design professionals to provide errors and omissions coverage in an amount not less than one million dollars ($1,000,000). All such insurance shall comply with and be subject to City's insurance requirements including, but not limited to, those set forth at Exhibit D.

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**c. Bonds.** Tenant shall provide or shall require such associates to provide construction payment and performance bonds in amounts covering not less than one hundred percent (100%) of the contract price of such improvements and in a form acceptable to City. All such bonds shall name the City as a co-obligee.

**B.5 Agreement Applicable to Work**. The provisions of this Agreement shall apply to all work pursued by Tenant to construct improvements, regardless of whether such work commences or concludes before the Commencement Date or after any expiration or termination of this Agreement (including, but not limited to, Tenant's obligations under Sections 6 and 4.F, provisions prohibiting liens, and provisions requiring compliance with all Laws and Regulations). Tenant shall provide for compliance with this Agreement's requirements by Tenant's Associates who are performing any work relating to constructing or installing improvements.

**B.6 Permits, Plan Checks Required.** Tenant and Tenant's Associates must comply with all City requirements applicable to construction, including, but not limited to, permit requirements, plan check requirements, and other requirements imposed by City.

**B.7 Default**. Tenant shall comply with any construction schedule approved by City. If such construction is not completed materially within any times required by Tenant's approved schedule, or if for any reason Tenant fails to complete construction within ninety (90) days of Tenant's approved date for substantial completion, Tenant shall be in default under this Agreement. Upon any default, Tenant shall turn over to City copies of all records associated with the work (if requested by City) and shall work cooperatively with City.

**B.8 Final Submittals**. If requested by City, Tenant shall submit the following to City within ninety (90) days of beneficial occupancy:

**a. Certified Financials.** Tenant shall submit a statement of construction costs certifying the total construction cost of any improvement in a form reasonably required by City.

**b. Free of Liens.** Tenant shall submit a statement that the Premises and Tenant Improvements are free and clear of all liens, claims, or encumbrances (except when specifically authorized in the manner permitted under this Agreement).

**c. As-Built Drawings.** Tenant shall submit at its expense a complete set of accurate "as-built" plans and specifications, including bond paper "record" drawings, and one set of electronic drawings in AUTOCAD and tiff or PDF format, or other format specified by City, meeting the City's graphic standards for such records.

**B.9 Initial Tenant Improvements. City has authorized and Tenant shall construct the initial Tenant Improvements that are summarized at Exhibit B, Attachment 1 (if any), and such obligation includes, but is not limited to, the plans, schedule, and date for access to the Premises in connection with such improvements.**

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**B.10 Release by Former Airport Tenants.** If Tenant was a tenant at the Former Airport, Tenant agrees that as of the Commencement Date, all agreements and other interests between Tenant and City regarding the Former Airport shall terminate (if not terminated sooner); provided that Tenant shall remain liable to City for any matter arising from or relating to Tenant's use, occupancy, or operations at the Former Airport during or prior to the time of Tenant's last entry upon the Former Airport. Tenant hereby releases, acquits, and forever discharges City and its officers, employees, and agents from and against any and all losses, liabilities, claims, and causes of action, of every kind and character, that Tenant may have against City arising from or relating to the Former Airport, whether the same are presently known or unknown and whether or not the same have been or could have been discovered as of the date of this Agreement.

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**EXHIBIT B**
**ATTACHMENT 1**

**INITIAL TENANT IMPROVEMENTS**

**If this Attachment 1 is left blank, the City has not approved any initial Tenant Improvements.**

**Date for Tenant's Access to the Premises: _____April 1, 2022_____**

**Commencement Date for this Agreement: _____ April 19. 2022_____**

**Schedule for Construction:**

**Commencement of the Work: _____**

**Substantial Completion: _____**

**Other schedule requirements shall be as set forth in the schedule submitted to City by Tenant.**

**Tenant shall cause the construction of the plans and specifications for Tenant Improvements as submitted to City, which may be summarized as follows:**

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# EXHIBIT C

## RENT AND PAYMENT

**C.1 Rent.** The following shall apply to Tenant's payment of rent pursuant to Section 3.A:

**a. Amount of Rent**. For every month (or partial month) when this Agreement is in effect, Tenant shall pay a percentage rent to City of ten percent (10%) of Tenant's Gross Revenue (as defined below).

**b. Gross Revenue.** "Gross Revenue" shall be defined as follows:

i. Inclusions. Gross Revenue includes all sums paid or payable to Tenant in connection with any matter associated with this Agreement (except sums that are specifically allowed to be deducted from Gross Revenue under Section C.1.cb.ii) regardless of how any sum may be stated to the customer or how or where Tenant received an order, and it shall include, but not be limited to, the following: all revenues attributable to Tenant's sale of, receipt of, or charge for a product or service at the Airport (or at a location within three (3) miles of the Airport boundary when Tenant's customer has arrived by aircraft) whether paid by cash, credit card, exchange for like property (at the sale price or fair and reasonable value thereof, whichever is greater), or otherwise, and whether wholesale or retail, regardless of when or whether paid for or not (including, but not limited to, car rental charges and fuel sales).

ii. Deductions. No deduction of any kind shall be made from Gross Revenue unless expressly authorized in this Agreement, and matters that cannot be deducted include, but are not limited to, any taxes levied on Tenant or Tenant's activities (such as Tenant's concession, property, or sales) and second tiers or volume discounts given or calculated after the vehicle has been rented. Tenant is expressly authorized to deduct from Gross Revenue the following: (1) charges to Tenant's customers for repairs to automobiles damaged by such customers; (2) uncollected items resulting from theft, conversion, or illegal use of Tenant's automobiles, unless and until the charges are collected; (3) monies collected from customers for the rental of accessory items such as child seats, ski racks, navigation equipment, cellular phones, or similar items; (4) separately stated fees collected by Tenant for collision damage waivers or personal accident insurance elections by customers; (5) charges made and collected from customers which are classified as "drop charges" for one-way rentals (however all other charges for one-way rentals shall be included in Gross Revenues, including time and mileage); (6) receipts from sales of office equipment or other assets

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necessary to conduct Tenant's business; (7) recovery of any facility concession recovery fee Tenant collects from customers for fees paid to City provided the fee is added to each customer contract (but Tenant shall not separately state on the customer contract any percentage rent or other charge by City, regardless of how identified); (8) discounts that are provided to customers through Tenant pursuant to a system-wide written contract with government, non-profit, or corporate clients if Tenant provides the contract to City upon City's request (Tenant may include Tenant's tracking codes for such discounts on the customer's receipt); (9) customer discounts or rebates that are shown on the face of the customer's receipt; (10) sums received as insurance proceeds or judicial judgments or settlements to restore losses incurred by Tenant; (11) items provided to Tenant on a complementary basis; (12) the sale of gift certificates (but Gross Revenue includes gift certificates when redeemed) and (13) the amount of any federal, state, local sales, or tourism tax separately stated on the rental agreement and collected from the customer and remitted to the taxing authority.

**c. Credit Basis Operations.** If Tenant conducts any part of its operation on a credit basis, Tenant shall bear all risk of loss for the same.

**d. No Diversion.** Tenant shall not intentionally divert, through direct or indirect means, any of Tenant's business relating to Tenant's operations in connection with this Agreement to other locations of Tenant or its affiliates without including such transactions in Gross Revenue.

**e. When Payment Due.** Tenant's percentage rent shall be due as follows without demand or notice:

i. Monthly in Arrears. By the fifteenth ($15^{th}$) day of each month, Tenant shall provide to City a written monthly statement itemizing all of Tenant's Gross Revenue (separating revenue and deductions) for the previous month, and Tenant shall pay to City ten percent (10%) of the Gross Revenue for that month.

ii. Proration. The rent for any fraction of a month shall be prorated.

**C.2 Tenant's Sales Procedures and Records**. Tenant shall keep accurate records (including, but not limited to, electronic data) in accordance with generally accepted accounting principles showing all of Tenant's Gross Revenue. Tenant shall use at the Premises a point of sales system that is commonly used in the car rental industry to accurately record all information pertaining to each transaction entered between Tenant and its customers. Such system shall, at a minimum,

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have the ability to record the date of the transaction, the name or identification number of the customer, the payment method, the amount of each purchase, the transaction location, and all other information that Tenant obtains for each transaction, and shall have the capacity to manage inventory and interface with a general ledger. Tenant shall sequentially number all transactions and shall identify transactions that were cancelled or for which Tenant received no revenue. Tenant agrees to notify City of any changes in Tenant's business operations that alter its accounting or records practices, and Tenant shall not engage in any practice to avoid including revenue in Gross Revenue. City may require additional measures to identify Gross Revenues.

**C.3 Inspection and Storage of Tenant Records**. City and City's designated representatives shall have the right, without prior notice during normal business hours, to inspect and take copies of all of Tenant's records that in any way may relate to Tenant's Gross Revenue. Tenant shall promptly make all such records available to City at its place of business in St. George, Utah for the current year and for three (3) previous years (during which this Agreement is in effect); provided that for any records that are regularly maintained solely outside of the St. George area, Tenant shall produce such records within ten (10) days. Tenant shall further make such records available to City for a period of one (1) year after any termination or expiration of this Agreement, and this obligation shall survive such termination or expiration. Storage shall be at the sole expense of Company.

**C.4 Payment of Any Amount Due.** Any amount due in connection with this Agreement or the use of the Airport shall be subject to the following terms; provided, however, that if any obligation is subject to payment terms pursuant to City ordinance or other City requirements that directly conflict with the following terms, such ordinance or other City requirements shall govern.

**a. Past Due Amounts.** Past due amounts are subject to Section 10.C of this Agreement.

**b. Dishonored Checks.** If any check paid on behalf of Tenant is dishonored or returned by a bank for any reason, Tenant shall pay all charges assessed to City by the bank plus a service charge of fifty dollars ($50.00) per occurrence (or such other amount that the City may implement from time to time) in addition to other sums due under this Agreement.

**c. No Demand and Effect of Payment.** All sums relating to this Agreement shall be due without prior notice or demand except when notice is necessary to make Tenant aware of the amount due if such amount is not otherwise set forth in this Agreement. Tenant shall make all payments without set-off or deduction. All sums paid by Tenant shall first be applied to any past due rent beginning with the most recent amount due. No statement on any check or elsewhere shall be deemed to create an accord and satisfaction. City may accept any payment without

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prejudice to City's rights to recover any sum or pursue other remedies provided by this Agreement or by law.

**d. City Advances.** If City pays any amount on behalf of Tenant (including, but not limited to, civil penalties assessed to City in connection with Tenant's use of the Airport) such amount shall constitute an advance by City to Tenant. Tenant shall promptly pay the same to the City upon receipt of an invoice for the same.

**e. City Right to Apply.** City shall have the right to apply any sums paid or provided by Tenant in connection with this Agreement to any obligation that Tenant owes to City, whether or not such obligation arises in connection with this Agreement.

**f. Payment Address.** Tenant shall make payments to City at the following address (or at such other address that City may designate in writing):

City of St. George
Finance Department
175 E. 200 N.
St. George, UT 84770

**g. Reestablishment of Rates and Charges.** City in its sole and absolute discretion may from time to time reestablish (or newly initiate) any type of rates and charges at the Airport (in a manner consistent with Laws and Regulations) to provide for the Airport's operations (including, but not limited to, reestablishing the rental rate charged to Tenant and all similarly situated tenants).

**h. No Interest.** City shall pay no interest on any sum that City pays to Tenant pursuant to this Agreement.

**i. Audit.** City and its designated representatives may audit any records that in any way may relate to Tenant's Gross Revenue. If an audit establishes that additional amounts are due to City, Tenant shall, upon written notice, pay such amounts in accordance with the requirements of Section 10.C, and shall pay the reasonable cost of the audit (including, but not limited to, reasonable legal or other professional fees) if the audit establishes a collective discrepancy of more than five percent (5%) for all matters examined. If the audit establishes that Tenant has overpaid

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City, City shall credit such excess balance to Tenant's monthly payments as they become due after City receives the results of the audit.

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# EXHIBIT D

## INSURANCE REQUIREMENTS

**D.1. General Requirements.** At all times when this Agreement is in effect Tenant shall maintain in force all required insurance coverage and shall have on file with the City Certificates of Insurance evidencing the same. Such certificates shall provide that coverage will not be canceled, suspended, voided, or reduced without at least thirty (30) days prior written notice to the City. Ratings for the financial strength of the companies providing Tenant's insurance policies shall be disclosed in such certificates and shall be "A- VII" or stronger as published in the latest Best's Key Rating Guide (or a comparable rating from a comparable rating service). If a lower rating is proposed, City may examine the financial strength of the insurance company proposed to provide coverage and may consent to a lower rating in the City's sole and absolute discretion, and City may also require additional assurances from Tenant. All certificates shall be signed by a person authorized by the insurer and licensed by the State of Utah. All policies (except any policies required for workers' compensation or errors and omissions) and the certificates evidencing coverage shall name City and its officers, employees, and volunteers as additional insureds (or in the case of property coverage, City shall be named as a loss payee). Tenant shall provide for a renewal of all insurance coverage on a timely basis to prevent any lapse in coverage. City retains the right to approve any deductibles, and Tenant shall notify City of any material erosion of the aggregate limits of any policy. Tenant's policies shall be primary. Such policies shall extend insurance to cover Tenant's contractual obligations under this Agreement.

**D.2 Minimum Requirements.** City's insurance requirements are minimum requirements, and Tenant is responsible to obtain adequate insurance coverage as Tenant may determine. Except as otherwise expressly set forth in this Agreement, Tenant assumes all risk under this Agreement (including, but not limited to, business interruption claims) whether or not insured.

**D.3. Waiver of Subrogation.** Notwithstanding any other provision contained in this Agreement, each of the parties hereby waives any rights of subrogation it may have against the other party for loss or damage from any risk that is covered by insurance (including, but not limited to, claims for business interruption). Each of the parties shall obtain a clause or endorsement providing for such waiver of subrogation in any policies of insurance required under this Agreement.

**D.4. Terms Subject to Change.** City, in its sole and absolute discretion, reserves the right to review and adjust at any time Tenant's required insurance limits, types of coverage, and any other

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terms applicable to insurance to insure against any risk associated with this Agreement or at the Airport. Among other things, City may review any or all insurance coverage on a periodic basis and in connection with any specific activity or event associated with the Airport or proposed by Tenant.

**D.5 Stopping Operations.** Among City's remedies, if at any time Tenant's insurance coverage is not in effect as required herein, City may (but is not required to) stop all or any portion of Tenant's operations without liability to City until Tenant fully restores such coverage.

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# EXHIBIT E

## GENERAL PROVISIONS

### E.1 Governmental Provisions.

**a. Nondiscrimination Regarding USDOT Programs.** Tenant for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a U.S. Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, Tenant shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

**b. Nondiscrimination Regarding Facilities, Improvements, and Federally Funded Activities.** Tenant for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities or any activity conducted with or benefiting from Federal assistance, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended, and other applicable Laws and Regulations, and shall obtain such compliance from any sublessees or other parties holding lower tier agreements (to the extent the same are permitted by this Agreement).

**c. No Exclusive Rights.** Nothing in this Agreement shall be construed to grant to Tenant any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for Tenant's exclusive use as provided herein).

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**d. Agreement Preserves City's Compliance**. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

**e. Subordination to City's Government Commitments.** This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in any program applicable to the Airport (including, but not limited to, those providing funding), Tenant agrees to consent to any such modification. If a governmental authority determines that any act or omission of Tenant or Tenant's Associates has caused or will cause City to be non-compliant with any of City's government commitments (including, but not limited to, any assurances or covenants required of City or obligations imposed by law), Tenant shall immediately take all actions that may be necessary to preserve City's compliance with the same. Without liability to City, City shall have the right to terminate this Agreement and reenter and repossess any portion of the Premises if the U.S. Department of Transportation or other governmental authority having jurisdiction expressly requires any such action, subject to any review that may be afforded to Tenant by such authority.

**E.2. Subordination to Financing and Matters of Record.** This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

**E.3. Force Majeure.** No act or event, whether foreseen or unforeseen, shall operate to excuse Tenant from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or Tenant in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and that such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

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**E.4. Rights and Remedies.** Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

**E.5. Attorney's Fees.** If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for recovery of possession of the Premises, the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. Tenant shall be responsible for all expenses, including, but not limited to, attorneys fees, incurred by City in any case or proceeding involving Tenant or any permitted assignee of Tenant under or related to any bankruptcy or insolvency law. The provisions of this Section E.5 shall survive any expiration or termination of this Agreement.

**E.6. Governing Law, Venue, and Waiver of Jury Trial.** This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance with the laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND TENANT EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section E.6 shall survive any expiration or termination of this Agreement.

**E.7. Amendments and Waivers.** No amendment to this Agreement shall be binding on City or Tenant unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

**E.8. Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any party. If any provision of this Agreement is

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held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

**E.9. Merger.** This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, nor agreement of the other party except for those expressly contained in this Agreement.

**E.10. Art.** Tenant shall not install any object in the Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 unless Tenant has obtained City's prior written approval and provided City with a written waiver that complies with the requirements of such Act or its successor.

**E.11. Confidentiality.** Tenant acknowledges that City is subject to legal requirements regarding the public disclosure of records. Tenant shall comply with such laws in connection with making any request that City maintain a record confidentially, and if Tenant complies with the same Tenant shall have the right to defend any such request for confidentiality at Tenant's expense.

**E.12. Relationship of Parties.** This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

**E.13. Further Assurances.** Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

**E.14. Miscellaneous.** The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by Tenant shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If Tenant consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

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**E.15. Time of Essence.** Time is of the essence of this Agreement.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2g

**Subject:**

Consider approval of Amendment No. 1 to the Professional Services Agreement between the City of St George and Jviation, A Woolpert Company for the design of the "Reconstruct and Expand Terminal Apron Project" - AIP-43.

**Item at-a-glance:**

Staff Contact: Richard Stehmeier

Applicant Name: City of St George

Reference Number: NA

Address/Location:

4508 South Airport Parkway #1

**Item History (background/project status/public process):**

The City of St George and Jviation, A Woolpert Company entered into a Professional Services Agreement on September 23, 2021 for engineering services at the St George Regional Airport. This is the 1st Amendment to this agreement for the design of the Reconstruct and Expand Terminal Apron Project - AIP-43. This project will be paid for with federal airport grant revenues. An application was submitted on February 24, 2022 and is still pending. Staff recommends approval.

**Staff Narrative (need/purpose):**

A Federal Grant will pay $619,176.00 and the City of St George will pay $62,361.00 using PFC revenues.

**Name of Legal Dept approver:** Collin Simonsen

**Budget Impact:**

Cost for the agenda item: $62,361

Amount approved in current FY budget for item: $62,261

If not approved in current FY budget or exceeds the budgeted amount, please explain

funding source:

AIP-43 Grant and Airport PFC Fund

Description of funding source:

This project will be funded with AIP-43 Grant up to approximately 91%. The remaining 9% will be from the airport PFC funds

**Recommendation (Include any conditions):**

Staff recommends approval

AMENDMENT NO. ONE (1) TO CONTRACT
DATED SEPTEMBER 23, 2021
BETWEEN
JVIATION, A WOOLPERT COMPANY
AND
CITY OF ST. GEORGE

The Sponsor and Jviation agree to amend their contract for improvements to the St. George Regional Airport, St. George, Utah to include fees for engineering services. The improvement item is included in the Scope of Work of the original contract. The item covered by this amendment is described as follows:

- Reconstruct and Expand Terminal Apron - Design

The Sponsor agrees to pay Jviation for the services listed under Section 2 of the original contract in the following manner, and within the time constraints outlined in the AIP development schedule.

**PART A - BASIC SERVICES**

DESIGN

Preliminary Design ..... Lump Sum of $90,930.00
Design ..... Lump Sum of $483,634.00

TOTAL BASIC SERVICES ..... Lump Sum of $574,564.00

Method of payment shall be as follows:

The Sponsor agrees to make monthly payments based upon the work performed by Jviation, up to 90 percent of the total contract. The final 10 percent of the fee shall be due and payable when the project final documents have been completed and have been submitted to the Sponsor.

**PART B - SPECIAL SERVICES**

The maximum estimated SPECIAL SERVICES engineering is as follows:

Design Survey ..... Not to Exceed of $16,973.00
Applied Geotechnical Engineering Consultants ..... Lump Sum of $70,000.00
Ellis & Associates ..... Lump Sum of $15,000.00

TOTAL SPECIAL SERVICES ..... $101,973.00

TOTAL ..... $676,537.00

All other terms and conditions of the original contract shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures this _____ day of _____ 2022.

SPONSOR:
City of St. George

ATTEST:

By: _____

_____

Name: _____

Title: _____

JVIATION, A WOOLPERT COMPANY:

By: _____

Name: Kirk Nielsen, PE

Title: Office Manager

Approved as to form:

Collin Simonsen,
Assistant City Attorney

# SCOPE OF WORK
# FOR
# ST. GEORGE REGIONAL AIRPORT
## St. George, UT
## AIP Project No. 3-49-0060-043-2022
## Reconstruct and Expand Terminal Apron (Phase I - Design)

This is an Appendix attached to, made a part of and incorporated by reference with the Consulting Contract dated September 23, 2021 between the City of St George, Utah and Jviation, a Woolpert Company, for providing professional services. For the remainder of this scope the St George Regional Airport is indicated as "Sponsor" and Jviation, a Woolpert Company, is indicated as "Engineer." The construction budget for this project is approximately $12,600,00.00. This budget does not include administrative, legal, or professional fees.

This project shall consist of preparing Construction Plans, Contract Documents, Technical Specifications and Engineer's Design Report, along with the Topographical Survey for the Reconstruct and Expand Terminal Apron Project. This scope of work is for the consulting services provided by the Engineer for the Sponsor. See Exhibit No. 1 below for the project location.

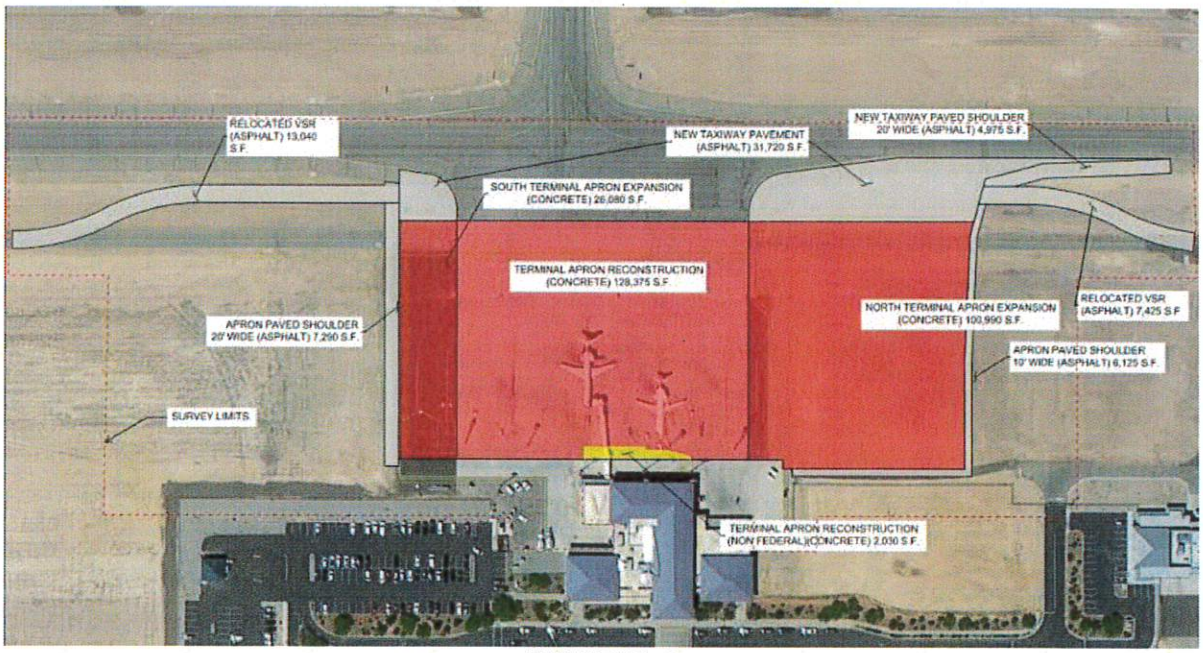



**EXHIBIT NO. 1**

**DESCRIPTION**

The existing terminal apron concrete/asphalt pavement was constructed in 2010 and is failing due to moisture induced swell of the subsurface expansive clays (St. George area "blue clay"). The 2015 UDOT pavement management evaluation rated the terminal apron PCI = 95. This PCI is not representative of the current apron pavement condition as the existing concrete panel distresses include joint seal damage, slab distortion (heaving/settlement) and longitudinal/transverse/diagonal cracking. These distresses usually take place over a period of years, however the subsurface expansive clays have accelerated this deterioration. This pavement reconstruction is essential to maintain adequate aircraft load-carrying

capacity, ride quality necessary for the safe operation of aircraft and to minimize the potential for FOD. The reconstruction of the terminal apron pavement will provide a restoration of the pavement's functionality, mitigate subsurface issues and provide a useful life. The reconstruction portion of the project will reconstruct the existing Terminal aircraft-parking apron concrete and asphalt pavements (400 feet x 440 feet (19,600 +/- square yards)). Phase I (design) will include the development and preparation of the project plans, contract documents, technical specifications, Construction Safety Phasing Plan (CSPP) and design report in preparation for FY2023 advertisement and construction.

The commercial airline traffic has grown since the airport was relocated in 2011. Annual passenger enplanements have increased from 48,000 (CY2011) to 103,000 (CY2019), 200% + growth. Skywest has added daily service to PHX/LAX/DFW/DEN, increased number of available flights to the other destinations and changed/increased aircraft type (i.e., from CRJ200 to CRJ700). This growth is due to southwest Utah's diverse economy and business opportunities. Aircraft "Remain Over Night" (RONs) has also increased. In summary, the terminal apron aircraft-parking and maneuvering areas need to be expanded. This proposed expansion will accommodate the described 10-year traffic growth and will provide area for future growth. This project's design will expand the existing Terminal aircraft-parking apron north (300 feet x 400 feet (13,500 +/- square yards)) and south (80 feet x 300 feet (2,670 +/- square yards)).

The engineering fees for this project will be broken into two parts. **Part A-Basic Services** includes; 1) Preliminary Design Phase, 2) Design Phase, and Reimbursable Costs During Design and **Part B-Special Services**, which includes; 3) Design Survey Phase and Reimbursable Costs During Survey. Additional design services that will be completed by subconsultants to the Engineer, including the proposed geotechnical investigation and structural design, will be included under **Part B-Special Services**. Parts A and B and the three phases are described in more detail below.

**PART A - BASIC SERVICES** consists of the Preliminary Design Phase and Design Phase, all invoiced on a lump sum basis.

***1.0 Preliminary Design Phase***

**1.01 Coordinate and Attend Meetings with the Sponsor and FAA**. Meetings with the Sponsor and the FAA will take place to determine critical project dates, establish the proposed design schedule and AIP development schedule, review environmental component(s), determine the feasibility of the proposed project and to establish the need for topographical surveying, pavement investigation and/or geotechnical testing. Various meetings during the design phase will also be conducted to review the progress of the design, discuss construction details and proposed time frame of construction and identify any special requirements for the project. It is anticipated that there will be up to five meetings with the Sponsor and/or the FAA throughout the course of the design.

**1.02 Prepare Project Scope of Work and Contract**. This task includes establishing the scope of work through meetings outlined above. Fees will be negotiated with the Sponsor and may be subject to an independent fee estimate conducted by a third party hired by the Sponsor. This task also includes drafting the contract for the work to be completed by the Engineer for the Sponsor once negotiations are complete.

**1.03 Prepare Preliminary Cost Estimating**. This task includes creating a preliminary construction rough order of magnitude (ROM) cost estimate, a preliminary working days estimate, a preliminary overall project schedule, and a preliminary overall project budget. The preliminary construction ROM cost estimate will be based upon the most current information available at the time of preparation. Work to refine these estimates is included under Task 2.17.

**1.04 Provide Project Coordination**. The Engineer shall provide project management and coordination services to ensure the completion of the design. These duties include:

- Time the Engineer spends planning, organizing, securing and scheduling resources, and providing instruction to staff to meet project objectives as defined in the approved scope of work.
- The Engineer will analyze the budget semi-monthly to ensure budget and staffing needs are on track to meet design schedules within budget.
- Additional items to be accomplished include compiling and sending additional information requested from the office to related parties, maintaining project files as necessary and other items necessary in day-to-day project coordination.
- The Engineer will prepare and submit monthly invoicing.

The Engineer will complete the following tasks:

- Provide the Sponsor with a monthly Project Status Report (PSR), in writing, reporting on Engineer's progress and any problems that may arise while performing the work. The PSR must include an update of the project schedule, as described in this section, when schedule changes are expected.
- Submit for acceptance and maintain, a design schedule detailing the scheduled performance of the work.
- Create and maintain a Quality Control Checklist (QCC) for the project. The QCC shall include personnel, project milestone checking and peer review procedures at each phase of the project.

**1.05 Review Existing Documents**. The Engineer will gather and review existing available documentation that may be relevant to the project, including, but not limited to, record drawings (as-builts), design reports, final reports, utility reports/maps and previous surveys. The Engineer may use relevant information from this review to coordinate the design and topographical survey for the project.

**1.06 Coordinate Topographical Survey.** This task includes preparing the requirements, establishing the limits of the survey area and scheduling time for the survey to be completed. The majority of the survey will be performed in-house under Task 4.1 and the remainder by a subconsultant hired by the Engineer. The Project Manager is expected to visit the project site to coordinate the survey activities with the Sponsor, the survey team and survey subconsultant.

**1.07 Coordinate Geotechnical Investigation**. This task includes preparing the requirements for soils testing, establishing the limits of work, and scheduling a time for testing to be completed. The requirements of the geotechnical investigation shall be established in accordance with FAA AC 150/5320-6 (current edition), *Airport Pavement Design and Evaluation*. Negotiating with the geotechnical engineering firm for a cost to perform the work and providing an on-site representative of the Engineer during the geotechnical investigation is also included in this task.

**1.08 Coordinate Structural Design**. This task includes preparing the requirements for the structural design elements of the project, including the verification of the structural design of the storm inlets and manholes. Negotiating with the structural engineering firm for a cost to perform the work is also included in this task.

**1.09 Prepare Federal Grant Application**. This task consists of preparing the federal grant application. The application will be submitted during the initial portion of the project. Preparation of the application includes the following:

- Prepare Federal 424 form.
- Prepare Federal Form 5100 II thru IV.
- Prepare project funding summary.
- Prepare program narrative, discussing the purpose and need of the work and the method of accomplishment.
- Project sketch (8.5" x 11").
- Include preliminary cost estimate.
- Include the existing Exhibit "A" Property Map
- Include the Sponsor's certifications.
- Attach the current grant assurances.
- Include DOT Title VI assurances.
- Include certification for contract, grants and cooperative agreements.
- Include Title VI pre-award checklist.
- Include current FAA advisory circulars required for use in AIP funded projects.

The Engineer shall submit the grant application to the Sponsor for approval and signatures. After obtaining the necessary signatures, the Sponsor or Engineer shall forward a copy of the signed application to the FAA for further processing.

**1.10 Prepare Environmental Documentation**. The FAA has determined that a Categorical Exclusion (CATEX) applies, according to FAA Order 1050.1F, Paragraph 5.6.4f and Supplemental Order 5050.4B, Chapter 1, Paragraph 9, Task 11. A documented CATEX shall be completed following current FAA guidance and address potential environmental effects resulting from the proposed project. An overall environmental exhibit will be created as part of this scope of work, approved by the FAA, and referenced throughout the project.

**1.11 Prepare Disadvantaged Business Enterprise (DBE) Program and Goal**. The Sponsor has an established Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The current DBE program has not been updated since 2018. In order to be in compliance with 49 CFR Part 26, the program will be amended. The Engineer shall assist the Sponsor with this task. The Engineer will research the current state highway certified DBE listings and local area contractors to determine the availability of potential DBE contractors. The Engineer will prepare preliminary construction cost estimates and establish potential DBE work tasks. The Engineer will finalize the DBE goal work sheets for the Sponsor for submittal to the FAA Civil Rights Office for approval. Preparation of the amended DBE program will include the following tasks:

- Prepare preliminary program with Sponsor specific information.
- Compile additional information from Sponsor to finalize program.
- Revise program after Sponsor review.
- Submit program to FAA/Civil Rights Office (CRO); revise per CRO review.
- Resubmit Program to CRO for final approval.
- Calculate base figure for DBE goal.
- Adjust base figure for DBE goal.
- Calculate Race Neutral and Race Conscious DBE goals.
- Consultation and Publication for DBE goals.
- Submit DBE goal to CRO.
- Revise DBE goals after Sponsor and FAA review.

**1.12 Prepare Quarterly Performance Reports - Design**. Federal Regulation 49 CFR Part 18 establishes uniform administrative requirements for grants to State and Local Governments. Sub-part 18.40 addresses monitoring and reporting requirements for the Sponsor. The Engineer will assist the Sponsor in managing grant activities to ensure compliance with applicable Federal requirements. The Engineer will submit a quarterly performance report while the grant is active. It is estimated there will be two quarterly performance reports completed during the design phase of this project.

| TASK 1 DELIVERABLES | TO FAA/STATE | TO SPONSOR |
|---|---|---|
| 1.01 Meeting Agendas, AIP Development Schedule and Meeting Minutes from Pre-Design Meeting | ✓ | ✓ |
| 1.02 Scope of Work and Draft Contract for the Sponsor | ✓ | ✓ |
| 1.03 Preliminary Cost Estimate | ✓ | ✓ |
| 1.04 Design Schedule, Project Status Report, and Monthly Invoicing | ✓ | ✓ |
| 1.09 Federal Grant Application | ✓ | ✓ |
| 1.10 Environmental Documentation | ✓ | ✓ |
| 1.11 DBE Program/Goal | ✓ | ✓ |
| 1.12 Quarterly Performance Reports | ✓ | ✓ |

| TASK 1 MEETINGS/SITE VISITS | LOCATION/ATTENDEES/DURATION |
|---|---|
| 1.01 Pre-Design Meeting | • St George, UT - One (1) Senior Consultant and Two (2) Project Managers - Assume One (1) hour via teleconference |
| 1.02 Prepare Project Scope of Work and Contract | • St George, UT - One (1) Project Manager - Assume One (1) hour via teleconference |

***2.0 Design Phase***

**2.01 Conduct Site Visit.** This task will include site visits to inventory and inspect the existing site conditions and the work to be completed as part of the project.

**2.02 Analyze Topographic Survey Data**. This task includes analyzing the topographical surveying data and preparing the data for use with computer modeling. This will include the following tasks:

- Generate three-dimensional contour model from TIN surface model.
- Prepare and process data for spot elevations, grading and/or paving cross sections.

**2.03 Analyze Geotechnical Investigation Data**. This task includes analyzing the geotechnical investigation. This will include the following tasks:

- Review Geotechnical Engineer recommendations.
- Determine on-site sources and quantities of suitable material for embankment.
- Determine appropriate data for the pavement design form(s).
- Input data for computer modeling with topographical survey data.
- Prepare soil information for incorporation on the construction plans.
- Coordinate with Structural Engineer on geotechnical findings.

**2.04 Prepare Pavement Design**. After receiving the geotechnical investigation data, the Engineer will analyze the data and prepare a proposed pavement section using current FAA design software (FAARFIELD). In addition to determining the proposed pavement section for the current and anticipated traffic, a pavement classification number (PCN) analysis will be performed to determine the runway PCN classification based on the expected fleet mix. The Engineer will submit the FAARFIELD computer printouts with a narrative to the FAA. The following tasks will be completed:

- Determine appropriate data for pavement design.
- Input data for computer modeling with topographical survey data.
- Prepare an exhibit showing the existing pavement and base course thickness.
- Determine areas of existing pavement to be removed and replaced.
- Prepare pavement and soils information for incorporation on the construction drawings.
- Verify elevation of water table.
- Compile the current airport fleet mix.
- Input data into FAARFIELD.
- Run pavement design scenarios.
- Analyze output from FAARFIELD.
- Select preferred pavement section.
- Compare pavement section to FAA Advisory Circular (AC) 150/5320-6 (Current Edition), *Airport Pavement Design and Evaluation.*
- Verify frost design method.
- Verify overexcavation requirements (if needed).
- Verify optimum moisture content for subgrade preparation.

**2.05 Review Structural Design Features**. Upon completion of the geotechnical investigation, the Structural Engineer will analyze the data to provide verify design for storm manholes and inlets.

**2.06 Develop On-Site Grading Plans**. This task includes developing potential on-site grading plans to place excavated material and/or to re-contour borrow sites. It is anticipated two to three different on-site grading options will be developed during this task. Aerial photography will be used to develop the grading plans and associated quantities for all potential embankment and excavation area(s).

**2.07 Prepare Existing Utility Inventory**. This task includes reviewing record drawings and consulting with the Sponsor and local utility companies to identify all utilities within the project site. The Construction Plans will include, to the maximum extent possible, the surveyed locations of observable utility features and the locations identified by utility locates.

**2.08 Prepare Preliminary Contract Documents**. This task includes preparing the Preliminary Contract Documents, including Contract Proposal, Bid Bond, Contractor Information Sheet, Subcontractor/Material Supplier List, Disadvantaged Business Utilization Commitment, DBE Participation Form, Certification of Non-Segregated Facilities, Equal Employment Opportunity Report Statement, Buy America Certification, Buy America Waiver Request, Buy America Conformance Listing, Certification Statement Regarding Undocumented Individuals, Bid Proposal, Contract, Payment Bond, Performance Bond, Notice of Award, Notice to Proceed, Notice of Contractor's Settlement, General Provisions, FAA AC 150/5370-2 (Current Edition), *Operational Safety on Airports During Construction*, and Wage Rates. The wage rates will be updated at the time of advertisement to reflect the most current wage rates available. Preparation will include establishing the location for the bid opening, dates for advertisement and description of the work schedule. Also included in the Preliminary Contract Documents, and covered under separate tasks below, are the Construction Safety and Phasing Plan, Technical Specifications, and Special Provisions. Preliminary

Contract Documents will be prepared as early as possible during the design phase and submitted to the Sponsor for review.

**2.09 Prepare Construction Safety and Phasing Plan (CSPP).** This task includes meeting with the Sponsor to discuss the current operations of the airport to assist in determining how the proposed construction phasing of the project will affect these operations. From these meetings, a complete Construction Safety and Phasing Plan (CSPP) will be developed to ensure safety compliance when coordinating construction activities and airport operations. The CSPP will be developed in accordance with the requirements of FAA AC 150/5370-2 (Current Edition), *Operational Safety on Airports During Construction*. A construction phasing plan that meets the requirements of the AC and operational needs of the airport will be developed and included in the Contract Documents. This plan will also identify any nighttime work, continuous working times, or other unusual conditions that could affect the Contractor's normal progress on the project. The draft CSPP will be submitted at 30% complete and at 90% complete for ADO review. Upon preliminary approval from the ADO, the CSPP will be submitted to FAA for OE/AAA coordination.

**2.10 Prepare Preliminary Construction Plans**. This task includes preparing the following list of construction plans for the project. Additional plans may be added during the design phase as needed:

| Plan Name/Description | Number of Sheets |
|---|---|
| Cover Sheet | 1 |
| Index of Drawings, Approximate Quantities and General Notes | 4 |
| Survey Control Plan | 1 |
| Geotechnical Investigation Plan | 5 |
| Safety Plan | 1 |
| Construction Layout Plan | 1 |
| Construction Phasing Plan | 4 |
| Environmental Requirements and Details | 1 |
| Demolition Plan | 3 |
| Geometric Layout Plan | 10 |
| Overall Grading and Drainage Plan | 1 |
| Grading and Drainage Plan | 4 |
| Pavement Plan and Profile | 4 |
| On-Site Borrow Grading and Drainage Plan | 2 |
| Typical Sections | 3 |
| Pavement Marking Plan | 2 |
| Pavement Marking Details | 1 |
| Drainage Plan and Profile | 4 |
| Drainage Details | 2 |
| Fence Layout Plan and Details | 2 |
| Electrical Demolition Plan | 2 |
| Electrical Layout Plan | 2 |
| Electrical Details | 2 |
| Total Sheet Count | 62 |

**2.11 Prepare Preliminary Technical Specifications**. This task includes assembling the technical specifications necessary for the project. Standard FAA specifications will be utilized where possible, with the guidance from FAA AC 150/5370-10 (Current Edition), *Standard Specifications for Construction of Airports*. Additional specifications may be prepared to address work items for materials that are not

covered by the standard FAA specifications. The standard specifications to be utilized shall include, but are not limited to, the following:

- Item C-100 Contractor Quality Control Program (CQCP)
- Item C-102 Temporary Air and Water Pollution, Soil Erosion and Siltation Control
- Item C-105 Mobilization
- Item C-110 Method of Estimating Percentage of Material Within Specification Limits (PWL)
- Item P-101 Preparation/Removal of Existing Pavements
- Item P-152 Excavation, Subgrade and Embankment
- Item P-154 Subbase Course
- Item P-209 Crushed Aggregate Base Course
- Item P-401 Asphalt Mix Pavement
- Item P-501 Cement Concrete Pavement
- Item P-603 Emulsified Asphalt Tack Coat
- Item P-604 Compression Joint Seals for Concrete Pavements
- Item P-610 Concrete for Miscellaneous Structures
- Item P-620 Runway and Taxiway Marking
- Item D-701 Pipe for Storm Drains and Culverts
- Item D-705 Pipe Underdrains for Airports
- Item D-751 Manholes, Catch Basins, Inlets and Inspection Holes
- Item L-108 Underground Power Cable for Airports
- Item L-110 Airport Underground Electrical Duct Banks and Conduits
- Item L-115 Electrical Manholes and Junction Structures
- Item L-125 Installation of Airport Lighting Systems

**2.12 Prepare Preliminary Special Provisions**. This task includes preparing the preliminary Special Provisions to address, or expound on, site conditions that require additional clarification. These include, but are not limited to: Haul Roads, Airport Security, Radio Communications, Work Schedule, Contractor's Quality Control Program, Sequencing of the Work, Closure of Air Operations Areas, Accident Prevention, Underground Cables/Utilities, Insurance, Indemnification, Sales and Use Taxes, Permits and Compliance with Laws, Executed Contracts, Subletting or Assigning of Contracts, Qualification of Disadvantaged Business Enterprises, Liquidated Damages, Acceptance Testing, Grade Control and Surface Tolerance, Construction Management Plan, and Instruction Manuals.

**2.13 Prepare Drainage Analysis and Storm Drainage Design**. This task includes verifying the existing storm drainage and/or subsurface drainage systems. Surface drainage will be evaluated and designed to ensure accordance with standard engineering practices, local requirements and FAA AC 150/5320-5 (Current Edition), *Airport Drainage Design*.

**2.14 Compile/Submit Permits**. This task includes identifying potential federal, state and local permits needed for the project. Permits are anticipated to be required for, but are not limited to, demolition activities, air quality, grading, Right-of-Way (ROW) access, hauling, batch plants, wetland disturbance, open burning, fencing, various building systems, construction dewatering, permanent dewatering, fueling systems and stormwater management construction plans and associated permits (SWMP). When applicable, the Engineer will assist the Sponsor to compile information and submit permits that are required to be obtained by the Sponsor.

**2.15 Compile/Submit FAA Form 7460**. This task includes preparing and submitting the required FAA Form 7460 on the Sponsor's behalf. The anticipated use of equipment during construction requires an FAA Form

7460 to be sent to the FAA a minimum of 45 days prior to the start of construction for approval. The Engineer will prepare exhibits to illustrate the project limits and temporary construction equipment height.

**2.16 Calculate Estimated Quantities**. This task includes calculating all necessary quantities for the various work items. Quantities must be consistent with the specifications and acceptable quantity calculation practices.

**2.17 Prepare Estimate of Probable Construction Cost**. Using the final quantities calculated following the completion of the construction plans and specifications, the Engineer will prepare the construction cost estimate. The estimate will be based on information obtained from previous projects, contractors, material suppliers and other available databases.

**2.18 Prepare Engineer's Design Report and Modification of Standards**. This task includes preparation of the Engineer's Design Report in accordance with current FAA Northwest Mountain Region Engineer's Design Report guidelines. The Engineer's Design Report will include a detailed summary of the project, photographs and descriptions of existing site conditions, pavement life cycle cost analysis, recycling and material availability analysis, estimate of project costs, and a schedule for the completion of the design, bidding, and construction. Modifications of the FAA standards, as necessary, for the project will be prepared for preliminary review. The approved Modifications of Standards (MOS) will be included in the Engineer's Design Report and submitted on the MOS website (See Task 2.19 below) to the FAA and Sponsor. The Engineer's Design Report will also contain any alternative design concepts that were investigated and evaluated.

**2.19 Prepare and Submit Modification of Standards on MOS Website**. This task includes Modifications of Standards (MOS) website access coordination with the Sponsor and FAA. Modifications of the FAA standards, as necessary, for the project must be compiled and submitted to the MOS website for approval. Revisions will be completed as needed.

**2.20 Review Plans at 30% and 90% Complete**. During various stages of completion of the design, the Engineer will submit a set of Construction Plans, Specifications, and Contract Documents to the Sponsor for their review. Meetings will be scheduled for periodic reviews, including a 90% plans-in-hand review. The project will be reviewed with the FAA to obtain their concurrence with the design.

**2.21 Provide In-House Quality Control**. The Engineer has an established quality control program that will provide both experienced and thorough reviews of all project submittals and will also provide engineering guidance to the design team throughout design development from an experienced, senior-level Professional Engineer.

Prior to each review set of Construction Plans, Specifications, Contract Documents, and Engineer's Design Report being submitted to the Sponsor and FAA, a thorough, in-house quality control review of the documents will be conducted. This process will include an independent review of the Construction Plans, Specifications, Contract Documents, and Engineer's Design Report being submitted by a licensed Professional Engineer other than the Engineer who performed the design of the project. Comments will be offered by the Engineer that performed the review, and revisions to the Construction Plans, Specifications, Contract Documents, and Engineer's Design Report will be made accordingly.

In addition to the 30% and 90% reviews, the Engineer's in-house quality control program also provides engineering guidance to the design team throughout the project design in an attempt to steer the project in a manner that provides the best engineering judgment.

At the 90% design review, the independent review will re-evaluate the CATEX boundary.

**2.22 Prepare and Submit Construction Plans, Specifications, Contract Documents, and Engineer's Design Report**. A final set of Construction Plans (11" x 17"), Specifications, Contract Documents, and the Engineer's Design Report will be prepared and submitted to the Sponsor and the FAA. These documents will incorporate all revisions, modifications, and corrections identified during the final review. Paper and electronic copies will be provided.

**2.23 Prepare Airfield Signing and Marking Plan**. This task includes providing or updating the overall airfield signing and marking plan.

**2.24 Prepare Requests for Reimbursement**. This task includes preparing the FAA Standard Form 271 for Sponsor reimbursement of eligible expenses incurred on a monthly basis. The Engineer will submit the completed form along with appropriate supporting documentation to the Sponsor for review and approval. Upon approval, the Engineer or the Sponsor will submit the completed forms and supporting documentation to the FAA for reimbursement. It is estimated there will be three RFRs for expenses incurred during the design and bidding phase of this project.

**2.25 Prepare and Submit Design Closeout Report**. This task includes preparation of the design closeout report in accordance with current FAA Northwest Mountain Region Design Closeout Report guidelines. Paper and electronic copies will be provided.

| TASK 2 DELIVERABLES | TO FAA/STATE | TO SPONSOR |
|---|---|---|
| 2.04 Proposed Pavement Design | ✓ | ✓ |
| 2.08 Preliminary Contract Documents for Sponsor's Review | ✓ | ✓ |
| 2.09 CSPP at 30% and 95% Complete | ✓ | ✓ |
| 2.15 FAA Form 7460 | ✓ | ✓ |
| 2.20 30% and 90% Construction Plans, Specifications, Contract Documents, and Engineer's Design Report | ✓ | ✓ |
| 2.22 Final Construction Plans, Specifications and Contract Documents, and Engineer's Design Report | ✓ | ✓ |
| 2.23 Airfield Signing and Marking Plan | ✓ | ✓ |
| 2.24 Requests for Reimbursement | ✓ | ✓ |
| 2.25 Design Closeout Report | ✓ | ✓ |

| TASK 2 MEETINGS/SITE VISITS | LOCATION/ATTENDEES/DURATION |
|---|---|
| 2.01 Design Site Visit | • St George - One (1) Project Manager and one (1) Associate Engineer - Assume half day visit (2 visits) |
| 2.20 Plan Review at 30% Complete. Plan Review at 90% Complete (Plans-in-hand). | • St George - One (1) Project Manager - Assume One (1) hour via teleconference (2 meetings) |

***EX Reimbursable Costs During Design***

This section includes reimbursable items such as auto rental, mileage, lodging, per diem and other miscellaneous expenses incurred in order to complete **Part A – Basic Services**.

**PART B - SPECIAL SERVICES** consists of the topographical survey phase (invoiced on a not-to-exceed basis). Also included are direct subcontract costs, such as geotechnical investigation and structural design.

## ***3.0 Design Survey Phase***

**3.01 Perform Topographical Survey**. This task includes providing design survey services within the topographic survey limits shown in Exhibit No. 1 to support the design team for this project. Work items associated with this task include the following:

- Topographical survey of approximately 18 acres.
- It is assumed that the Primary Airport Control Station (PACS) and Secondary Airport Control Stations (SACS) located on the airport are in good condition and can be verified; however, if it is found that the PACS and SACS are compromised, establishment of temporary airport control must be completed and tied to the national spatial reference system via static GPS observations. Following airport control verification/establishment, temporary project control, based upon the airport control PACS and SACS or temporary airport control, will be placed near the project area at intervals not to exceed 500 feet to control the project.
- One permanent benchmark shall be placed for each four (4) acres and description and elevation to the nearest 0.01 foot. A minimum of three (3) benchmarks shall be established for the project, regardless of size.
- Ground topography of non-pavement areas will be surveyed at 50-foot stations with associated cross sections having no greater than 25-foot spacing and will include additional shots as necessary to accurately depict breaklines. These ground topography areas will be surveyed with vertical accuracies not to exceed +/- 0.10 feet.
- Hard surface pavements for the runway and connector taxiways will be surveyed at 25-foot stations as well as all vertical and horizontal points of tangent/curve with associated cross sections having no greater than 25-foot spacing. All hard surface pavement will be surveyed with vertical accuracies not to exceed +/- 0.02 feet. Concrete joints will also be surveyed if applicable.
- Coordination with design staff to determine pavement tie-in locations. These locations will be surveyed with vertical accuracies of at least +/- 0.02 feet.
- Location of structures, paving, and above ground improvements including building footprint, finished floor elevations at the openings plus five feet interior of the opening and concrete aprons associated with door openings will be surveyed at intervals of no greater than 25 feet.
- Additional airfield elements that will be located and surveyed include aircraft tie-downs, guidance signs, airfield runway, taxiway, and/or apron lighting and paint markings, NAVAIDS within the project area (if any), fuel farm, fences, gates and other airport features within the project area.
- Coordinate location and field marking of all existing utilities in the project limits with one-call services, airport operations staff, and/or private utility locators as necessary. Review of existing as-built and other construction records as necessary. All utility locates will be surveyed as marked by utility locators in the field. Points of utilities to be surveyed include, but are not limited to, all paint marks, hydrants, valves, hand holes, manholes, inlets, cleanouts, culverts, pipes, pedestals, meters, transformers, utility poles and other reasonably visible existing utility infrastructure components.
- Survey and record location, size, depth, and pressure of water and gas mains, central steam and other utilities including but not limited to buried tanks and septic fields.
- Survey and record location of fire hydrants and the size of main serving each
- Survey and record location, elevation, and characteristics of primary and secondary electrical power, cable television, communications, lighting, traffic control systems, and navigational and control systems.
- Survey and record location, size, depth, invert, and direction of flow for sanitary sewers and storm drains including manholes, catch basins, junction boxes, and diversion structures.
- Survey and record mean elevation of water in any excavation, well, or nearby body of water.

- Survey and record location of adjacent bodies of water, river, stream, creek, or swale.
- Survey and record extent of watershed onto the property.
- Survey and record location of all trees greater than three (3) inches in caliper, three (3) feet above the ground. Identify type of tree.
- Record description of natural features.
- During design, there may be the need to verify existing survey information or extend the limits of the existing survey.
- Reduce all field notes and pictures into a topographic survey report to be used by the Engineer.
- Create an AutoCAD drawing using the surveyed data that will include symbols, linework, breaklines, notes, details, and a surface model.

The Topographical Survey shall be completed by, or under the direct supervision of, a Professional Land Surveyor licensed in the State of Utah.

| TASK 3 DELIVERABLES | TO FAA/STATE | TO SPONSOR |
|---|---|---|
| 3.01 Topographical Survey | ✓ | ✓ |

| TASK 3 MEETINGS/SITE VISITS | LOCATION/ATTENDEES/DURATION |
|---|---|
| 3.01 Coordinate and Perform Topographical Survey | • St George, UT - One (1) Surveyor - Assume two 3 day site visits and one 1 day site visit (3 site visits) - Assume travel to/from Denver, CO to St George, UT, with three (3) overnight stays for the Surveyor for two of the site visits and no travel and one (1) overnight stay for the third site visit |

***Special Considerations***

The following special considerations are required for this project, but will be completed by subconsultants to the Engineer. The cost for this work will be included in the engineering contract agreement with the Sponsor and the costs are in addition to the engineering fees outlined above.

**Geotechnical Investigation.** Soil samples for analysis must be taken for both the project site and all potential on-site borrow sources. Investigation and testing will also be performed to facilitate the pavement design per FAA Advisory Circular (AC) 150/5320-6 (Current Edition), *Airport Pavement Design and Evaluation*. As mentioned under the project description, the geotechnical investigation will include the following:

- Perform a geologic reconnaissance of the project site
- Soil boring and laboratory testing at approximately 20 project locations, with four borings to 30 feet below grade and the remainder to 20 feet below grade
- Visual inspection and documentation of each soil boring
- Soil Classification/Atterberg Limits, Liquid Limit (LL), Plastic Limit (PL), Plasticity Index (PI), gradation and percent finer than 0.02 mm
- Moisture/Density Relations
- Swell/Consolidation Potential
- California Bearing Ratio and modulus of subgrade reaction or the elastic modulus
- Moisture content, density (ASTM D1557) of undisturbed fine-grained samples

**Structural Design.** A Structural Engineer will be retained to provide structural evaluation/design elements for the project, including structural design of storm inlets and manholes. The Structural Engineer will provide layout plans, details and specifications for each of the tasks, if needed.

***Assumptions***

The scope of services described previously is based on the following assumptions of responsibilities by the Engineer and Sponsor.

1. It is anticipated there will be a minimum number of trips and site visits to the airport to facilitate the completion of the various phases listed in this scope. The number of trips for each phase are included at the end of each phase above.

2. The Sponsor will provide existing mapping data including as-builts available for the project areas, aerial orthoimagery, subsurface conditions information such as prior geotechnical investigations in the project area and other available information in the possession of the Sponsor.

3. The Sponsor will provide an electronic copy of the current ALP to allow for updating of the plan upon completion of the project.

4. The Engineer will provide additional base mapping of existing topography, planimetric features and underground utilities needed in the design phase of the project.

5. The Sponsor will furnish escorts as needed for the Engineer to conduct field work.

6. The Sponsor will coordinate with tenants as required to facilitate field evaluations and construction.

7. While the project has both eligible and ineligible work, this scope and fee assumes that the project will be designed as one bid package with separate federal and non-federal bid schedules. Splitting the project into two bid packages will result in additional costs.

8. All engineering work will be performed using accepted engineering principles and practices and provide quality products that meet or exceed industry standards. Dimensional criteria will be in accordance with FAA AC 150/5300-13 (Current Edition), *Airport Design* and related circulars. Construction specifications will be in accordance with FAA AC 150/5370-10 (Current Edition), *Standard Specifications for Construction of Airports* and the Northwest Mountain Region's Regional Updates for Specifying Construction of Airports and related circulars. Project planning, design and construction will further conform to all applicable standards, including all applicable current FAA Advisory Circulars and Orders required for use in AIP-funded projects and other national, state, or local regulations and standards, as identified and relevant to an airfield design and construction project.

9. The Engineer will utilize the following plan standards for the project:

    - Plans will be prepared using the Engineer's standards, unless the Sponsor provides its own standards upon Notice to Proceed.
    - Plan elevations will be vertical datum NAVD 88 derived from the existing control network.
    - Plan coordinates will be based on horizontal datum NAD 83/2011 State Plane Coordinates

derived from the existing control network.

- All plans will be stamped and signed by a registered Utah Professional Engineer, or Professional Land Surveyor, as required.
- Plans prepared by subconsultants will be prepared using the same base maps, the same coordinate systems and the same plan layout and format as plans prepared by the Engineer.
- The guidance included in FAA Memorandum, FAA Review of Construction Plans and Specifications for AIP Funded Projects, will be reviewed, incorporated and will supplement the Engineer's standards.

10. The Engineer will utilize the following assumptions when preparing the project manual for bidding and construction of the project:

    - The project manual Contract Documents will be developed jointly by the Sponsor and the Engineer.
    - The Engineer is responsible for developing the contents of the document and including the Front-End documents which will be supplied by the Sponsor.
    - FAA General Provisions and required contract language will be used.

11. The Engineer must maintain records of design analyses and calculations consistent with typical industry standards, as required by the FAA, for a period of three years after the project is closed by the FAA.

12. Because the Engineer has no control over the cost of construction-related labor, materials, or equipment, the Engineer's opinions of probable construction costs will be made on the basis of experience and qualifications as a practitioner of his/her profession. The Engineer does not guarantee that proposals for construction, construction bids, or actual project construction costs will not vary from Engineer's estimates of construction cost.

13. It is assumed that a project audit will not be performed. If a project audit occurs, the Engineer is prepared to assist the Sponsor in gathering and preparing the required materials for the audit. This work will be negotiated with the Sponsor, should the need occur, and payment will be on a time and material basis.

***Additional Services***

The following items are not included under this agreement but will be considered as extra work:

- Redesign for the Sponsor's convenience or due to changed conditions after previous alternate direction and/or approval.
- Submittals or deliverables in addition to those listed herein.
- Serving as an expert witness for the Owner in any litigation, surety claim, contractor bond activation, or other proceeding involving the project.
- Additional or extended services during construction made necessary by extension of contract time, non-concurrent work, or changes in the work.
- Legal, surety, or insurance support, coordination, and representation.

Extra Work will be as directed by the Sponsor in writing for an additional fee as agreed upon by the Sponsor and the Engineer.

AIRPORT: St George Regional Airport
AIP PROJECT NUMBER: 3-49-0060-043-2022
PROJECT NAME: Reconstruct and Expand Terminal Apron - Design
DATE: January 11, 2022

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FEE BREAKDOWN

| Labor Category | Total Hours | | Billing Rate | | Total Cost |
|---|---|---|---|---|---|
| **1.0 Preliminary Design Phase (Lump Sum)** | | | | | |
| Senior Project Manager | 4 hrs. | x | $ 265.00 /hr | = $ | 1,060.00 |
| Project Manager V | 56 hrs. | x | $ 245.00 /hr | = $ | 13,720.00 |
| Senior Consultant II | 16 hrs. | x | $ 260.00 /hr | = $ | 4,160.00 |
| Project Manager IV | 200 hrs. | x | $ 215.00 /hr | = $ | 43,000.00 |
| Engineer III | 46 hrs. | x | $ 160.00 /hr | = $ | 7,360.00 |
| Associate Engineer II | 24 hrs. | x | $ 125.00 /hr | = $ | 3,000.00 |
| Planner III | 72 hrs. | x | $ 165.00 /hr | = $ | 11,880.00 |
| CADD Tech III | 16 hrs. | x | $ 125.00 /hr | = $ | 2,000.00 |
| Project Coordinator II | 38 hrs. | x | $ 125.00 /hr | = $ | 4,750.00 |
| SUBTOTAL | 472 hrs. | | SUBTOTAL | $ | 90,930.00 |
| | | | | | |
| **Reimbursables** | | | | | |
| Auto Rental | 0 Day | x | $ 85.00 /Day= | $ | - |
| Mileage | 0 Mi | x | $ 0.585 /Mi= | $ | - |
| Lodging + Tax & Fees | 0 Day | x | $ 110.00 /Day= | $ | - |
| Per Diem | 0 Day | x | $ 59.00 /Day= | $ | - |
| | | | SUBTOTAL | $ | - |
| | | | SUBTOTAL | $ | 90,930.00 |

LABOR HOUR BREAKDOWN

| | TASK | LABOR CATEGORY | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Senior Project Manager | Project Manager V | Senior Consultant II | Project Manager IV | Engineer III | Associate Engineer II | Planner III | CADD Tech III | Project Coordinator II | Phase Item Costs |
| 1.0 | **Preliminary Design Phase (Lump Sum)** | | | | | | | | | | |
| 1.01 | Coordinate and Attend Meetings with the Sponsor and FAA | | 16 | 16 | 32 | 10 | 8 | | | | $ 17,560.00 |
| 1.02 | Prepare Project Scope of Work and Contract | 4 | 8 | | 20 | | | | | 6 | $ 8,070.00 |
| 1.03 | Prepare Preliminary Cost Estimating | | | | 12 | 8 | 8 | | | | $ 4,860.00 |
| 1.04 | Provide Project Coordination | | 16 | | 80 | 16 | 4 | | | 12 | $ 25,680.00 |
| 1.05 | Review Existing Documents | | | | 4 | 4 | 4 | | 8 | | $ 3,000.00 |
| 1.06 | Coordinate Topographical Survey | | | | 8 | | | | | | $ 1,720.00 |
| 1.07 | Coordinate Geotechnical Investigation | | | | 8 | | | | | | $ 1,720.00 |
| 1.08 | Coordinate Structural Design | | | | 8 | | | | | | $ 1,720.00 |
| 1.09 | Prepare Federal Grant Application | | 4 | | 8 | 4 | | | | 12 | $ 4,840.00 |
| 1.10 | Prepare Environmental Documentation | | 4 | | 8 | | | 32 | 8 | | $ 8,980.00 |
| 1.11 | Prepare Disadvantaged Business Enterprise Program and Goal | | 4 | | 8 | | | 40 | | | $ 9,300.00 |
| 1.12 | Prepare Quarterly Performance Reports - Design | | 4 | | 4 | 4 | | | | 8 | $ 3,480.00 |
| | TOTALS | 4 | 56 | 16 | 200 | 46 | 24 | 72 | 16 | 38 | $ 90,930.00 |

| Labor Category | Total Hours | | Billing Rate | | Total Cost |
|---|---|---|---|---|---|
| **2.0 Design Phase (Lump Sum)** | | | | | |
| Senior Project Manager | 0 hrs. | x | $ 265.00 /hr | = $ | - |
| Project Manager V | 182 hrs. | x | $ 245.00 /hr | = $ | 44,590.00 |
| Quality Control Manager | 100 hrs. | x | $ 230.00 /hr | = $ | 23,000.00 |
| Project Manager IV | 440 hrs. | x | $ 215.00 /hr | = $ | 94,600.00 |
| Electrical Engineer III | 180 hrs. | x | $ 240.00 /hr | = $ | 43,200.00 |
| Engineer III | 852 hrs. | x | $ 160.00 /hr | = $ | 136,320.00 |
| Associate Engineer III | 84 hrs. | x | $ 155.00 /hr | = $ | 13,020.00 |
| CADD Tech III | 856 hrs. | x | $ 125.00 /hr | = $ | 107,000.00 |
| Project Coordinator II | 172 hrs. | x | $ 125.00 /hr | = $ | 21,500.00 |
| SUBTOTAL | 2866 hrs. | | SUBTOTAL | $ | 483,230.00 |
| | | | | | |
| **Reimbursables** | | | | | |
| Auto Rental | 2 Day | x | $ 85.00 /Day= | $ | 170.00 |
| Mileage | 400 Mi | x | $ 0.585 /Mi= | $ | 234.00 |
| Lodging + Tax & Fees | 0 Day | x | $ 110.00 /Day= | $ | - |
| Per Diem | 0 Day | x | $ 59.00 /Day= | $ | - |
| Travel & Airline Costs | 0 Trip | x | $ 500.00 /Trip= | $ | - |
| | | | SUBTOTAL | $ | 404.00 |
| | | | SUBTOTAL | $ | 483,634.00 |

| | TASK | LABOR CATEGORY | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Senior Project Manager | Project Manager V | Quality Control Manager | Project Manager IV | Electrical Engineer III | Engineer III | Associate Engineer III | CADD Tech III | Project Coordinator II | Phase Item Costs |
| 2.0 | **Design Phase (Lump Sum)** | | | | | | | | | | |
| 2.01 | Conduct Site Visit | | | | 12 | | 12 | | | | $ 4,500.00 |
| 2.02 | Analyze Topographical Survey Data | | | | 8 | | 16 | | 32 | | $ 8,280.00 |
| 2.03 | Analyze Geotechnical Investigation Data | | 4 | | 16 | | 4 | 4 | | | $ 5,680.00 |
| 2.04 | Prepare Pavement Design | | 8 | | 16 | | 32 | | | | $ 10,520.00 |
| 2.05 | Review Structural Design Features | | 2 | | 4 | | 16 | | | | $ 3,910.00 |
| 2.06 | Develop On-Site Grading Plans | | 2 | | 4 | | | 40 | 40 | | $ 12,550.00 |
| 2.07 | Prepare Existing Utility Inventory | | 2 | | 4 | | 8 | | | | $ 2,630.00 |
| 2.08 | Prepare Preliminary Contract Documents | | 4 | | 16 | | 8 | 32 | | 16 | $ 12,660.00 |
| 2.09 | Prepare Construction Safety and Phasing Plan (CSPP) | | 4 | | 16 | | 32 | | 12 | 8 | $ 12,040.00 |
| 2.10 | Prepare Preliminary Construction Plans | | | | | | | | | | |
| | Cover Sheet (1 Sheet) | | 1 | | 2 | | 8 | | 16 | | $ 3,955.00 |
| | Dawing Index, Approx. Qtys and General Notes (4 Sheets) | | 2 | | 4 | | 8 | | 48 | | $ 8,630.00 |
| | Survey Control Plan (1 Sheet) | | 1 | | 2 | | 8 | | 16 | | $ 3,955.00 |
| | Geotechnical Investigation Plan (5 Sheets) | | 1 | | 2 | | 16 | | 32 | | $ 7,235.00 |
| | Safety Plan (1 Sheet) | | 1 | | 2 | | 16 | | 16 | | $ 5,235.00 |
| | Construction Layout Plan (1 Sheet) | | 1 | | 2 | | 16 | | 16 | | $ 5,235.00 |
| | Construction Phasing Plan (4 Sheets) | | 8 | | 12 | | 32 | | 48 | | $ 15,660.00 |
| | Environmental Requirements and Details (1 Sheet) | | 2 | | 4 | | 16 | | 16 | | $ 5,910.00 |
| | Demolition Plan (3 Sheets) | | 2 | | 4 | | 16 | | 48 | | $ 9,910.00 |
| | Geometric Layout Plan (10 Sheets) | | 4 | | 8 | | 16 | | 48 | | $ 11,260.00 |
| | Overall/Grading and Drainage Plan (1 Sheet) | | 1 | | 2 | | 4 | | 16 | | $ 3,315.00 |
| | Grading and Drainage Plan (4 Sheets) | | 8 | | 16 | | 32 | | 64 | | $ 18,520.00 |
| | Pavement Plan and Profile (4 Sheets) | | 4 | | 8 | | 16 | | 32 | | $ 9,260.00 |
| | On-Site Borrow Grading and Drainage Plan (2 Sheets) | | 2 | | 4 | | 8 | | 16 | | $ 4,630.00 |
| | Typical Sections (3 Sheets) | | 4 | | 8 | | 16 | | 32 | | $ 9,260.00 |
| | Pavement Marking Plan/Details (3 Sheets) | | 2 | | 4 | | 4 | | 32 | | $ 5,990.00 |
| | Drainage Plan and Profile/Details (6 Sheets) | | 2 | | 4 | | 16 | | 80 | | $ 13,910.00 |
| | Fence Layout Plan and Details (2 Sheets) | | 2 | | 4 | | 4 | | 16 | | $ 3,990.00 |
| | Electrical Demolition Plan/Layout Plan/Details (6 Sheets) | | 2 | | 4 | 80 | | | 16 | | $ 22,550.00 |
| 2.11 | Prepare Preliminary Technical Specifications | | 12 | | 40 | 16 | 64 | | | 32 | $ 29,620.00 |
| 2.12 | Prepare Preliminary Special Provisions | | 4 | | 12 | | 16 | | | 8 | $ 7,120.00 |
| 2.13 | Prepare Drainage Analysis and Storm Drainage Design | | 4 | | 8 | | 32 | | 16 | | $ 9,820.00 |
| 2.14 | Compile/Submit Permits | | 2 | | 4 | | 8 | | | | $ 2,630.00 |
| 2.15 | Compile/Submit FAA Form 7460 | | | | 8 | | | | 4 | 12 | $ 3,720.00 |
| 2.16 | Calculate Estimated Quantities | | 8 | | 16 | 16 | 64 | | 32 | | $ 23,480.00 |
| 2.17 | Prepare Estimate of Probable Construction Cost | | 8 | | 16 | 16 | 48 | | | | $ 16,920.00 |
| 2.18 | Prepare Engineer's Design Report and Modification of Standards | | 16 | | 32 | 16 | 80 | | | 16 | $ 29,440.00 |
| 2.19 | Prepare and Submit Modification of Standards on MOS Website | | 8 | | 16 | | 32 | | | | $ 10,520.00 |
| 2.20 | Review Plans at 30% and 90% Complete | | 24 | | 48 | 32 | 80 | | 64 | 32 | $ 48,680.00 |
| 2.21 | Provide In-House Quality Control | | | 100 | | | | | | | $ 23,000.00 |
| 2.22 | Prepare/Submit Plans, Specs., Cont. Docs., and Design Report | | 8 | | 24 | 4 | 32 | 8 | 32 | 24 | $ 21,440.00 |
| 2.23 | Prepare Airfield Signing and Marking Plan | | 2 | | 4 | | 8 | | 16 | | $ 4,630.00 |
| 2.24 | Prepare Requests for Reimbursement | | 2 | | 4 | | | | | 16 | $ 3,350.00 |
| 2.25 | Prepare and Submit Design Closeout Report | | 8 | | 16 | | 8 | | | 8 | $ 7,680.00 |
| | TOTALS | 0 | 182 | 100 | 440 | 180 | 852 | 84 | 856 | 172 | $ 483,230.00 |

| Labor Category | Total Hours | | Billing Rate | | Total Cost |
|---|---|---|---|---|---|
| **3.0 Design Survey Phase (Not-to-Exceed)** | | | | | |
| Survey Manager | 16 hrs. | x | $ 235.00 /hr | = $ | 3,760.00 |
| Surveyor | 80 hrs. | x | $ 115.00 /hr | = $ | 9,200.00 |
| SUBTOTAL | 96 hrs. | | SUBTOTAL | $ | 12,960.00 |
| **Reimbursables** | | | | | |
| Mileage | 2600 MI | x | $ 0.585 /Mi= | $ | 1,521.00 |
| Lodging + Tax & Fees | 7 Day | x | $ 110.00 /Day= | $ | 770.00 |
| Per Diem | 7 Day | x | $ 59.00 /Day= | $ | 413.00 |
| Travel & Airline Costs | 0 Trip | x | $ 500.00 /Trip= | $ | - |
| Survey Supplies & Equip. | 3 Each | x | $ 238.00 /Trip= | $ | 714.00 |
| Survey Field Vehicle | 7 Day | x | $ 85.00 /Day= | $ | 595.00 |
| | | | SUBTOTAL | $ | 4,013.00 |
| | | | SUBTOTAL | $ | 16,973.00 |

| TASK | | LABOR CATEGORY | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Survey Manager | Surveyor | | | | | | | | Phase Item Costs |
| 3.0 | Design Survey Phase (Not-to-Exceed) | | | | | | | | | | |
| 3.01 | Perform Topographical Survey | 16 | 80 | | | | | | | | $ 12,960.00 |
| | TOTALS | 16 | 80 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | $ 12,960.00 |

| | | |
|---|---|---|
| SUBCONSULTANT 1 | | |
| Applied Geotechnical Engineering Consultants | | |
| Geotechnical Investigation | SUBTOTAL | $ 70,000.00 |
| SUBCONSULTANT 2 | | |
| Ellis & Associates | | |
| Structural Design | SUBTOTAL | $ 15,000.00 |

| | Phase Fee | Reimbursable Costs | Total Cost |
|---|---|---|---|
| **PART A - BASIC SERVICES (LUMP SUM)** | | | |
| 1.0 Preliminary Design Phase (Lump Sum) | $ 90,930.00 | $ - | $ 90,930.00 |
| 2.0 Design Phase (Lump Sum) | $ 483,230.00 | $ 404.00 | $ 483,634.00 |
| SUBTOTAL | $ 574,160.00 | $ 404.00 | $ 574,564.00 |
| **PART B - SPECIAL SERVICES** | | | |
| 3.0 Design Survey Phase (Not-to-Exceed) | $ 12,960.00 | $ 4,013.00 | $ 16,973.00 |
| Applied Geotechnical Engineering Consultants | | | $ 70,000.00 |
| Ellis & Associates | | | $ 15,000.00 |
| SUBTOTAL | $ 12,960.00 | $ 4,013.00 | $ 101,973.00 |
| **TOTAL** | **$ 587,120.00** | **$ 4,417.00** | **$ 676,537.00** |

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2h

**Subject:**

Consider approval of a deed of dedication for public right-of-way for Snow Canyon Parkway, north of the intersection of Snow Canyon Parkway and Dixie Downs Road.

**Item at-a-glance:**

Staff Contact: Wes Jenkins

Applicant Name: City of St. George.

Reference Number: N/A

Address/Location:

North of the intersection of Snow Canyon Parkway and Dixie Downs Road

**Item History (background/project status/public process):**

The deceleration lane from Snow Canyon Parkway to Dixie Downs Road was constructed a number of years ago but the dedication of the deceleration lane as public right-of-way did not occur when the lane was constructed. With the development of the proposed Maverik at the northwest corner of the intersection of Dixie Downs Road and Snow Canyon Parkway, Staff requests that the deceleration lane be dedicated as public right-of-way. Maverik has agreed to dedicate the right-of-way and has prepared the deed of dedication. Staff recommends approval.

**Staff Narrative (need/purpose):**

To dedicate an existing deceleration lane at the northwest corner of the intersection of Snow Canyon Parkway and Dixie Downs Road as public right-of-way.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Public Works recommends approval.

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID: SG-6-2-11-331

**DEED OF DEDICATION**

That in consideration of Ten Dollars and other good and valuable consideration paid to MAVERIK, INC., a Utah corporation, Grantor, by the City of St. George, a Utah municipal corporation, Grantee, the receipt of which is hereby acknowledged, does hereby grant, release, convey and warrant to Grantee, its successors and assigns forever, free and clear of all encumbrances, all its rights, title and interest in and to the following described properties located in the County of Washington, State of Utah, and the dedication being more fully described as follows:

for boundary description see Exhibit A,
and map see Exhibit B, incorporated herein

TO HAVE AND TO HOLD such property to Grantee, the City of St. George, forever for the uses and purposes normally associated with transportation of traffic, municipal utilities and other public purposes.

**GRANTOR**: MAVERIK, INC., a Utah corporation

Name (Print) Chuck Maggelet

Title (Print) C.E.O.

STATE OF UTAH )
ss.
COUNTY OF Salt Lake )

On the 1st day of February 20 22, before me, Bailey Peterson, a notary public, personally appeared Chuck Maggelet proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same voluntarily for its stated purpose.

BAILEY PETERSON
Notary Public State of Utah
My Commission Expires on:
October 4, 2023
Comm. Number: 708559

Notary Public

**ACCEPTANCE OF DEDICATION**

The City of St. George, a municipal corporation of the State of Utah, hereby accepts the above conveyance and in consideration thereof agrees that it will utilize and maintain the same for purposes consistent with the above dedication.

DATED this _____ day of _____, 2022.

CITY OF ST. GEORGE

_____
Michele Randall, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

Approved as to form:

_____
Jami R. Brackin, Deputy City Attorney

ROSENBERG ASSOCIATES™
CIVIL ENGINEERS LAND SURVEYORS

## Exhibit "A"

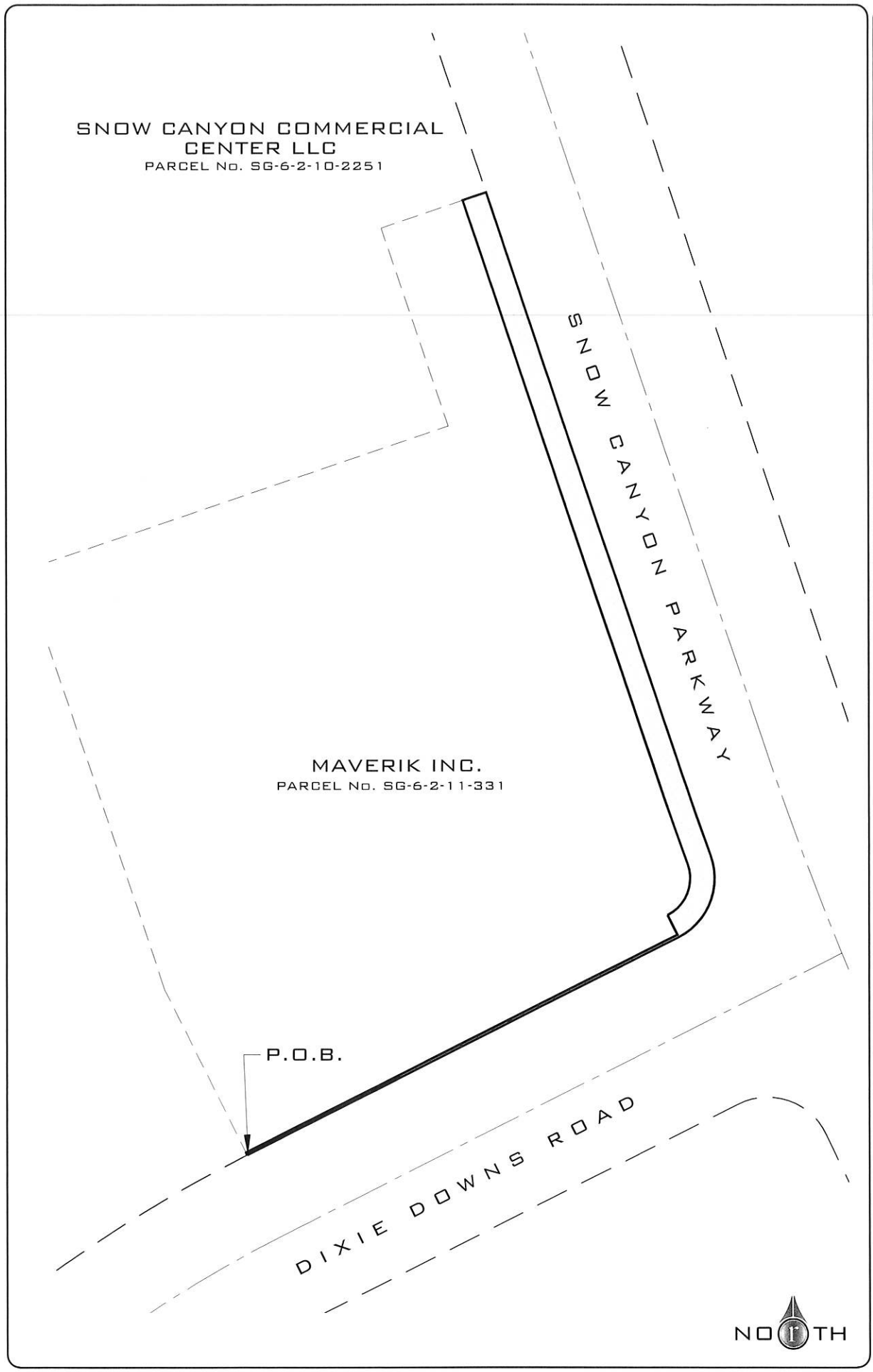
Beginning at a point being on the northerly line of Dixie Downs Road, said point being North 01°12'08" East 595.01 feet along the section line and East 303.17 feet from the Southwest Corner of Section 11, Township 42 South, Range 16 West, Salt Lake Base & Meridian, and running;

thence North 26°35'56" West 1.25 feet;
thence North 63°24'06" East 220.97 feet;
thence North 26°35'41" West 10.00 feet;
thence North 27.33 feet along an arc of a 18.75 foot radius curve to the left (center bears North 26°35'43" West, long chord bears North 21°39'19" East 24.97 feet with a central angle of 83°29'57");
thence North 38.39 feet along an arc of a 1,551.25 foot radius curve to the right (center bears North 69°54'21" East, long chord bears North 19°23'07" West 38.39 feet with a central angle of 01°25'04");
thence North 18°40'35" West 280.43 feet;
thence North 71°19'25" East 11.25 feet to the westerly line of Snow Canyon Parkway;
thence southeasterly the following (3) courses along said westerly line of Snow Canyon Parkway;
thence South 18°40'35" East 280.43 feet;
thence South 38.11 feet along an arc of a 1,540.00 foot radius curve to the left (center bears North 71°19'25" East, long chord bears South 19°23'07" East 38.11 feet with a central angle of 01°25'04");
thence South 43.72 feet along an arc of a 30.00 foot radius curve to the right (center bears South 69°54'21" West, long chord bears South 21°39'19" West 39.95 feet with a central angle of 83°29'57") to the northerly line of said Dixie Downs Road;
thence South 63°24'04" West 220.97 feet along said northerly lien of Dixie Downs Road to the Point of Beginning.

Containing 4,261 square feet or 0.10 acres.




August 17, 2021




DATE: 8/17/2021
JOB NO.: 11746-19-136A
DRAWN BY: B.E.A.
SCALE: 1"=60'
DWG: SURVEY-EXHIBIT

REVISIONS | DATE

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS
352 East Riverside Drive, Suite A-2
St. George, Utah
84790
435.673.8586
www.racivil.com

# EXHIBIT MAP

SHEET 1 OF 1 SHEETS

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2i

**Subject:**

Consider acceptance of a municipal utility easement for a culinary water booster pump station in the Divario development.

**Item at-a-glance:**

Staff Contact: Scott Taylor

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

Lesina Heights Drive- Divario

**Item History (background/project status/public process):**

In order to develop a portion of the Divario development, a culinary water booster pump is required to provide the necessary water pressure. The booster pump was constructed by the developer and turned over to the City to own, operate, and maintain. The parcel of land that the booster pump occupies was not included in the final plat of the subdivision where the site is located. The pump station site will be included in the final plat of an adjacent and subsequent phase of the development. Until then, we have asked the developer to provide a municipal utility easement of the pump station site. In the near future, the site will be included in a final plat and deeded to the City. Staff recommends approval.

**Staff Narrative (need/purpose):**

The municipal utility easement is necessary for the City to operate and maintain the culinary water booster pump station. The parcel will soon be included in a final subdivision plat and deeded to the City. At that point, the municipal utility easement will no longer be necessary.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Staff recommends acceptance of the municipal utility easement.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2j

**Subject:**

Consider approval of a quitclaim deed quitclaiming 50% of city ownership of a portion of 3000 East to Washington County.

**Item at-a-glance:**

Staff Contact: Karen Roundy

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

1450 South 3000 East

**Item History (background/project status/public process):**

The Council of Governments (COG) is made up of local elected officials and is managed by the Washington County Commission. The COG manages funds appropriated by the State of Utah to purchase right-of-way for major future roads within the city. When funds are approved by the COG to purchase right-of-way, their rules require that the ownership be placed 50% in Washington County's name and 50% in the City until construction is complete. The simplest way to accomplish this is for the city to purchase the property in the city's name using appropriated COG funds, and then quitclaim 50% interest back to Washington County. Staff recommends approval.

**Staff Narrative (need/purpose):**

In order to obtain reimbursement from the COG for funds expended by the city to obtain the right-of-way, a quitclaim deed is required to be recorded so that the ownership is 50% in the County and 50% in the city.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Approve

When Recorded mail deed and tax notice To:
St. George City
175 East 200 North
St. George, Utah 84770
Attn: Legal Department

Tax ID: SG-5-3-3-148 (originally SG-5-3-3-134)

**QUITCLAIM DEED**

The City of St. George, a Utah municipal corporation, Grantor, hereby QUITCLAIMS to WASHINGTON COUNTY, Grantee, for the sum of TEN and no/100 Dollars the receipt of which is hereby acknowledged, the following described tract of land in Washington County, State of Utah:

See Exhibit "A" attached hereto and made a part hereof.

TOGETHER WITH all improvements and appurtenances thereunto belonging, LESS AND EXCEPTING public utility easements and any other easement that belongs to the City of St. George easements, including rights of way, restrictions, and reservations of record for the City of St. George and those enforceable in law and equity.

IN WITNESS WHEREOF, the Grantor has executed this Quitclaim Deed this _____

CITY OF ST. GEORGE

_____
Michele Randall, Mayor

Attest:

_____
Christina Fernandez, City Recorder

Approved as to form:

_____
Jami R. Brackin, Deputy City Attorney

STATE OF UTAH )
ss.
WASHINGTON COUNTY )

On the _____ day of _____, 2022, appeared before me, _____, a notary public, personally appeared Michele Randall, Mayor of the City of St. George, and Christina Fernandez, City Recorder of the City of St. George, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged each executed the same voluntarily for its state purpose.

_____
Notary Public

**EXHIBIT A**
**Legal Description**

**3000 EAST 1140 SOUTH RIGHT OF WAY ACQUISITION:**

**BEGINNING AT A POINT S0°31'24"W, 155.32 FEET ALONG THE CENTER SECTION LINE AND EAST, 16.50 FEET FROM THE NORTH 1/4 CORNER OF SECTION 34, T42S, R15W, SLB&M, SAID POINT BEING ON THE SOUTH RIGHT-OF-WAY LINE OF 3000 EAST AS SHOWN ON THE FINAL PLAT OF "THE FIELDS AT MALL DRIVE" SUBDIVISION FILED AS DOCUMENT NO. 20150026943 IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, RUNNING THENCE EAST, 23.48 FEET ALONG SAID RIGHT-OF-WAY LINE AND THE SOUTH LINE OF PARCEL "E" SHOWN ON SAID FINAL PLAT; THENCE S6°29'27"W, 34.41 FEET TO A POINT 36.50 FEET EAST OF THE CENTER SECTION LINE; THENCE S0°22'14"W, 2403.34 FEET; THENCE S44°11'02"E, 18.74 FEET TO A POINT 35.00 FEET NORTH OF THE EAST-WEST CENTER SECTION LINE OF SAID SECTION 34; THENCE S89°15'38"E, 746.78 FEET ALONG A LINE PARALLEL TO AND 35.00 FEET NORTH OF SAID EAST-WEST CENTER SECTION LINE TO A POINT ON THE WEST LINE OF THAT CERTAIN PARCEL DESCRIBED IN DOCUMENT NO. 20180003587 FILED IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER; THENCE S0°23'38"W, 18.50 FEET ALONG SAID WEST LINE TO A POINT 16.50 FEET NORTH OF SAID EAST-WEST CENTER SECTION LINE; THENCE N89°15'38"W, 786.31 FEET ALONG A LINE PARALLEL TO AND 16.50 FEET NORTH OF SAID EAST-WEST CENTER SECTION LINE TO A POINT 16.50 FEET EAST OF THE NORTH-SOUTH CENTER SECTION LINE OF SAID SECTION 34; THENCE N0°31'24"E, 2469.01 FEET ALONG A LINE PARALLEL TO AND 16.50 FEET EAST OF SAID NORTH-SOUTH CENTER SECTION LINE TO THE POINT OF BEGINNING.**
**CONTAINING 1.636 ACRES.**

**Source: R&B Surveying, 3000 East/1140 South Right of Way Acquisition, Dated April 7, 2021**

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2k

**Subject:**

Consider approval of a Memorandum of Understanding between the City of St. George and G-Six Investments, LLC (the Glendenning family) regarding property located at 76 Tabernacle Street.

**Item at-a-glance:**

Staff Contact: Jami Brackin

Applicant Name: G-Six Investments LLC

Reference Number: N/A

Address/Location:

76 Tabernacle Street

**Item History (background/project status/public process):**

G-Six Investments, LLC is seeking to remodel and rehabilitate a building next to the City-owned Electric Theater on Tabernacle Street. In so doing, repairs and changes to the City's building(s) regarding eave overhangs and water drainage are required. G-Six has agreed to make those repairs at their cost. G-Six also seeks to bury the current overhead powerlines to that building and seeks to work with the Energy Services department to contribute to the costs associated with burying those lines. In addition, the Theater was expanded across a pedestrian easement granted to the former owner and the City has agreed to relocate that easement on the west side of the Theater building. The applicant has also asked for a temporary construction easement on City owned property while they remodel. Staff recommends approval.

**Staff Narrative (need/purpose):**

N/A

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Staff recommends approval of the agreement

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (hereafter "MOU") is entered into by and between G-Six Investments, LLC a Utah Limited Liability Company, ("Developer") and the City of St. George, a municipal corporation of the State of Utah ("City"). Developer and the City are individually referred to herein as a "Party" or collectively as the "Parties".

## RECITALS

A. WHEREAS Developer., has recently purchased the real property located at 76 E. Tabernacle St. (Parcel No. SG-254) ("Property"), which is located adjacent to, and just east of properties owned by the City(Parcel No.SG-250-A and SG-248-A-1).

B. WHEREAS the City recognizes the unique characteristics of the Property and desires to see the restoration and improvement of the Property consistent with the goals and objectives set forth in the City of St. George General Plan ("General Plan").

C. WHEREAS to achieve the most effective use of the Property as well as the most effective use of the surrounding City owned properties the parties recognize and agree that this MOU is necessary to set forth the terms and conditions of a mutually agreeable relationship in order to work together for the betterment and improvement of the neighborhood consistent with the General Plan.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the following mutual terms and conditions:

## AGREEMENT

**1. Underground Power Line.** The City electrical power line for the Property currently runs overhead from the Southwest Corner of Parcel No. SG-254 **(Ed Bowler property)** to the Southwest Corner of Parcel No. SG-253 **(Old Post Office property)**, and from there to the Property. As part of the property restoration and improvements on 76E. Tabernacle Street, the overhead powerline will need to be removed and installed underground. This portion of the project is also part of long-range plan to improve reliability of the power system by burying electrical power lines within selected areas in the Downtown District. The City has designed at their cost, the buried line portion of this project which includes; (1) connecting to a new switch, installed in the southeast corner of parcel SG-242-1; (2) installing a new 225 KVA pad mounted transformer on parcel SG-253; (3) boring conduit and installing primary power from the switch to the new transformer; and (4) removal of the overhead powerline from the southwest corner of Parcel No. SG-254 to the last power pole on Parcel No. SG-253. *See* Exhibit F (Overhead Removal Plan). The installation, of the described work, will be completed by City. For project contribution, the Developer will be required to pay Eight Thousand Dollars ($8,000.00) for a portion of the 225 KVA transformer cost and One Thousand Six Hundred Dollars ($1,600.00) for the primary wire from the new switch to the 225 KVA transformer. Developer has obtained the easements and access rights to install the Power Project on the property and/or existing easements not currently owned by City, as shown on the attached Exhibit A. *See* Exhibit A (Municipal Utility Easement (SG-253) and Municipal Utility Easement (SG-254). *See* also

Exhibit B (Municipal Utility Easement, SG-253) and Exhibit C (Municipal Utility Easement, SG-254). That part of the Underground Power Lines and equipment which will be constructed in property not owned by the City shall be installed within the Easements described within Exhibits B and C. Final easements across City owned property should be prepared and recorded after underground power has been installed in order to accurately describe the as-built alignment. *See* Exhibit A (Municipal Utility Easement (SG-242-1). *See* also Exhibit D (Municipal Utility Easement SG-242-1 – to be revised by as-built)

1.1 **Easements**. City affirms that any municipal utility easement acquired by the City for purposes of locating the Power Project or other municipal utility services, on or near the Property shall contain a prohibition for any structure not authorized by the City to be constructed or installed within the easement.

**2. Pedestrian Access Easement.** An access and right-of-way easement was recorded with the Washington County Recorder as Entry Number 00408918, Book 0665, Page 0065, granting to Developer as successor in interest an access easement or right of way easement running from the west side of the G-Six building, approximately twentyfeet from the southernmost portion of the building located on the Property, which runs directly through the several City buildings to the east, then turns north and out to the narrow alley immediately west of the City owned buildings and to Tabernacle Street. The City agrees to replace this access easement with a public pedestrian access easement running from Tabernacle Street through the narrow alley, and around the City's buildings to the west side entrance of the Property See Exhibit A (Proposed Access Easement) and more particularly described in Exhibit E (Municipal Access Easement SG-242-1). Developer shall Quit Claim the first easement in exchange for the second, public pedestrian easement.

**3. Parking**. It is anticipated that City shall at a future date, construct a public parking structure to the South of the Property, the use of which would be available to employees and patrons of the Property along with the general public. Additional public rights-of-way may be acquired to the west to Main Street and possibly East to 100 East Street. In the event public access is acquired and improved by the City, that access shall be open to the public including the Developer and its invitees.

**4. Construction Staging Area (Material Storage).** The City agrees to grant to Developer a temporary construction staging easement in the location and form described in Exhibit A, which would allow Developer to fence off the described property for a limited time period during the construction and for the purpose of construction staging and material storage purposes. *See also* Exhibit G (Temporary Construction Easement aka Staging Area). The easement area shall be fenced off in order divide the construction area and encourage safety and shall comply with all development and building codes and permits.

**5. Temporary Construction Dumpster**. During construction, Developer shall, at Developer's expense, establish a Trash Collection Area and a large dumpster for the construction debris and waste, and the City, including the Electric Theater, may use the same.

**6. Dumpster Area.** At the conclusion of Construction, the City shall select an agreeable site on Parcel No. SG-252-1 to be used as a trash collection area with a dumpster(s),

which shall be used and shared by The Electric Theater and the Property. The City shall decide whether the Property would obtain a second dumpster of its own, placed side by side in a common location, or whether the two buildings would share the cost of one dumpster, upsized as needed.

**7. Renovation of City's Encroaching Eves.** The Parties agree that the eves of the City's roof structure on Parcel No. SG-250-A currently encroach onto the Property and existing building. As part of any permitting application for construction, Developer shall present plans to the City, showing the proposed renovation of the Property, including the cutting back the City's roof structure, the constructing an addition and second story to the Property, and the refinishing of the City's rain gutter and roof water distribution system. City consent to and approval of the plans shall be required prior to issuance of any permit and the Parties agree to work in good faith toward a mutually acceptable plan.

**8. Roof Water Drainage System**. The City's Roof water drain system on Parcel No. SG-250-A is currently distributed to a rain gutter, which runs down the back of the building and is allowed to surface drain across the parking lot area on parcel SG-242-1. See Exhibit A (Developer has proposed installing a subsurface roof drain line taking the runoff of the City Building and the Property back to the storm drain located in the northwest corner of the proposed staging area indicated in Exhibit A (Proposed Storm Drain). However, the City has recommended Developer hold off on creating a subsurface line, given that the area may be included within the boundaries of the proposed Parking Structure. The City has recommended, for the present time, that the both the Electric Theater and the Property roof water be directed to a rain gutter and be allowed to surface drain across the parking lot area on parcel SG-242-1. The parties may mutually alter the roof system drainage at some future time.

*[Signatures to follow]*

[CITY SIGNATURE PAGE]

CITY of ST. GEORGE:

,

_____

Michele Randall, Mayor

ATTEST:

[seal]

_____

Christina Fernandez, City Recorder

APPROVED AS TO FORM:
St. George City Attorney

By: _____

(name)(title)

[DEVELOPER SIGNATURE PAGE]

Developer: G-Six Investments, LLC

Matthew G. Glendenning, Manger

STATE OF UTAH )
: ss.
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 27th day of April 2022, by Matthew G. Glendenning, the manager of G-Six Investments, LLC.

Jennifer Lee Larson
Notary Public
State of Utah
My Commission Expires January 18, 2025
COMMISSION #716129

NOTARY PUBLIC

# Exhibit A

Exhibit A

PROJECT OWNER/DEVELOPER
G-SIX INVESTMENTS, LLC — CONTACT: MATT GLENDENING (435) 668-1884
753 E LIZZIE LANE
ST. GEORGE, UT 84790

PROJECT ENGINEER
ROSENBERG ASSOCIATES — CONTACT: JARED BATES (435) 673-8586
352 EAST RIVERSIDE DRIVE, SUITE A2
ST. GEORGE, UT 84790

GEOTECHNICAL ENGINEER
APPLIED GEOTECHNICAL A&EG — CONTACT: JOHN HANSEN
1420 SOUTH 210 EAST
ST. GEORGE, UT 84790

POWER
ST. GEORGE
ENERGY SERVICES
811 EAST REDHILLS PARKWAY
ST. GEORGE, UTAH 84790
(435) 674-4213

NATURAL GAS
DOMINION ENERGY
1155 EAST 350 NORTH
ST. GEORGE, UTAH 84770
(435) 673-7514

WATER
ST. GEORGE WATER SERVICES
175 EAST 200 NORTH
ST. GEORGE, UTAH 84790
(435) 674-4213

CATV SERVICE
TDS BROADBAND
111 WEST 700 SOUTH
ST. GEORGE, UTAH 84770
(866) 622-8648

TELEPHONE
CENTURY LINK
546 N. 1400 E. (TRAILER)
ST. GEORGE, UTAH 84770
(435) 673-4634

FIBER
GO FIBER
285 WEST TABERNACLE ST, 304
ST. GEORGE, UTAH 84770
(435) 767-9053

SITE DATA

PARCEL NUMBER:
SG-252

SITE ADDRESS:
76 E TABERNACLE

CURRENT ZONE:
C-4

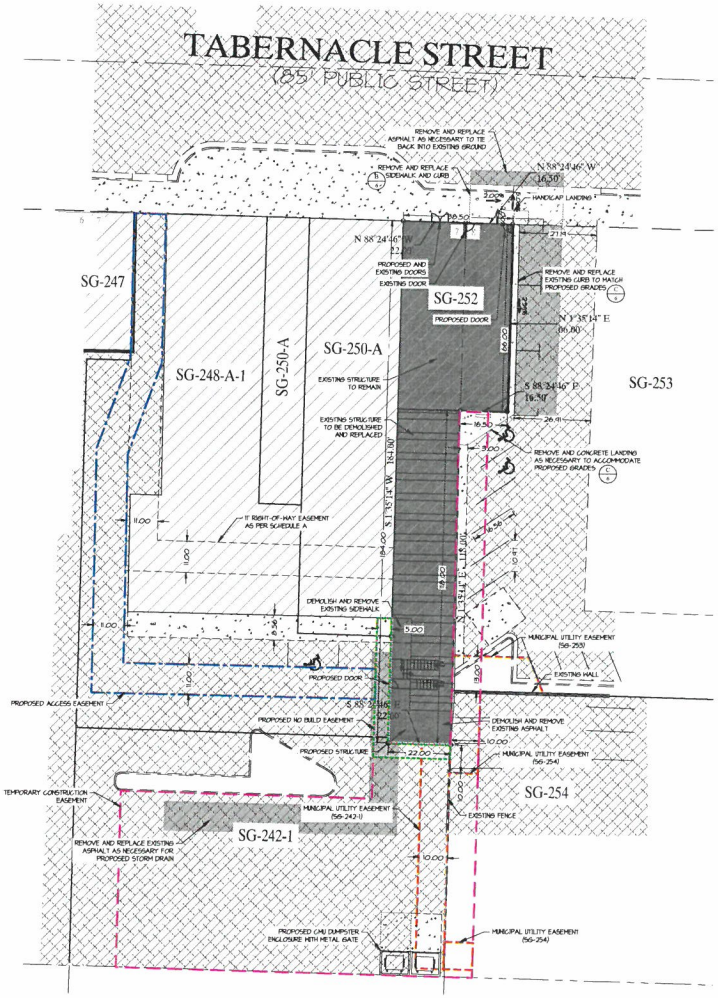
GENERAL PLAN:
COMMERCIAL

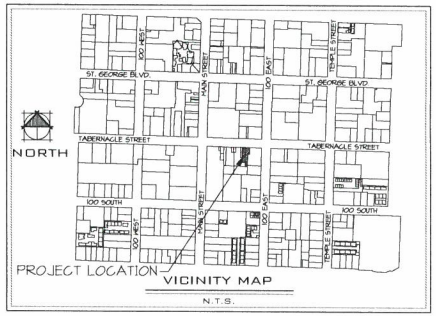
TOTAL PARCEL AREA:
5131 SQ. FT.
.012 ACRES

LOT COVERAGE:
BUILDING HEIGHT: -
BUILDING: 5131 SQ. FT. (ENTIRE PARCEL)

PROPOSED LAND USE:
OFFICE

PARKING:
TOTAL SPACES REQUIRED: 2
PROVIDED: ALL SPACES PROVIDED WITH ON STREET PARKING ALONG TABERNACLE STREET AND PARKING GARAGE AT 20 N MAIN STREET.




Know what's below. Call before you dig.




LEGEND
- EXISTING ASPHALT
- PROPOSED ASPHALT
- EXISTING BUILDING
- EXISTING BUILDING TO BE DEMOLISHED
- PROPOSED BUILDING
- PROPOSED CONCRETE
- PROPOSED CONCRETE

DATE: 2/4/22
JOB NO.: 1232-20-001
DESIGNED BY: DMH
CHECKED BY: JHB
DWG: CONST. DWGS.

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS
352 East Riverside Drive, Suite A-2 St. George, Utah 84790
Ph (435) 673-8586 Fx (435) 673-8397
www.rosenbergassociates.com

SITE PLAN
FOR
76 TABERNACLE
ST. GEORGE
UTAH

JARED W. BATES
2/4/22
PROFESSIONAL ENGINEER
STATE OF UTAH

SHEET
2
2 OF 6 SHEETS

# Exhibit B

STATE OF UTAH )
ss.
COUNTY OF WASHINGTON )

On the _____ day of _____ 2020, before me, _____, a notary public, personally appeared _____ proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same voluntarily for its stated purpose.

_____
Notary Public

**ACCEPTANCE OF DEDICATION**

The City of St. George, a municipal corporation of the State of Utah, hereby accepts the above conveyance and dedication, and in consideration thereof agrees that it will utilize and maintain the same for purposes consistent with the above dedication.

DATED this _____ day of _____, 2020.

CITY OF ST. GEORGE

_____
Jonathan T. Pike, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:

_____
Bryan Pack, Assistant City Attorney

Exhibit B

ROSENBERG ASSOCIATES™
CIVIL ENGINEERS LAND SURVEYORS

## Exhibit "A"

Beginning at a point on the westerly line of Lot 8, Block 15, Plat "A", St. George City Survey, said point being North 01°35'02" East 100.00 feet from the southwest corner of said Lot 8, and running;

thence North 01°35'14" East 13.00 feet along said westerly line;
thence South 88°24'46" East 26.73 feet;
thence South 21°13'55" East 14.10 feet;
thence North 88°24'46" West 32.20 feet to the Point of Beginning.




January 12, 2021

Exhibit B

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID: SG-253

**MUNICIPAL UTILITY EASEMENT**

That in consideration of Ten Dollars and other good and valuable consideration paid to PS4H LTD, a Utah limited partnership, Grantor, by the City of St. George, a Utah municipal corporation, Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, transfer and convey unto Grantee, its successors and assigns, a perpetual easement for ingress and egress, to use, install, operate, maintain, repair, remove, relocate and replace municipal utilities; for unimpeded perpetual ingress and egress for vehicular and pedestrian traffic over, upon and across the roads, driveways, access ways, entrances, exits and sidewalks as such currently exist and as may be developed from time to time by Grantor; and for other public use, in and along real property owned by Grantor in Washington County, State of Utah, and the easement being more fully described as follows:

See Exhibit "A" and Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD such property to Grantee, the City of St. George, forever for the uses and purposes normally associated with municipal uses such as utilities and drainage.

Grantor may not install, build, place or cause or allow anything to be installed, built, or placed in the easement. Grantor may not interfere with the easement in anyway. If any improvement is installed, built, or placed within the easement by Grantor or its successors or assigns, Grantor bears the risk of loss or damage to those improvements resulting from the exercise of the easement rights and Grantee is not responsible to repair, replace, maintain, indemnify or reimburse Grantor for any damage or loss. Grantor shall pay for any extra costs which Grantee incurs as a result of Grantor burdening the easement.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee its successors and assigns.

IN WITNESS WHEREOF, the Grantors has executed this instrument this _____ day of

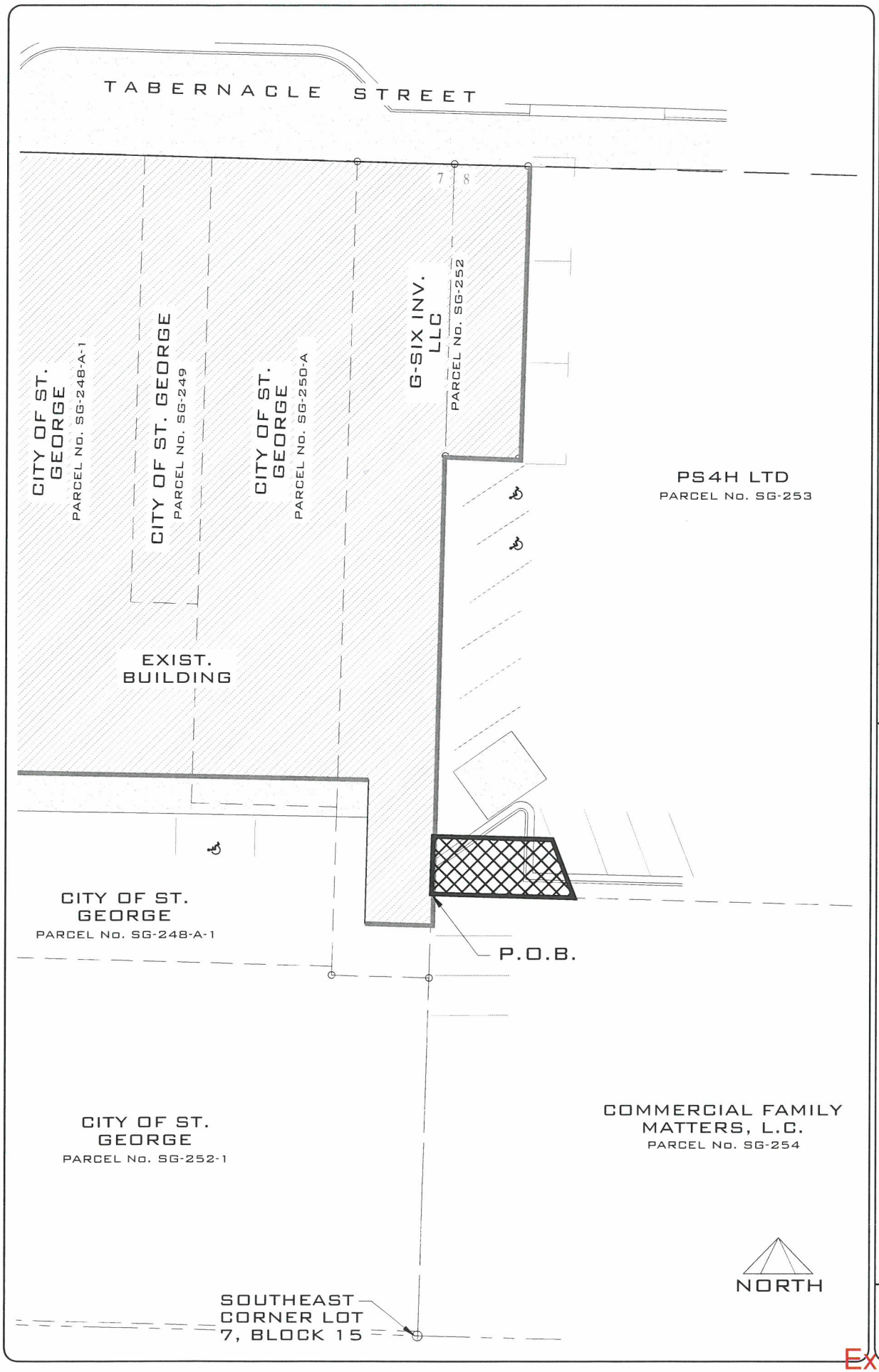
_____, 2020.

GRANTOR: PS4H LTD, a Utah limited partnership

_____

Partner -

Exhibit B




| | |
|---|---|
| DATE: | 12/10/2020 |
| JOB NO.: | 12131-20 |
| DRAWN BY: | B.E.A. |
| DESIGNED BY: | B.E.A. |
| SCALE: | N.T.S |
| DWG: SURVEY-MUE-EXHIBIT | |

REVISIONS DATE

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS
352 East Riverside Drive, Suite A-2 St. George, Utah 84790
Ph (435) 673-8586
Fx (435) 673-8397
www.racivil.com

# EXHIBIT MAP

SHEET 1 OF 1 SHEETS

Exhibit B

# Exhibit C

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID: SG-254

**MUNICIPAL UTILITY EASEMENT**

That in consideration of Ten Dollars and other good and valuable consideration paid to Commercial Family Matters, L.C., a Utah Limited Liability Company , Grantor, by the City of St. George, a Utah municipal corporation, Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, transfer and convey unto Grantee, its successors and assigns, a perpetual easement for ingress and egress, to use, install, operate, maintain, repair, remove, relocate and replace municipal utilities; for unimpeded perpetual ingress and egress for vehicular and pedestrian traffic over, upon and across the roads, driveways, access ways, entrances, exits and sidewalks as such currently exist and as may be developed from time to time by Grantor; and for other public use, in and along real property owned by Grantor in Washington County, State of Utah, and the easement being more fully described as follows:

See Exhibit "A" and Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD such property to Grantee, the City of St. George, forever for the uses and purposes normally associated with municipal uses such as utilities and drainage.

Grantor may not install, build, place or cause or allow anything to be installed, built, or placed in the easement. Grantor may not interfere with the easement in anyway. If any improvement is installed, built, or placed within the easement by Grantor or its successors or assigns, Grantor bears the risk of loss or damage to those improvements resulting from the exercise of the easement rights and Grantee is not responsible to repair, replace, maintain, indemnify or reimburse Grantor for any damage or loss. Grantor shall pay for any extra costs which Grantee incurs as a result of Grantor burdening the easement.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee its successors and assigns.

IN WITNESS WHEREOF, the Grantors has executed this instrument this _____ day of

_____, 2020.

GRANTOR: Commercial Family Matters, L.C., a Utah Limited Liability Company

_____

Manager -

Exhibit C

STATE OF UTAH )
ss.
COUNTY OF WASHINGTON )

On the _____ day of _____ 2020, before me, _____, a notary public, personally appeared _____ proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he/she executed the same voluntarily for its stated purpose.

_____
Notary Public

**ACCEPTANCE OF DEDICATION**

The City of St. George, a municipal corporation of the State of Utah, hereby accepts the above conveyance and dedication, and in consideration thereof agrees that it will utilize and maintain the same for purposes consistent with the above dedication.

DATED this _____ day of _____, 2020.

CITY OF ST. GEORGE

_____
Jonathan T. Pike, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:

_____
Bryan Pack, Assistant City Attorney

Exhibit C

ROSENBERG ASSOCIATES™
CIVIL ENGINEERS LAND SURVEYORS

## Exhibit "A"

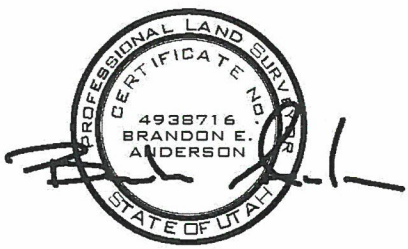
Beginning at a point on the westerly line of Lot 8, Block 15, Plat "A", St. George City Survey, said point being North 01°35'02" East 70.99 feet from the southwest corner of said Lot 8, and running;

thence North 01°35'14" East 29.00 feet along said westerly line;
thence South 88°24'46" East 10.00 feet;
thence South 01°35'14" West 29.00 feet;
thence North 88°24'46" West 10.00 feet to the Point of Beginning.

Together with:

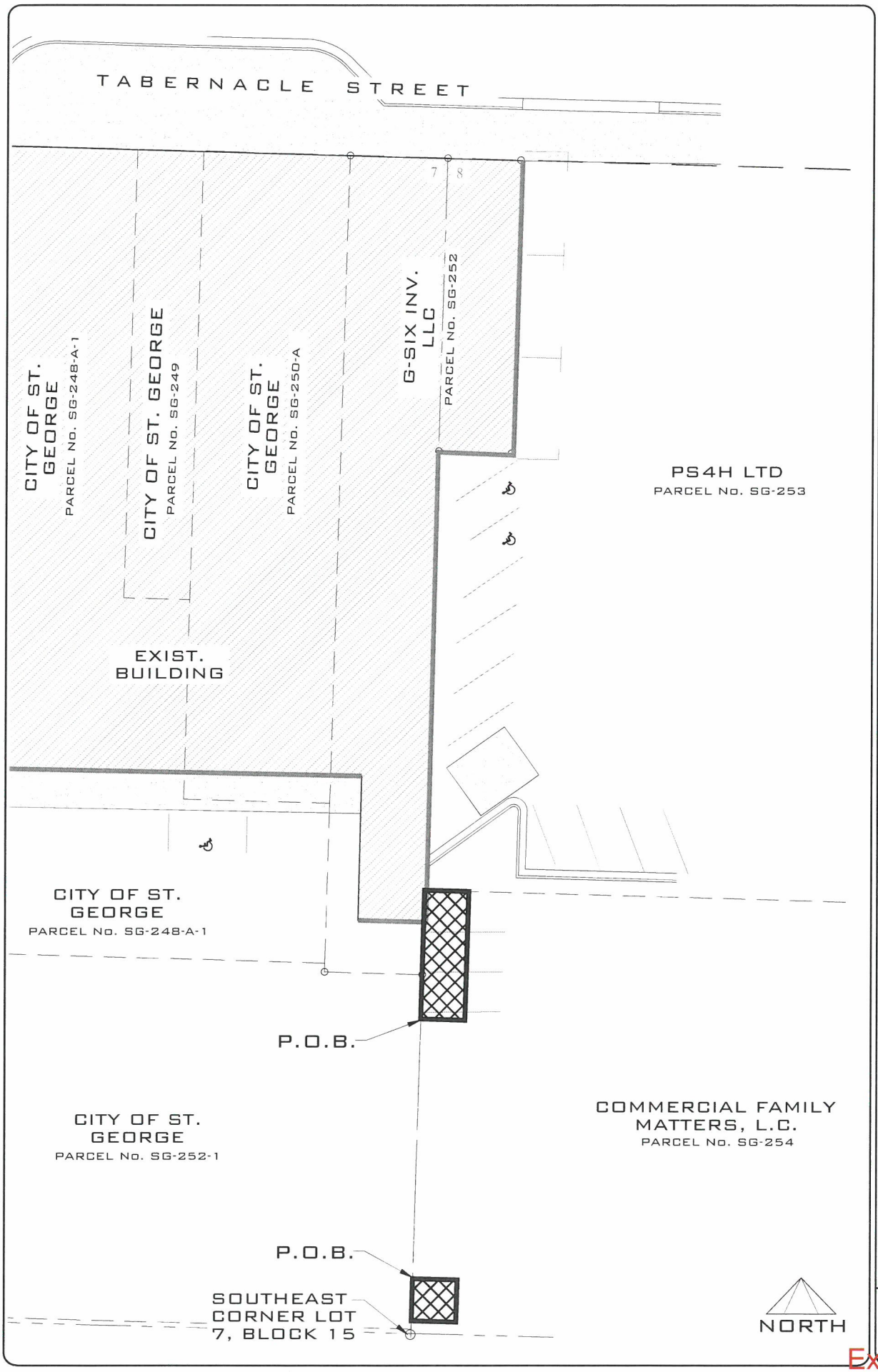
Beginning at a point on the westerly line of Lot 8, Block 15, Plat "A", St. George City Survey, said point being North 01°35'02" East 2.85 feet from the southwest corner of said Lot 8, and running;

thence North 01°35'14" East 9.53 feet along said westerly line;
thence South 88°24'46" East 10.00 feet;
thence South 01°35'14" West 9.53 feet;
thence North 88°24'46" West 10.00 feet to the Point of Beginning.




December 9, 2020

Exhibit C




DATE: 12/10/2020
JOB NO.: 1213-20
DRAWN BY: B.E.A.
DESIGNED BY: B.E.A.
SCALE: N.T.S.
DWG: SURVEY-MUE-EXHIBIT

REVISIONS
DATE

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS

352 East Riverside Drive, Suite A-2 St. George, Utah 84790
Ph (435) 673-8586
Fx (435) 673-8397
www.racivil.com

# EXHIBIT MAP

SHEET 1 OF 1 SHEETS

Exhibit C

# Exhibit D

When Recorded Return To:
City of St. George
City Attorney's Office
175 East 200 North
St. George, Utah 84770

Tax ID: SG-242-1

# MUNICIPAL UTILITY EASEMENT

That in consideration of Ten Dollars and other good and valuable consideration paid to St. George City, a Municipal Body Politic, Grantor, by the City of St. George, a Utah municipal corporation, Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, sell, transfer and convey unto Grantee, its successors and assigns, a perpetual easement for ingress and egress, to use, install, operate, maintain, repair, remove, relocate and replace municipal utilities; for unimpeded perpetual ingress and egress for vehicular and pedestrian traffic over, upon and across the roads, driveways, access ways, entrances, exits and sidewalks as such currently exist and as may be developed from time to time by Grantor; and for other public use, in and along real property owned by Grantor in Washington County, State of Utah, and the easement being more fully described as follows:

See Exhibit "A" and Exhibit "B" attached hereto and made a part hereof.

TO HAVE AND TO HOLD such property to Grantee, the City of St. George, forever for the uses and purposes normally associated with municipal uses such as utilities and drainage.

Grantor may not install, build, place or cause or allow anything to be installed, built, or placed in the easement. Grantor may not interfere with the easement in anyway. If any improvement is installed, built, or placed within the easement by Grantor or its successors or assigns, Grantor bears the risk of loss or damage to those improvements resulting from the exercise of the easement rights and Grantee is not responsible to repair, replace, maintain, indemnify or reimburse Grantor for any damage or loss. Grantor shall pay for any extra costs which Grantee incurs as a result of Grantor burdening the easement.

The grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Grantee its successors and assigns.

IN WITNESS WHEREOF, the Grantors has executed this instrument this _____ day of

_____, 2020.

Exhibit D

GRANTOR: St. George City, a Municipal Body Politic

_____

Jonathan T. Pike, Mayor

ATTEST:

_____

Christina Fernandez, City Recorder

**ACCEPTANCE OF DEDICATION**

The City of St. George, a municipal corporation of the State of Utah, hereby accepts the above conveyance and dedication, and in consideration thereof agrees that it will utilize and maintain the same for purposes consistent with the above dedication.

DATED this ____ day of _____, 2020.

CITY OF ST. GEORGE

_____

Jonathan T. Pike, Mayor

ATTEST:

_____

Christina Fernandez, City Recorder

APPROVED AS TO FORM:

_____

Bryan Pack, Assistant City Attorney

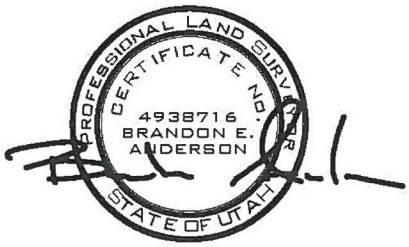
Exhibit D

ROSENBERG ASSOCIATES™
CIVIL ENGINEERS LAND SURVEYORS

## Exhibit "A"

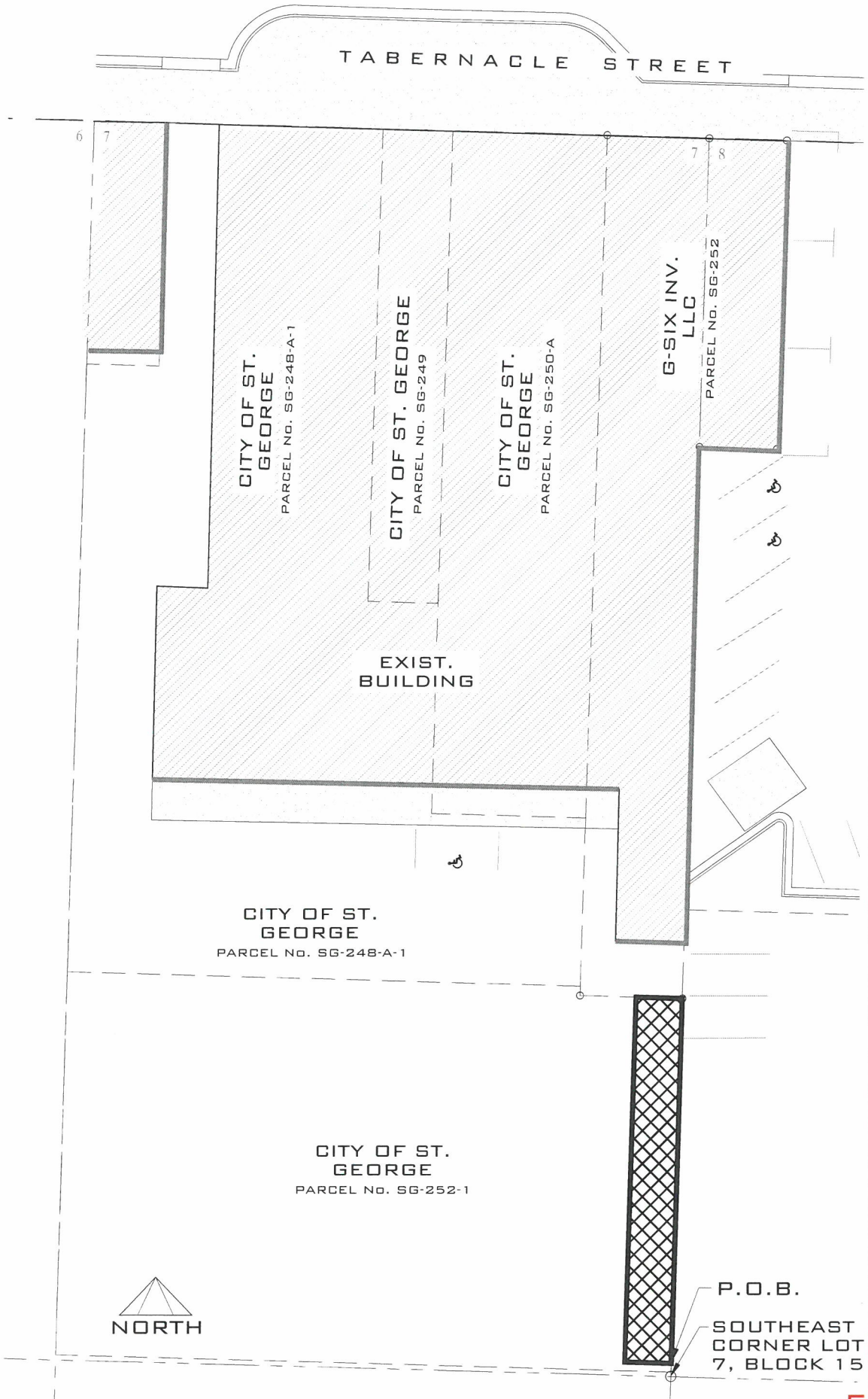
Beginning at a point on the easterly line of Lot 7, Block 15, Plat "A", St. George City Survey, said point being North 01°35'02" East 2.85 feet from the southeast corner of said Lot 7, and running;

thence North 88°24'46" West 10.00 feet;
thence North 01°35'14" East 78.14 feet;
thence South 88°24'46" East 10.00 feet to said easterly line of said Lot 7;
thence South 01°35'14" West 78.14 feet along said easterly line to the Point of Beginning.




December 9, 2020

Exhibit D




DATE: 12/10/2020
JOB NO.: 12131-20
DRAWN BY: B.E.A.
DESIGNED BY: B.E.A.
SCALE: N.T.S.
DWG: SURVEY-MUE-EXHIBIT

REVISIONS
DATE:

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS
352 East Riverside Drive, Suite A-2 St. George, Utah 84790
Ph (435) 673-8586
Fx (435) 673-8397
www.RACIVIL.com

# EXHIBIT MAP

SHEET 1 OF 1 SHEETS

Exhibit D

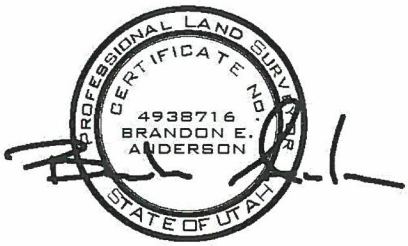
# Exhibit E

ROSENBERG ASSOCIATES™
CIVIL ENGINEERS LAND SURVEYORS

## Exhibit "A"

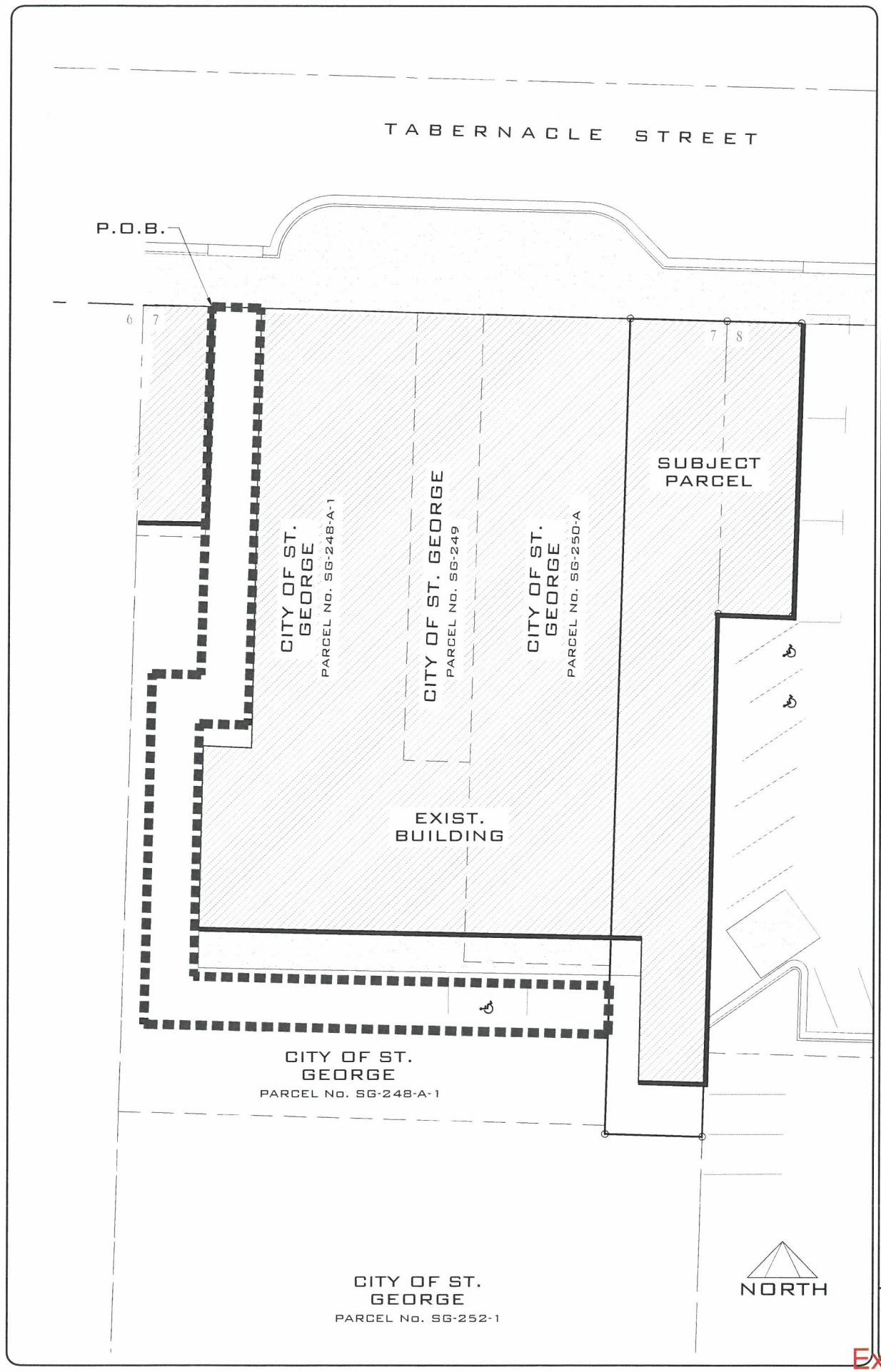
Beginning at a point on the northerly line of being South 88°24'46" East 15.59 feet along the block line from the northwest corner of Lot 7, Block 15, Plat "A", St. George City Survey, and running;

thence South 88°24'46" East 11.08 feet along said northerly line of Block 15;
thence South 01°35'02" West 94.06 feet;
thence North 88°24'58" West 11.00 feet;
thence South 01°10'51" West 56.98 feet;
thence South 88°44'35" East 93.92 feet;
thence South 01°35'14" West 11.00 feet;
thence North 88°44'35" West 104.84 feet;
thence North 01°10'51" East 79.05 feet;
thence South 88°24'58" East 11.08 feet;
thence North 01°31'49" East 83.06 feet to the Point of Beginning.




October 12, 2020

Exhibit E




DATE: 10/20/2020
JOB NO.: 12131-20
DRAWN BY: B.E.A.
DESIGNED BY: B.E.A.
SCALE: N.T.S.
DWG: SURVEY-LEGAL

REVISIONS
DATE

ROSENBERG ASSOCIATES
CIVIL ENGINEERS • LAND SURVEYORS

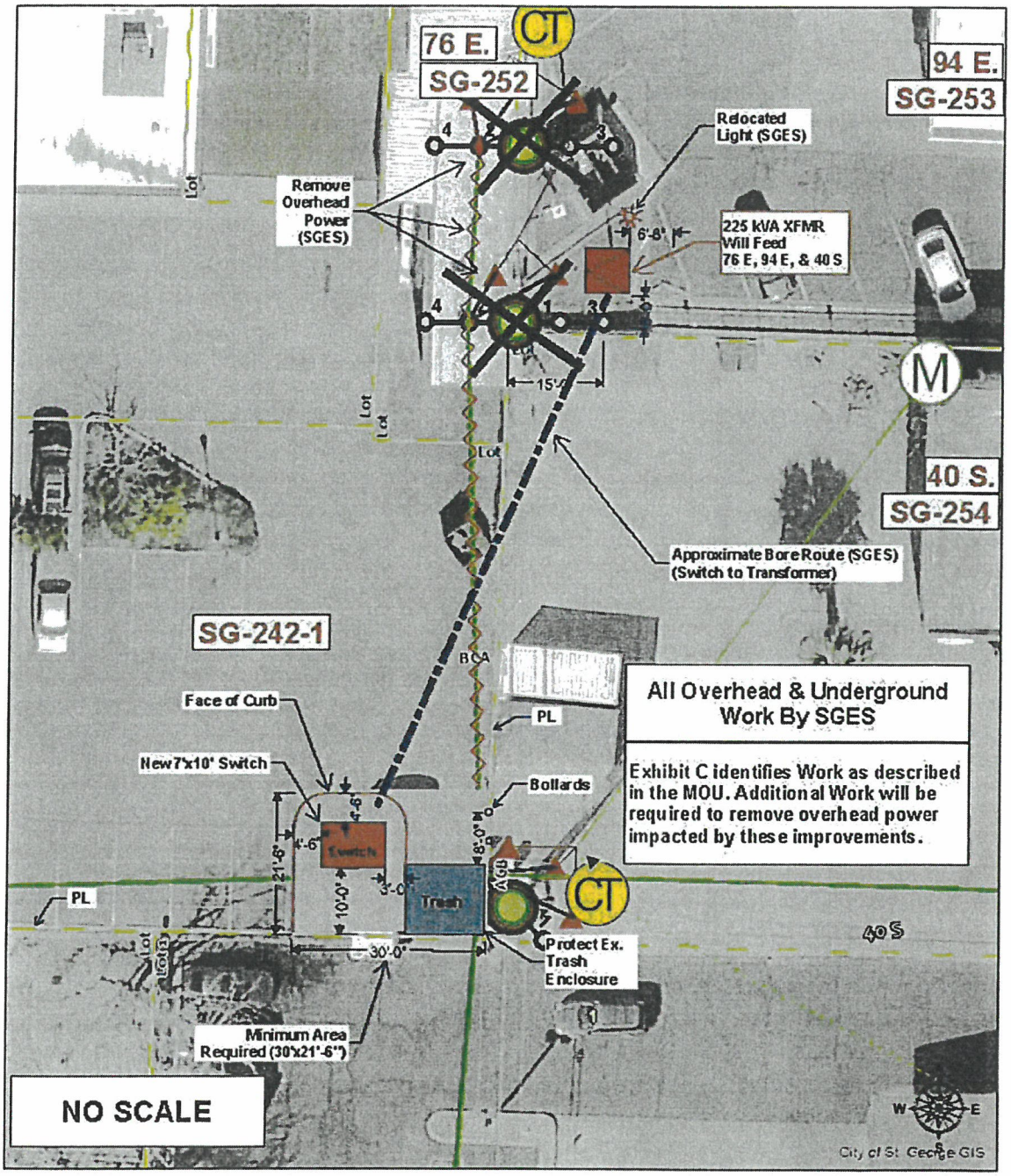
352 East Riverside Drive, Suite A-2 St. George, Utah 84790
Ph (435) 673-8586
Fx (435) 673-8397
www.racivil.com

# EXHIBIT MAP

SHEET
1
OF 1 SHEETS

Exhibit E

# Exhibit F




# EXHIBIT
# Overhead Removal Plan

March 18, 2022

Exhibit F

# Exhibit G

Return to:
St. George City Attorney
175 East 200 North
St. George, Utah 84770

Parcel Number: SG-242-1

## TEMPORARY CONSTRUCTION EASEMENT

The City of St. George, a Utah municipal corporation, **Grantor**, whose principal office is located at 175 East 200 North, St. George, Utah, for good and valuable consideration, receipt of which is hereby acknowledged, hereby grants, bargains, sells and conveys to G-Six Investments, LLC, a Utah limited liability company, **Grantee**, whose principal office is located at 2376 Rocky Vw. Dr. Ste 350B, St. George, UT 84790. its successors, assigns and contractors, a temporary construction easement to stage construction materials and equipment during the renovation of Grantee's building located at 76 E. Tabernacle Street, St. George, Utah (Parcel no. SG-252-1) over a portion of Grantor's property (Parcel SG-242-1) and more specifically described as follows:

***See* Exhibit 1**

This grant of easement shall for a period of time not exceeding one (1) year from the date of recording.

The parties agree and acknowledge that this grant of easement is conditional and may be revoked and cancelled by the Grantor prior to the one-year expiration upon the following occurrence:

1. It is determined by the Grantor, to be necessary to revoke the easement in order to commence construction of any City capital building project located on Parcel SG-252-1; and

2. Grantor has delivered written notice of the intent to revoke and cancel to Grantee at the above address at least ninety (90) days in advance of the revocation and cancellation.

Unless revoked or cancelled, upon expiration or upon the conclusion of construction, whichever is earlier, Grantee shall, as close as practical, restore Grantor's real property and any access used to its condition prior to the commencement of construction activities, subject to Grantor's reasonable approval.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot or has not been waived.



Exhibit G

IN WITNESS WHEREOF, the Grantor has caused this easement to be executed by its respective duly-authorized representative this ____ day of _____, 2016.

CITY OF ST. GEORGE

By:_____
Michele Randall, Mayor

STATE OF UTAH )
:ss.
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by Michele Randall, in her capacity as Mayor of the City of St. George, Utah.

_____
Notary Public



Exhibit G

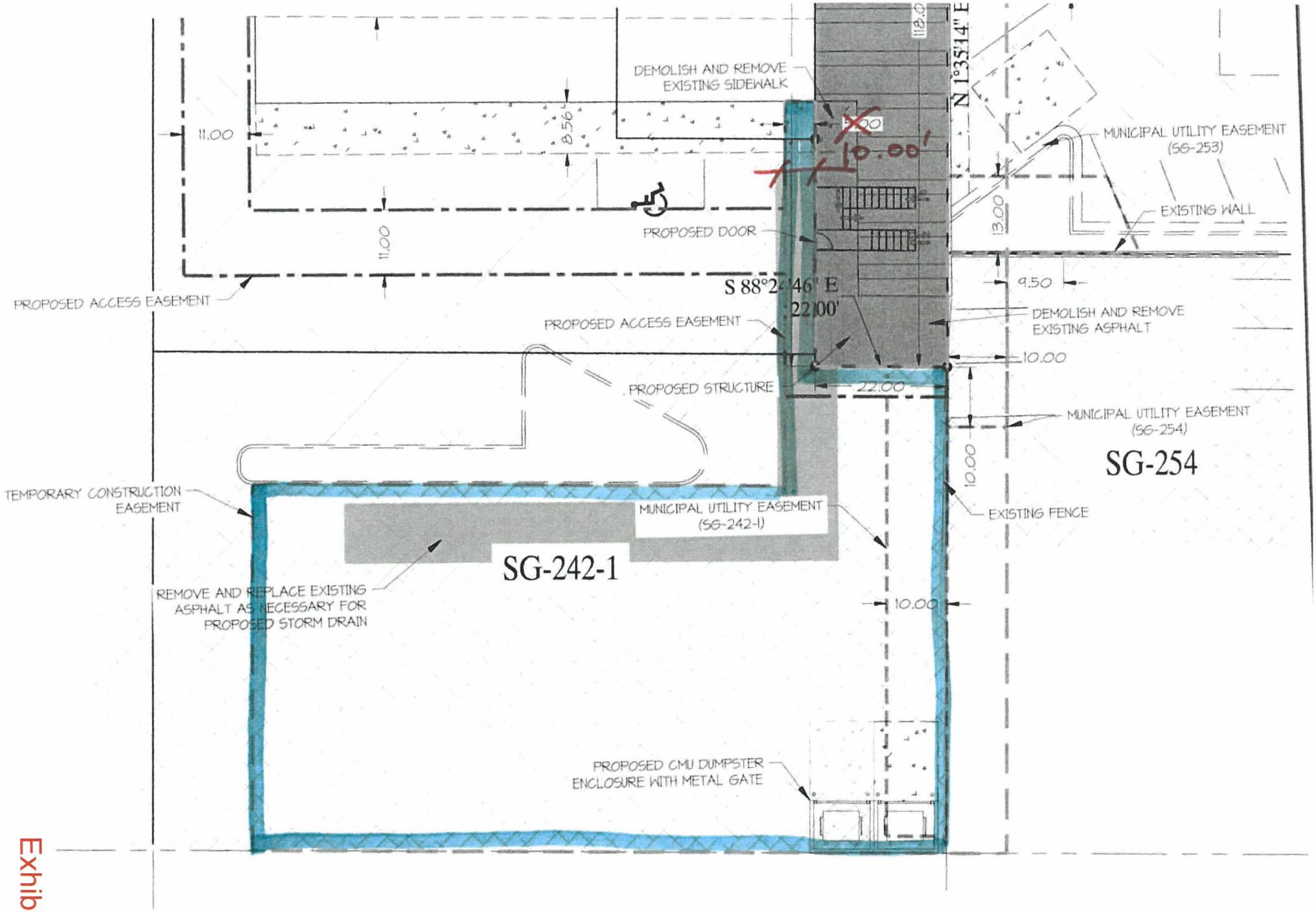

DEMOLISH AND REMOVE EXISTING SIDEWALK
11.00
8.56
11.00
PROPOSED DOOR
PROPOSED ACCESS EASEMENT
PROPOSED ACCESS EASEMENT
S 88°2'46" E
22.00'
PROPOSED STRUCTURE
22.00
TEMPORARY CONSTRUCTION EASEMENT
MUNICIPAL UTILITY EASEMENT (SG-242-1)
SG-242-1
REMOVE AND REPLACE EXISTING ASPHALT AS NECESSARY FOR PROPOSED STORM DRAIN
10.00
PROPOSED CMU DUMPSTER ENCLOSURE WITH METAL GATE
118.0
N 1°35'14" E
10.00
MUNICIPAL UTILITY EASEMENT (SG-253)
EXISTING WALL
13.00
9.50
DEMOLISH AND REMOVE EXISTING ASPHALT
10.00
MUNICIPAL UTILITY EASEMENT (SG-254)
SG-254
10.00
EXISTING FENCE

Exhibit 1

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 2

**Subject:**

Consider approval of a hangar lease with the Division of Facilities Construction and Management and Department of Public Safety.

**Item at-a-glance:**

Staff Contact: Collin Simonsen

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

Airport lot 56J

**Item History (background/project status/public process):**

The State, through the Department of Public Safety and the Division of Facilities Construction and Management, desires to lease hangar space to house and operate a helicopter to be used for emergency transport. Because this is a benefit to the City, the agreement requires only a nominal rent. In addition to the lease, the State desires to construct improvements to the hangar to include office space. The City is agreeing to hire and pay the contractor to be reimbursed by the State in the amount of $198,500. Staff recommends approval subject to review and approval of the agreement by the Legal Department.

**Staff Narrative (need/purpose):**

Because this is a benefit to the City, the agreement requires only a nominal rent. In addition to the lease, the State desires to construct improvements to the hangar to include office space. The City is agreeing to hire and pay the contractor to be reimbursed by the State in the amount of $198,500.

**Name of Legal Dept approver:** Collin Simonsen

**Budget Impact:**

Cost for the agenda item: $198,500

Amount approved in current FY budget for item: $0

If not approved in current FY budget or exceeds the budgeted amount, please explain

funding source:

While the City is bearing the initial cost, the State has agreed to fully reimburse the City within 180 days of the issuance of a certificate of occupancy.

Description of funding source:

N/A

**Recommendation (Include any conditions):**

Staff recommends approval subject to review and approval of the agreement by the Legal Department.

# HANGAR AGREEMENT

**BETWEEN**

**CITY OF ST. GEORGE**

**&**

**DEPARTMENT OF GOVERNMENT OPERATIONS**

**DIVISION OF FACILITIES CONSTRUCTION AND MANAGEMENT**

**STATE OF UTAH**

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## HANGAR AGREEMENT

THIS HANGAR AGREEMENT (which, as amended from time to time, is defined herein as the "Agreement") is entered into as of the __ day of _____, 202_, (Execution Date) by and between the City of St. George, Utah, a Utah municipal corporation, (the "City") and the Utah Department of Government Operations a subdivision of the state of Utah_____, ("State").

## RECITALS

WHEREAS, City owns an airport located at 4550 S. Airport Parkway, St. George, Utah 84790 (the "Airport") ; and

WHEREAS, City and State desire to accommodate, promote, and enhance the safety of the public by having greater availability of emergency transportation; and

WHEREAS, State desires to lease certain space at the Airport for purposes of constructing and/or using a hangar for aircraft and office space as set forth in this Agreement;

NOW, THEREFORE, in consideration of the payment of TEN AND NO/100 DOLLARS ($10.00), the foregoing recitals and the covenants and conditions stated herein, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

### 1. Agreement to Lease and Operate

**A. Agreement to Lease Premises.** City hereby leases to State and State hereby leases from City space located at the property described in Exhibit A together with the improvements constructed thereon (the "Premises"). City has authority to lease such Premises. State agrees to accept the Premises "as is," and City makes no warranty as to the condition of the Premises or their suitability for any particular purpose. The lease will be categorized as a net lease and not as a ground lease.

**B. Construction of Office Improvements.** Certain improvements shall be constructed as provided in Exhibit B (the "Office Improvements"). The City shall send out for bid, award a bid, contract with a contractor and oversee the construction of the Office Improvements. The City shall pay for the construction of the Office Improvements. Within 180 days of the issuance of a certificate of occupancy, the State shall occupy the Office Improvements and reimburse the City for all costs in constructing the improvements. State agrees that the construction of the Office Improvements as provided in this Agreement is a part of the consideration to City under this Agreement. State will review and approve or request changes to any design, plan, or budget for the Office Improvements. The State's cost shall $198,500.00 unless it approves change requests that increase its cost. City may also approve or request changes to any design, plan or budget for the Office Improvements. The Office Improvements will become a part of the hangar and the Premises. And the end of the lease term, City will receive ownership of all Office Improvements.

**C. Purpose of Agreement.** The State agrees to keep one (1) helicopter at the Premises. State will keep at least one helicopter in good working order at all times, conducting

regular maintenance and safety checks as is customary in the industry. The State will employ at least two (2) pilots who will work at and be available for flights at regular times. If a properly functioning helicopter is not present at the Premises for more than 90 consecutive days, this lease shall terminate upon written notice by the City. The State shall have thirty (30) days to vacate. State agrees that it shall use the Premises for the following purposes only: the parking, storage, service, repair, light maintenance, operation, and modification or construction (on a noncommercial basis only) of Aircraft, plus incidental activities related to such purposes (including, but not limited to, parking an automobile or motorcycle inside the hangar while the Aircraft is in flight, but only if such vehicle was driven by a person on board such Aircraft). An "Aircraft" shall be any aircraft that State owns or controls. State shall provide proof of the ownership or control of any Aircraft upon City's request. The following are the make, model, and identification number of all Aircraft approved by City upon entering this Agreement, and State shall provide the same information to City in writing when requesting approval for any subsequent Aircraft:

i. Make:

ii. Model:

iii. Identification Number:

**D. Access.** City agrees that State and State's employees, officers, directors, contractors, subcontractors, suppliers, agents, invitees, and other representatives ("State's Associates") are authorized to ingress and egress across the Airport (in the areas designated by City and as permitted by applicable Laws and Regulations, as such term is defined in Section 4.B) on a non-exclusive basis and to the extent reasonably necessary for State's use, occupancy, and operations at the Premises.

**E. Right of Flight and Other Reserved Rights.** This Agreement conveys only a leasehold interest in the Premises on the terms and for the purposes provided herein, and it conveys no other rights, title, or interests of any kind. Among the rights reserved to City, City reserves in the Premises a right of flight for the passage of aircraft in the air, a right to cause such noise as may at any time be inherent in the operation of aircraft, and all other rights, including, but not limited to, water, minerals, oil, and gas.

**F. Enjoyment of Rights.** Subject to State's complete performance of the payment and other obligations contained in this Agreement, State shall enjoy the rights, uses, and privileges stated in this Agreement.

**2. Term**. This Agreement shall be effective during the period when City constructs the initial Office Improvements as stated in Exhibit B. The term of this Agreement shall commence on the Execution Date and shall continue for twenty (20) years ending on _____,_____ 20__ subject to the termination provisions herein.

**3. Rent**

**A. Rent.** For State's lease of the Premises, State covenants to pay to City one dollar

($1) per annum.

**B. Additional Rent.** Any sum (other than the rent required in Section 3.A) that State is obligated to pay to City arising from or relating to this Agreement or State's use, occupancy, or operations at the Airport constitutes additional rent, which may include, but is not limited to, fees, fuel flowage fees for self-fueling activities (at the rate and on the terms imposed by City), fines, civil penalties, damages, claims, interest, charges, expenses, and utility charges.

## 4. State's Use of Premises and Airport

**A. No Interference.** State and State's Associates shall not use the Premises or the Airport in any manner that) interferes with any operation at the Airport or decreases the Airport's effectiveness. State shall promptly notify City of any use that creates such interference or decrease in effectiveness and remedy the same.

**B. Comply with All Laws.** State and State's Associates shall comply at all times, at State's sole cost, with any and all laws and regulations (as amended or otherwise modified from time to time) that are applicable to State's use, occupancy, or operations at the Premises or the Airport (the "Laws and Regulations"), which include, but are not limited to, all laws, statutes, ordinances, regulations, rules, orders, writs, judgments, decrees, injunctions, directives, rulings, guidelines, standards, codes, policies, common law, and other pronouncements of any kind having the effect of law including, but not limited to, the Airport Rules and Regulations, the Airport Building Development Standards, and all Laws and Regulations pertaining to the environment (the "Environmental Laws"); any and all plans and programs developed in compliance with such requirements (including, but not limited to, the Airport Security Plan); and all lawful, reasonable, and nondiscriminatory Airport policies and other requirements. Upon a written request by City, State will verify, within a reasonable time frame, compliance with any Laws and Regulations.

**C. No Unauthorized Use.** State and State's Associates shall use the Premises and the Airport only for purposes that are expressly authorized by this Agreement and shall not engage in any unauthorized use of the same. Unauthorized uses include, but are not limited to, any use that would damage, interfere with, or alter any improvement; restricting access on any road or other area that State does not lease; placing waste materials on the Airport or disposing of such materials in violation of any Laws and Regulations; any use that would constitute a public or private nuisance or a disturbance or annoyance to other Airport users; any commercial activity; driving a motor vehicle at an Airport location other than a roadway or parking area (except in connection with parking an automobile or motorcycle inside the hangar while the Aircraft is in flight, but only if such vehicle was driven by a person on board such Aircraft); the use of automobile parking areas in a manner not authorized by City; self-fueling activities on the Premises or any other area that City has not authorized; any use conflicting with Exhibit F; and any use that would be prohibited by or would impair coverage under either party's insurance policies.

**D. Permits and Licenses.** State shall obtain and maintain in current status all permits and licenses that are required under any Laws and Regulations in connection with State's use, occupancy, or operations at the Premises or the Airport. In the event that State receives notice from any governmental authority that State lacks, or is in violation of, any such permit or license,

State shall provide City with timely written notice of the same.

**E. Taxes and Liens.** State shall pay (before their respective due dates) all taxes, fees, assessments, and levies that relate to State's use, occupancy, or operations at the Premises or the Airport and all other obligations for which a lien may be created relating thereto (including, but not limited to, utility charges and work for the Office Improvements). Within ten (10) days, State shall remove any such lien that may be created or commence a protest of such lien by depositing with City cash or other security acceptable to City in an amount sufficient to cover the cost of removing such lien. When contracting for any work in connection with the Premises, State shall include in such contract a provision prohibiting the contractor or any subcontractor or supplier from filing a lien or asserting a claim against City's real property or any interest therein.

**F. Damage to Property and Notice of Harm.** In addition to State's indemnification obligations set forth in Section 6, State, at State's sole cost, shall repair or replace (to City's sole satisfaction) any damaged property that belongs to City or City's other tenants to the extent that such damage arises from or relates to an act or omission of State or State's Associates. State shall promptly notify City of any such property damage. If State discovers any other potential claims or losses that may affect City, State shall promptly notify City of the same.

**G. No Alterations or Improvements.** State shall not make or cause to be made to the Premises any alteration or improvement that is subject to City code requirements, and shall not alter or improve other areas of the Airport, without City's prior written consent (in City's sole discretion).

**I. Security.** State is responsible to comply (at State's sole cost) with all security measures that City, the United States Transportation Security Administration, or any other governmental authority having jurisdiction may require in connection with the Airport, including, but not limited to, any access credential requirements, any decision to remove State's access credentials, and any civil penalty obligations and other costs arising from a breach of security requirements caused or permitted by State or State's Associates. State agrees that City has the right (in City's sole discretion) to impose any Airport security requirements that City may determine. State further agrees that Airport access credentials are the property of City and may be suspended or revoked by City in its sole discretion at any time. State shall pay all fees associated with such credentials, and State shall immediately report to the Airport Manager any lost credentials or credentials that State removes from any employee or any of State's Associates. State shall protect and preserve security at the Airport.

**J. Removal of Disabled Aircraft.** When consistent with Laws and Regulations, State shall promptly remove or cause to be removed from any portion of the Airport not leased by State the Aircraft or any other aircraft that State owns or controls if it becomes disabled. State may store such aircraft within the Office Improvements or, with City's prior written consent, elsewhere at the Airport on terms and conditions established by City. If State fails to comply with this requirement after a written request by City to comply, City may (but is not required to) cause the removal of any such aircraft at State's expense by any means that City determines, in its sole discretion, to be in City's best interests.

**K. Maintenance, Repair, Utilities, and Storage.** State's use, occupancy, and operations at the Premises shall be without cost or expense to City. State shall be solely responsible to maintain, repair, reconstruct, and operate the Premises and the Office Improvements at State's sole cost and expense, including, but not limited to, all utility services, janitorial services, waste disposal, and ramp repair. State shall at all times maintain the Premises and the Office Improvements in a condition that is equal to the level of maintenance maintained by the City in comparable areas and that is clean, safe, sanitary, and in good repair. State shall perform all work in accordance with Laws and Regulations and in a good and workmanlike manner. State shall promptly remedy any condition that fails to meet this standard. Without limiting the foregoing obligations, State shall not store on the Premises any inoperable equipment, discarded or unsightly materials, or materials likely to create a hazard; shall not use areas outside of the Office Improvements for storage; and shall store trash in covered metal receptacles. Any substance or material that is regulated by any Environmental Law ("Hazardous Materials") shall be governed by Section 7.

**L. Operations.** State's operations shall comply with the following:

i. Airport Operations. State shall occupy the Premises at all times and shall operate in a manner that promotes effective airport operations. Among other things, State shall immediately notify the Airport Manager of any condition observed at the Airport that may create a hazard or disruption; State shall refrain from annoying, disturbing, or impairing Airport customers, tenants, or employees; and State shall promptly respond to City's complaints, requests for information, and requests for reasonable assistance in connection with planning and other operational matters at the Airport. If City determines for any reason that emergency conditions exist at the Airport, State shall participate in any emergency response as directed by City or other agency in charge and shall operate in a manner that protects safety and the interests of the public.

ii. Safety. City may, but is not obligated to, stop State's operations if safety Laws and Regulations or other safe work practices are not being observed.

iii. Personnel. State shall control the conduct, demeanor, and appearance of its employees and State's Associates so that they do not annoy, disturb, or impair Airport customers, tenants, or employees. State's employees shall possess adequate training and qualifications to carry out their assigned duties.

iv. Deficiencies. Without limiting or waiving any other remedies available to City, City's remedies shall include the following in connection with deficiencies in State's operations:

a. Propose and Implement Cure. State shall meet with the Airport Manager upon such manager's request regarding the quality of State's operations, whether or not in connection with a specific complaint. State shall propose curative measures in response to City's determinations regarding deficiencies in State's operations and shall implement measures that are agreed upon by the parties.

## 5. City's Rights and Obligations

**A. Airport Maintenance.** City agrees that as long as the Airport is certified to operate as an airport by the Federal Aviation Administration (or any successor agency), City shall keep the property of the Airport in good repair and free from obstruction in accordance with applicable Federal standards.

**B. Access to Premises.** City for itself and its employees, officers, directors, agents, contractors, subcontractors, suppliers, invitees, volunteers and other representatives ("City's Associates") reserves the right to enter the Premises as provided in this Section 5.B. City and City's Associates shall not be deemed guilty of trespass upon the Premises, or to have violated any of State's rights hereunder, by reason of such an entrance into any portion of the Premises.

i. Without Notice. City and City's Associates shall have the right to enter the Premises at any time and without prior notice, provided that they shall not unreasonably interfere with State's use of the Premises. City and City's Associates shall have the right to enter the hangar at any time and without prior notice for any purpose relating to any emergency, security or safety concern, or to investigate or remediate potential threats or hazards.

ii. Notice. In addition to the rights set forth in Section 5.B.i, City and City's Associates shall have the right to enter the Office Improvements for any other purpose relating to the Airport (including, but not limited to, in order to conduct inspections, determine compliance with the Agreement, and conduct Airport work) provided that they shall not unreasonably interfere with State's use of the Premises. In connection with such entry, City shall provide twenty four (24) hours' advance notice to State by sending a message to State if: (a) State maintains on file with City a working email address (or an address in another format designated by City) that is capable of accepting messages for State, and (b) State provides to City a key or other access to the Premises by no later than the time of the entry. If State does not comply with all of the foregoing conditions for such notice, City and City's Associates shall have the right to enter the Office Improvements as determined by City in City's sole discretion.

iii. Interviews. State agrees to allow City to interview any of State's employees to discuss any matters pertinent to State's use, occupancy, or operations at the Premises and the Airport.

**C. City's Right to Implement Airport Programs.** City has the right to implement any lawful, reasonable, and nondiscriminatory program at the Airport as City may determine in its sole discretion, and to require State to participate in or comply with any such program. Such programs may include, but are not limited to, providing common arrangements for trash disposal, utilities, or other Airport functions; providing revenue-generating activities at the Airport by City or its designee (including, but not limited to, vending machines, advertising, wireless communications, and utility services whether on or off of the Premises); designating approved vendors and service providers at the Airport; establishing central locations and security procedures for delivering goods or materials to the Airport; and establishing green building and other programs to benefit the environment and conserve energy.

**D. City Directives.** City is the owner and proprietor of the Airport, and City has the

right to issue any lawful, reasonable, and non-discriminatory directive as a landlord and proprietor that City determines to be in City's best interests.

**E. Governmental Acts.** City is a government entity, and City has all rights, powers, and privileges afforded to it under Laws and Regulations. State agrees that State is subject to any lawful governmental act of City without regard to the provisions of this Agreement.

## 6. Indemnity, Insurance, and Letter of Credit

**A. Indemnity by State.** State agrees to indemnify, hold harmless, and defend City and its officers and employees from and against losses of every kind and character (including, but not limited to, liabilities, causes of action, losses, claims, costs, fees, attorney fees, expert fees, court or dispute resolution costs, investigation costs, environmental claims, mitigation costs, judgments, settlements, fines, demands, damages, charges, and expenses) that arise out of or relate to: (i) any use, occupancy, or operations at the Premises or the Airport by State or State's Associates; or (ii) any wrongful, reckless, or negligent act or omission of State or State's Associates. State shall use attorneys, experts, and professionals that are reasonably acceptable to City in carrying out this obligation. This obligation does not require State to indemnify City and its officers and employees against losses (as defined above) that arise solely from the negligent acts or omissions of City and its officers and employees. The obligation stated in this Section 6.A shall survive the expiration or other termination of this Agreement with respect to matters arising before such expiration or other termination. These duties shall apply whether or not the allegations made are found to be true.

**B. Waiver.** State assumes all risk of the use of the Premises and the Airport, and State hereby knowingly, voluntarily, and intentionally waives any and all losses, liabilities, claims, and causes of action, of every kind and character, that may exist now or in the future (including, but not limited to, claims for business interruption and for damage to any aircraft) against City and its officers, employees, and volunteers arising from or relating to State's use, occupancy, or operations at the Premises or the Airport.

**C. Insurance.** At State's cost, State shall procure the following insurance coverage, or substantially equivalent coverage through the State Risk Management Fund established by Utah Code Title 63A, Chapter 4, Part 2 prior to entering the Premises, and State shall maintain its insurance coverage in force at all times when this Agreement is in effect in compliance with and subject to City's insurance requirements as they exist from time to time.:

i. Aircraft Liability with Additional Coverage. Aircraft liability insurance that includes premises liability, and, if applicable, mobile equipment coverage with a combined single limit for bodily injury and property damage of not less than one million dollars ($1,000,000) per occurrence (and one hundred thousand dollars ($100,000) per passenger seat for applicable claims), including, but not limited to, contractual liability coverage for State's performance of the indemnity agreement set forth in Section 6.A. If any such coverage is not available to State in the form of an aircraft liability policy, State shall obtain substantially similar coverage through a commercial general liability policy.

ii. Property. All risk property insurance coverage in an amount equal to the replacement cost (without deduction for depreciation) of the hangar (including the Office Improvements.) State is solely responsible for State's personal property, and State may purchase insurance for State's personal property as State may determine.

iii. Automobile. If State drives any automobile other than in the roadways and automobile parking areas at the Airport (including, but not limited to, if State parks an automobile in State's hangar when permitted by this Agreement), comprehensive automobile liability coverage for claims and damage due to bodily injury or death of any person or property damage arising out of State's ownership, maintenance, or use of any motor vehicles, whether owned, hired, or non-owned, of not less than five hundred thousand dollars ($500,000) single combined limit "per accident" for bodily injury and property damage.

iv. Pollution. State is responsible for environmental losses. Any pollution legal liability insurance obtained by State shall comply with the requirements for insurance that are stated in this Agreement. If State engages in self-fueling, State shall comply with City's self-fueling requirements, including, but not limited to, pollution legal liability insurance requirements.

v. Aircraft. State is solely responsible for any damage or loss to the Aircraft. State shall obtain insurance coverage for the Aircraft as State may determine.

vi. Business Interruption. State is solely responsible for all costs of business interruption, however incurred, and State may purchase business interruption insurance as State may determine.

## 7. Hazardous Materials

**A. No Violation of Environmental Laws.** State shall not cause or permit any Hazardous Materials to be used, produced, stored, transported, brought upon, or released on, under, or about the Premises or the Airport by State or State's Associates in violation of applicable Environmental Laws. State is responsible for any such violation as provided by Section 6.A of this Agreement.

**B. Response to Violations.** State agrees that in the event of a release or threat of release of any Hazardous Material by State or State's Associates at the Airport, State shall provide City with prompt notice of the same. State shall respond to any such release or threat of release in accordance with applicable Laws and Regulations. If City has reasonable cause to believe that any such release or threat of release has occurred, City may request, in writing, that State conduct reasonable testing and analysis (using qualified independent experts acceptable to City) to show that State is complying with applicable Environmental Laws. City may conduct the same at State's expense if State fails to respond in a reasonable manner. State shall cease any or all of State's activities as City determines necessary, in its sole and absolute discretion, in connection with any investigation, cure, or remediation. If State or State's Associates violate any Environmental Laws at the Airport (whether due to the release of a Hazardous Material or otherwise), State, at State's expense, shall have the following obligations, which shall survive any expiration or termination of

this Agreement: (i) promptly remediate such violation in compliance with applicable Environmental Laws; (ii) submit to City a written remediation plan, and City reserves the right to approve such plan (which approval shall not be unreasonably withheld) and to review and inspect all work; (iii) work with City and other governmental authorities having jurisdiction in connection with any violation; and (iv) promptly provide to City copies of all documents pertaining to any environmental concern that are not subject to State's attorney-client privilege.

**C. Obligations Affecting Permits.** To the extent that State is a co-permittee with City in connection with any permit relating to the environment at the Airport, or to the extent that any of State's operations in connection with this Agreement or otherwise may impact City's compliance with any such permit, State shall work cooperatively with City and other tenants and take all actions necessary to ensure permit compliance, and minimize the cost of such compliance, for the benefit of Airport operations.

**D. Obligations upon Termination and Authorized Transfers.** Upon any expiration or termination of this Agreement (and this obligation shall survive any such expiration or termination), and upon any change in possession of the Premises authorized by City, State shall demonstrate to City's reasonable satisfaction that State has removed any Hazardous Materials and is in compliance with applicable Environmental Laws. Such demonstration may include, but is not limited to, independent analysis and testing. The obligations of this Section 7 shall survive any termination of this Agreement.

## 8. Assignment and Subleasing

**A. Assignment.** State shall not assign any of its rights under this Agreement, including, but not limited to, rights in the Office Improvements, (whether such assignment is voluntarily or involuntarily, by merger, consolidation, dissolution, change in control, or any other manner), shall not encumber any such rights or record this Agreement (or any document or interest relating thereto), and shall not delegate any performance under this Agreement.

## 9. Damage, Destruction, and Condemnation

**A. Damage or Destruction of Premises.** If any portion of the Premises or the Office Improvements is damaged in any manner, State shall promptly remove from the Airport all debris and cause repairs to be made to restore the same to an orderly and safe condition. All work shall be performed in accordance with plans and specifications that are approved by City as being consistent with or better than the original improvements. State shall apply all proceeds that are made available from State's insurance policies (or those of any subtenant or assignee) to performing such work. If City performs such work pursuant to Section 10.B, such insurance proceeds shall be paid to City. If the Premises or Office Improvements are tenantable despite such damage, State shall not receive any abatement of State's rent obligations. To the extent that any portion is rendered untenantable by such damage in light of the purposes of this Agreement (as determined by City in its sole discretion), rent shall continue if State has business interruption

insurance, or if State does not have such insurance, City shall abate State's rent proportionately until repairs have been substantially completed (as determined by City in its sole discretion).

**B. Condemnation.** In the event of any condemnation proceeding in which all or any part of the Premises is taken (by a condemnor other than City), all compensation from such proceeding shall be paid to City, except that State may pursue a claim against the condemnor for the value of the Office Improvements and State's leasehold interest. In the event of a partial taking, City shall reduce the rent payable by State on a pro rata basis for portions of the Premises so taken. If City determines in its sole discretion that all or a material portion of the Premises will be (or has been) rendered untenantable as a result of such taking, City may terminate this Agreement by giving State a written notice of termination, and this Agreement shall terminate at the time specified in the notice (which shall not be less than thirty (30) days after the date of such notice).

## 10. Default

**A. State's Default.** The occurrence of any of the following events shall constitute a default by State under this Agreement: (i) State fails to timely pay any installment of rent or any additional rent; (ii) State violates any requirement under this Agreement (including, but not limited to, abandonment of the Premises) and fails to cure the same within twenty (20) days following written notice of such violation from City (except that in the case of insurance coverage required to be maintained, such period shall be five (5) days); (iii) State assigns or encumbers any right in this Agreement, delegates any performance hereunder, or subleases any part of the Premises (except as expressly permitted in this Agreement); (iv) State files a petition in bankruptcy, becomes insolvent, or has a petition filed against State in bankruptcy, insolvency, or for reorganization or appointment of a receiver or trustee which is not dismissed within sixty (60) days; (v) State petitions for or enters into an arrangement for the benefit of creditors, or suffers this Agreement to become subject to a writ of execution and such writ is not released within thirty (30) days; or (vi) State defaults in paying the City for constructing the Office Improvements in Exhibit B.

**B. Remedies.** Upon any default by State under this Agreement, City may (at any time) pursue any or all remedies available to City, including, but not limited to, the following: (i) perform in State's stead any obligation that State has failed to perform, and State shall promptly pay to City all costs incurred by City for such performance, together with interest and service fees for any past due amounts (as provided in Section 10.C) and an administrative charge equal to twenty percent (20%) of the cost incurred by City (which the parties agree is a reasonable estimate of and liquidated damages for City's overhead expenses associated with such performance); (ii) terminate State's rights under this Agreement upon delivering a written notice of termination; and (iii) re-enter and take possession of the Premises by any lawful means (with or without terminating this Agreement). State shall pay all costs and damages arising out of State's default, including, but not limited to, the cost of recovering possession of the Premises, the cost of improving and reletting the Premises (including, but not limited to, any real estate broker fees or marketing costs), and attorneys' fees and costs. Notwithstanding any termination or re-entry, State shall remain liable to pay the rent and additional rent required under this Agreement for the remaining term of this Agreement, and State shall pay City on demand for any deficiency in the same. No action by City or City's Associates shall be construed as an election by City to terminate this Agreement or accept any surrender of the Premises unless City provides State with a written notice expressly stating

that City has terminated this Agreement or accepted a surrender of the Premises. Following a default by State under this Agreement, City shall exercise commercially reasonable, good faith efforts to mitigate its damages as required by applicable Utah law.

**C. Past Due Amounts.** If State fails to pay when due any amount required to be paid by State under this Agreement, such unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date of such amount to the date of payment in full, with interest. In addition, City may also charge a sum of five percent (5%) of such unpaid amount as a service fee, which the parties agree is a reasonable estimate of and liquidated damages for City's additional costs for billing and collection arising from State's failure to make payment in a timely manner. All amounts due under this Agreement are and shall be deemed to be rent or additional rent, and shall be paid without abatement, deduction, offset, prior notice, or demand (unless expressly provided by the terms of this Agreement). City's acceptance of any past due amount (or its associated interest or service fee) shall not constitute a waiver of any default under this Agreement.

**D. Default by City.** City shall not be in default under this Agreement unless City fails to perform an obligation required of City under this Agreement within twenty (20) days after written notice by State to City. If the nature of City's obligation is such that more than twenty (20) days are reasonably required for performance or cure, City shall not be in default if City commences performance within such twenty (20) day period and thereafter diligently prosecutes the same to completion. In no event may State terminate this Agreement or withhold the payment of rent or other charges provided for in this Agreement as a result of City's default.

**E. Survival.** The provisions of this Section 10 and the remedies and rights provided in Section 6 shall survive any expiration or termination of this Agreement.

## 11. Expiration or Termination

### A. Disposition of Hangar and Office Improvements.

i. Disposition If Agreement Terminates Before Expiration Date. If this Agreement terminates for any reason before the Expiration Date, within ninety (90) days after such terminates, City, in its sole discretion, may determine to accept title to all or any portion of the hangar and Office Improvements. Upon City accepting any such title, all of State's rights, title, and interests in the same shall be forfeited to City and title thereto shall vest in City automatically. State shall surrender the Premises upon termination (and shall surrender any Office Improvements as accepted by City) in accordance with Section 11.B.

ii. Disposition Upon Expiration. Upon the expiration of this Agreement, the City shall take full possession of the Premises and all buildings, fixtures, appurtenances and personal property left thereon.

**B. Surrender of Premises.** Upon any expiration or termination of this Agreement, State, at State's sole cost, shall (i) promptly and peaceably surrender to City the Premises (and any Office Improvements accepted by the City pursuant to Section 11.A) "broom clean" and in good order and condition; (ii) repair in a good and workmanlike manner any damage to the Premises or

the Airport that arises from or relates to State's use, occupancy, or operations under this Agreement (including, but not limited to, while removing any property upon expiration or termination); (iii) deliver to City all keys and access credentials relating to the Airport; (iv) perform State's environmental obligations as provided in Section 7; and (v) remove all movable personal property and trade fixtures (including signage) that are not owned by City, (except that State must obtain City's prior written consent to remove any such property if State is in default under this Agreement or if such removal may impair the structure of any building). Upon any expiration or termination of this Agreement (which includes, but is not limited to, termination for abandonment of the Premises), all property that State leaves on the Premises shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed, or otherwise disposed of by City without notice to, and without any obligation to account to, State or any other person (except that Office Improvements shall be as provided in Section 11.A). State shall not be released from State's obligations under this Agreement in connection with surrender of the Premises until City has inspected the Premises and delivered to State a written acceptance of such surrender.

**C. Holding Over.** If State remains in possession of the Premises after any expiration or termination of this Agreement, such occupancy shall not waive any default under this Agreement and City may terminate such occupancy as a tenancy at will in accordance with state law. During such occupancy, State shall comply with all provisions of this Agreement that are applicable to an at-will tenancy, and State shall pay the following rent: ground rent at the highest rate then charged at the Airport and rent for the Office Improvements at fair market value based on City's survey of rent for similarly situated facilities at the Airport and at other western airports (which City shall determine in its sole discretion).

**D. Survival.** The provisions of this Section 11 shall survive any expiration or termination of this Agreement.

## 12. General Provisions

**A. General Provisions.** This Agreement is subject to the General Provisions set forth in Exhibit E.

**B. Notices.** Any notice, demand, written consent, or other communication required to be in writing under this Agreement shall be given in writing by personal delivery, express mail (postage prepaid), nationally recognized overnight courier with all fees prepaid (such as, by way of example, Federal Express or DHL), or certified mail (return receipt requested and postage prepaid) when addressed to the respective parties as follows:

If to City:
Airport Manager
St. George Regional Airport
175 E. 200 N.
St. George, Utah 84770

If to State:
DFCM
Real Estate Division
4315 S. 2700 West, 3rd Floor
Taylorsville, UT 84129

with a required, simultaneous copy to:
City Attorney
City of St. George
175 E. 200 N.
St. George, Utah 84770

with a required, simultaneous copy to:

Either City or State may change its notice address by giving written notice (as provided herein) of such change to the other party. Any notice, demand, or written consent or communication shall be deemed to have been given, and shall be effective, upon compliance with this Section 12.B and delivery to the notice address then in effect for the party to which the notice is directed; provided, however, that such delivery shall not be defeated or delayed by any refusal to accept delivery or an inability to effect delivery because of an address change that was not properly communicated.

**C. Incorporation.** All exhibits referred to in this Agreement, as they may be amended from time to time, are incorporated in and are a part of this Agreement. Any proposal materials submitted by State in response to a solicitation by City, to the extent accepted by City, shall also be incorporated in this Agreement. State hereby acknowledges receiving Exhibits A – F to this Agreement.

**D. Binding Obligation.** State warrants and represents that it has the right, power, and legal capacity to enter into and perform its obligations under this Agreement as a legal, valid, and binding obligation of State.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

| CITY OF ST. GEORGE | STATE OF UTAH |
|---|---|
| _____ | _____ |
| Michele Randall, Mayor | By: Lee Fairbourn |
| | Its: Real Estate Manager |
| Attest: | Approved as to form: |
| _____ | _____ |
| Christina Fernandez, City Recorder | City Attorney |

## EXHIBIT A

## PREMISES

Property description of the Premises:

The hangar (existing or to be built) and its immediate environs located on Lot(s) 56J on the St. George Airport Hangar Parcel Plat.

## EXHIBIT B

## CONSTRUCTION REQUIREMENTS

**Construction will be performed by Doug Hunt Construction according to the plans included herein prepared by L. R. Pope Engineering Inc.**

**Doug Hunt Construction's bid was awarded in the amount of $321,547.00 of which the State's portion will be $198,500.00 except as approved via change order by the State.**

## EXHIBIT C
## ATTACHMENT 1

## INITIAL OFFICE IMPROVEMENTS

Date for State's Access to the Premises: NA

The Commencement Date for this Agreement is stated in Section 2.

Schedule for Construction:

Commencement of the Work: April 25, 2022

Substantial Completion: _____

Other schedule requirements shall be as set forth in the schedule submitted to City by State.

City shall cause the construction of the plans and specifications for Office Improvements, which may be summarized as follows:

**Hangar and appurtenances as detailed in plans approved by the City of St. George**

## EXHIBIT D

## INSURANCE REQUIREMENTS

**D.1. General Requirements.** At all times when this Agreement is in effect Tenant shall maintain in force all required insurance coverage and shall have on file with the City Certificates of Insurance evidencing the same. Such certificates shall provide that coverage will not be canceled, suspended, voided, or reduced without at least thirty (30) days prior written notice to the City. Ratings for the financial strength of the companies providing Tenant's insurance policies shall be disclosed in such certificates and shall be "A- VII" or stronger as published in the latest Best's Key Rating Guide (or a comparable rating from a comparable rating service). If a lower rating is proposed, City may examine the financial strength of the insurance company proposed to provide coverage and may consent to a lower rating in the City's sole and absolute discretion, and City may also require additional assurances from Tenant. All certificates shall be signed by a person authorized by the insurer and licensed by the State of Utah. All policies (except any policies required for workers' compensation or errors and omissions) and the certificates evidencing coverage shall name City and its officers, employees, and volunteers as additional insureds (or in the case of property coverage, City shall be named as a loss payee). Tenant shall provide for a renewal of all insurance coverage on a timely basis to prevent any lapse in coverage. City retains the right to approve any deductibles, and Tenant shall notify City of any material erosion of the aggregate limits of any policy. Tenant's policies shall be primary. Such policies shall extend insurance to cover Tenant's contractual obligations under this Agreement.

**D.2 Minimum Requirements.** City's insurance requirements are minimum requirements, and Tenant is responsible to obtain adequate insurance coverage as Tenant may determine. Except as otherwise expressly set forth in this Agreement, Tenant assumes all risk under this Agreement (including, but not limited to, business interruption claims) whether or not insured.

**D.3. Waiver of Subrogation.** Notwithstanding any other provision contained in this Agreement, each of the parties hereby waives any rights of subrogation it may have against the other party for loss or damage from any risk that is covered by insurance (including, but not limited to, claims for business interruption). Each of the parties shall obtain a clause or endorsement providing for such waiver of subrogation in any policies of insurance required under this Agreement.

**D.4. Terms Subject to Change.** City, in its sole and absolute discretion, reserves the right to review and adjust at any time Tenant's required insurance limits, types of coverage, and any other terms applicable to insurance to insure against any risk associated with this Agreement or Tenant's use, occupancy, or operations at the Airport. Among other things, City may review any or all insurance coverage on a periodic basis and in connection with any specific activity or event associated with the Airport or proposed by Tenant.

**D.5 Stopping Operations.** Among City's remedies, if at any time Tenant's insurance coverage is not in effect as required herein, City may (but is not required to) stop all or any portion of Tenant's operations without liability to City until Tenant fully restores such coverage.

## EXHIBIT E

## GENERAL PROVISIONS

### E.1 Governmental Provisions.

**a. Nondiscrimination Regarding USDOT Programs.** State for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), as a part of the consideration hereof, does hereby agree that in the event facilities are constructed, maintained, or otherwise operated on the property described in this Agreement for a purpose for which a U.S. Department of Transportation program or activity is extended, or for another purpose involving the provision of similar services or benefits, State shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said regulations may be amended.

**b. Nondiscrimination Regarding Facilities, Improvements, and Federally Funded Activities.** State for itself, successors in interest, and assigns (to the extent successors and assigns are permitted by this Agreement), as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: (1) no person on the grounds of race, creed, color, national origin, sex, age, or handicap shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities or any activity conducted with or benefiting from Federal assistance, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that State shall use the Premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, as said regulations may be amended, and other applicable Laws and Regulations, and shall obtain such compliance from any sublessees or other parties holding lower tier agreements (to the extent the same are permitted by this Agreement).

**c. No Exclusive Rights.** Nothing in this Agreement shall be construed to grant to State any exclusive right or privilege for the conduct of any activity on the Airport (except to lease the Premises for State's exclusive use as provided herein).

**d. Agreement Preserves City's Compliance**. This Agreement shall be interpreted to preserve City's rights and powers to comply with City's Federal and other governmental obligations.

**e. Subordination to City's Government Commitments**. This Agreement is subordinate to the provisions of any agreement between City and the United States or other governmental authority (regardless of when made) that affects the Airport, including, but not limited to, agreements governing the expenditure of Federal funds for Airport improvements. In the event that the Federal Aviation Administration or other governmental authority requires any modification to this Agreement as a condition of City entering any agreement or participating in

any program applicable to the Airport (including, but not limited to, those providing funding), State agrees to consent to any such modification. If a governmental authority determines that any act or omission of State or State's Associates has caused or will cause City to be non-compliant with any of City's government commitments (including, but not limited to, any assurances or covenants required of City or obligations imposed by law), State shall immediately take all actions that may be necessary to preserve City's compliance with the same. Without liability to City, City shall have the right to terminate this Agreement and reenter and repossess any portion of the Premises if the U.S. Department of Transportation or other governmental authority having jurisdiction expressly requires any such action, subject to any review that may be afforded to State by such authority.

**E.2. Subordination to Financing and Matters of Record.** This Agreement is subordinate to the provisions of any agreements or indentures entered by City (regardless of when entered) in connection with any debt financing applicable to the Airport and is subordinate to any matter of record affecting the real property of the Airport.

**E.3. Force Majeure.** No act or event, whether foreseen or unforeseen, shall operate to excuse State from the prompt payment of rent or any other amounts required to be paid under this Agreement. If City (or State in connection with obligations other than payment obligations) is delayed or hindered in any performance under this Agreement by a force majeure event, such performance shall be excused to the extent so delayed or hindered during the time when such force majeure event is in effect, and such performance shall promptly occur or resume thereafter at the expense of the party so delayed or hindered. A "force majeure event" is an act or event, whether foreseen or unforeseen, that prevents a party in whole or in part from performing as provided in this Agreement, that is beyond the reasonable control of and not the fault of such party, and that such party has been unable to avoid or overcome by exercising due diligence, and may include, but is not limited to, acts of nature, war, riots, strikes, accidents, fire, and changes in law.

**E.4. Rights and Remedies.** Except as expressly set forth in this Agreement, the rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist.

**E.5. Attorney's Fees.** If any action is brought to recover any rent or other amount under this Agreement because of any default under this Agreement, to enforce or interpret any of the provisions of this Agreement, or for recovery of possession of the Premises, the party prevailing in such action shall be entitled to recover from the other party reasonable attorney's fees, court costs, the fees of experts and other professionals, and other costs arising from such action (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered. State shall be responsible for all expenses, including, but not limited to, attorneys fees, incurred by City in any case or proceeding involving State or any permitted assignee of State under or related to any bankruptcy or insolvency law. The provisions of this Section E.5 shall survive any expiration or termination of this Agreement.

**E.6. Governing Law, Venue, and Waiver of Jury Trial.** This Agreement and the respective rights and obligations of the parties shall be governed by, interpreted, and enforced in accordance

with the laws of the State of Utah. Venue for any action arising out of or related to this Agreement or actions contemplated hereby may be brought in the United States District Court for Utah or the District Court for the State of Utah sitting in Washington County, Utah so long as one of such courts shall have subject matter jurisdiction over such action or proceeding, and each of the parties hereby irrevocably consents to the jurisdiction of the same and of the appropriate appellate courts there from. Process in any such action may be served on any party anywhere in the world. CITY AND STATE EACH KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER OF THEM AGAINST THE OTHER FOR ALL MATTERS ARISING OUT OF OR RELATING TO THIS LEASE OR ANY USE, OCCUPANCY, OR OPERATIONS AT THE PREMISES OR THE AIRPORT. The provisions of this Section E.6 shall survive any expiration or termination of this Agreement.

**E.7. Amendments and Waivers.** No amendment to this Agreement shall be binding on City or State unless reduced to writing and signed by both parties. No provision of this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

**E.8. Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect if both the economic and legal substance of the transactions that this Agreement contemplates are not affected in any manner materially adverse to any party. If any provision of this Agreement is held invalid, illegal, or unenforceable, the parties shall negotiate in good faith to modify this Agreement to fulfill as closely as possible the original intents and purposes of this Agreement.

**E.9. Merger.** This Agreement constitutes the final, complete, and exclusive agreement between the parties on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied on any statement, representation, warranty, nor agreement of the other party except for those expressly contained in this Agreement.

**E.10. Art.** State shall not install any object in the Premises that constitutes a work of visual art under the Visual Artists Rights Act of 1990 unless State has obtained City's prior written approval and provided City with a written waiver that complies with the requirements of such Act or its successor.

**E.11. Confidentiality.** State acknowledges that City is subject to legal requirements regarding the public disclosure of records. State shall comply with such laws in connection with making any request that City maintain a record confidentially, and if State complies with the same State shall have the right to defend any such request for confidentiality at State's expense.

**E.12. Relationship of Parties.** This Agreement does not create any partnership, joint venture, employment, or agency relationship between the parties. Nothing in this Agreement shall confer upon any other person or entity any right, benefit, or remedy of any nature.

**E.13. Further Assurances.** Each party shall execute any document or take any action that may be necessary or desirable to consummate and make effective a performance that is required under this Agreement.

**E.14. Miscellaneous.** The headings in this Agreement are provided for convenience only and do not affect this Agreement's construction or interpretation. All references to Sections are to Sections in this Agreement. Each provision to be performed by State shall be construed as both a covenant and a condition. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the drafting party. If State consists of more than one individual or entity, the obligations of all such individuals and entities shall be joint and several. References in this Agreement to any period of days shall mean calendar days unless specifically stated otherwise.

**E.15. Time of Essence.** Time is of the essence of this Agreement.

## EXHIBIT F

## HANGAR RULES

The rules set forth in this Exhibit F may be modified by City from time to time upon written notice to State.

**F.l Authorized Use Only.** State shall use the Premises only for the purposes permitted by this Agreement. No items unrelated to that purpose are to be stored on the Premises. State may not store any property outside of the Office Improvements.

**F.2 Storage of Certain Materials.** State shall store no explosives, solvents, or flammables with a f1ash point below 100 degrees Fahrenheit (100° F) on the Premises. Lubricating oil stored on the Premises must be in closed containers.

**F.3 Close Doors.** State shall assure that all hangar doors for the Office Improvements are kept closed when the hangar is unattended.

**F.4 Aircraft Maintenance and Repairs.** State shall not use the Premises for spray painting or doping (except for de minimus painting on a portion of the Aircraft on a non-commercial basis). State may make or cause to be made on the Premises necessary repairs, light maintenance, and inspections to the Aircraft as required by Laws and Regulations to allow the Aircraft to be maintained in an airworthy condition. On a non-commercial basis, State may also construct an Aircraft within the Office Improvements. Mechanics hired by State to repair, maintain, or inspect said Aircraft must be properly licensed according to Laws and Regulations.

**F.5 Fire Extinguisher**. State shall furnish a portable fire extinguisher (which meets the applicable fire code) and shall keep the same in the Office Improvements at all times, provide for the yearly inspection thereof by a certified fire extinguisher inspector, and report the use of any fire extinguisher equipment on the Premises to the Airport Manager.

**F.6 Clean Premises.** State shall keep the Premises clean and free of debris and shall store garbage in a covered metal container.

**F.7 Hoisting Devices.** State shall not use any hoisting device which in any way attaches to the structure of the Office Improvements. This does not preclude the use of a horizontal winch or similar device used to move the Aircraft into a hangar.

**F.8 Self-Fueling.** State shall not conduct any self-fueling operations on the Premises. State agrees that all self-fueling operations shall be subject to the Airport's self-fueling policies and fuel flowage fees.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 03

**Subject:**

Consider approval of a resolution accepting and adopting the Preliminary Fiscal Year 2022-2023 Budget of the City of St. George and to set the dates for the required public hearings.

**Item at-a-glance:**

Staff Contact: Robert Myers

Applicant Name: City of St. George

Reference Number: NA

Address/Location:

175 East 200 North

**Item History (background/project status/public process):**

State Law requires the recommended budget to be presented to the Mayor & City Council on or before the first regular meeting in May of each year and to adopt the final budget on or before June 30th of each year. Staff recommends approval of the resolution to accept and adopt the Preliminary Fiscal Year 2022-2023 Budget and to set the public hearing dates for the final budget as June 2nd and June 16th, 2022.et.

**Staff Narrative (need/purpose):**

The city's budget represents the financial plan for delivering the municipal services that are expected and depended on by the residents, businesses and visitors to the City of St. George. Development of the budget involves a significant investment of time for all levels of the organization as we work to develop a balanced budget that reflects the city's commitment to provide services that focus on people and advance an active, thriving, and fiscally healthy community. This year's budget development focused around addressing critical needs in public safety, infrastructure and facility improvements, and continuing to provide the high quality services expected by our community. As part of the Thursday May 12th and Thursday May 26th regular work meetings staff will review the FY 2022-2023 Recommended Budget with the Mayor and City Council. This year's public hearings on the recommended budget are proposed to be held during the regularly scheduled City Council meetings on Thursday June 2, 2022 and Thursday June 16, 2022.A copy of the budget will be available for public review following tonight's City Council meeting on the City's website at www.sgcity.org and at City Hall in the City Recorder's Office.

**Name of Legal Dept approver:** NA

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Recommend approval of the resolution to accept and adopt the Preliminary Fiscal Year 2022-2023 Budget and to set the public hearing dates for the final budget as June 2nd and June 16th, 2022.

**RESOLUTION NO. _____**

**ADOPTING THE 2022-2023 PRELIMINARY FISCAL BUDGET FOR THE CITY OF ST. GEORGE, UTAH.**

WHEREAS, pursuant to the Uniform Fiscal Procedures Act for Utah Cities (the "Act"), the City of St. George is required to adopt an annual budget with regard to the funds of the City; and

WHEREAS, the City has complied with the provisions of the Act in adopting a budget, and setting and conducting public hearings on such budget.

NOW, THEREFORE, at a regular meeting of the City Council of the City of St. George, Utah, duly called, noticed and held on the 5th day of May, 2022, upon motion duly made and seconded, it is unanimously

RESOLVED that the preliminary 2022-2023 fiscal budget for the City of St. George, attached hereto as Exhibit "A" including all schedules thereto, is hereby adopted, subject to later amendment.

VOTED UPON AND PASSED BY THE CITY COUNCIL OF THE CITY OF ST. GEORGE AT A REGULAR MEETING OF SAID COUNCIL HELD ON THE 5TH DAY OF MAY, 2022

ST. GEORGE CITY:

_____
Michele Randall, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:
City Attorney's Office

_____

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 04

**Subject:**

Consider approval of a resolution entering into an Interlocal Agreement with Washington County for the Little Valley Soccer Artificial Turf Fields project.

**Item at-a-glance:**

Staff Contact: Shane Moore

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

2330 Horseman Park Drive

**Item History (background/project status/public process):**

This interlocal agreement is for funding of the artificial turf fields at the Little Valley Soccer complex. This project will replace the existing turf grass fields with artificial turf grass. Washington County has agreed to help fund this project by contributing $1.5 million from Transient Room Tax (TRT) funds. Staff recommends approval.

**Staff Narrative (need/purpose):**

The Little Valley soccer complex currently is a hybrid Bermuda grass sand based complex. By switching these fields to artificial turf the City will save over 18 million gallons of water. The soccer complex is heavily used during the winter months for soccer, lacrosse, futsal, flag football and many other sports. These natural grass fields can only handle a small amount of play during the winter season because the grass is not actively growing. This project would allow more use for sports practice and tournaments.

**Name of Legal Dept approver:** Collin Simonsen

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Approval

**RESOLUTION NO. _____**

**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF ST. GEORGE AND WASHINGTON COUNTY, UTAH FOR TRT FUNDING TO INSTALL ARTIFICIAL TURF AT THE LITTLE VALLEY SPORTS COMPLEX**

**WHEREAS,** Washington County receives tourism tax revenues that may only be spent to promote and establish tourism and recreation in the county; and

**WHEREAS,** pursuant to Utah Code Annotated 11-13-1 *et seq.*, public agencies are authorized to enter into mutually advantageous agreements for joint or cooperative action and both St. George and the County are public agencies as defined in Utah Code Annotated 11-13-103(19); and

**WHEREAS,** the Washington County Tourism Tax Advisory Board ("TAB") shall make recommendations to the county legislative body on the best use of tourism tax revenues; and

**WHEREAS,** events and projects that promote and establish tourism and recreation often request funds from the county tourism tax revenues; and

**WHEREAS,** Washington County Code 2-6-5(C) establishes that funding to other governmental agencies for capital projects shall be done through an interlocal agreement and the parties have come to terms with an interlocal agreement ("Agreement); and

**WHEREAS,** the City of St. George is preparing to improve its Little Valley Sports Complex by installing artificial turf on three of its existing grass fields ("Project"); the Project will reduce maintenance costs, significantly reduce water use, and provide a longer season to host sporting events; and

**WHEREAS,** the Project will have an approximate total cost of $2,919,720; and

**WHEREAS,** the City of St. George will contribute $1,419,720 total Project costs and St. George has requested additional funds of $1,500,000 from the County Transient Room Tax ("TRT") fund to assist with construction of the Project; and

**WHEREAS,** TAB recommends to approve the $1,500,000 of County TRT funding for the Project; and

**WHEREAS,** Washington County desires to provide funding to the City of St. George to complete construction of this Project.

**NOW THEREFORE, BE IT RESOLVED** that the attached "Interlocal Cooperation Agreement between the City of St. George and Washington County, Utah for Funding Installation of Turf Fields at the Little Valley Sports Complex" is hereby entered into. This resolution is effective immediately.

PASSED AND ADOPTED by the City Council of the City of St. George, this 5th day of May, 2021.

ST. GEORGE CITY:

Michele Randall, Mayor

ATTEST:

Christina Fernandez, City Recorder

APPROVED AS TO FORM:

City Attorney's Office

Collin Simonsen, Assistant City Attorney

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

INTERLOCAL AGREEMENT BETWEEN WASHINGTON COUNTY, UTAH AND THE CITY OF ST. GEORGE FOR FUNDING INSTALLATION OF TURF FIELDS AT THE LITTLE VALLEY SPORTS COMPLEX

This Interlocal Agreement ("Agreement") is by and between the City of St. George ("St. George") with offices at 175 East 200 North, St. George Utah 84770 and Washington County, Utah, ("County") with offices at 197 East Tabernacle Street, St. George, Utah 84770.

RECITALS

WHEREAS, Washington County receives tourism tax revenues that may only be spent to promote and establish tourism and recreation in the county;

WHEREAS, pursuant to Utah Code Annotated 11-13-1 *et seq.*, public agencies are authorized to enter into mutually advantageous agreements for joint or cooperative action and both St. George and the County are public agencies as defined in Utah Code Annotated 11-13-103(19);

WHEREAS, the Washington County Tourism Tax Advisory Board ("TAB") shall make recommendations to the county legislative body on the best use of tourism tax revenues;

WHEREAS, events and projects that promote and establish tourism and recreation often request funds from the county tourism tax revenues;

WHEREAS, Washington County Code 2-6-5(C) establishes that funding to other governmental agencies for capital projects shall be done through an interlocal agreement;

WHEREAS, St. George is preparing to improve its Little Valley Sports Complex buy installing artificial turf on three of its existing grass fields ("Project"); the Project will reduce maintenance costs, significantly reduce water use, and provide a longer season to host sporting events;

WHEREAS, the Project will have an approximate total cost of $2,919,720;

WHEREAS, St. George will contribute $1,419,720 total Project costs and St. George has requested additional funds of $1,500,000 from the County Transient Room Tax ("TRT") fund to assist with construction of the Project;

WHEREAS, TAB recommends to approve the $1,500,000 of County TRT funding for the Project; and

WHEREAS, County desires to provide funding to St. George to complete construction of this Project.

THEREFORE, the parties agree as follows:

## AGREEMENT

Washington County will fund $1,500,000 within thirty days after the Effective Date of this Agreement, to St. George City to be used for the installation of the Little Valley Turf fields.

St. George agrees to use the funds for of the Project in compliance with the requirements of Utah Code sections 59-12-301, 59-12-603(2), and 17-50-303.

### 1. INTERLOCAL AGREEMENT REQUIREMENTS

1.1 Resolution. This Agreement shall be authorized and adopted by resolution of each legislative body of each party to this Agreement, pursuant to and in accordance with the provisions of Utah Code Ann. 11-13-202.5;

1.2 Attorney Review. As this Agreement provides for St. George to make an improvement to real property, this Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the Utah Code Section 11-13-202.5(3)

1.3 Effective Date. The effective date of this Agreement shall be May 3, 2022 and this Agreement shall terminate upon the completion of the Project.

1.4 Filing. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party.

### 2. GENERAL TERMS

2.1 Authorization. Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth.

2.2 Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.

2.3 Severability. The articles, sections, paragraphs, sentences, clauses, and phrases of this Agreement, and the application thereof, are expressly declared to be severable. If any such article, section, paragraph, sentence, clause, or phrase, or the application thereof, shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining articles, sections, paragraphs, sentences, clauses, or phrases, or applications, of this Agreement.

2.4 Governing Law. This Agreement shall be governed according to the laws of the State of Utah.

2.5 Captions. The Captions to the various Articles and Sections of this Agreement are for convenience and ease of reference only, and neither define, limit, augment, nor describe the scope, content, and/or intent of this Agreement or any part or parts hereof.

2.6 Counterparts. This Agreement may be executed simultaneously in one or more counterpart(s), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

2.7 Entire Agreement. This Agreement contains the entire agreement between the County and St. George concerning its subject matter and shall not be modified except by written agreement duly executed by the Parties hereto. There are no oral understandings or agreements not set forth herein.

*(Signatures on next page)*

ST. GEORGE CITY

_____ Date: _____
Michelle Randall, Mayor

ATTEST:

_____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

WASHINGTON COUNTY

_____ Date: _____
Victor Iverson, Chair
Washington County Commission

ATTEST:

_____
Susan Lewis
Washington County Clerk-Auditor

APPROVED AS TO FORM:

_____
County Attorney

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 05

**Subject:**

Consider approval of a resolution entering into an Interlocal Agreement with Washington County for the Little Valley Pickleball expansion project.

**Item at-a-glance:**

Staff Contact: Shane Moore

Applicant Name: City of St. George

Reference Number: N/A

Address/Location:

2330 Horseman Park Dr

**Item History (background/project status/public process):**

This interlocal agreement is for funding nine (9) additional courts at the Little Valley Pickleball Complex. The County has agreed to contribute $1 million of Transient Room Tax (TRT) funds to the project. Staff recommends approval.

**Staff Narrative (need/purpose):**

The Little Valley complex is heavily used for tournaments, leagues, and drop in play. This facility's leagues fill to capacity within minutes of registration opening. Our City tournaments sellout and have waiting lists. These courts will provide more opportunity for play. This project will include a championship court with bleachers for spectators.

**Name of Legal Dept approver:** Collin Simonson

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Approval

**RESOLUTION NO. _____**

**A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT BETWEEN THE CITY OF ST. GEORGE AND WASHINGTON COUNTY FOR TRT FUNDING TO EXPAND THE LITTLE VALLEY PICKLEBALL COMPLEX**

**WHEREAS,** Washington County receives tourism tax revenues that may only be spent to promote and establish tourism and recreation in the county; and

**WHEREAS,** pursuant to Utah Code Annotated 11-13-1 *et seq.*, public agencies are authorized to enter into mutually advantageous agreements for joint or cooperative action and both St. George and the County are public agencies as defined in Utah Code Annotated 11-13-103(19); and

**WHEREAS,** the Washington County Tourism Tax Advisory Board ("TAB") shall make recommendations to the county legislative body on the best use of tourism tax revenues; and

**WHEREAS,** events and projects that promote and establish tourism and recreation often request funds from the county tourism tax revenues; and

**WHEREAS,** Washington County Code 2-6-5(C) establishes that funding to other governmental agencies for capital projects shall be done through an interlocal agreement and the parties have come to terms with an interlocal agreement ("Agreement"); and

**WHEREAS,** the City of St. George is preparing expand its Little Valley Pickleball Complex ("Project"); the Project would expand from 24 court to 34 courts, including a championship court with stadium seating; and

**WHEREAS,** the Project, when finished, would make the Little Valley Pickleball Complex the largest public Pickleball Complex in the state and will help to draw visitors and competitors from outside Washington County; and

**WHEREAS,** the Project will have a total cost of $2,022,545; and

**WHEREAS,** the City of St. George will contribute $1,022,545 in total Project costs and St. George has requested additional funds of $1,000,000 from the County Transient Room Tax ("TRT") fund to assist with construction of the Project; and

**WHEREAS,** TAB recommends to approve the $1,000,000 of County TRT funding for the Project; and

**WHEREAS**, Washington County desires to provide funding to the City of St. George to complete construction of this Project.

**NOW THEREFORE, BE IT RESOLVED** that the attached "Interlocal Cooperation Agreement between the City of. St. George and Washington County, Utah for TRT Funding to Expand the Little Valley Pickleball Complex" is hereby entered into. This resolution is effective immediately.

PASSED AND ADOPTED by the City Council of the City of St. George, this 5th day of May, 2021.

ST. GEORGE CITY:

Michele Randall, Mayor

ATTEST:

Christina Fernandez, City Recorder

APPROVED AS TO FORM:

City Attorney's Office

Collin Simonsen, Assistant City Attorney

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

INTERLOCAL AGREEMENT BETWEEN WASHINGTON COUNTY, UTAH AND THE CITY OF ST. GEORGE FOR FUNDING AN EXPANSION OFTHE LITTLE VALLEY PICKLEBALL COMPLEX

This Interlocal Agreement ("Agreement") is by and between the City of St. George ("St. George") with offices at 175 East 200 North, St. George Utah 84770 and Washington County, Utah, ("County") with offices at 197 East Tabernacle Street, St. George, Utah 84770.

RECITALS

WHEREAS, Washington County receives tourism tax revenues that may only be spent to promote and establish tourism and recreation in the county;

WHEREAS, pursuant to Utah Code Annotated 11-13-1 *et seq.*, public agencies are authorized to enter into mutually advantageous agreements for joint or cooperative action and both St. George and the County are public agencies as defined in Utah Code Annotated 11-13-103(19);

WHEREAS, the Washington County Tourism Tax Advisory Board ("TAB") shall make recommendations to the county legislative body on the best use of tourism tax revenues;

WHEREAS, events and projects that promote and establish tourism and recreation often request funds from the county tourism tax revenues;

WHEREAS, Washington County Code 2-6-5(C) establishes that funding to other governmental agencies for capital projects shall be done through an interlocal agreement;

WHEREAS, St. George is preparing expand its Little Valley Pickleball Complex ("Project"); the Project would expand from 24 court to 34 courts, including a championship court with stadium sitting;

WHEREAS, the Project, when finished, would make the Little Valley Pickleball Complex the largest public Pickleball complex in the state and will help to draw visitors and competitors from outside Washington County;

WHEREAS, the Project will have a total cost of $2,022,545;

WHEREAS, St. George will contribute $1,022,545 in total Project costs and St. George has requested additional funds of $1,000,000 from the County Transient Room Tax ("TRT") fund to assist with construction of the Project;

WHEREAS, TAB recommends to approve the $1,000,000 of County TRT funding for the Project; and

WHEREAS, County desires to provide funding to St. George to complete construction of this Project.

THEREFORE, the parties agree as follows:

## AGREEMENT

Washington County will fund $1,000,000 within thirty days after the Effective Date of this Agreement, to St. George City to be used to expand the Little Valley Pickleball Complex.

St. George agrees to use the funds for of the Project in compliance with the requirements of Utah Code sections 59-12-301, 59-12-603(2), and 17-50-303.

## 1. INTERLOCAL AGREEMENT REQUIREMENTS

1.1 Resolution. This Agreement shall be authorized and adopted by resolution of each legislative body of each party to this Agreement, pursuant to and in accordance with the provisions of Utah Code Ann. 11-13-202.5;

1.2 Attorney Review. As this Agreement provides for St. George to make an improvement to real property, this Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party pursuant to and in accordance with the Utah Code Section 11-13-202.5(3)

1.3 Effective Date. The effective date of this Agreement shall be May 3, 2022 and this Agreement shall terminate upon the completion of the Project.

1.4 Filing. A duly executed original counterpart of this Agreement shall be filed immediately with the keeper of records of each Party.

## 2. GENERAL TERMS

2.1 Authorization. Each individual executing this Agreement does represent and warrant to each other so signing (and each other entity for which another person may be signing) that he or she has been duly authorized to sign this Agreement in the capacity and for the entities set forth.

2.2 Recitals. The Recitals contained in this Agreement are incorporated into the Agreement.

2.3 Severability. The articles, sections, paragraphs, sentences, clauses, and phrases of this Agreement, and the application thereof, are expressly declared to be severable. If any such article, section, paragraph, sentence, clause, or phrase, or the application thereof, shall be declared invalid or unconstitutional by the valid judgment or decree of a Court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining articles, sections, paragraphs, sentences, clauses, or phrases, or applications, of this Agreement.

2.4 Governing Law. This Agreement shall be governed according to the laws of the State of Utah.

2.5 Captions. The Captions to the various Articles and Sections of this Agreement are for convenience and ease of reference only, and neither define, limit, augment, nor describe the scope, content, and/or intent of this Agreement or any part or parts hereof.

2.6 Counterparts. This Agreement may be executed simultaneously in one or more counterpart(s), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

2.7 Entire Agreement. This Agreement contains the entire agreement between the County and St. George concerning its subject matter and shall not be modified except by written agreement duly executed by the Parties hereto. There are no oral understandings or agreements not set forth herein.

*(Signatures on next page)*

ST. GEORGE CITY

_____ Date: _____
Michelle Randall, Mayor

ATTEST:

_____
City Recorder

APPROVED AS TO FORM:

_____
City Attorney

WASHINGTON COUNTY

_____ Date: _____
VICTOR IVERSON, Chair
Washington County Commission

ATTEST:

_____
Susan Lewis
Washington County Clerk-Auditor

APPROVED AS TO FORM:

_____
Deputy County Attorney

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 06

**Subject:**

Consider approval of an ordinance amending Section 10-13E-4 of City Code for designating a landmark site and to amend the allowed conditional uses for landmarks. The proposed amendments would extend the required age of the structure to 100 years old and remove the option to use the landmark site as a short-term rental.

**Item at-a-glance:**

Staff Contact: Carol Davidson

Applicant Name: City of St. George

Reference Number: 2022-ZRA-001

Address/Location:

N/A

**Item History (background/project status/public process):**

The landmark criterion was first established in 2006. At that time, the structure was required to be a minimum of 50 years old. In 2019 that qualification was changed to being built before 1970. This current proposal changes the age of the structure to be at least 100 years old. The last time a change was made to the conditional use portion of this chapter was in 2006 when the second, third, and fourth conditions were created. This proposal will remove the option to use the landmark site as a short-term rental. At their meeting held on April 12, 2022, the Planning Commission held a public hearing and recommended approval of the application.

**Staff Narrative (need/purpose):**

The proposed changes to Section 10-13E-4 of the City Code are based on feedback staff has received from the City Council.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

The Planning Commission recommended approval of this zoning regulation amendment to Section 10-13E-4 of the City Code.

St.George
Community Development

Zoning Regulation Amendment

PLANNING COMMISSION AGENDA REPORT: 04/12/2022
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

Amendment to Title 10-13E-4
**Landmark Designation**
(Case No. 2022-ZRA-001)

**REQUEST:** To revise Title 10-13E-4(Landmark Sites)

**APPLICANT:** City of St. George

**BACKGROUND:**
There are two major changes proposed to Section 10-13E-4 with this request. The first change is associated with the criteria for designating a landmark site. The landmark criterion was first established in 2006. At that time, the structure was required to be a minimum of 50 years old. In 2019, when the City readopted the zoning regulations, that qualification was changed to being built before 1970. This current proposal changes the age of the structure to be at least 100 years old. What this means today is, any structure built before 1921 would be eligible for the landmark designation. And as the years pass, this number would increase.

The second proposed change is to the allowed conditional uses for landmarks. The City of St. George has permitted commercial uses of properties that have been designated as local landmarks with the approval of a conditional use. Over the years, slight modifications have been made to this ordinance. The last time a change was made to the conditional use portion of this chapter was in 2006 when the second, third, and fourth conditions were created. This proposal will remove the option to use the landmark site as a short-term rental.

**Proposed Changes:**
The proposed revisions are attached.
- The additions are in green
- The deletions are in red with a ~~strikethrough~~

**10-13E-4: LANDMARK SITES:**

A. *Designation of Landmark Sites:*

1. *City Council Designates:* Upon application of the property owner, the city council may designate certain areas or structure as landmark sites if the property satisfies the criteria in this section.

2. *Criteria for Designating a Property as a Landmark Site:* Any building, structure, or site may be designated as a city landmark site if it meets the criteria in

subsections A2a through A2c of this section, and at least one (1) of the other criteria set forth in subsections A2d through A2h of this section:

a. It is located within the boundaries of St. George City.

b. The building or structure ~~was constructed before 1970~~ is at least 100 years old.

c. There are no major alterations or additions that have obscured or destroyed significant historic features, such as: changes in pitch of the main roof, enlargement or enclosure of windows on the principal façades, addition of upper stories or the removal of original upper stories, covering the exterior walls with nonhistoric materials, moving the resource from its original location to one that is dissimilar to the original, or additions which significantly detract from or obscure the original form and appearance of the building or structure when viewed from the public way.

d. It is currently listed in the National Register of Historic Places, or it has been officially determined eligible for listing in the National Register of Historic Places under the provisions of 36 CFR 60.6. Properties listed on or determined to be eligible for the national register must still retain their integrity.

e. It is associated with events that have made a significant contribution to the broad patterns of the history of the city, state or nation.

f. It is associated with lives of persons significant in the history of the city, state or nation.

g. It embodies the distinctive characteristics of a rare or unique type, period or method of construction, or represents the work of an architect or builder recognized as a master in his/her field, or possesses high artistic values or style, or represents a significant and distinguishable entity whose components may lack individual distinction.

h. It has yielded or may be likely to yield information important in prehistory or history (archaeological sites, for example).

B. *Conditional Uses for Landmark Sites:* Landmark sites ~~shall~~ may be granted a conditional use permit only if the following conditions are satisfied:

1. The requested use is limited to ~~for~~ low impact professional office ~~or~~, retail, or restaurant ~~commercial~~ use and does not include short-term rentals or hotel.

2. Substantial investment is made to upgrade the property and enhance its historic significance.

3. Any renovation maintains or enhances the historic, architectural and aesthetic features of the property.

4. The proposed use shall generate only minimal traffic or parking demand as determined by the city council.

5. The city council may impose such other conditions for granting a conditional use permit as it deems necessary to protect the character of the landmark site.

C. *Construction Permits:* Any construction upon a landmark site that materially changes the exterior appearance of, adds to, reconstructs, or alters a landmark site shall require a permit from the city council. Applications for such permits shall be made to the historic preservation commission who shall recommend the granting or denial of the permit to the city council. The city council shall have final authority to grant or deny a permit to construct that is consistent with standards set forth herein.

D. *Demolition Prohibited:* No structure or building within a landmark site designation shall be demolished or removed unless the structure poses an immediate hazard to human health and safety.

E. *Removal of Landmark Site Designation:* If a property owner no longer wants its area or structure designated as a landmark site, the designation shall be removed by recording a removal document in the property records of the county on a form acceptable to the city. Recording a removal document immediately terminates any conditional use permit associated with the area or structure.

**RECOMMENDATION:**

The Planning Commission recommended approval of the zoning regulation amendment to Title 10-13E-4 as presented.

**ALTERNATIVES:**

1. Approve as presented.
2. Approve with changes.
3. Deny this zoning regulation amendment.
4. Table the proposed zoning regulation amendment to a specific date.

**POSSIBLE MOTION:**

I move we approve the zoning regulation amendment to amend Title 10-13E-4, Landmark Sites.

**FINDINGS:**

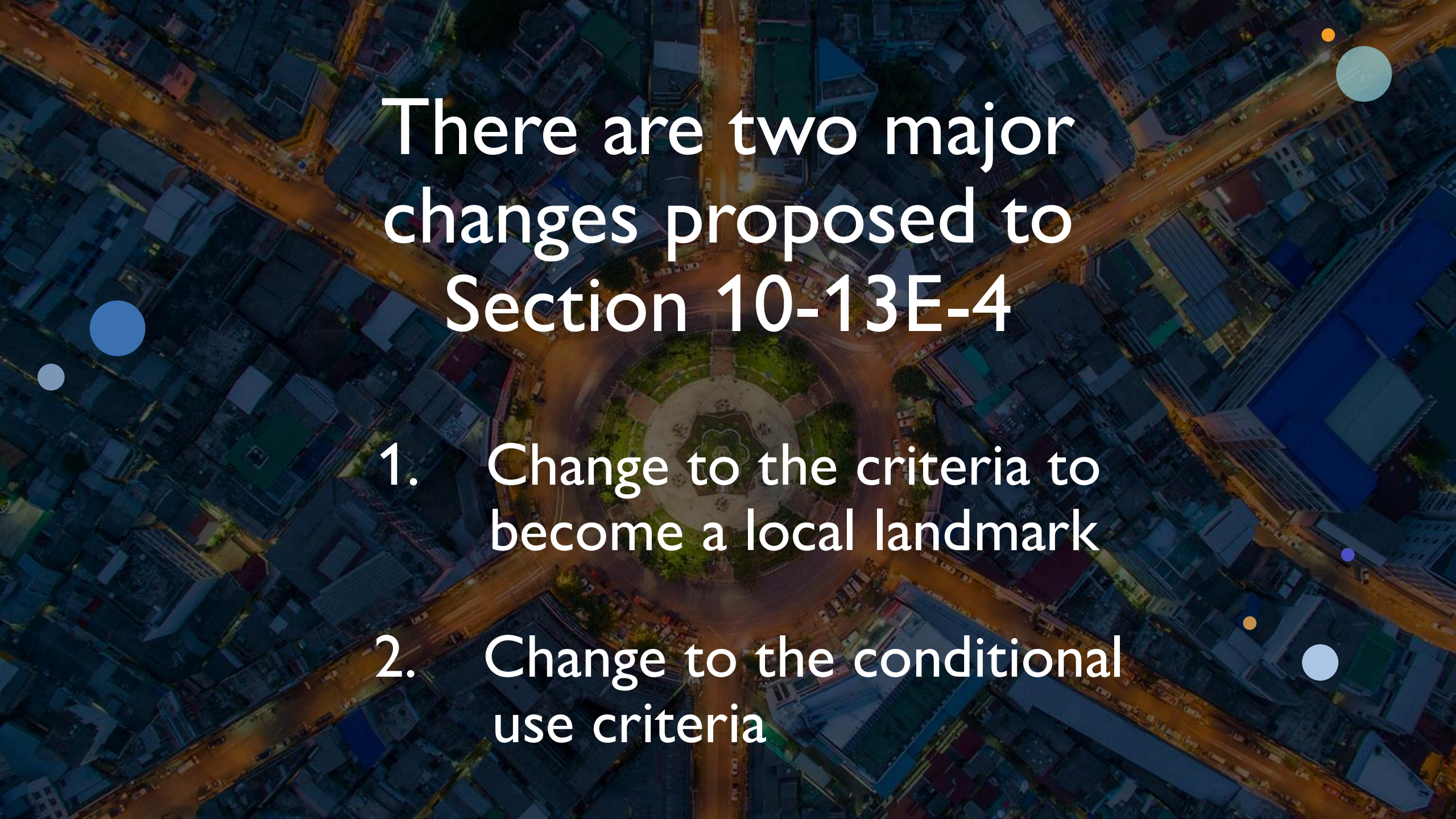
1. It is in the best interest of the city to update city zoning regulations periodically.
2. The proposed revisions will allow the city to welcome appropriate development in and around the airport.

**EXHIBIT A**
**POWER POINT PRESENTATION**



# Landmark Designation

2022-ZRC-001



# There are two major changes proposed to Section 10-13E-4

1. Change to the criteria to become a local landmark

2. Change to the conditional use criteria

## 10-13E-4: LANDMARK SITES:

A. *Designation of Landmark Sites:*

1. *City Council Designates:* Upon application of the property owner, the city council may designate certain areas or structures as landmark sites if the property satisfies the criteria in this section.

2. *Criteria for Designating a Property as a Landmark Site:* Any building, structure, or site may be designated as a city landmark site if it meets the criteria in subsections A2a through A2c of this section, and at least one (1) of the other criteria set forth in subsections A2d through A2h of this section:

a. It is located within the boundaries of St. George City.

b. The building or structure ~~was constructed before 1970~~ is at least 100 years old.

c. There are no major alterations or additions that have obscured or destroyed significant historic features, such as: changes in pitch of the main roof, enlargement or enclosure of windows on the principal façades, addition of upper stories or the removal of original upper stories, covering the exterior walls with nonhistoric materials, moving the resource from its original location to one that is dissimilar to the original, or additions which significantly detract from or obscure the original form and appearance of the building or structure when viewed from the public way.

d.  It is currently listed in the National Register of Historic Places, or it has been officially determined eligible for listing in the National Register of Historic Places under the provisions of 36 CFR 60.6. Properties listed on or determined to be eligible for the national register must still retain their integrity.

e.  It is associated with events that have made a significant contribution to the broad patterns of the history of the city, state or nation.

f.  It is associated with lives of persons significant in the history of the city, state or nation.

g.  It embodies the distinctive characteristics of a rare or unique type, period or method of construction, or represents the work of an architect or builder recognized as a master in his/her field, or possesses high artistic values or style, or represents a significant and distinguishable entity whose components may lack individual distinction.

h.  It has yielded or may be likely to yield information important in prehistory or history (archaeological sites, for example).

B. *Conditional Uses for Landmark Sites:* Landmark sites may be granted a conditional use permit only if the following conditions are satisfied:

1. The requested use is for low impact professional office or commercial use.

2. Substantial investment is made to upgrade the property and enhance its historic significance.

3. Any renovation maintains or enhances the historic, architectural and aesthetic features of the property.

4. The proposed use shall generate only minimal traffic or parking demand as determined by the city council.

5. The city council may impose such other conditions for granting a conditional use permit as it deems necessary to protect the character of the landmark site.

B. *Conditional Uses for Landmark Sites:* Landmark sites ~~shall~~ may be granted a conditional use permit only if the following conditions are satisfied:

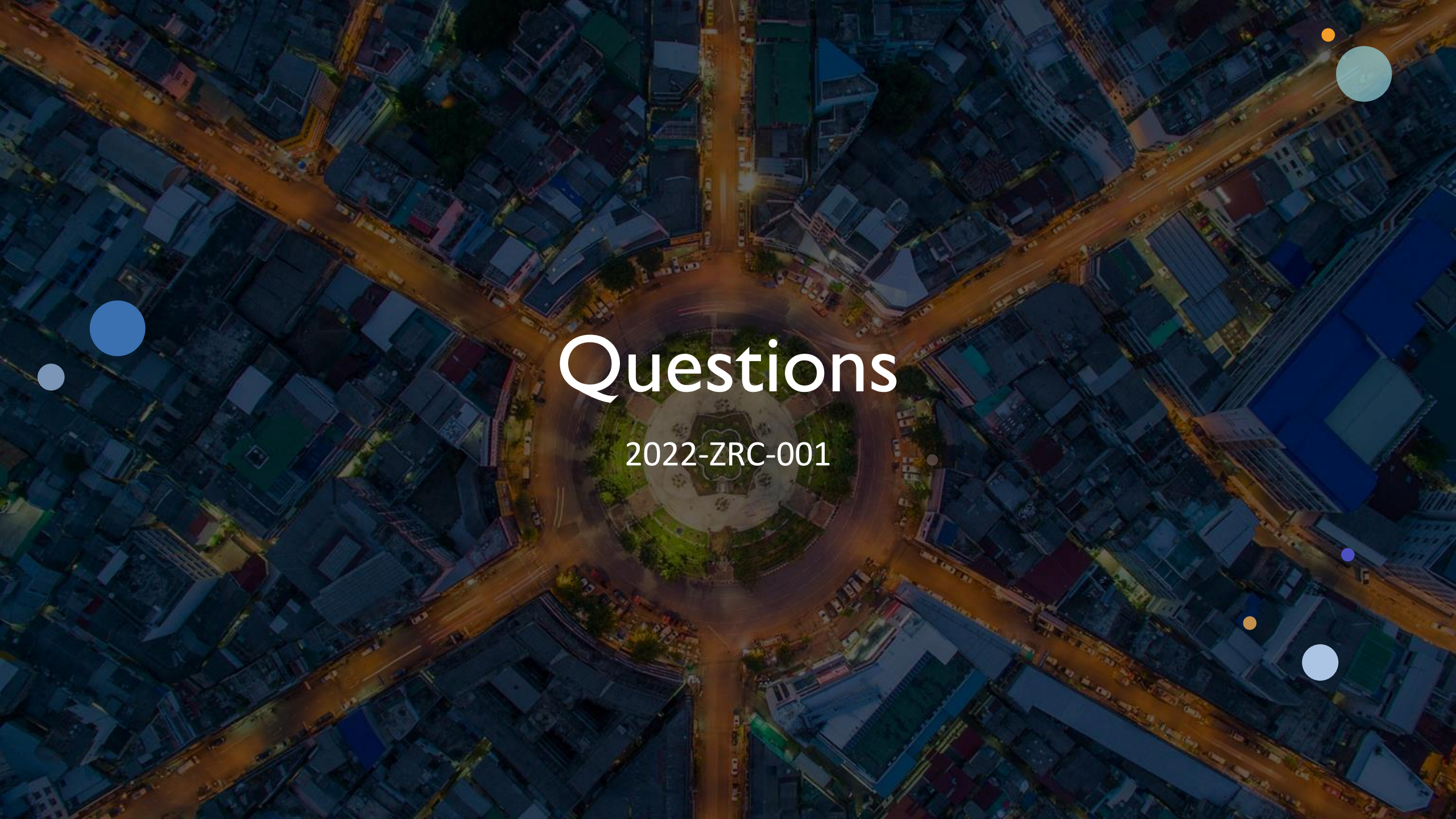
1. The requested use is limited to ~~for~~ low impact professional office, ~~or~~ retail, or restaurant ~~commercial~~ use and does not include short-term rentals or hotel.

2. Substantial investment is made to upgrade the property and enhance its historic significance.

3. Any renovation maintains or enhances the historic, architectural and aesthetic features of the property.

4. The proposed use shall generate only minimal traffic or parking demand as determined by the city council.

5. The city council may impose such other conditions for granting a conditional use permit as it deems necessary to protect the character of the landmark site.



# Questions

2022-ZRC-001

**ORDINANCE NO. _____**

**AN ORDINANCE AMENDING TITLE 10-13E-4 OF THE ST. GEORGE CITY CODE, TO AMEND THE DESIGNATION CRITERIA AND CONDITIONAL USES OF LANDMARK SITES.**

**WHEREAS**, the City Council has determined that it is in the best interest of the City and the public to amend provisions of city code, Title 10-13E-4, to amend the designation criteria and conditional uses of Landmark Sites; and

**WHEREAS**, after careful consideration, the City Council has determined that amending Title 10-13E-4 is in the best interest of the health, safety and welfare of the citizens of St. George to amend the designation criteria and conditional uses of landmark sites;

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The St. George City Code is hereby amended by adopting changes and revisions to Title 10-13E-4 for the protection of the City and the public, as set forth in Exhibit 'A' attached hereto and incorporated herein.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately upon execution below and upon posting in the manner required by law.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:
City Attorney's Office

_____

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# EXHIBIT A

## 10-13E-4: LANDMARK SITES:

A. *Designation of Landmark Sites:*

1. *City Council Designates:* Upon application of the property owner, the city council may designate certain areas or structure as landmark sites if the property satisfies the criteria in this section.

2. *Criteria for Designating a Property as a Landmark Site:* Any building, structure, or site may be designated as a city landmark site if it meets the criteria in subsections A2a through A2c of this section, and at least one (1) of the other criteria set forth in subsections A2d through A2h of this section:

a. It is located within the boundaries of St. George City.

b. The building or structure is at least 100 years old.

c. There are no major alterations or additions that have obscured or destroyed significant historic features, such as: changes in pitch of the main roof, enlargement or enclosure of windows on the principal façades, addition of upper stories or the removal of original upper stories, covering the exterior walls with nonhistoric materials, moving the resource from its original location to one that is dissimilar to the original, or additions which significantly detract from or obscure the original form and appearance of the building or structure when viewed from the public way.

d. It is currently listed in the National Register of Historic Places, or it has been officially determined eligible for listing in the National Register of Historic Places under the provisions of 36 CFR 60.6. Properties listed on or determined to be eligible for the national register must still retain their integrity.

e. It is associated with events that have made a significant contribution to the broad patterns of the history of the city, state or nation.

f. It is associated with lives of persons significant in the history of the city, state or nation.

g. It embodies the distinctive characteristics of a rare or unique type, period or method of construction, or represents the work of an architect or builder recognized as a master in his/her field, or possesses high artistic values or style, or represents a significant and distinguishable entity whose components may lack individual distinction.

h. It has yielded or may be likely to yield information important in prehistory or history (archaeological sites, for example).

B. *Conditional Uses for Landmark Sites:* Landmark sites may be granted a conditional use permit only if the following conditions are satisfied:

1. The requested use is limited to low impact professional office, retail, or restaurant use and does not include short-term rental or hotel.

2. Substantial investment is made to upgrade the property and enhance its historic significance.

3. Any renovation maintains or enhances the historic, architectural and aesthetic features of the property.

4. The proposed use shall generate only minimal traffic or parking demand as determined by the city council.

5. The city council may impose such other conditions for granting a conditional use permit as it deems necessary to protect the character of the landmark site.

C. *Construction Permits:* Any construction upon a landmark site that materially changes the exterior appearance of, adds to, reconstructs, or alters a landmark site shall require a permit from the city council. Applications for such permits shall be made to the historic preservation commission who shall recommend the granting or denial of the permit to the city council. The city council shall have final authority to grant or deny a permit to construct that is consistent with standards set forth herein.

D. *Demolition Prohibited:* No structure or building within a landmark site designation shall be demolished or removed unless the structure poses an immediate hazard to human health and safety.

E. *Removal of Landmark Site Designation:* If a property owner no longer wants its area or structure designated as a landmark site, the designation shall be removed by recording a removal document in the property records of the county on a form acceptable to the city. Recording a removal document immediately terminates any conditional use permit associated with the area or structure.

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 07

**Subject:**

Consider approval of an ordinance amending and extending the hillside overlay zone in order to include additional approximately 24 acres located generally north and west of the Red Hills Parkway and Middleton Drive intersection known as Hillside Overlay Amendment.

**Item at-a-glance:**

Staff Contact: Dan Boles

Applicant Name: City of St. George

Reference Number: 2022-ZC-013

Address/Location:

Generally located north and west of the Red Hills Parkway and Middleton Drive intersection

**Item History (background/project status/public process):**

These properties meet the criteria for inclusion in the hillside overlay zone. The Hillside Review Board met on site and held a meeting ultimately forwarding a positive recommendation for the application. At their meeting held on April 12, 2022, the Planning Commission then held a public hearing on the proposed change and recommended approval.

**Staff Narrative (need/purpose):**

The Middleton Ridge overlay area was identified as part of the initial hillside overlay ordinance approved in the early 1990s. At that time, there were eight areas (including Middleton Ridge) that were included as areas of special interest to monitor. Middleton Ridge is the smallest of these areas. Through the years of reviews and discussions, staff has identified the subject area as an area that could be included in the hillside overlay due to topography. Staff is proposing that the outlined area be included to the Middleton Ridge overlay area.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

The Planning Commission held a Public Hearing on April 12, 2022 on the proposed amendment and, along with the Hillside Review Board, are recommending approval of the proposal.

St.George
Community Development

# Hillside Overlay Amendment

**HILLSIDE REVIEW BOARD AGENDA REPORT: 03/23/2022**
**PLANNING COMMISSION AGENDA REPORT: 04/12/2022**
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

HILLSIDE OVERLAY AMENDMENT
**Middleton Ridge 9-1992**
Case No. 2022-ZC-013
2022-HS-009

**Request:** To amend the hillside overlay map by adding approximately 23 acres to the existing Middleton Ridge hillside overlay.

**Background:** The Middleton Ridge overlay area was identified as part of the initial hillside overlay ordinance approved in the early 1990's. At that time, there were eight areas (including Middleton Ridge) that were included as areas of special interest to monitor. Middleton Ridge is the smallest of these areas. Through the years of reviews and discussions, staff has identified the subject area as an area that could be included in the hillside overlay due to topography. Staff is proposing that the outlined area be included to the Middleton Ridge overlay area.

**Owner:** Various owners

**Location:** The property is generally located north or Red Hills Drive and Middleton Drive and approximately 2200-2300 East.

**Acreage:** Approximately 23 Acres

**Zoning:** PD-R (Planned Development Residential), RE-12.5 (Residential Estates, 12,500 square foot minimum lot size), C-2 (Highway Commercial)

**General Plan:** COM (Commercial), OS (Open Space), LDR (Low Density Residential)

**Powers & Duties:** Section 10-13A-8.B.1 of the "Hillside Review Board Powers and Duties" states that the hillside board can make recommendations to "adopt, modify or reject a proposal" to the Planning Commission (PC).

**Hillside Meeting:** On March 23, 2022, the Hillside Review Board held a meeting to discuss and review this proposal. They have made a made a recommendation to approve the changes as proposed.

**PC Motion Options:** The City Council may consider several different options regarding this application:

1. Denial

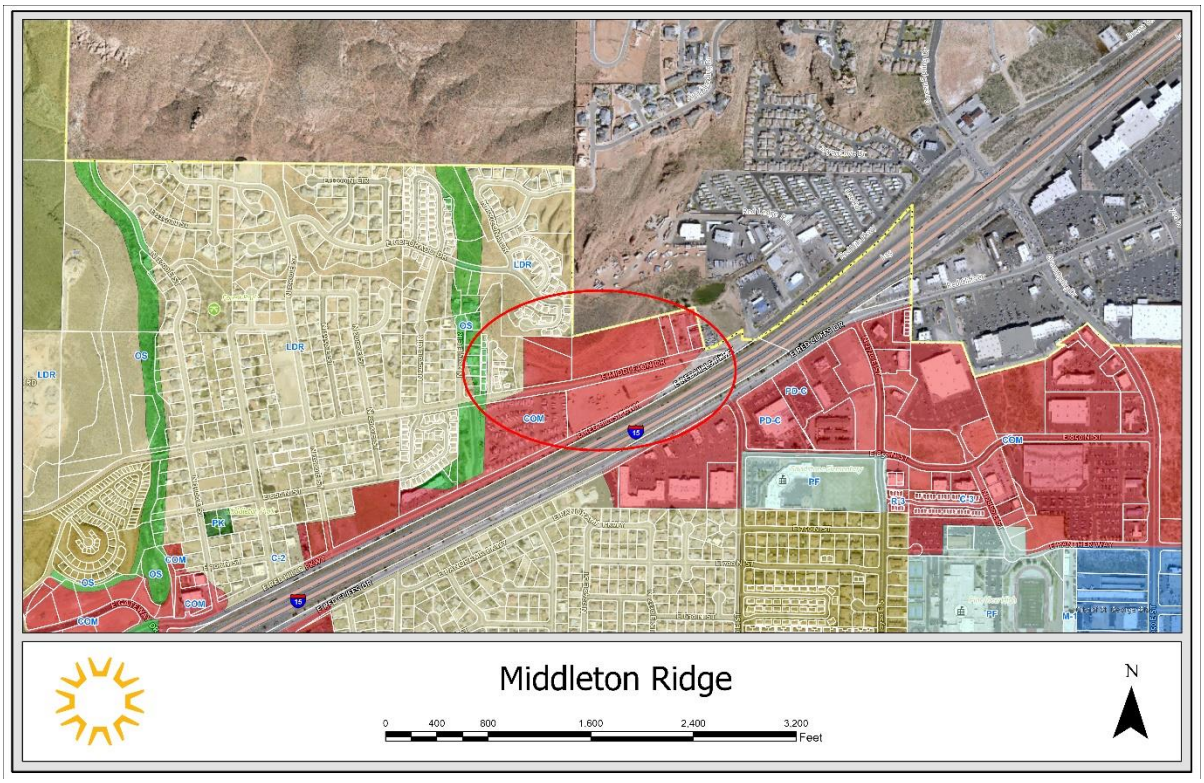
2. Approval as presented
3. Approval with specific conditions and comments added as required.

**Possible Motion:** "I move that we approve the Hillside Overlay Amendment as presented, case no. 2022-HS-009, based on the findings listed in the staff report."

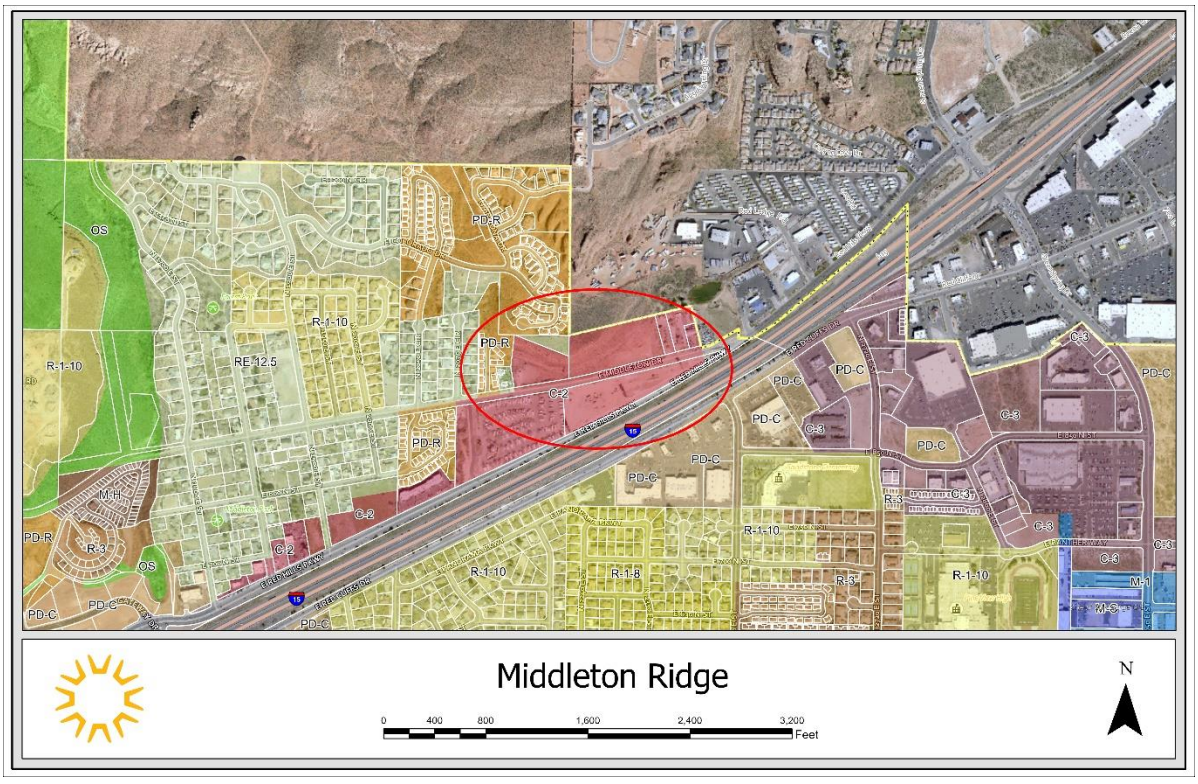
# Vicinity Map



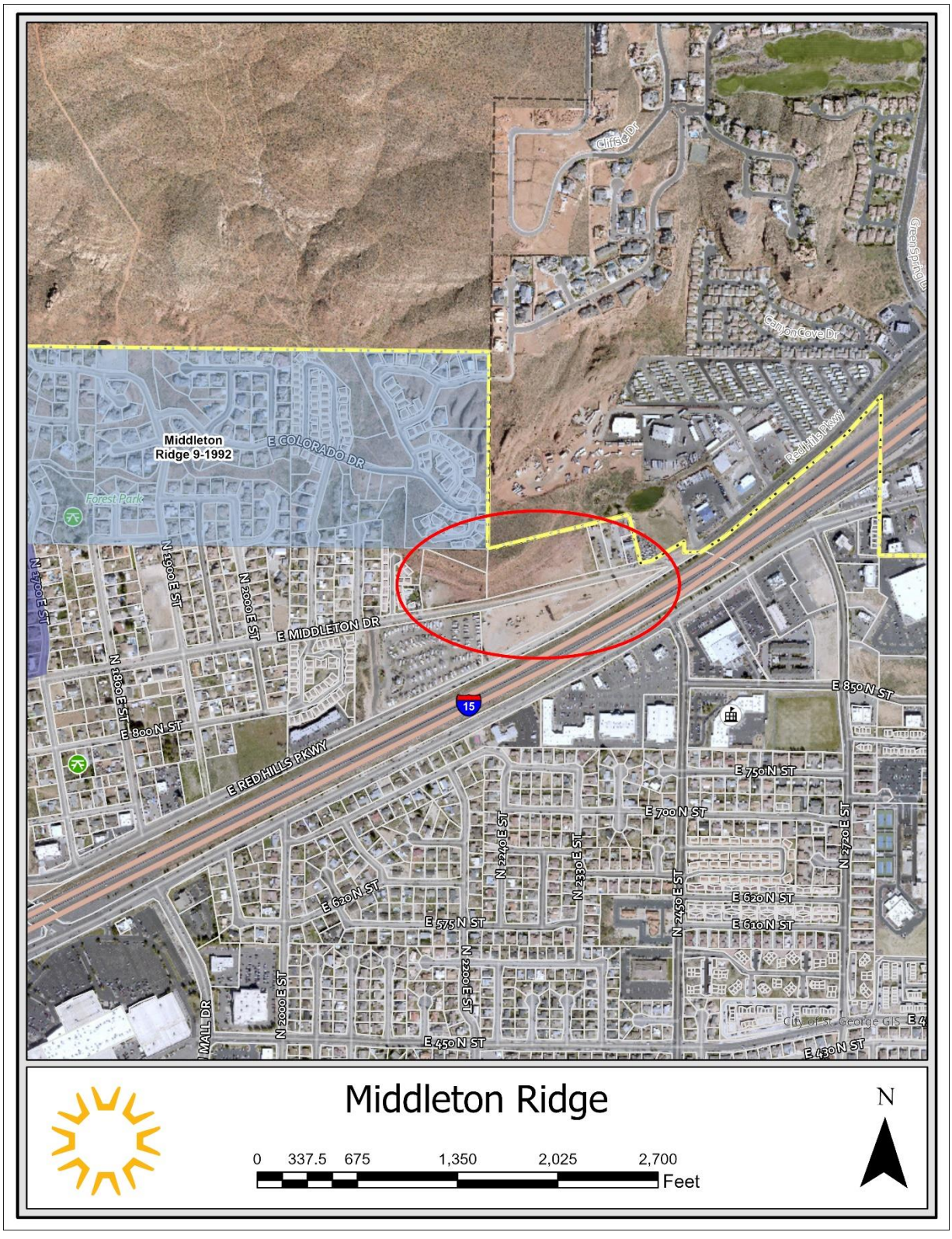
# General Plan = LDR/OS/COM




# Zoning = C-2, RE-12.5, PD-R



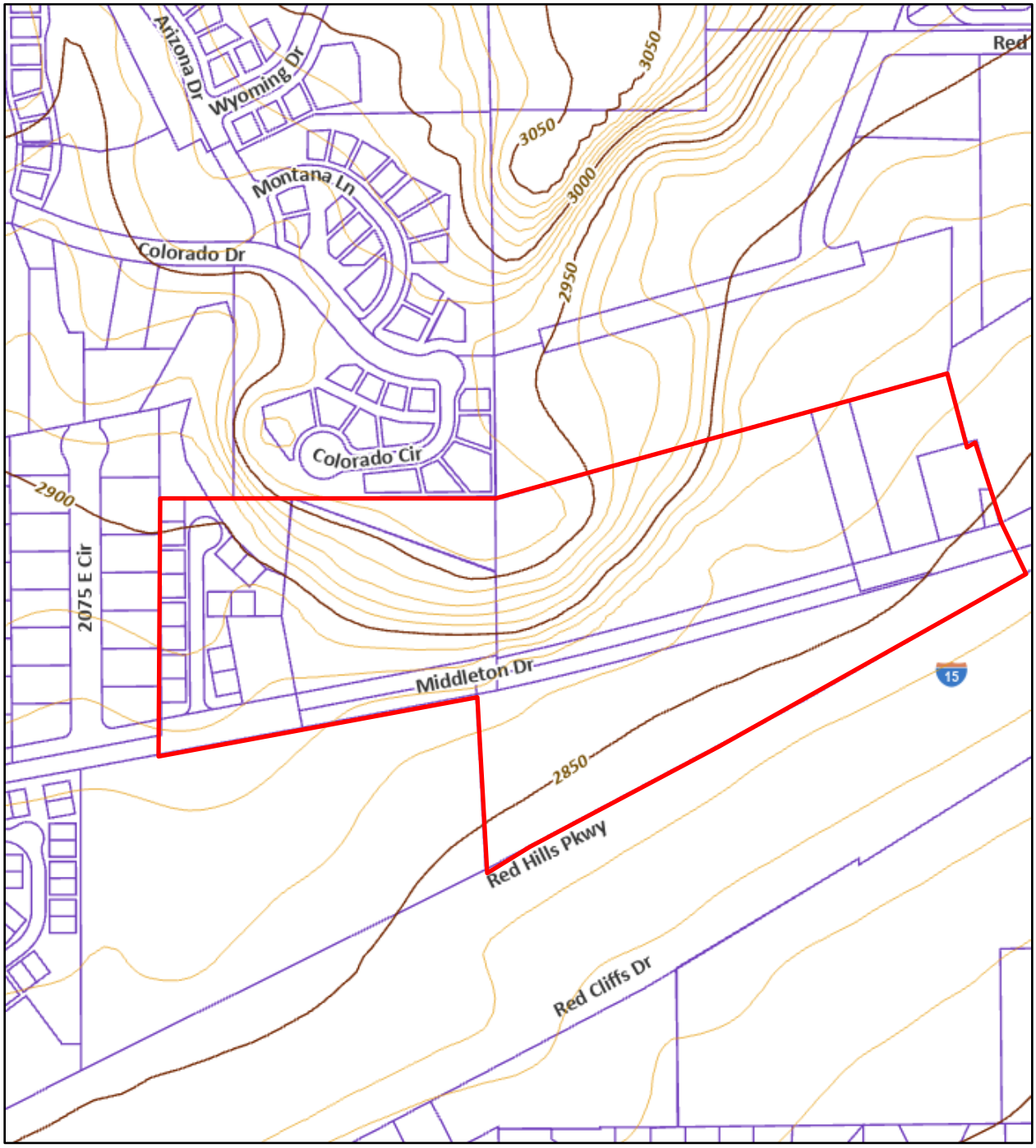
# Existing Hillside Overlay Map



# Proposed Hillside Overlay Map Amendment



# Washington County Contours Map



# Photos of Site










**ORDINANCE NO. _____**

**AN ORDINANCE AMENDING THE HILLSIDE OVERLAY MAP BY ADDING APPROXIMATELY 23.6 ACRES TO THE EXISTING MIDDLETON RIDGE HILLSIDE OVERLAY ZONE.**

**WHEREAS** a discrepancy in the development code exists regarding certain identified protected ridgeline and hillside areas and the adopted hillside overlay zone map identifying those areas; and

**WHEREAS**, the City Council has determined that it is in the best interest of the City and the public to amend the mapped boundary of the hillside overlay zone, in order to fully encompass the Middleton Ridge and to provide protection to hillsides in the vicinity; and

**WHEREAS**, after careful consideration, the city council has determined that amending hillside overlay zone is in the best interest of the health, safety and welfare of the citizens of St. George to amend the hillside overlay zone within the city.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George city council, as follows:

**Section 1. Repealer.** Any provision of the St. George city code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The St. George Hillside Overlay Zone is hereby amended as set forth in Exhibit 'A' attached hereto and incorporated herein.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately upon execution below and upon posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:
City Attorney's Office

_____

VOTING OF CITY COUNCIL:

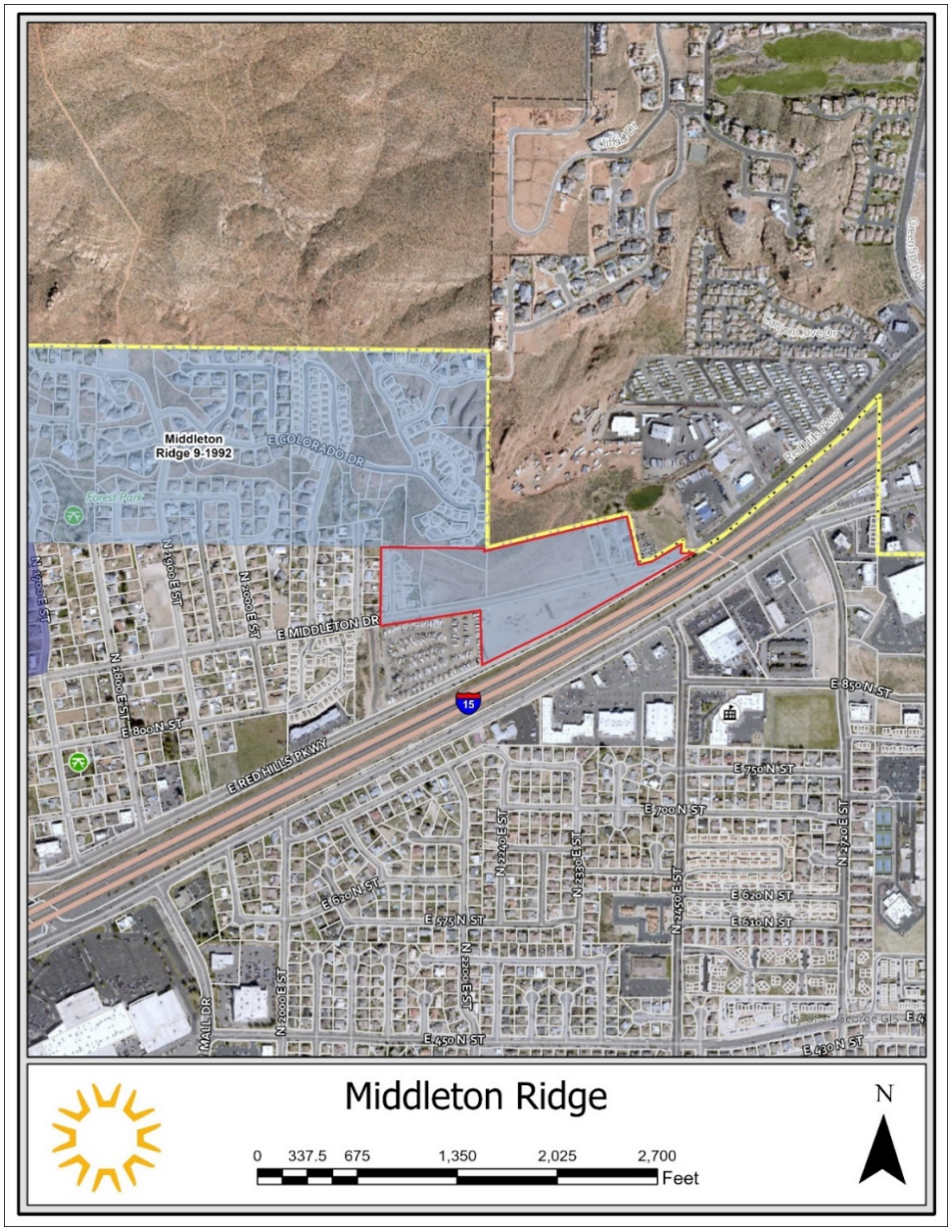
Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# EXHIBIT A

## Hillside Overlay Boundary

Beginning at the Northeast quarter corner of Section 21, Township 42 South, Range 15 West, Salt Lake Base and Meridian, said point being the POINT OF BEGINNING; thence S 48°12'18" W 143.09 feet; thence S 59°24'57" W 545.60 feet; thence S 62°10'49" W 545.63 feet; thence S 64°58'37" W 332.57 feet; thence N 01°56'15" E 5.80 feet; thence N 02°07'57" W 364.26 feet; thence S 80°35'52" W 683.20 feet; thence N 02°08'20" E 76.38 feet; thence N 00°53'44" E 464.98 feet; thence S 89°02'33" E 710.50 feet; thence N 76°25'00" E 983.13 feet; thence S 13°42'05" E 335.00 feet; thence N 76°17'55" E 75.07 feet; thence N 59°36'08" E 254.93 feet; thence S 00°30'54" W 71.52 feet to the POINT OF BEGINNING.

Containing 1,028,250.85 square feet or 23.6054 acres, more or less.



**Agenda Date:** 05/05/2022 **Agenda Item Number:** 08

**Subject:**

Consider approval of an ordinance amending the Desert Color Planned Development Residential (PD-R) zone in order to construct 100 units to be known as Sage Haven Plat C Phase 12 on approximately 4.90 acres located on the north-east corner of Silver Birch Drive and Emerald Point Drive.

**Item at-a-glance:**

Staff Contact: Dan Boles

Applicant Name: Bob Hermandson, Bush & Gudgell

Reference Number: 2022-ZCA-017

Address/Location:

North-east corner of Silver Birch Drive and Emerald Point Drive

**Item History (background/project status/public process):**

Surrounding phases of Sage Haven were reviewed and approved in 2021. At their meeting held on April 12, 2022, the Planning Commission held a public hearing and recommended approval.

**Staff Narrative (need/purpose):**

Plat C (phase 12) of Sage Haven will include 100 units which includes eight ten-plex units and four five plex units. The site is surrounded by two other phases of Sage Haven. The multi-family pod is located directly north of this phase. The Desert Color DRC has required the builder to make upgrades to the faade which can be reviewed in the staff report.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission held a public hearing and recommends approval of the application as presented.

St.George
Community Development

# ZONE CHANGE AMENDMENT

**PLANNING COMMISSION AGENDA REPORT: 04/12/2022**
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

Zone Change Amendment
**Desert Color Sage Haven Plat C (Phase 12)**
Case No. 2022-ZCA-017

**Request:** Consider a Zone Change Amendment to the Desert Color PD-R to develop plat 'C' (phase 12) of Sage Haven in the Desert Color development. This is the final portion of Sage Haven. Plat 'A' was approved by City Council on March 4, 2021. Plat 'B' was approved by the City Council on March 18, 2021.

**Applicant:** Desert Color St. George, LLC

**Representative:** Bob Hermandson, Bush & Gudgell

**Area:** 4.90 Acres

**Location:** Generally located in the north-east portion of Sage Haven on the north-east corner of Silver Birch Drive and Emerald Point Drive in the Desert Color Development.

**Current Zone:** PD-R – TNZ (NG) (Planned Development Residential, Traditional Neighborhood Zone – Neighborhood General)



**General Plan:** RES (Residential)

**Background:**
In February of 2021, The Planning Commission approved the first plat in Sage Haven which is located directly south of Auburn Hills in Desert Color. All buildings have, at this time, received approval with the exception of this subject parcel. The Planning Commission and City Council reviewed the surrounding phases of Sage Haven with the understanding that this phase (phase 12) would come forward in the future. Today is the future.

Plat 'C' (phase 12) of Sage Haven will include 100 units which includes eight ten-plex units and four five plex units. The site is surrounded by other phases of Sage Haven. The multi-family pod is located directly north of this phase. This product has been constructed in other phases of Desert Color. The Desert Color DRC has required the builder to make upgrades to the façade. The buildings will be discussed in more detail later.

The development standards for TNZ-NG zones are as follows:

1. **Pattern of development**. The pattern of development is required to follow the Traditional Neighborhood Zone (TNZ) guidelines found in Chapter 7H of the Zoning Regulations. In Section 7H-1-A-2 of the Zoning Regulations, it suggests the traditional block design to be used for the pattern of development. The traditional block design uses a grid street pattern. The traditional block design also includes street cross-sections that promote pedestrian activity. Off-street parking is to be placed at the rear of the buildings and is designed for pedestrian activity as opposed to creating a car-oriented environment.

   This proposal does use the grid pattern as much as possible within the limits of this space. The plan makes use of streets, alleys, and pedestrian walkways for access with a public street surrounding the project. The street cross-sections found in the preliminary plat depict pedestrian friendly corridors. Sidewalks will connect buildings and units to the rights-of-way.

2. **Civic Space.** Plat 'C' is the TNZ-NG zone which require that 5% be dedicated to civic space. The zone plan also allows the required civic space to be spread out through the overall neighborhood, in this case, Pod 6 or Sage Haven. This particular phase is showing opens space around the townhomes and scattered throughout the neighborhood. The combined total for Sage Haven civic space is 9.71 acres throughout the development for a total of 7.29%.

3. **Parking.** The parking requirements for Desert Color multi-family vary depending on the number of bedrooms with a maximum requirement of two spaces per unit. Each of the units in the development will have a single-car garage and all will also have a 20' driveway providing enough parking to satisfy this requirement. In addition, guest parking is to be provided at a rate of one stall for every five units. That would yield a requirement of 20 stalls for guest parking. The development is showing a total of five stalls onsite with 45 stalls on street. Typically, on-street parking does not count toward parking requirements.

However, in the TNZ zone and specifically in the Desert Color zone plan, it can be counted and is, in fact, encouraged.

4. **Building and Streetscapes.** Within this phase, the applicant is proposing 12 multi-family buildings all of which will be the same design with varying color palettes, except that the four buildings in the center will be five-plex's instead of 10. All buildings will face the public right-of-way or civic space as is required in Desert Color. The Desert Color DRC has approved of the elevations of the proposed buildings.

   There are several architectural guidelines that these units must follow. These items, found in section 3.5 of the zone plan are:
   a. **Guideline A.** Each building that is greater than one story must have a clear delineation between the levels. The proposed buildings all delineate the floor boundaries. Each building is also required to use high quality materials such as brick, stone, stucco, cement clapboard siding or similar materials. The proposed buildings appear to satisfy this guideline.
   b. **Guideline B.** No building can be twice the height of the building adjacent to it or across the street. Though these will be taller buildings at approximately 41 feet, the proposed buildings will be situated to meet this requirement.
   c. **Guideline C.** All of the proposed ground floor units are required to have a prominent entryway through the use of a porch, stoop or similar feature. All ground floor units will have a raised entryway such as a stoop or similar feature. Each entryway is clearly defined.
   d. **Guideline D.** The streetscape will be required to adhere to Section 3.2, Local and Collector Street Cross Section standards found in the Desert Color Zoning Plan. Additionally, signage and street lighting is outlined in this section.
   e. **Guideline E.** Walls and Fencing. Walls and fencing are not proposed at this time.
   f. **Guideline F.** The applicant is not proposing any accessory structures in this phase of the development.
   g. **Guideline G.** The landscape standards require a 15' wide landscape strip along the right-of-way of any property facing a public street unless it is occupied by a building, driveway, etc. City code requires that five years after planting, all landscape areas are at least 50% covered with foliage of shrubs and live-vegetative ground cover. A detailed landscape plan will be submitted with the construction drawings.

5. **Lighting.** The lighting for these phases will be required to be night-sky friendly fixtures. Pedestrian level lighting is strongly encouraged. A lighting plan has not been submitted with these plans, but staff will ensure that the lighting meets the standards during the site plan process.

**PC Recommendation:** Planning Commission held a public hearing on April 12, 2022 and recommends approval of this Zone Change Amendment.

**Alternatives:**

1. Approve as presented.

2. Approve with conditions.
3. Deny the proposal.
4. Table the proposed zone change amendment to a specific date.

**Possible Motion:**
"I move that we approve the zone change amendment for the Sage Haven Plat 'C' (Phase 12) as presented, case no. 2022-ZCA-017, based on the findings listed in the staff report."

**Findings for Approval:**

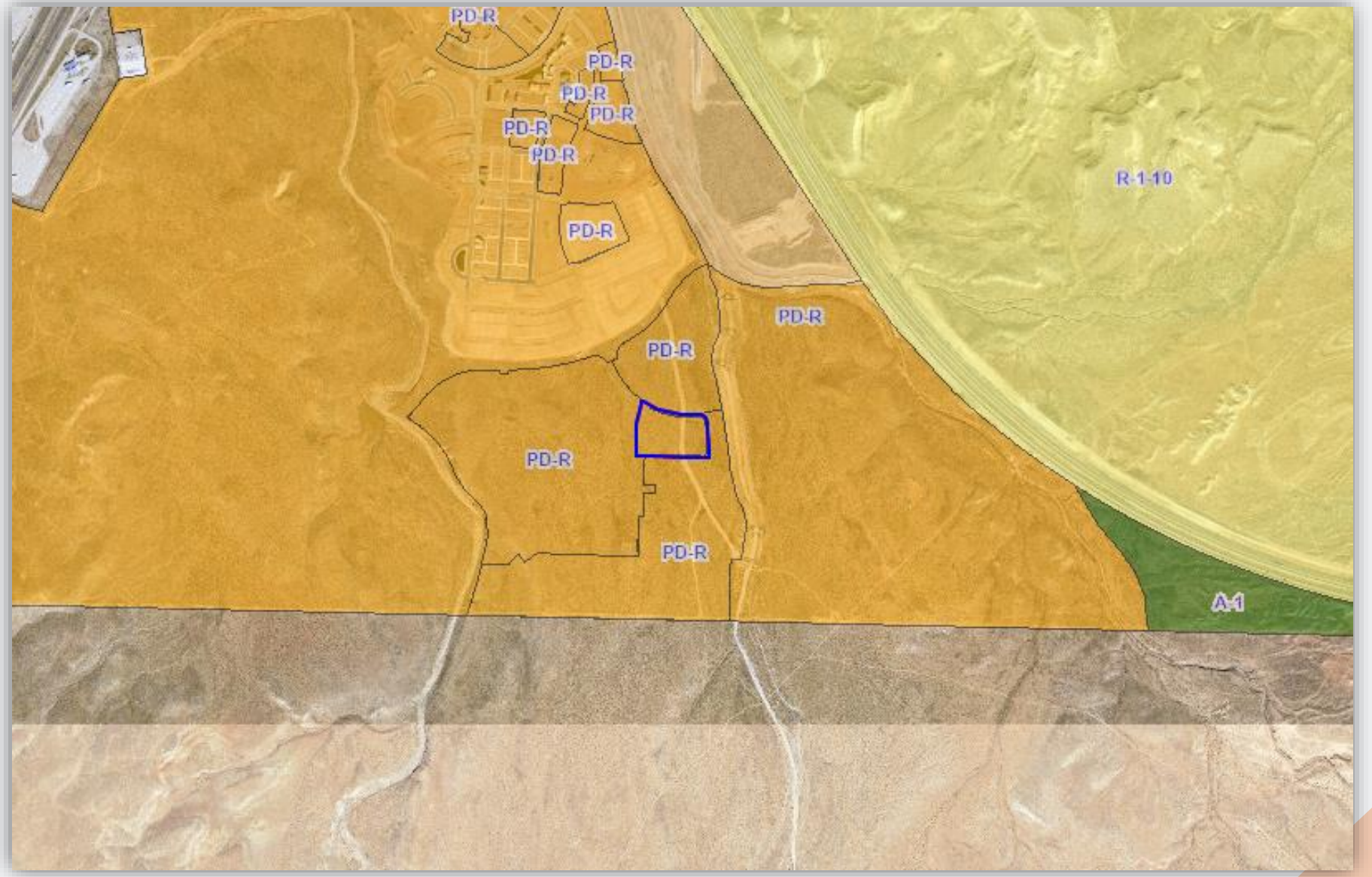
1. The proposed amendment meets the requirements of the Desert Color zoning plan as approved by City Council.
2. There will be adequate parking to facilitate the development.

**EXHIBIT A**
**POWER POINT PRESENTATION**

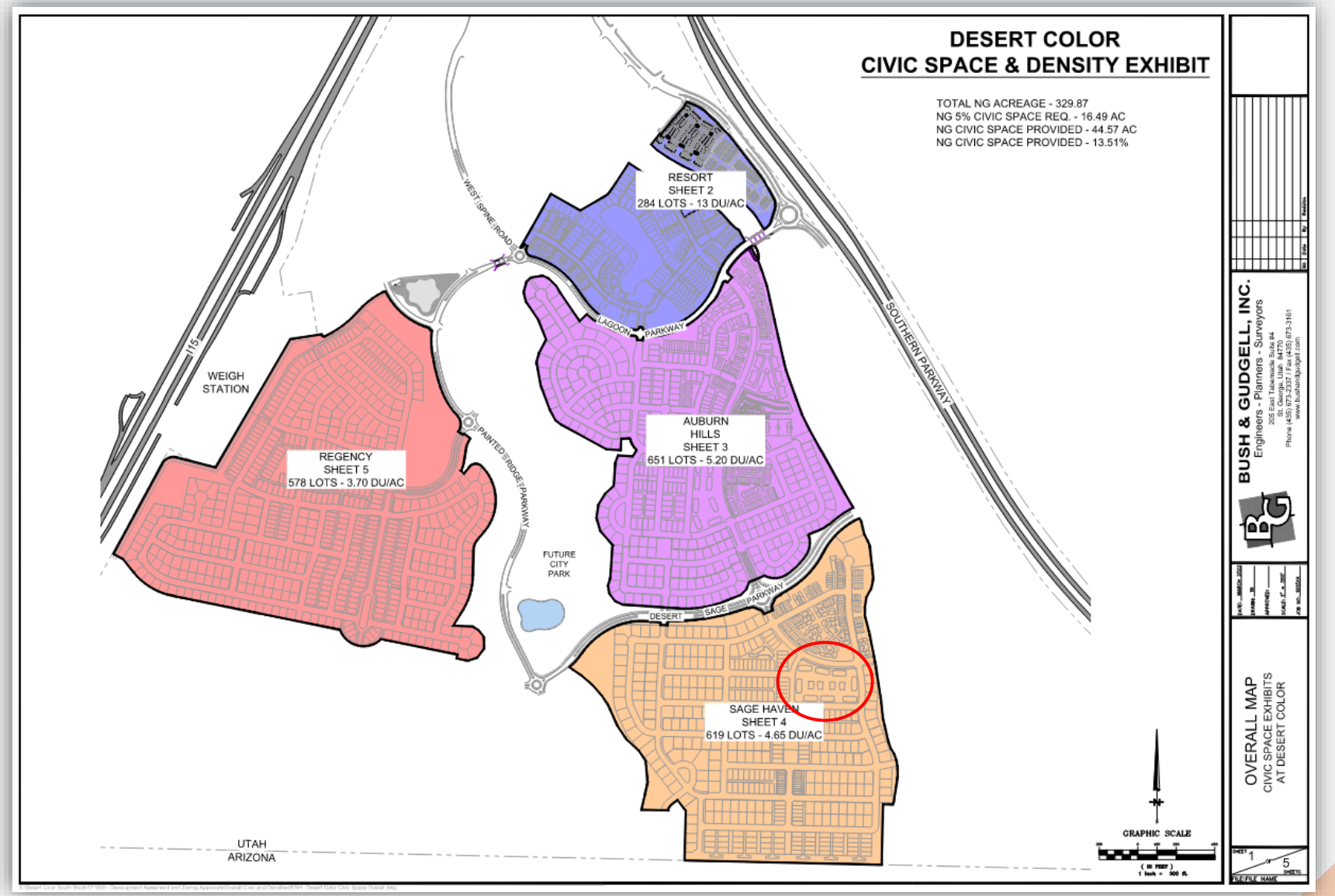
# *Sage Haven Plat C (Phase 12)*

2021-ZCA-061

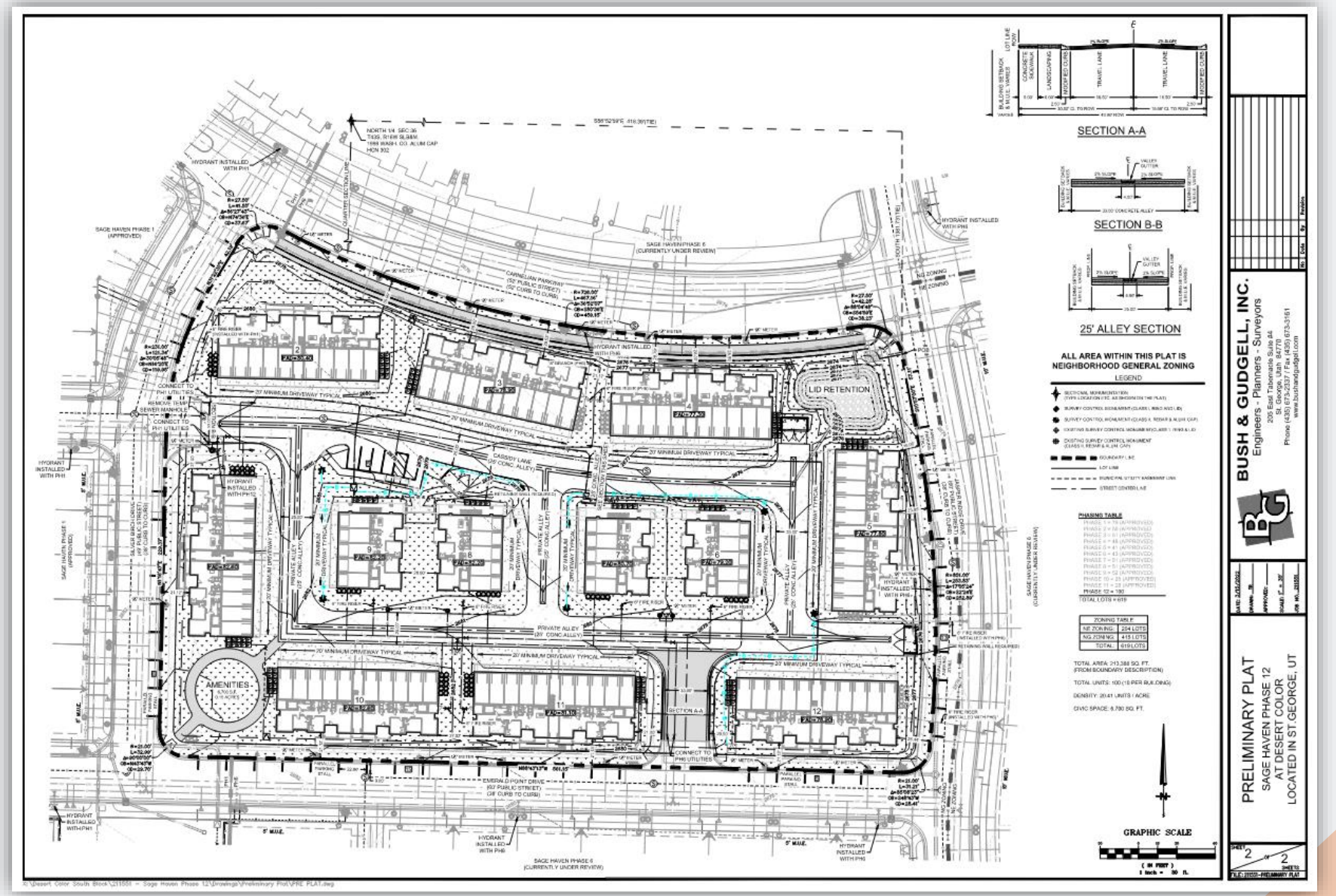
# *Zoning Map*



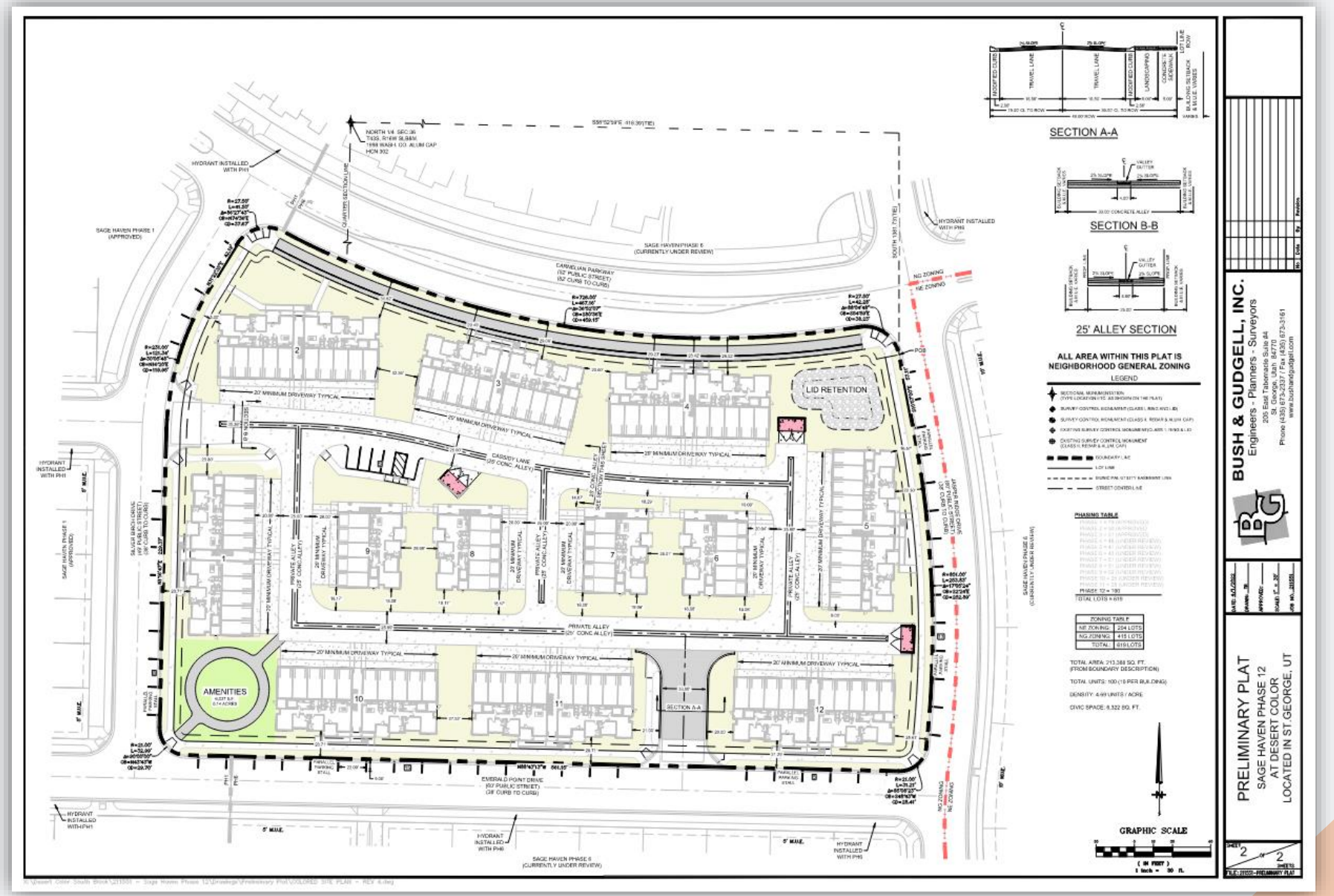
# *Civic Space and Density*



# *Proposed Plat*



# *Proposed Site Plan*



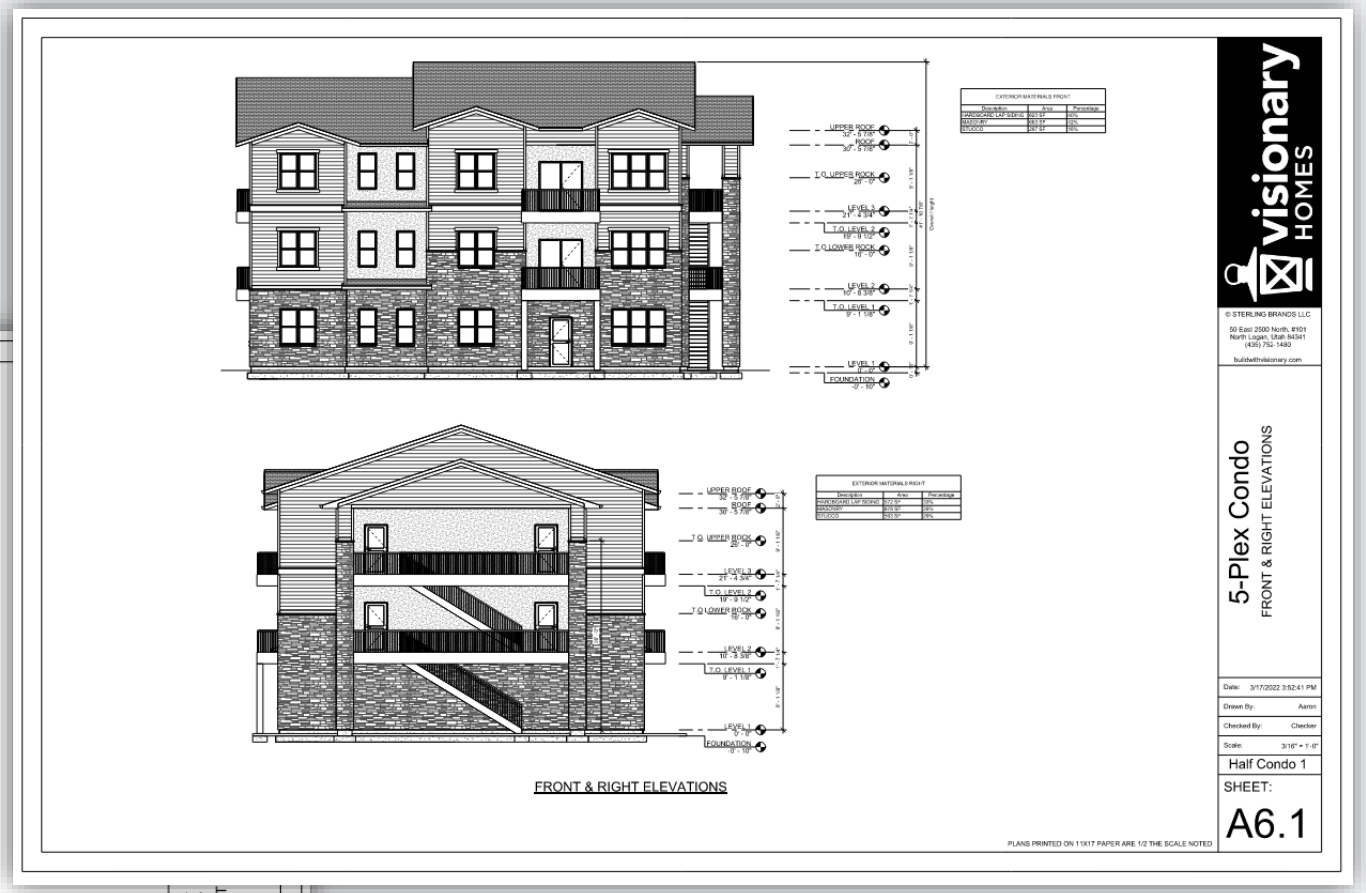
# *Landscape Plan*



# *Elevations*


UPPER ROOF
ROOF
T.O. UPPER ROCK
LEVEL 3
T.O. LEVEL 2
LEVEL 2
T.O. LEVEL 1
T.O. LOWER ROCK
LEVEL 1
FOUNDATION
EXTERIOR MATERIALS REAR
Description
Area
Percentage
HARDBOARD LAP SIDING
1234 SF
52%
MASONRY
490 SF
21%
STUCCO
647 SF
27%
Aged Pewter Lap
Dryvit 103 Natural White Stucco
Slate Drystone with natural mortar (on 2 alcoves)
White Sand Thin Brick with natural mortar (in center)
Flat Bel Air 4679 Light Gray Range
Grey Garage Door
Cobble Stone Lap
Dryvit Dovetail Stucco
Slate Drystone with natural mortar (in center)
White Sand Thin Brick with natural mortar (on 2 alcoves)
Flat Bel Air 4679 Light Gray Range
Grey Garage Door
EXTERIOR MATERIALS LEFT
Description
Area
Percentage
HARDBOARD LAP SIDING
1330 SF
71%
MASONRY
533 SF
29%
visionary HOMES
© STERLING BRANDS LLC
50 East 2500 North, #101
North Logan, Utah 84341
(435) 752-1480
buildwithvisionary.com
10-Plex Condo
REAR & LEFT ELEVATIONS
Date: 3/28/2022 4:12:06 PM
Drawn By: Aaron
Checked By: Checker
Scale: 3/16" = 1'-0"
Condo 1
SHEET:
A6.2

# *Elevations*


visionary HOMES
© STERLING BRANDS LLC
50 East 2500 North, #101
North Logan, Utah 84341
(435) 752- 1480
buildwithvisionary.com
5-Plex Condo
FRONT & RIGHT ELEVATIONS
Date: 3/17/2022 3:52:41 PM
Drawn By: Aaron
Checked By: Checker
Scale: 3/16" = 1'-0"
Half Condo 1
SHEET:
A6.1
FRONT & RIGHT ELEVATIONS
PLANS PRINTED ON 11X17 PAPER ARE 1/2 THE SCALE NOTED


5-Plex
REAR & LEFT
Aged Pewter Lap
Dryvit 103 Natural White Stucco
Slate Drystone with natural mortar (on 2 alcoves)
White Sand Thin Brick with natural mortar (in center)
Flat Bel Air 4679 Light Gray Range
Grey Garage Door
Cobble Stone Lap
Dryvit Dovetail Stucco
Slate Drystone with natural mortar (in center)
White Sand Thin Brick with natural mortar (on 2 alcoves)
Flat Bel Air 4679 Light Gray Range
Grey Garage Door
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Checked By: Checker
Scale: 3/16" = 1'-0"
Half Condo 1
SHEET:
A6.2
REAR & LEFT ELEVATIONS
PLANS PRINTED ON 11X17 PAPER ARE 1/2 THE SCALE NOTED

# *Renderings*





# *Renderings*





# *Materials Board*



**ORDINANCE NO._____**

**AN ORDINANCE AMENDING THE CITY ZONING MAP BY AMENDING THE EXISTING DESERT COLOR PLANNED DEVELOPMENT RESIDENTIAL (PD-R) ZONE ON APPROXIMATELY 4.90 ACRES TO APPROVE THE ADDITION OF 100 NEW MULTI-FAMILY UNITS IN THE DESERT COLOR DEVELOPMENT WITH ELEVATIONS AND SITE PLAN.**

(Desert Color Sage Haven Plat C Phase 12)

**WHEREAS**, the property owner has requested a zone change amendment to the existing PD-R zone on approximately 4.90 acres, to approve the addition of 100 multi-family units to the Desert Color Planned Development and approve elevations and site layout. The site is generally located on the north-east corner of Silver Birch Drive and Emerald Point Drive; and

**WHEREAS,** the City Council held a public meeting on this request on May 5, 2022; and

**WHEREAS**, the Planning Commission held a public hearing on April 12, 2022, and thereafter forwarded a recommendation for approval of the requested zone change amendment to the City Council; and

**WHEREAS,** the City Council has determined that the requested zone change amendment to the Zoning Map is consistent with the goals and objectives of the General Plan, consistent with the approved master plan, does not create an undue burden or hardship on the city, and is in the best interest of the health, safety, and welfare of the citizens of the City of St. George.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City Code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The City Zoning Map is hereby ordered to be changed to reflect the amendment to the Planned Development Residential (PDR) zone on approximately 4.90 acres. The zone change amendment and location is more specifically described on the attached property legal description, incorporated herein as Exhibit “A.” The project must comply with all conditions, requirements, and restrictions as approved by City Council.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately on the date executed below, and upon publication and/or posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

APPROVED AS TO FORM:
City Attorney's Office

_____

ATTEST:

_____
Christina Fernandez, City Recorder

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# EXHIBIT "A"

(Sage Haven Phase 12 Boundary Description)

Beginning at a point that lies North 88°50'55" West along the section line 67.91 feet and due South 1294.40 feet, from the North Quarter Corner of Section 36, Township 43 South, Range 16 West, Salt Lake Base and Meridian, said point being on the south right of way line of Carnelian Parkway, and running thence along said line the following two (2) courses: 1) easterly along a 726.00 foot radius non-tangent curve to the left, (long chord bears South 80°36'42" East a distance of 459.04 feet), center point lies North 27°49'06" East through a central angle of 36°51'35", a distance of 467.05 feet and 2) southeasterly along a 27.50 foot radius reverse curve to the right, (long chord bears South 54°59'45" East a distance of 38.24 feet), center point lies South 09°02'29" East through a central angle of 88°05'29", a distance of 42.28 feet to a point on the west right of way line of Jasper Ridge Drive, and running thence along said line the following three (3) courses: 1) South 10°57'00" East 57.10 feet, 2) southerly along a 851.00 foot radius curve to the right, (long chord bears South 02°24'18" East a distance of 252.89 feet), center point lies South 79°03'00" West through a central angle of 17°05'24", a distance of 253.83 feet and 3) southwesterly along a 21.00 foot radius compound curve to the right, (long chord bears South 48°42'35" West a distance of 28.41 feet), center point lies North 83°51'37" West through a central angle of 85°08'23", a distance of 31.21 feet to a point on the north right of way line of Emerald Point Drive, and running thence along said line the following two (2) courses: 1) North 88°43'13" West 561.15 feet and 2) northwesterly along a 21.00 foot radius curve to the right, (long chord bears North 43°43'13" West a distance of 29.70 feet), center point lies North 01°16'47" East through a central angle of 90°00'00", a distance of 32.99 feet to a point on the east right of way line of Silver Birch Lane and running thence along said line the following four (4) courses: 1) North 01°16'47" East 229.37 feet and 2) northerly along a 231.00 foot radius curve to the right, (long chord bears North 16°19'41" East a distance of 119.95 feet), center point lies South 88°43'13" East through a central angle of 30°05'48", a distance of 121.34 feet, 3) North 31°22'35" East 42.09 feet and 4) easterly along a 27.50 foot radius curve to the right, (long chord bears North 74°45'25" East a distance of 37.78 feet), center point lies South 58°37'25" East through a central angle of 86°45'41", a distance of 41.64 feet, to the point of beginning.

Containing 213,362 square feet or 4.90 acres.



**Agenda Date:** 05/05/2022 **Agenda Item Number:** 09

**Subject:**

Consider approval of an ordinance amending the Desert Color Planned Development zone to allow the addition of pickleball and bocce ball courts and gathering areas to the amenities to be known as Desert Color Recreation Area on approximately 1.49 acres located generally between Akoya Pearl Road and Lagoon Parkway at approximately 800 West.

**Item at-a-glance:**

Staff Contact: Dan Boles

Applicant Name: Bob Hermandson

Reference Number: 2022-ZCA-016

Address/Location:

Between Akoya Pearl Rd and Lagoon Pkwy at approximately 800 West

**Item History (background/project status/public process):**

The Resort area was part of the initial approval when Desert Color was approved in 2018. As part of that initial approval, the developer constructed the clubhouse, swimming pool, and lagoon amenities which are up and usable to most residents of Desert Color. Part of the plan was to add additional amenities in the general clubhouse area. This application will fulfil that desire to add more amenities. No residential units are under review with this application. At their meeting held on March 22, 2022, the Planning Commission held a public hearing and recommended approval.

**Staff Narrative (need/purpose):**

The developer is proposing a 1.49-acre site to provide additional options for recreation. No new buildings are being proposed with the exception of a shade structure. The shade structure is next to a grassy area where events may take place such as a concert or similar activity. The amenities will also include pickleball and bocce ball courts.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission held a public hearing on March 22, 2022, and is recommending approval of the application with the following condition:1.That the applicant goes through the site planning process prior to any construction.

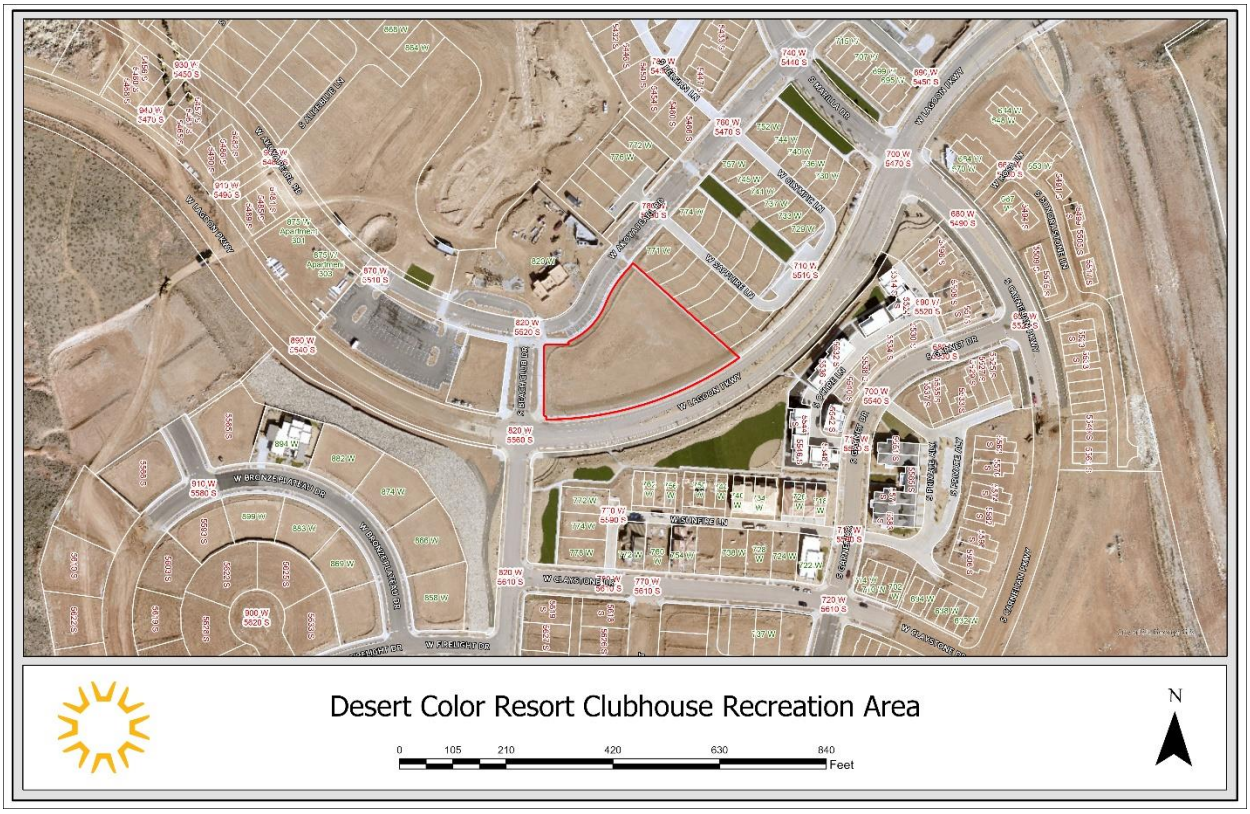
St.George
Community Development

# ZONE CHANGE AMENDMENT

**PLANNING COMMISSION AGENDA REPORT: 03/22/2022**
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

Zone Change Amendment
**Desert Color Recreation Area**
Case No. 2022-ZCA-016

| | |
|---|---|
| **Request:** | Consider a Zone Change Amendment to the Desert Color PD-R to approve the Desert Color recreation area. Approval of this application will add recreation area to the existing clubhouse, pool, and lagoon area. |
| **Applicant:** | SITLA/Desert Color St. George, LLC |
| **Representative:** | Bob Hermandson |
| **Area:** | 1.49 Acres |
| **Location:** | Generally located between Akoya Pearl Rd and Lagoon Pkwy at approximately 800 West. |
| **Current Zone:** | PD-R - Resort (Planned Development Residential) |
| **General Plan:** | RES (Residential) |



**Background:**
The Resort area was part of the initial approval when Desert Color was approved in 2018. As part of that initial approval, the developer constructed the clubhouse, swimming pool, and lagoon amenities which are up and usable to most residents of Desert Color. Part of the plan was to add additional amenities in the general clubhouse area. This application will fulfil that desire to add more amenities. No residential units are under review with this application, only amenities.

**Proposed Amenities:**
The lagoon, which takes the better part of the 5.63-acre site it occupies, is the big feature as far as the amenities are concerned. However, the clubhouse is and the associated pool are also major amenities. All of these features are constructed and available for use. The applicant has also shown parking adjacent to the project for not only cars but for golf carts as well. The trail system (which allows golf carts) funnels into this site and will provide access for those wanting to access via that method.

The developer is now proposing a 1.49-acre site to provide additional options for recreation. No new buildings are being proposed with the exception of a shade structure. The shade structure is next to a grassy area where events may take place such as a concert or similar activity.

> Sports courts & pool: The main attraction will be pickleball and bocce ball courts. Six Pickleball courts and two bocce ball courts will be available for the residents.
>
> Grassy areas: There are two areas designated for grass areas for the various activities. A total of approximately 16,825 sq ft is dedicated to grass areas. This accounts for approximately 25% of the overall site. The applicant is providing this centralized grass area and other common areas throughout the development to limit the amount of grass provided throughout the Auburn Hills, Resort and Sage Haven areas of Desert Color.

**Recommendation:** Planning Commission held a public hearing on March 22, 2022, and recommends approval of this Zone Change Amendment with the following comments and conditions:

1. That the applicant goes through the site planning process prior to any construction.

**Alternatives:**

1. Approval as presented.
2. Approval with conditions.
3. Deny the application.
4. Table the proposed zone change amendment to a specific date.

**Possible Motion:** "I move that we approve the zone change amendment for Desert Color Recreation Area as presented, case no. 2022-ZCA-016, based on the findings listed in the staff report."

**Findings for Approval:**

1. The proposed amendment meets the requirements of the Desert Color zoning plan as approved by City Council.
2. There will be adequate parking either on site or on street to facilitate the development.
3. The grassy areas will help reduce the demand for each individual home to have sod.

# EXHIBIT A
# POWER POINT PRESENTATION

# Desert Color Recreation Area

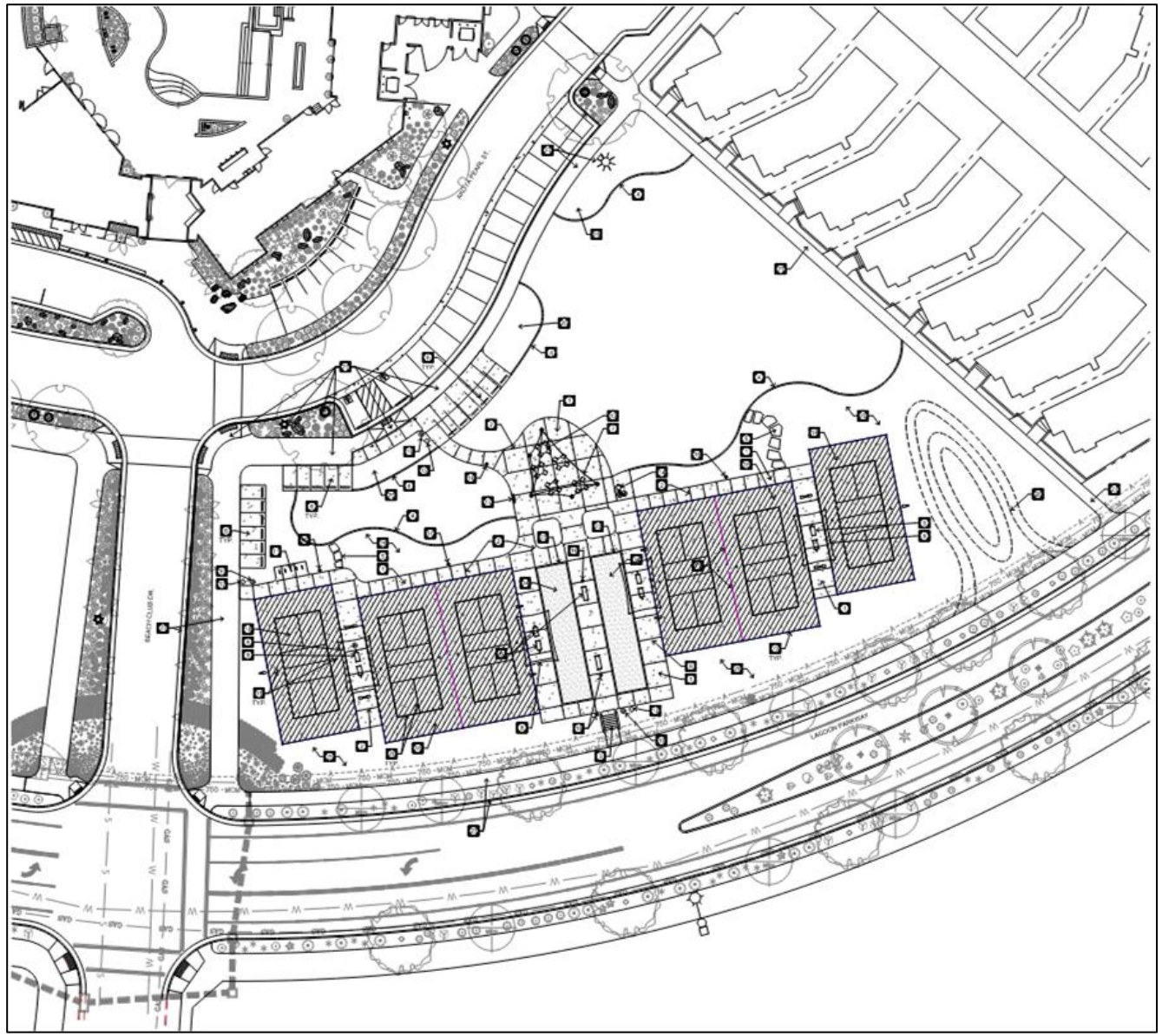
2022-ZCA-016


Aerial
W LAGOON PKWY
S BEACH CLUB DR
W AKOYA PEARL RD
S ALICE BLUE LN
W PERSIAN LN
S MARILLA DR
W OLYMPIC LN
W SAPPHIRE LN
S OCHRE LN
S GARNET DR
S PRIVATE ALY
S CARNELIAN PKWY
S SONORA STONE LN
W BRONZE PLATEAU DR
W SUNFIRE LN
W CLAYSTONE DR
W FIRELIGHT DR
Apartment 301
Apartment 303

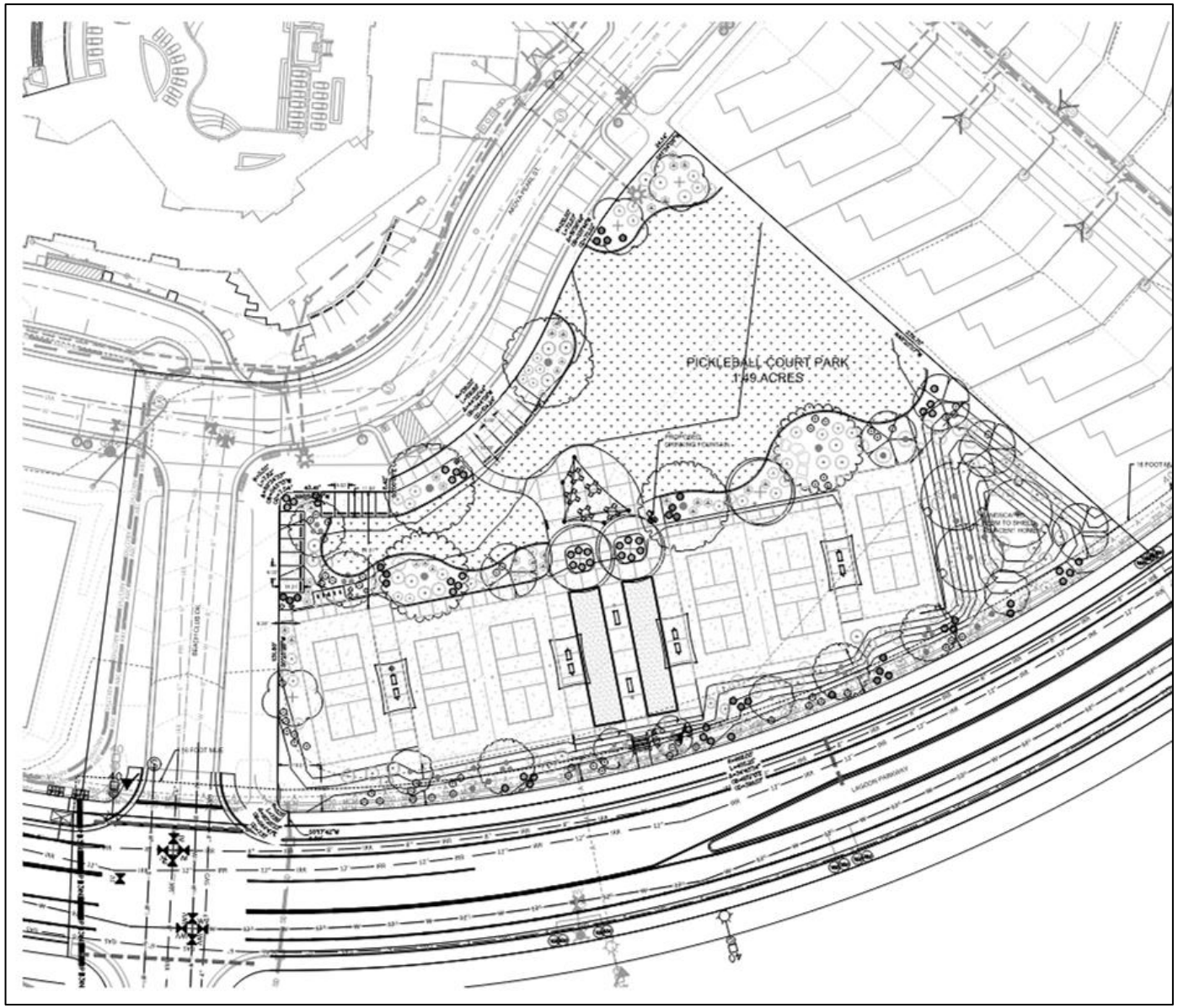

Land Use
OS
RES
TC
W LAGOON PKWY
S BEACH CLUB DR
W AKOYA PEARL RD
W SAPPHIRE LN
W OLYMPIC LN
S MARILLA DR
S ALICE BLUE LN
W BRONZE PLATEAU DR
W SUNFIRE LN
W CLAYSTONE DR
W FIRELIGHT DR
S GARNET DR
S CARNELIAN PKWY
S SONORA STONE LN
S PRIVATE ALY


Zoning
PD-R
PD-C
W LAGOON PKWY
S BEACH CLUB DR
W AKOYA PEARL RD
S ALICE BLUE LN
W PERSIAN LN
S MARILLA DR
W OLYMPIC LN
W SAPPHIRE LN
W SUNFIRE LN
W CLAYSTONE DR
W FIRELIGHT DR
W BRONZE PLATEAU DR
S GARNET DR
S CARNELIAN PKWY
S PRIVATE ALY
S OCHRE LN
W FROST LN
S SONORA STONE LN

# Site Plan



# Landscape Plan









**ORDINANCE NO._____**

**AN ORDINANCE AMENDING THE CITY ZONING MAP BY AMENDING THE EXISTING DESERT COLOR PLANNED DEVELOPMENT RESIDENTIAL (PD-R) ZONE ON APPROXIMATELY 1.49 ACRES TO APPROVE THE ADDITION OF AMENITIES IN THE DESERT COLOR DEVELOPMENT WITH SITE PLAN.**

(DESERT COLOR RESORT CLUBHOUSE RECREATION AMENITIES)

**WHEREAS**, the property owner has requested a zone change amendment to the existing PD-R zone on approximately 1.49 acres, to approve the addition of pickleball and bocce ball courts and gathering areas along with approved elevations and site layout. The site is generally located between Akoya Pearl Rd and Lagoon Pkwy at approximately 800 West; and

**WHEREAS,** the City Council held a public meeting on this request on May 5, 2022; and

**WHEREAS**, the Planning Commission held a public hearing on March 22, 2022, and thereafter forwarded a recommendation for approval of the requested zone change amendment to the City Council; and

**WHEREAS,** the City Council has determined that the requested zone change amendment to the Zoning Map is consistent with the goals and objectives of the General Plan, consistent with the approved master plan, does not create an undue burden or hardship on the City, and is in the best interest of the health, safety, and welfare of the citizens of the City of St. George.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City Code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The City Zoning Map is hereby ordered to be changed to reflect the amendment to the Planned Development Residential (PDR) zone on approximately 1.49 acres. The zone change amendment and location is more specifically described on the attached property legal description, incorporated herein as Exhibit “A.” The project must comply with all conditions, requirements, and restrictions as approved by City Council.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately on the date executed below, and upon publication and/or posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

APPROVED AS TO FORM:
City Attorney's Office

_____

ATTEST:

_____
Christina Fernandez, City Recorder

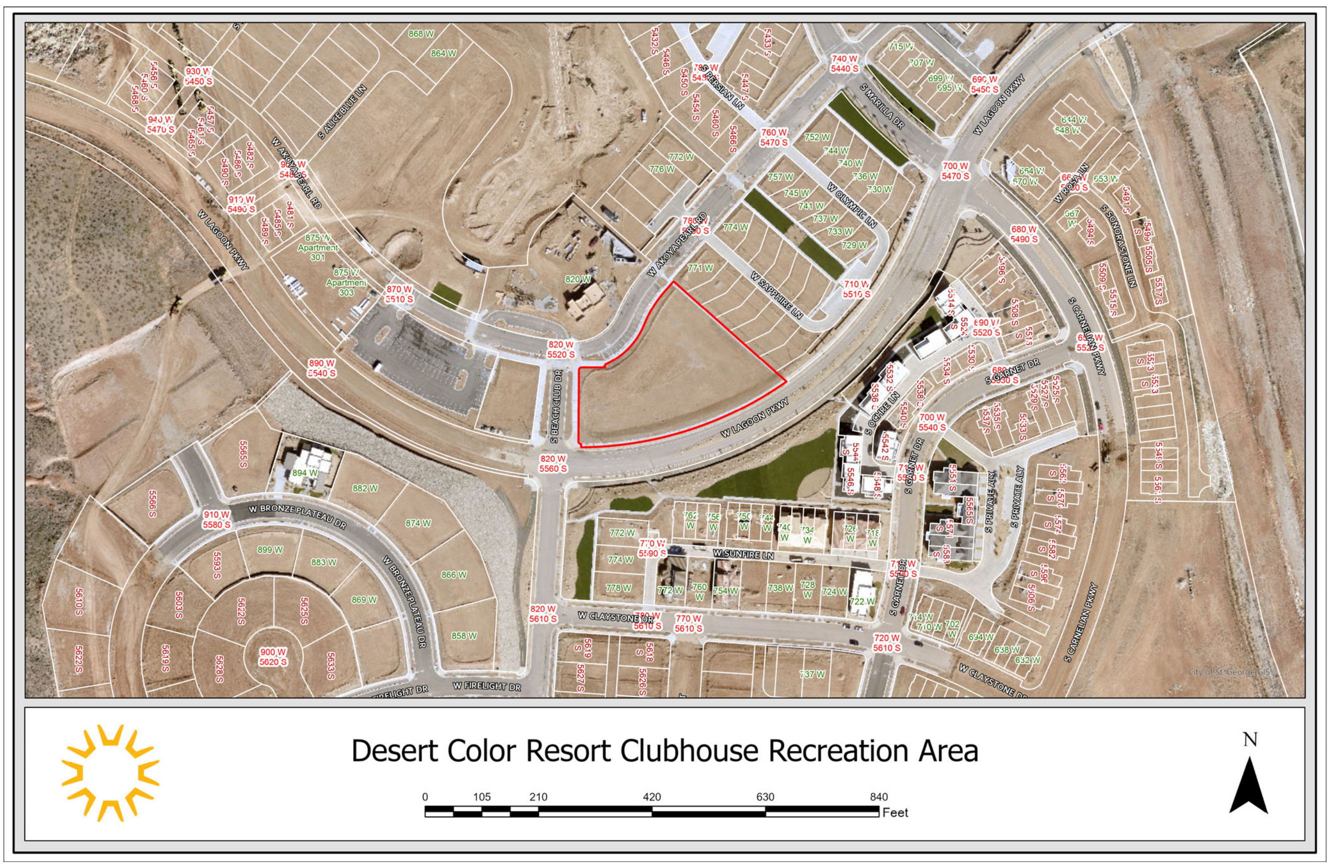
VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# EXHIBIT "A"

BEGINNING AT A POINT THAT LIES SOUTH 01°14'25" WEST ALONG THE SECTION LINE 1001.12 FEET AND DUE EAST 1097.32 FEET, FROM THE WEST QUARTER CORNER OF SECTION 25, TOWNSHIP 43 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON THE SOUTH BOUNDARY OF DESERT COLOR RESORT PHASE 2A SUBDIVISION AMENDED, DOCUMENT NO. 20210019666, OFFICIAL RECORDS, WASHINGTON COUNTY, UTAH, AND RUNNING THENCE ALONG SAID LINE THE FOLLOWING TEN (10) COURSES: NORTH 00°17'42" EAST 6.09 FEET, 2) NORTHWESTERLY ALONG A 5.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 44°47'18" WEST A DISTANCE OF 7.10 FEET), CENTER POINT LIES NORTH 00°00'00" EAST THROUGH A CENTRAL ANGLE OF 90°25'23", A DISTANCE OF 7.89 FEET, 3) NORTH 00°25'23" EAST 131.80 FEET, 4) NORTHEASTERLY ALONG A 5.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 45°12'42" EAST A DISTANCE OF 7.04 FEET), CENTER POINT LIES SOUTH 89°34'37" EAST THROUGH A CENTRAL ANGLE OF 89°34'37", A DISTANCE OF 7.82 FEET, 5) DUE EAST 43.41 FEET, 6) DUE NORTH 5.42 FEET, 7) NORTHEASTERLY ALONG A 138.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, (LONG CHORD BEARS NORTH 44°08'41" EAST A DISTANCE OF 104.24 FEET), CENTER POINT LIES NORTH 23°39'57" WEST THROUGH A CENTRAL ANGLE OF 44°22'44", A DISTANCE OF 106.89 FEET, 8) NORTHEASTERLY ALONG A 212.00 FOOT RADIUS REVERSE CURVE TO THE RIGHT, (LONG CHORD BEARS NORTH 31°45'44" EAST A DISTANCE OF 72.22 FEET), CENTER POINT LIES SOUTH 68°02'41" EAST THROUGH A CENTRAL ANGLE OF 19°36'49", A DISTANCE OF 72.57 FEET, 9) NORTH 41°34'08" EAST 24.14 FEET, AND 10) SOUTH 48°20'57" EAST 279.75 FEET TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF LAGOON PARKWAY, A PUBLIC ROAD DEDICATED AS DOCUMENT NO. 20190000314, OFFICIAL RECORDS, WASHINGTON COUNTY, UTAH THENCE ALONG SAID LINE WESTERLY ALONG A 668.00 FOOT RADIUS NON-TANGENT CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 72°15'02" WEST A DISTANCE OF 399.07 FEET), CENTER POINT LIES NORTH 35°07'45" WEST THROUGH A CENTRAL ANGLE OF 34°45'34", A DISTANCE OF 405.25 FEET, TO THE POINT OF BEGINNING.

CONTAINING 64,985 SQUARE FEET OR 1.49 ACRES.



**Agenda Date:** 05/05/2022 **Agenda Item Number:** 10

**Subject:**

Consider approval of an ordinance amending the Desert Color Planned Development zone to allow an amenity area for Regency at Desert Color to be known as Regency at Desert Color Amenity Area on approximately 7.85 acres located generally at the northeast corner of the future Canyon Wash Drive and Alder Grove Drive intersection.

**Item at-a-glance:**

Staff Contact: Dan Boles

Applicant Name: Bob Hermandson

Reference Number: 2022-ZCA-015

Address/Location:

Northeast corner of the future Canyon Wash Drive and Alder Grove Drive intersection

**Item History (background/project status/public process):**

Regency Plat A was approved by City Council in August of 2021 and included 175 single and two-family units and is part of the overall Desert Color association which entitled them to use of the existing (and future) amenities such as the lagoon, clubhouse, swimming pool, pickleball and bocce ball courts, etc. At their meeting held on March 22, 2022, the Planning Commission held a public hearing and recommended approval.

**Staff Narrative (need/purpose):**

The amenities site is 7.85 acres in size and is dedicated solely to amenity space. A clubhouse building will be the anchor of the site with other buildings, fields and amenities scattered throughout. Staff has asked the applicant to keep grassy areas to a minimum though they are showing some grass areas. These facilities are above and beyond the already provided lagoon, clubhouse, pool and proposed pickleball courts provided by Desert Color.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission held a public hearing and recommended approval of the application with the following findings:1.The proposed amendment meets the requirements of the Desert Color zoning plan as approved by City Council.2.There will be adequate parking either on site or on street to facilitate the development.3.The grassy areas are in lieu of each individual home having sod.

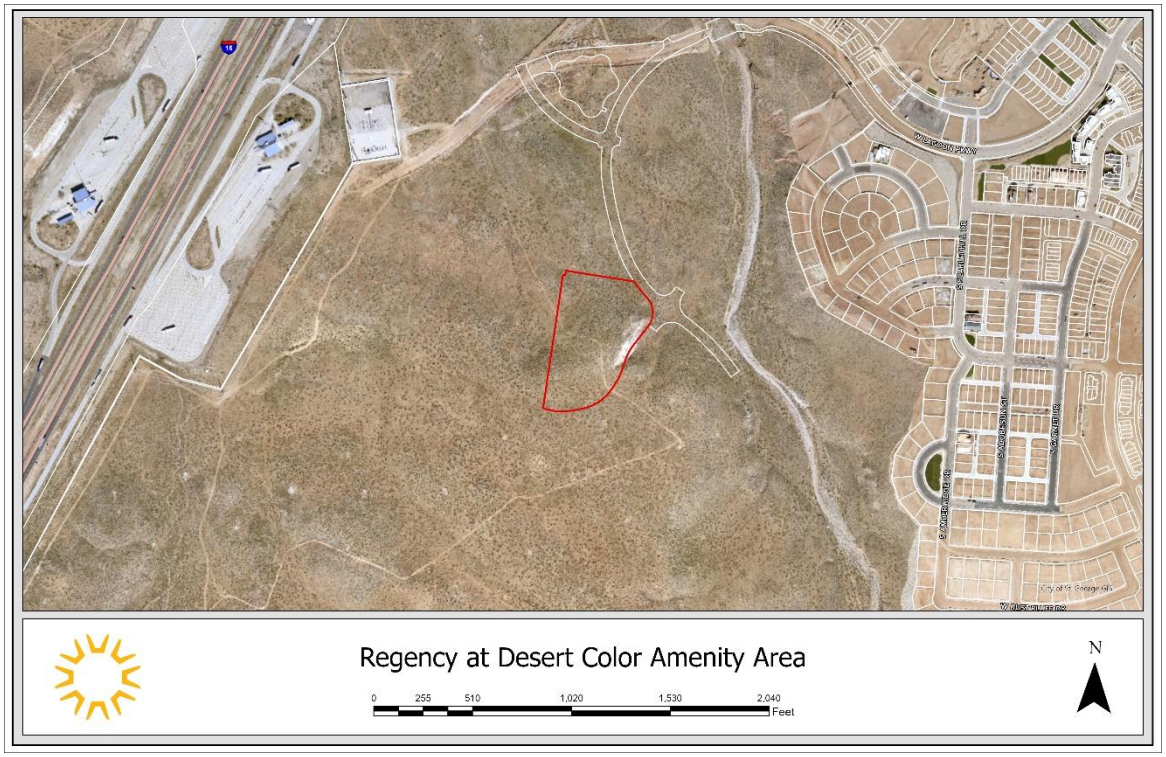
St.George
Community Development

# ZONE CHANGE AMENDMENT

**PLANNING COMMISSION AGENDA REPORT: 03/22/2022**
**CITY COUNCIL AGEND REPORT: 04/26/2022**

Zone Change Amendment
**Regency at Desert Color Amenity Area**
Case No. 2022-ZCA-015

| | |
|---|---|
| **Request:** | Consider a Zone Change Amendment to the Desert Color PD-R to approve the Regency Desert Color amenities. Development approvals were granted in August of 2021. This is only a review of the amenities. |
| **Applicant:** | SITLA/Desert Color St. George, LLC |
| **Representative:** | Bob Hermandson |
| **Area:** | 7.85 Acres |
| **Location:** | Generally located on the north-east corner of the future Canyon Wash Drive and Alder Grove Drive intersection. |
| **Current Zone:** | PD-R - TNZ-NG (Planned Development Residential, Traditional Neighborhood Zone – Neighborhood General & Neighborhood Edge) |
| **General Plan:** | RES (Residential) |



**Background:**
Auburn Hills and Desert Color Resort have been the focus of development in Desert Color over the past couple of years. More recently, Sage Haven has been a focus with approvals in 2021. With approvals in Auburn Hills winding up and fully under construction and Desert Color Resort also under construction, and Sage Haven coming online, the applicant is ready to focus on the next neighborhood or pod. This pod which has been dubbed "Regency" is located directly west of Auburn Hills. Regency is designated the NG (Neighborhood General) zone. Regency is slated to be age restricted (age 55 and older) and is designed with that demographic in mind.

Regency Plat 'A' was approved by City Council in August of 2021 and included 175 single and two-family units and is part of the overall Desert Color association which entitled them to use of the existing (and future) amenities such as the lagoon, clubhouse, swimming pool, pickleball and bocce ball courts, etc. Regency is being constructed by Toll Brothers who desired more amenities which would be customized to the age restricted population specifically. The proposed amenities are for Regency use exclusively. This application is intended to review those amenities only. No residential units are under review with this application, only the amenities.

**Amenities:**
The amenities site is 7.85 acres in size and is dedicated solely to amenity space. A clubhouse building will be the anchor of the site with other buildings, fields and amenities scattered throughout.

Buildings: The clubhouse will be a total of 10,995 sq ft and a max height of 31 feet. As previously stated, it will be the anchor for the site and is located in the center of the site. It is a desert territorial motif which complies with the Desert Color zone plan. An indoor swimming pool is proposed in a wing of the clubhouse. Other buildings such as pavilions will also provide gathering areas on the site.

Sports courts & pool: The main attraction, outside of the clubhouse will be pickleball and bocce ball courts and outdoor pool. Seven Pickleball courts, two bocce ball courts and a swimming pool will be available for the residents.

Grassy areas: Four areas are designated grass areas for various activities. A total of approximately 50,400 sq ft is dedicated to grass areas. This accounts for approximately 14.7% of the overall site. The applicant is providing this centralized grass area and other common areas throughout the development in lieu of providing grass on individual lots throughout.

**Recommendation:** Planning Commission held a public hearing on March 22, 2022, and recommends approval of this Zone Change Amendment with the following comments and conditions:

1. That the applicant goes through the site planning process prior to any construction.

**Alternatives:**

1. Approve as presented.
2. Approve with conditions.
3. Deny as presented.
4. Table the proposed zone change amendment to a specific date.

**Possible Motion:** "I move that we approve the zone change amendment for Regency at Desert Color Amenity Area as presented, case no. 2022-ZCA-015, based on the findings listed in the staff report."

**Findings for Approval:**

1. The proposed amendment meets the requirements of the Desert Color zoning plan as approved by City Council.
2. There will be adequate parking either on site or on street to facilitate the development.
3. The grassy areas are in lieu of each individual home having sod.

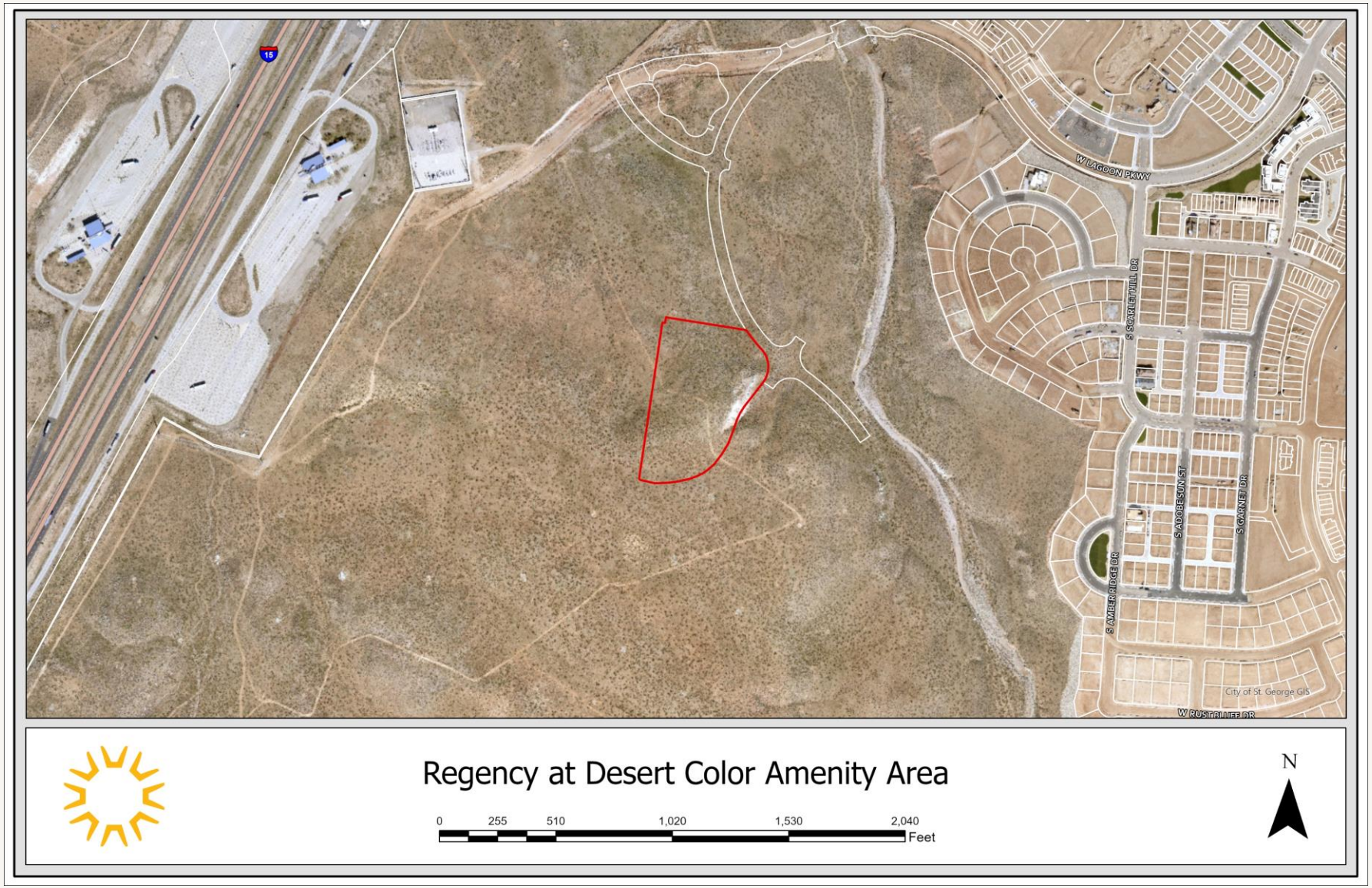
# EXHIBIT A
# POWER POINT PRESENTATION



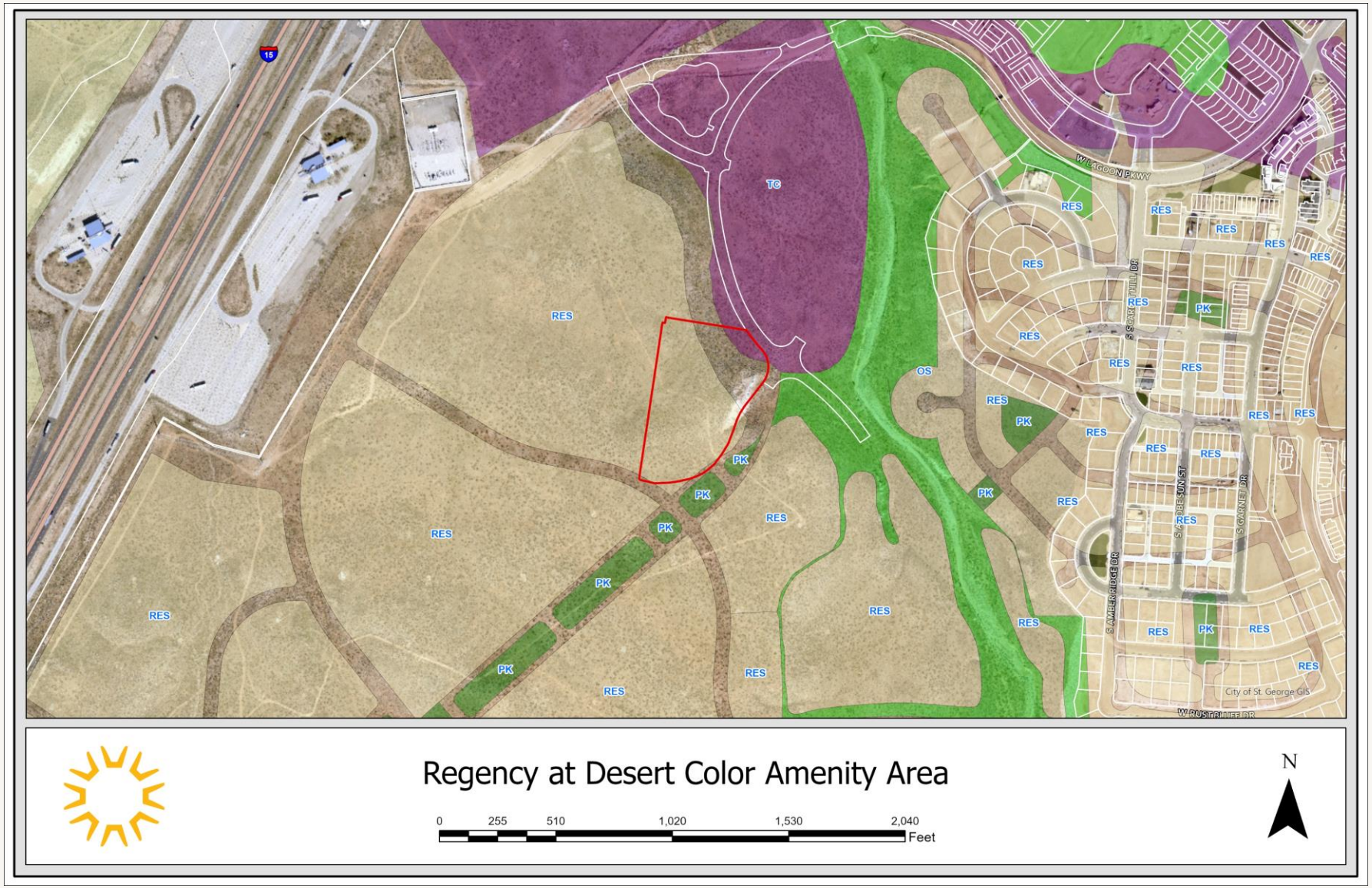
2022-ZCA-015

# Regency at Desert Color Amenity Area

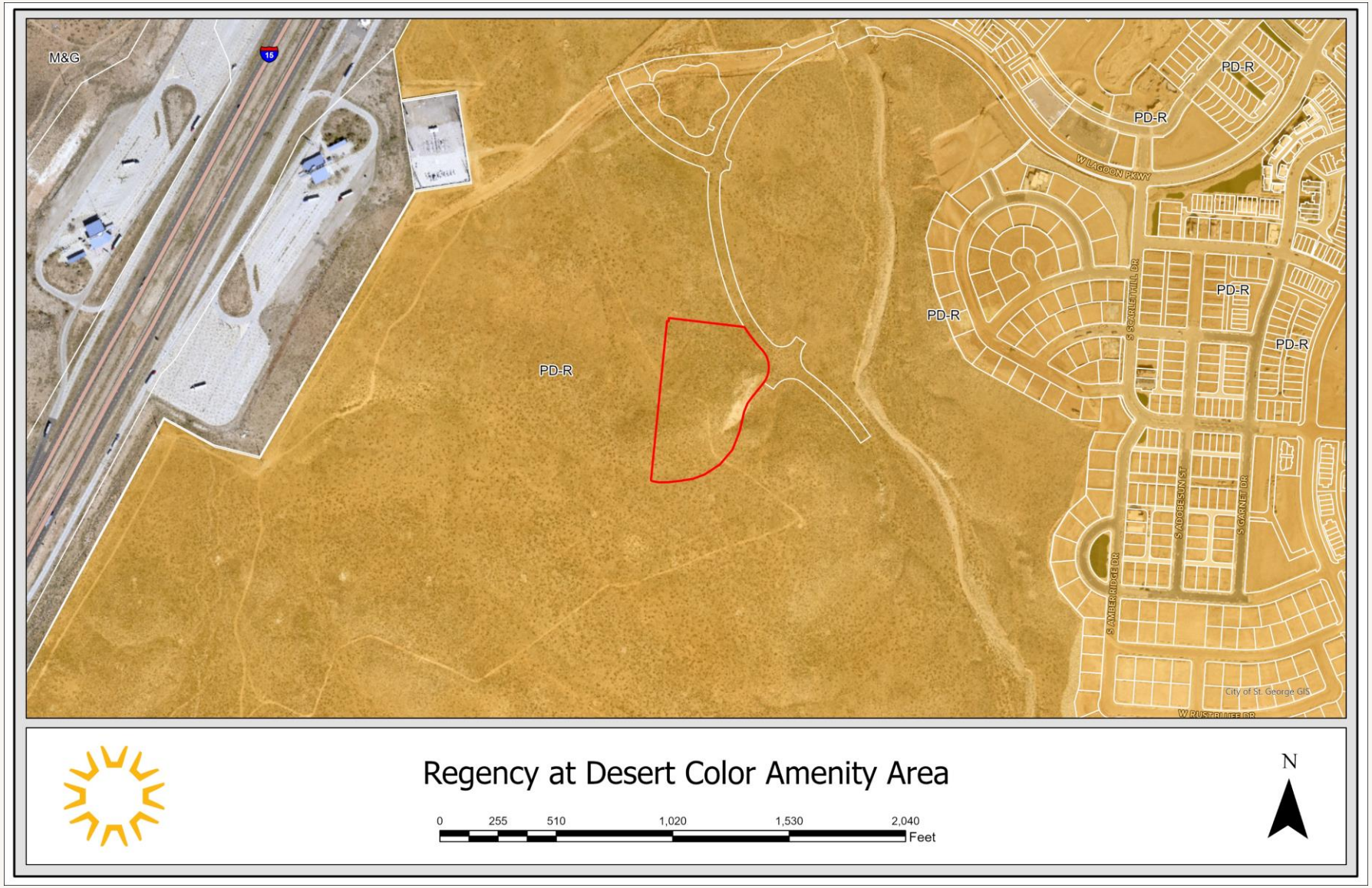
# Aerial Map


15
W LAGOON PKWY
S SCARLET HILL DR
S ADOBE SUN ST
S GARNET DR
S AMBER RIDGE DR
W RUSTRILLEE DR
City of St. George GIS
Regency at Desert Color Amenity Area
0
255
510
1,020
1,530
2,040
Feet
N

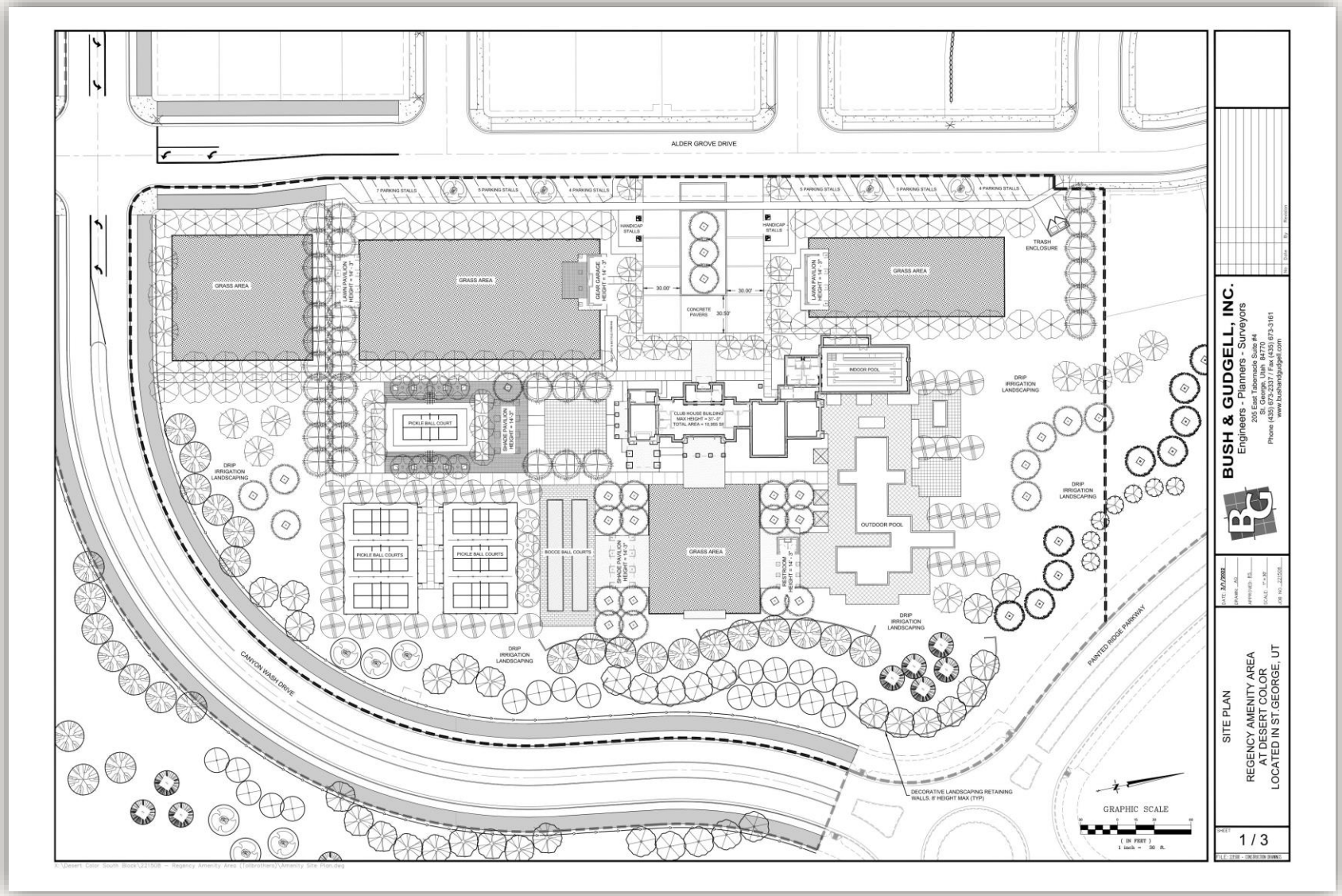
# Land Use


15
TC
RES
OS
PK
W AGOON PKWY
S SCARLET HILL DR
S GARNET DR
S AMBERRIDGE DR
W RUSTRIDGE DR
City of St. George GIS
Regency at Desert Color Amenity Area
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Feet
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# Zoning


M&G
15
PD-R
PD-R
PD-R
PD-R
PD-R
PD-R
W LAGOON PKWY
S SCARLET HILL DR
S ADOBE SUN ST
S GARNET DR
S AMBER RIDGE DR
W RUSTRIDGE DR
City of St. George GIS
Regency at Desert Color Amenity Area
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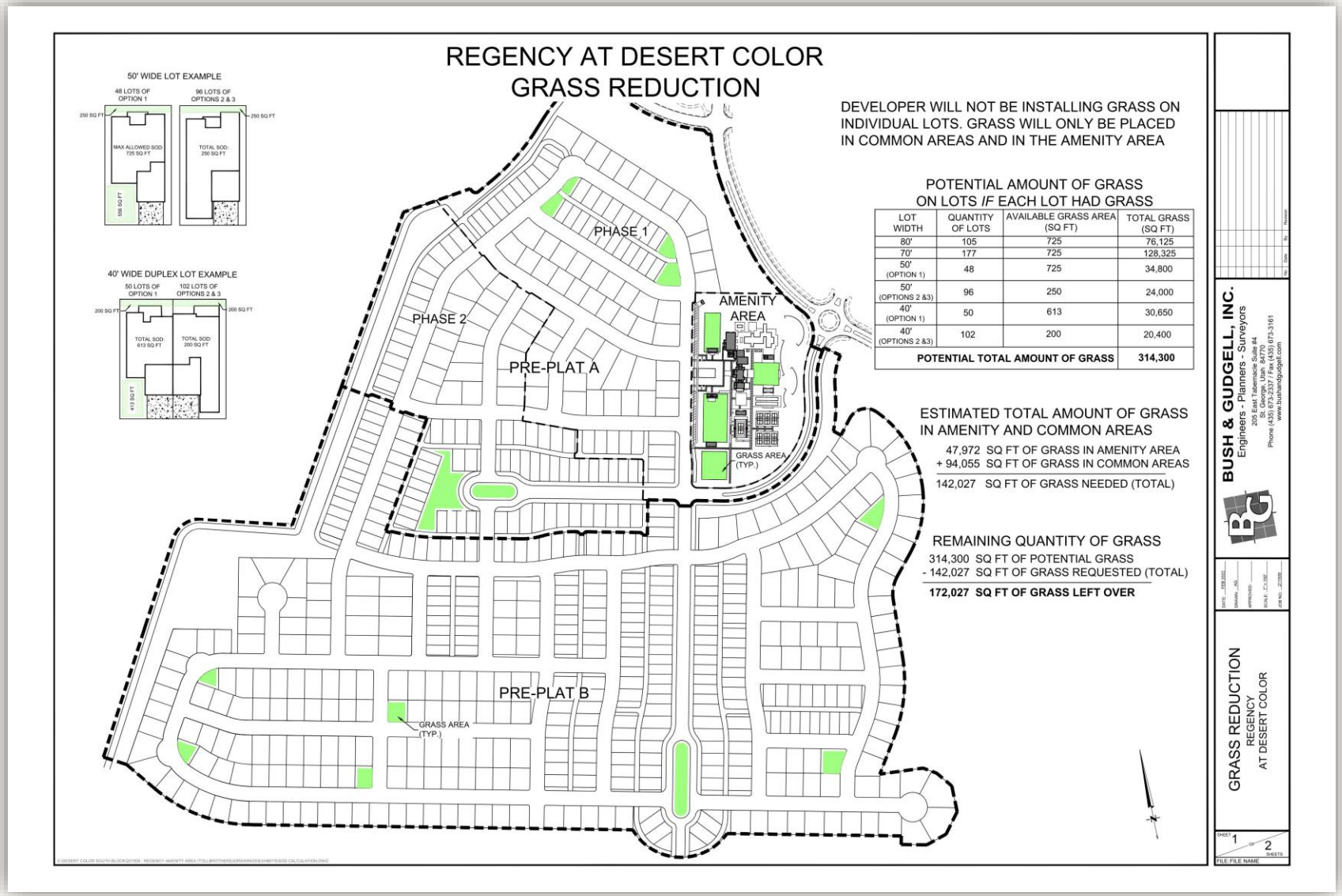
# Site Plan


ALDER GROVE DRIVE
CANYON WASH DRIVE
PAINTED RIDGE PARKWAY
GRASS AREA
PICKLE BALL COURT
PICKLE BALL COURTS
BOCCE BALL COURTS
CLUB HOUSE BUILDING
INDOOR POOL
OUTDOOR POOL
CONCRETE PAVERS
TRASH ENCLOSURE
DRIP IRRIGATION LANDSCAPING
DECORATIVE LANDSCAPING RETAINING WALLS. 8' HEIGHT MAX (TYP)
GRAPHIC SCALE
BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors
205 East Tabernacle Suite #4
St. George, Utah 84770
Phone (435) 673-2337 / Fax (435) 673-3161
www.bushandgudgell.com
SITE PLAN
REGENCY AMENITY AREA
AT DESERT COLOR
LOCATED IN ST.GEORGE, UT
SHEET
1 / 3

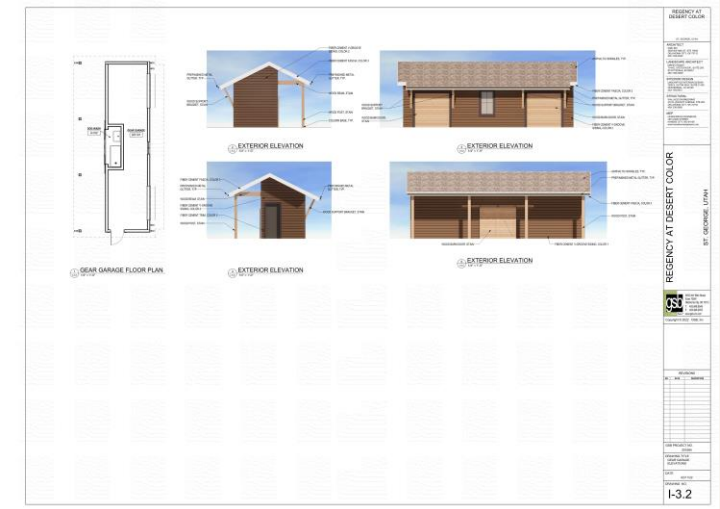
# Landscape Plan

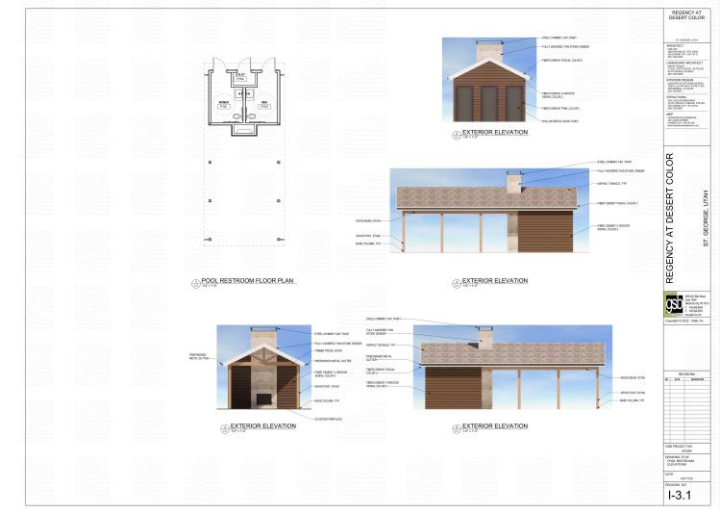


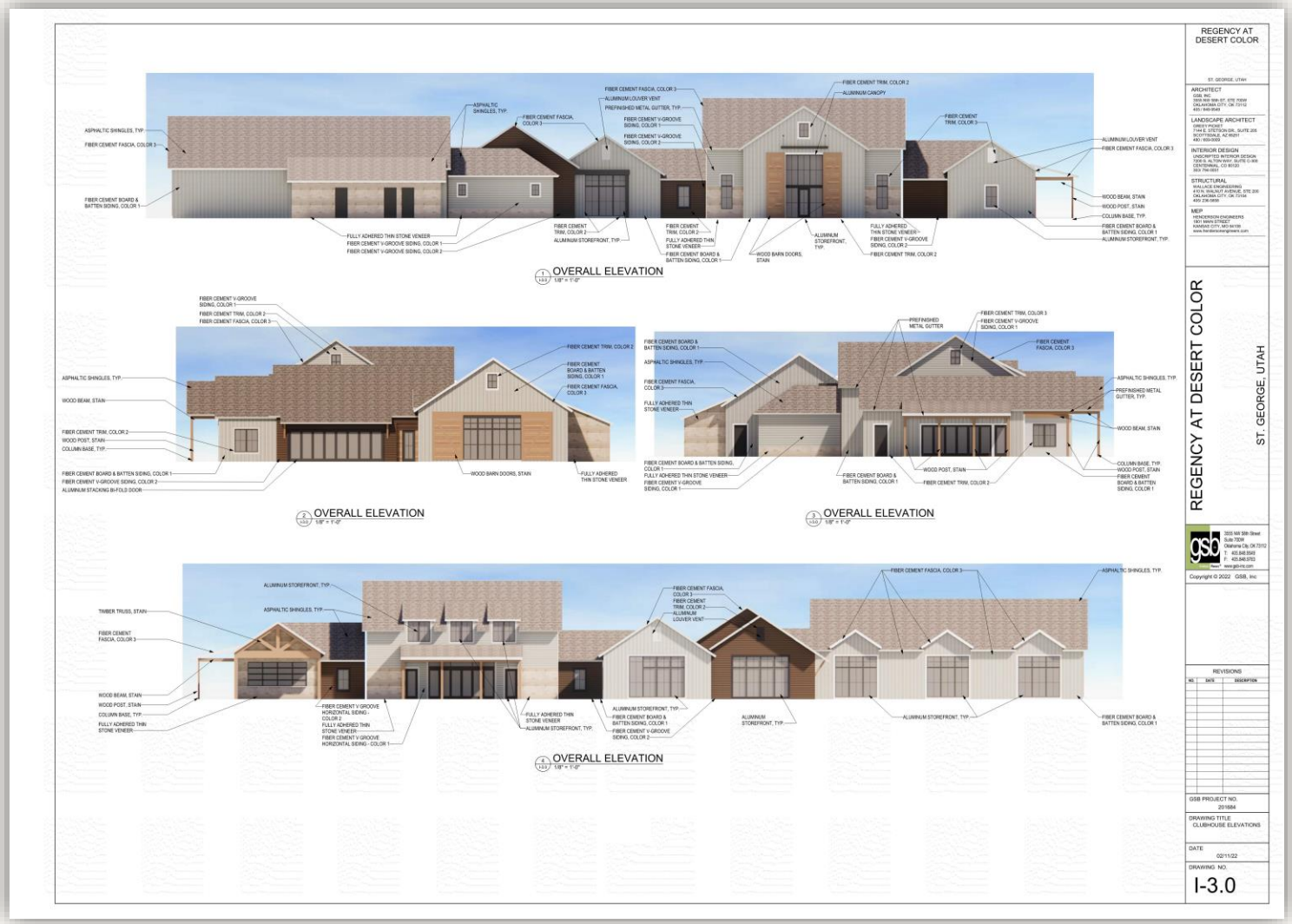
# Regency Landscaping



# Elevations


REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
GEAR GARAGE FLOOR PLAN
EXTERIOR ELEVATION
EXTERIOR ELEVATION
EXTERIOR ELEVATION
EXTERIOR ELEVATION
I-3.2


REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
POOL RESTROOM FLOOR PLAN
EXTERIOR ELEVATION
EXTERIOR ELEVATION
EXTERIOR ELEVATION
EXTERIOR ELEVATION
I-3.1


OVERALL ELEVATION
OVERALL ELEVATION
OVERALL ELEVATION
OVERALL ELEVATION
REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
GSB PROJECT NO.
201664
DRAWING TITLE
CLUBHOUSE ELEVATIONS
DATE
02/11/22
DRAWING NO.
I-3.0

# Renderings


REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
REGENCY AT DESERT COLOR
DESIGN REVIEW COMMITTEE SUBMITTAL
ST. GEORGE, UTAH
ARCHITECTURAL STYLE: DESERT COTTAGE
I-0.0


3D VIEW LOOKING SOUTHEAST
REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
I-2.1

# Renderings


REGENCY AT DESERT COLOR
3D VIEW LOOKING WEST


BOCCE
OKING NORTH
NOT FOR CONSTRUCTION - 50% CONSTRUCTION DOCUMENTS
REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
REVISIONS
GSB PROJECT NO.
201684
DRAWING TITLE
3D RENDERINGS
DATE
02/11/22
DRAWING NO.
I-2.4

# Renderings


REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
ARCHITECT
LANDSCAPE ARCHITECT
INTERIOR DESIGN
STRUCTURAL
MEP
REGENCY AT DESERT COLOR
ST. GEORGE, UTAH
Copyright © 2022 GSB, Inc.
REVISIONS
NO. DATE DESCRIPTION
GSB PROJECT NO.
201684
DRAWING TITLE
3D RENDERINGS
DATE
02/11/22
DRAWING NO.
I-2.6
3D VIEW LOOKING WEST

**ORDINANCE NO._____**

**AN ORDINANCE AMENDING THE CITY ZONING MAP BY AMENDING THE EXISTING DESERT COLOR PLANNED DEVELOPMENT RESIDENTIAL (PD-R) ZONE ON APPROXIMATELY 7.85 ACRES TO APPROVE THE ADDITION OF AMENITIES IN REGENCY AT DESERT COLOR DEVELOPMENT WITH SITE PLAN AND ELEVATIONS.**

(REGENCY AT DESERT COLOR AMENITY AREA)

**WHEREAS**, the property owner has requested a zone change amendment to the existing PD-R zone on approximately 7.85 acres, to approve the addition of pickleball and bocce ball courts, gathering areas, swimming pool and clubhouse along with approved elevations and site layout. The site is generally located on the north-east corner of Canyon Wash Drive and Alder Grove Drive intersection; and

**WHEREAS,** the City Council held a public meeting on this request on May 5, 2022; and

**WHEREAS**, the Planning Commission held a public hearing on March 22, 2022, and thereafter forwarded a recommendation for approval of the requested zone change amendment to the City Council; and

**WHEREAS,** the City Council has determined that the requested zone change amendment to the Zoning Map is consistent with the goals and objectives of the General Plan, consistent with the approved master plan, does not create an undue burden or hardship on the city, and is in the best interest of the health, safety, and welfare of the citizens of the City of St. George.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City Code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The City Zoning Map is hereby ordered to be changed to reflect the amendment to the Planned Development Residential (PDR) zone on approximately 7.85 acres. The zone change amendment and location is more specifically described on the attached property legal description, incorporated herein as Exhibit “A.” The project must comply with all conditions, requirements, and restrictions as approved by City Council.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately on the date executed below, and upon publication and/or posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

APPROVED AS TO FORM:
City Attorney's Office

_____

ATTEST:

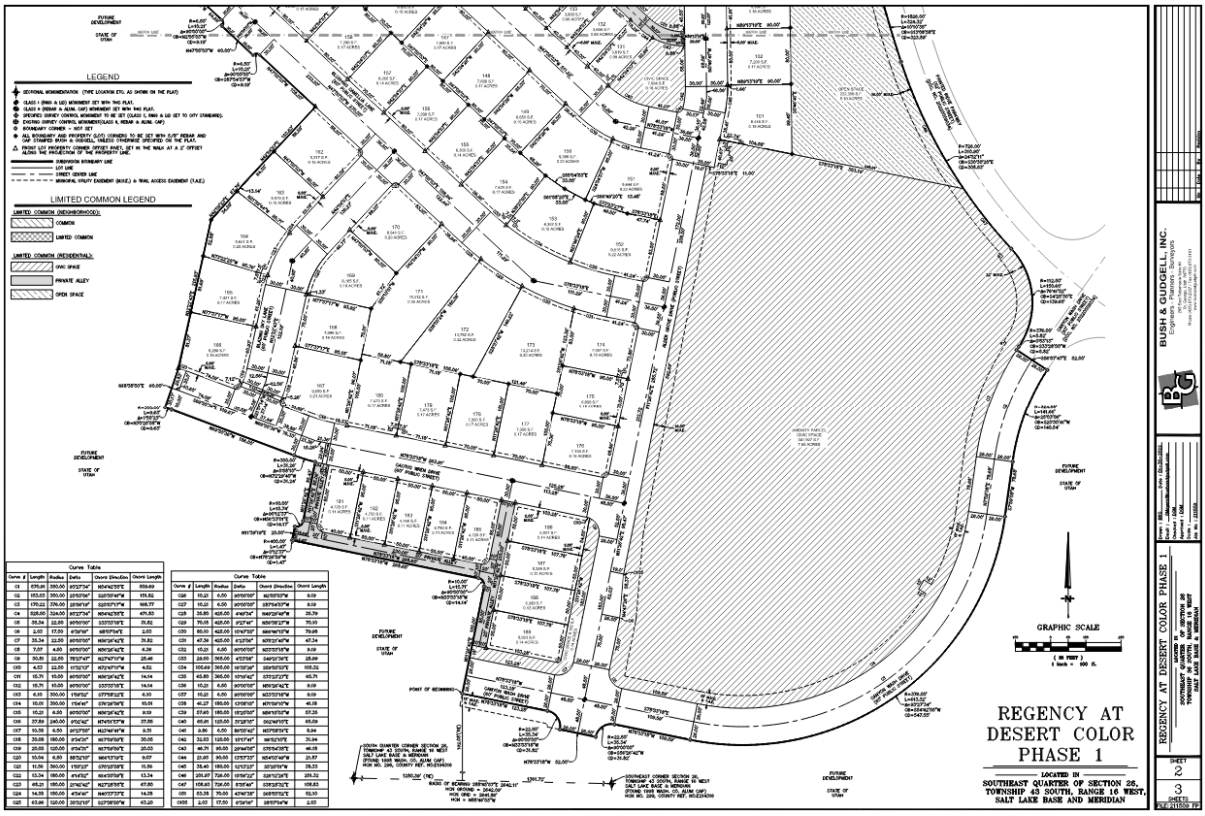
_____
Christina Fernandez, City Recorder

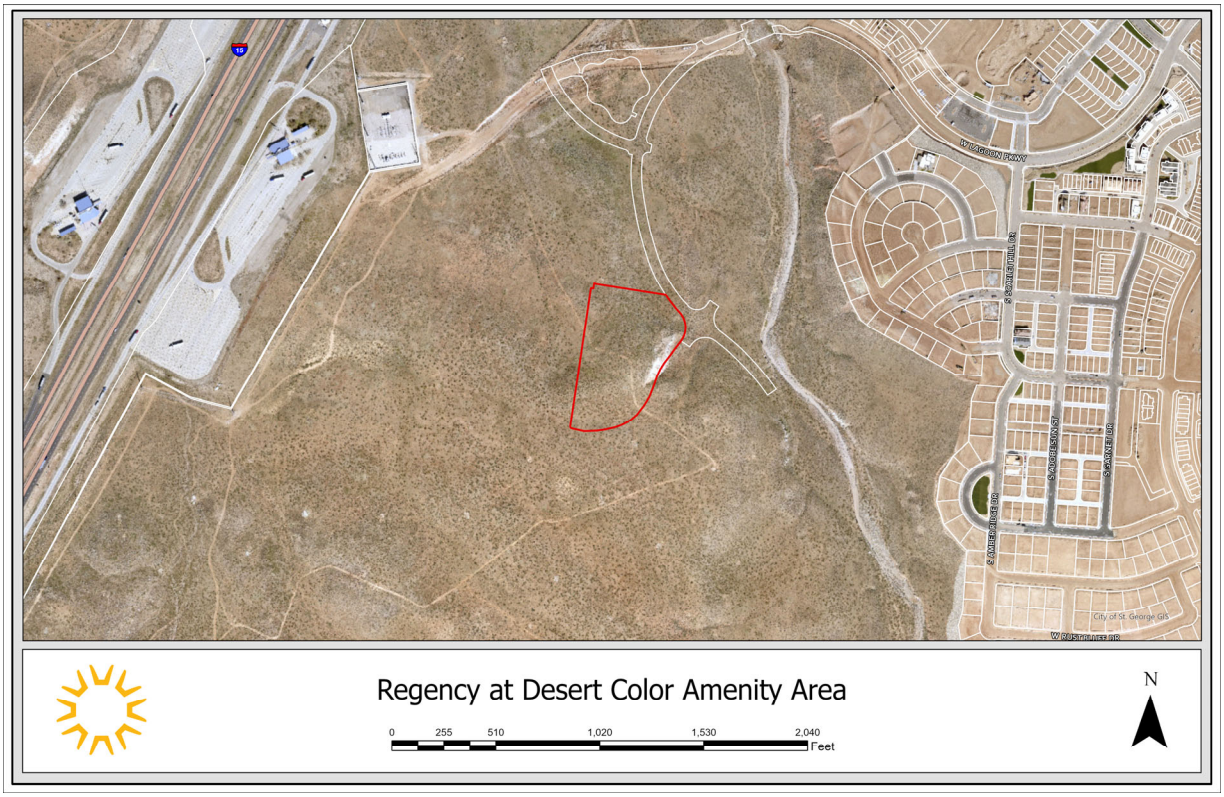
VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# EXHIBIT "A"

"Amenity parcel" Regency at Desert Color Phase 1



**Agenda Date:** 05/05/2022 **Agenda Item Number:** 11

**Subject:**

Consider approval of an ordinance amending the Humane Society Planned Development Commercial (PD-C) zone to allow construction of a medical clinic and pet resource center on approximately 2.35 acres located on the northwest corner of 2860 East and 850 North Street.

**Item at-a-glance:**

Staff Contact: Carol Davidson

Applicant Name: Humane Society of Utah

Reference Number: 2022-ZCA-018

Address/Location:

Northwest corner of 2860 East and 850 North.

**Item History (background/project status/public process):**

The Humane Society Planned Development Commercial zone was approved on July 15, 2021. This proposal is to allow for construction of a medical clinic and pet resource center. This project may be completed in two phases. The underlying general plan land use map is Commercial (COM). At their meeting held on April 12, 2022, the Planning Commission held a public hearing and recommended approval.

**Staff Narrative (need/purpose):**

The medical center will provide a low cost spay and neuter clinic and vaccine center for dogs and cats. This resource center will provide an adoption center for dogs, cats, and small mammals with long-term boarding kennels for the adoptable animals, a training facility, a humane education center, and pet retention center providing resources to the community to keep animals in homes.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

The Planning Commission recommended approval as presented.

St.George
Community Development

Zone Change Amendment

PLANNING COMMISSION AGENDA REPORT: 04/12/2022
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

| **Humane Society Medical Clinic**<br>Zone Change (Case No. 2022-ZC-018) | | |
|---|---|---|
| **Request:** | The applicant is seeking approval of their design for their medical clinic and pet resource center on approximately 2.35 acres. | |
| **Applicant:** | Humane Society of Utah | |
| **Representative:** | Vaughn Maurice | |
| **Location:** | The property is located at the northwest corner of 2860 E. 850 N., Tuscany Commercial Subdivision, Lot 1 | |
| **General Plan:** | COM (Commercial) | |
| **Existing Zoning:** | PD-C (General Commercial) | |
| **Surrounding Zoning:** | North | C-3 (General Commercial) |
| | South | C-3 (General Commercial) |
| | East | C-3 (General Commercial) |
| | West | C-3 (General Commercial) |
| **Land Area:** | Approximately 2.35 acres | |



**BACKGROUND:**
The Humane Society of Utah is proposing to build a state-of-the-art medical clinic and pet resource center. The medical center will provide a low cost spay and neuter clinic and vaccine center for dogs and cats. This resource center will provide an adoption center for dogs, cats, and small mammals with long-term boarding kennels for the adoptable animals, a training facility, a humane education center, and pet retention center providing resources to the community to keep animals in homes.

This project is being proposed in two phases. The first phase will house the medical clinic with the pet resource center coming in the second phase.

On July 15, 2021, a zone change was approved for this property from General Commercial (C-3) to Planned Development Commercial (PD-C). See Exhibit B for the approved use list. There was one condition with this approval, this was that an internal courtyard for the outdoor animal space be provided to reduce sound. Phase 2 does provide an outdoor courtyard.

Please see the zoning requirement details below:

| Zoning Requirements | | | |
|---|---|---|---|
| **Regulation** | **Section Number** | **Proposal** | **Staff Comments** |
| **Setbacks** | | See attached site plan | The required setbacks will be:<br>Front: 20' (on 850 N. Street)<br>10' (on access road)<br>Side: 10'<br>Rear: 10'<br>Site plan appears to meet setbacks |
| **Temporary Buildings, including Cargo Containers** | 10-8-4 | None | N/A |
| **Pedestrian Circulation Plan** | 10-8-6 | The site plan provided shows pedestrian access from 850 N. to building. | There is an existing sidewalk on 850 N. Street. This meets requirements |
| **Uses** | 10-8D-2 | Please see the existing use list for this PD-C. | The proposed uses are allowed in this PD-C |
| **Height and Elevation** | 10-8D-2 | The approximate proposed height is 18' for Phase 1 and 20' for the Phase 2 | The PD-C zone allows for a 50' height. This meets regulations. |
| **Phasing Plan** | 10-8D-2 | Two phases – see site | The two phases meet |

| | | | |
|---|---|---|---|
| | | plan | regulations |
| **Landscape Plan** | 10-8D-2 | The site plan indicates the location of the landscaping. | This will require a 15' wide plant strip along 850 N Street, and we will require street trees to be planted in the plant strip. |
| **Utilities** | 10-8D-2 | None shown | All utilities will be determined and designed during the JUC process. We will ensure this is completed during the site plan approval process. |
| **Signs** | 10-8D-2 | Signage has been provided. The applicants will also be putting in an electronic message board | The applicants will be required to pull a sign permit when they are ready to put in their signs. |
| **Lighting** | 10-8D-2 | A photometric plan has been provided. | The lighting appears to meet the foot candle requirement. |
| **Lot Coverage** | 10-8D-6 | See attached site plan | The PD-C zone allows coverage up to 50%. This meets the zoning regulations. |
| **Solid Waste** | 10-8D-6 | The site plan shows the location for solid waste. | The waste location has a matching fence around it which meets regulations. |
| **Buffer Protection of Residential Property** | 10-8D-6 | N/A | N/A |
| **Overlay Zones** | 10-13 | None | N/A |
| **Parking** | 10-19-5 | Parking provided:<br>Phase 1: 28<br>Phase 2: 47<br>Total: **75 stalls** | Phase 1 will require 5 stalls per doctor – with two doctors = 10 spaces will be required. Phase 2 will be approximately 13,600 sf. This building will be for pet adoption, pet storage, offices, and education. This building can be parked at 1 space for every 250 sf with the extra parking from the medical clinic. |
| **EVCS And Bike Parking** | 10-19-6 | Bike parking and EVCS conduit is not shown. | They will be required to install at least one bike rack to hold at least 2 bikes and conduit for at least one future charging station. |

**RECOMMENDATION:**
Planning Commission recommended approval of this zone change amendment.

**ALTERNATIVES:**

1. Approve as presented.
2. Approve with conditions.
3. Deny this zone change amendment.
4. Table the proposed zone change amendment to a specific date.

**POSSIBLE MOTION:**

I move we approve the zone change amendment for the Humane Society Medical Clinic.

**FINDINGS FOR APPROVAL:**

1. The proposed uses are permitted uses found in the PD-C zone.
2. The proposed zone change meets the initial zone-change application requirements found in Section 10-8D-2A.

# Exhibit A
# Applicant's Narrative

The Humane Society of Utah plans to use our new St. George site to build a comprehensive Pet Resource Center. The Center will consist of phase 1, a low cost spay/neuter clinic and vaccine center for dogs and cats, and phase 2, an adoption center for dogs, cats, and small mammals with long term boarding kennels for the adoptable animals, a training facility, a humane education center, and pet retention center providing resources to the community to keep animals in homes.

# Exhibit B
# Approved Use List

1. Animal hospital and veterinarian clinic including care for dogs, cats, rabbits, chickens, and small animals only; provided conducted completely within enclosed building with up to 150 animals and limited outdoor activities to be approved with the PD-C site plan
2. Animal Shelter (Non-Government/Non-Profit) for dogs, cats, rabbits, chickens, and small animals only; provided conducted completely within enclosed building with no more than 150 animals and limited outdoor activities to be approved with the PD-C site plan
3. Office
4. Retail uses

# Exhibit C
# Comments From Public

St.George
THE BRIGHTER SIDE

**Carol Davidson <carol.davidson@sgcity.org>**

# Humane Society Medical Clinic and Pet Resource Center project

1 message

**Jeff Compas** <jeff@contactclimbinggym.com> Thu, Apr 7, 2022 at 1:57 PM
To: carol.davidson@sgcity.org

Hello,

My name is Jeff Compas, and I am the owner of Contact Climbing Gym located at 2875 E 850 N, across the street from the proposed site of the Humane Society project. I regret that I will not be able to personally attend the planning commission meeting on Tuesday, but **I want to express my complete support for the project and the zoning change.**

We have spoken several times with leaders from the Humane Society and have been shown the proposed plans as well as renderings of the completed building and we are of the opinion that the building will complement the subdivision very nicely. In addition, the people who frequent our business are often animal lovers and advocates and we feel that this will not only provide a good place for the Humane Society, but will mutually benefit our customers as well.

I appreciate the opportunity to comment on this proposal and hope that my thoughts are helpful.

Please reach out to me directly with any questions at 801-358-8523.

Thank you,

Jeff Compas

# Exhibit D
# PowerPoint Presentation





# HUMANE SOCIETY MEDICAL CENTER

ZONE CHANGE AMENDMENT

(2022-ZCA-018)

# LOCATION

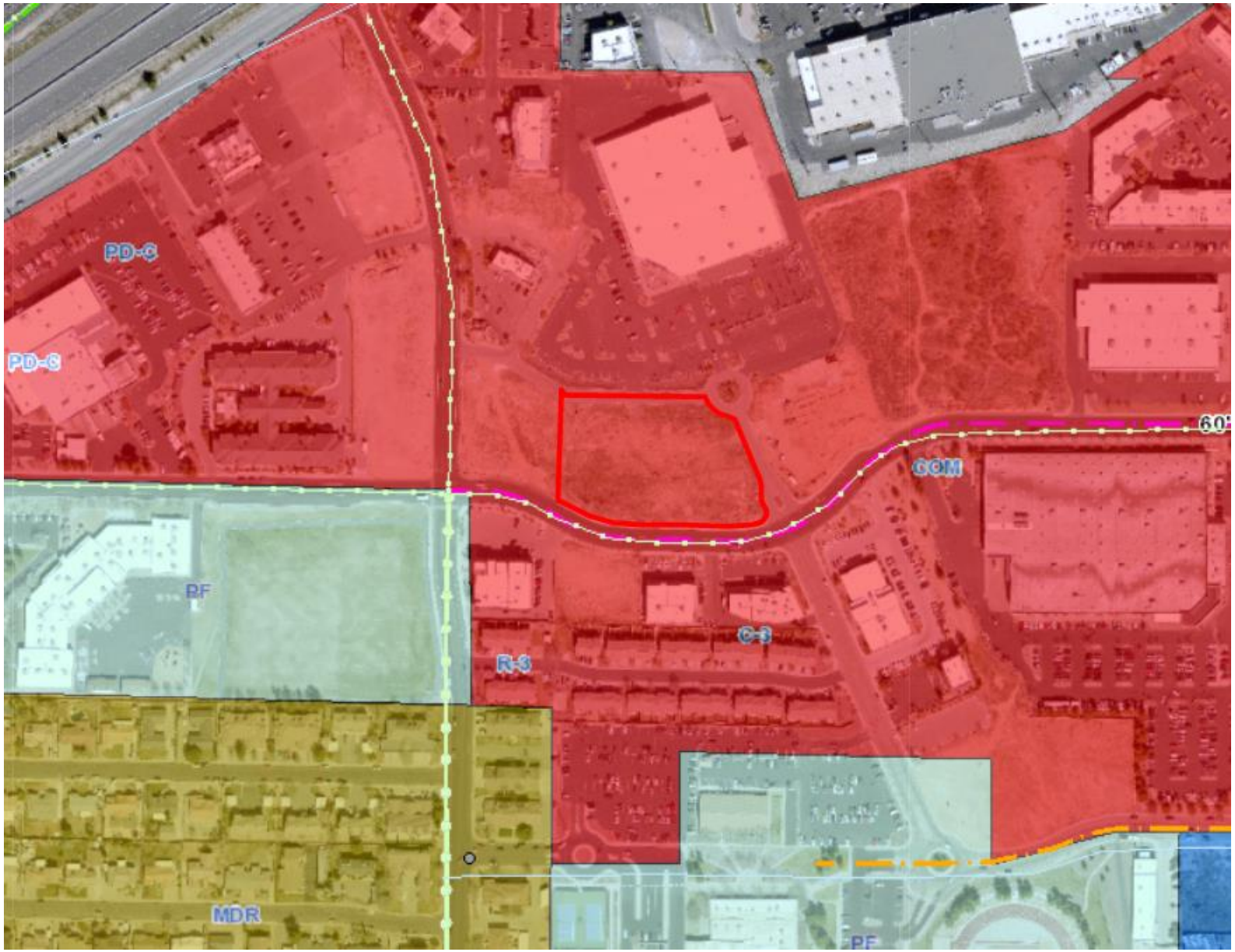
Northwest corner of
2860 E. 850 N.



# GENERAL PLAN FUTURE LAND USE

COM,

Commercial



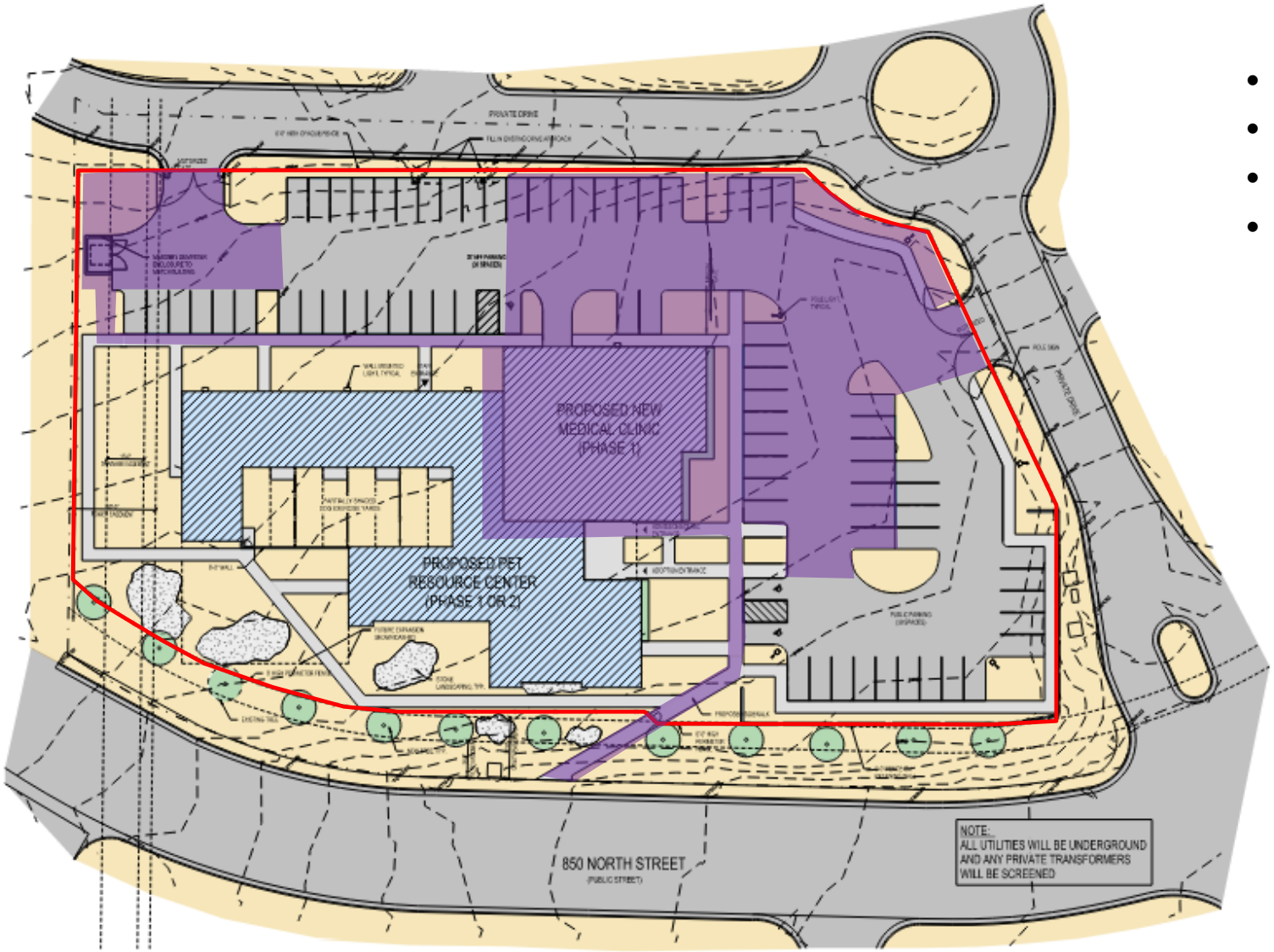
# ZONING

PD-C

Planned Development Commercial




PROPOSED NEW
MEDICAL CLINIC
(PHASE 1)
PROPOSED PET
RESOURCE CENTER
(PHASE 1 OR 2)
E 850 N ST




- Fence
- Landscaping
- Parking
- Phasing

# ELEVATIONS




HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 02 - FRONT VIEW 01
COMM. NO 1164
03/17/22

"Shelter Planners of America"

# ELEVATIONS




HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 02 - FRONT VIEW 02
COMM. NO 1164
03/17/22

"Shelter Planners of America"

# ELEVATIONS


HUMANE SOCIETY OF UTAH
HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 02 - PUBLIC STREET VIEW
COMM. NO 1164
03/17/22
"Shelter Planners of America"

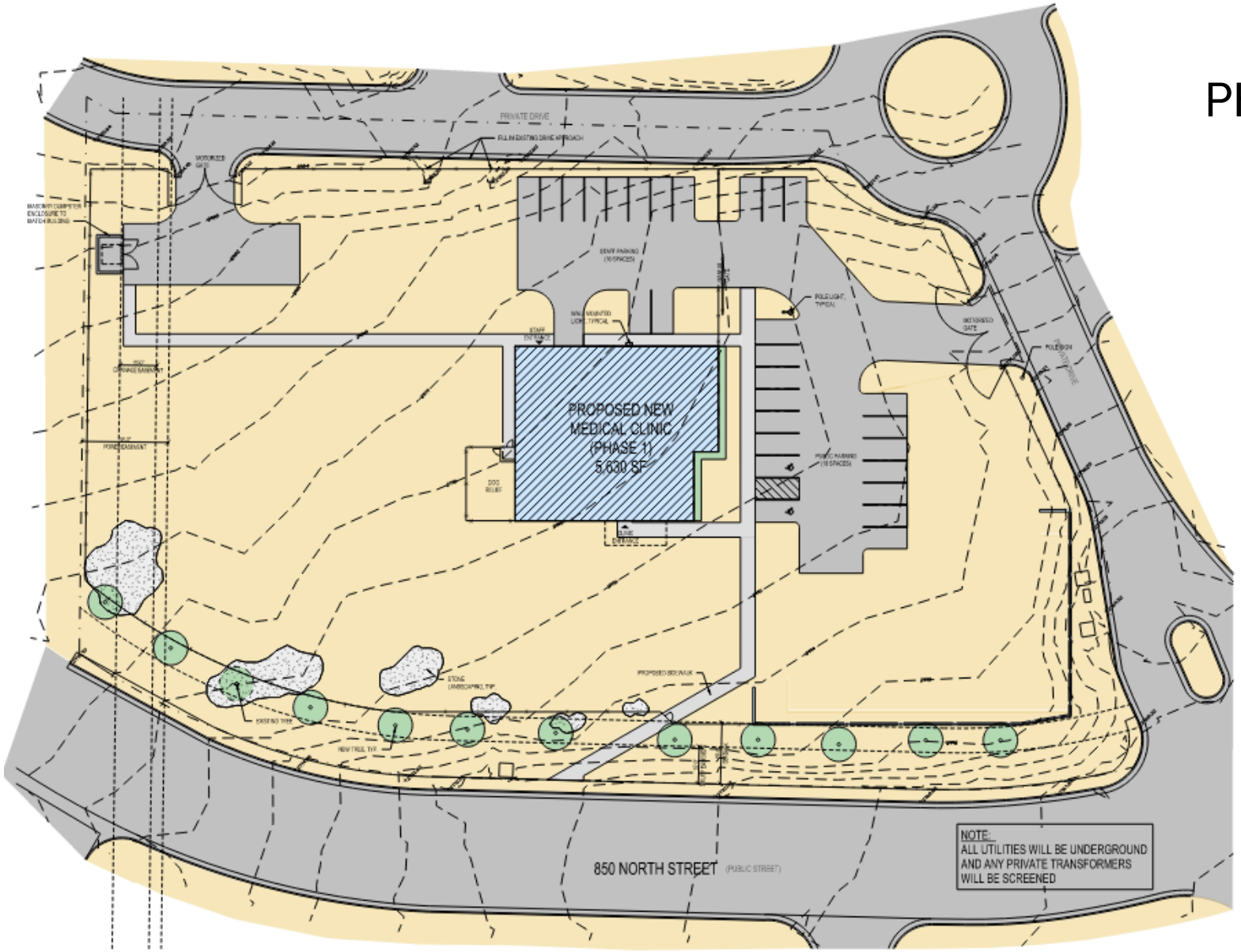
# ELEVATIONS



# ELEVATIONS


HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 02 - PRIVATE STREET VIEW
COMM. NO 1164
03/17/22
HUMANE SOCIETY OF UTAH
EST 1960
"Shelter Planners of America"


HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 02 - AERIAL VIEW
COMM. NO 1164
03/17/22
HUMANE SOCIETY OF UTAH
EST 1960
"Shelter Planners of America"


PRIVATE DRIVE
PROPOSED NEW
MEDICAL CLINIC
(PHASE 1)
5,630 SF
850 NORTH STREET (PUBLIC STREET)
NOTE:
ALL UTILITIES WILL BE UNDERGROUND
AND ANY PRIVATE TRANSFORMERS
WILL BE SCREENED

PHASE 1 ONLY

# ELEVATIONS




HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 01 - FRONT VIEW 01
COMM. NO 1164
03/22/22

"Shelter Planners of America"

# ELEVATIONS




HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 01 - FRONT VIEW 02
COMM. NO 1164
03/22/22

"Shelter Planners of America"

# ELEVATIONS



HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 01 - PUBLIC STREET VIEW
COMM. NO 1164
04/07/22

HUMANE SOCIETY OF UTAH
est. 1960

"Shelter Planners of America"

# ELEVATIONS



HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 01 - PRIVATE STREET VIEW
COMM. NO 1164
03/22/22

HUMANE SOCIETY OF UTAH
EST. 1960

"Shelter Planners of America"

# ELEVATIONS



HUMANE SOCIETY OF UTAH - ST. GEORGE PET RESOURCE CENTER
PHASE 01 - AERIAL VIEW
COMM. NO 1164
03/22/22

HUMANE SOCIETY OF UTAH
SINCE 1960

"Shelter Planners of America"

# LIGHT FIXTURES



## McGraw-Edison

### GLEON Galleon

Area / Site Luminaire

### Product Features

LumenSafe Technology

Light ARchitect™

### Product Certifications

3G VIB

IP66

5 YEAR

### Interactive Menu


- Ordering Information page 2
- Mounting Details page 3
- Optical Distributions page 4
- Product Specifications page 4
- Energy and Performance Data page 4
- Control Options page 9

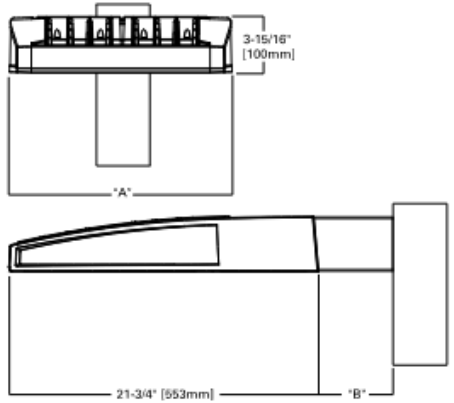

### Quick Facts

- Lumen packages range from 4,200 - 80,800 (34W - 640W)
- Efficacy up to 156 lumens per watt
- Options to meet Buy American and other domestic preference requirements

### Connected Systems

- WaveLinx
- Enlighted

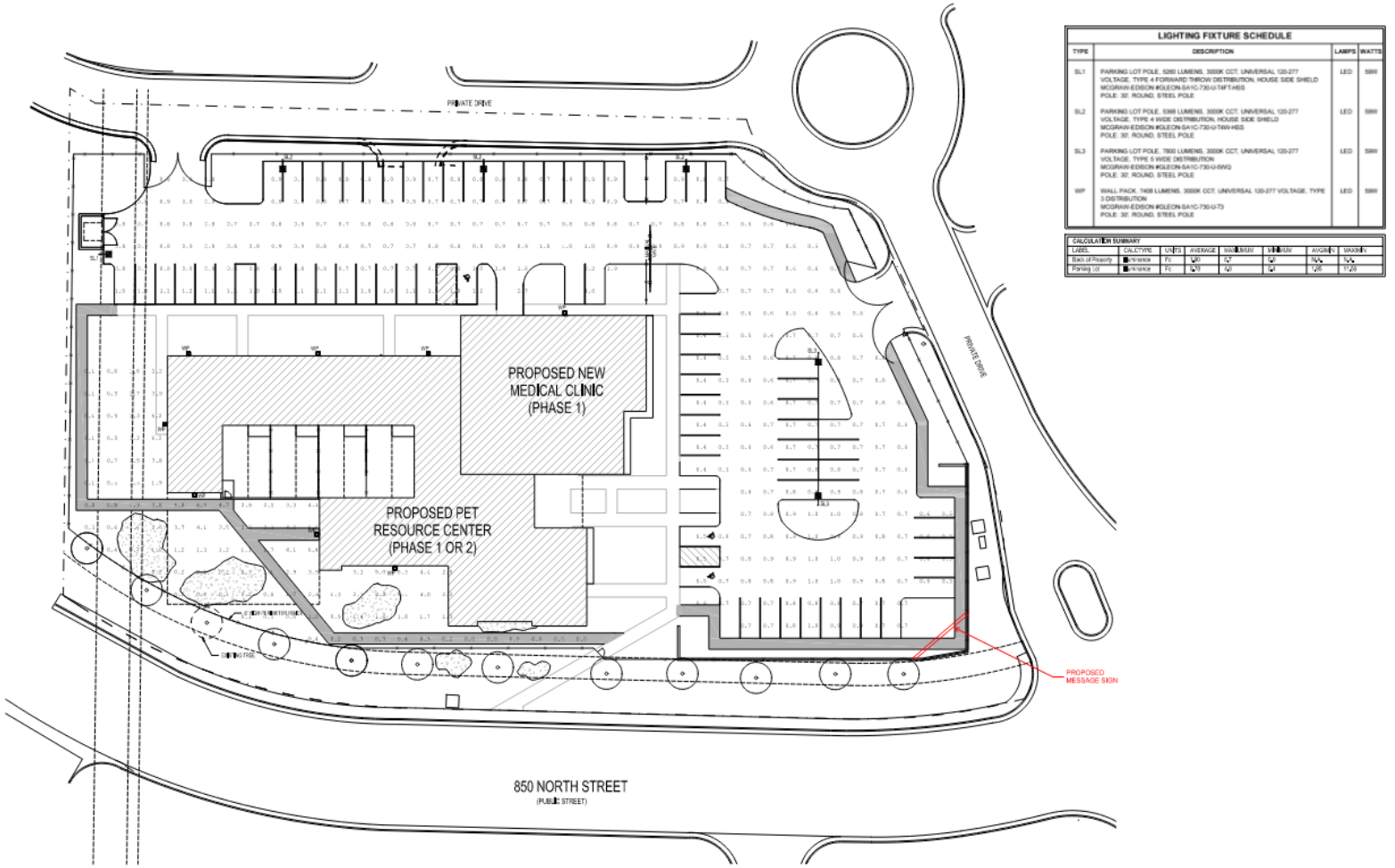
### Dimensional Details




| Number of Light Squares | "A" Width | "B" Standard Arm Length | "B" Extended Arm Length † | "B" Quick Mount Arm Length | "B" Quick Mount Extended Arm Length |
|---|---|---|---|---|---|
| 1-4 | 15-1/2" | 7" | 10" | 10-5/8" | 16-9/16" |
| 5-6 | 21-5/8" | 7" | 10" | 10-5/8" | 16-9/16" |
| 7-8 | 27-5/8" | 7" | 13" | 10-5/8" | -- |
| 9-10 | 33-3/4" | 7" | 16" | -- | -- |

NOTES:
For arm selection requirements and additional line art, see Mounting Details section.

NOTES:
1. Visit https://www.designlights.org/search/ to confirm qualification. Not all product variations are DLC qualified.
2. IDA Certified for 3000K CCT and warmer only.




**LIGHTING FIXTURE SCHEDULE**

| TYPE | DESCRIPTION | LAMPS | WATTS |
|---|---|---|---|
| SL1 | PARKING LOT POLE, 5260 LUMENS, 3000K CCT, UNIVERSAL 120-277 VOLTAGE, TYPE 4 FORWARD THROW DISTRIBUTION, HOUSE SIDE SHIELD MCGRAW-EDISON #GLEON-SA1C-730-U-TAFT-HSS POLE: 30', ROUND, STEEL POLE | LED | 59W |
| SL2 | PARKING LOT POLE, 5368 LUMENS, 3000K CCT, UNIVERSAL 120-277 VOLTAGE, TYPE 4 WIDE DISTRIBUTION, HOUSE SIDE SHIELD MCGRAW-EDISON #GLEON-SA1C-730-U-T4W-HSS POLE: 30', ROUND, STEEL POLE | LED | 59W |
| SL3 | PARKING LOT POLE, 7800 LUMENS, 3000K CCT, UNIVERSAL 120-277 VOLTAGE, TYPE 5 WIDE DISTRIBUTION MCGRAW-EDISON #GLEON-SA1C-730-U-5WQ POLE: 30', ROUND, STEEL POLE | LED | 59W |
| WP | WALL PACK, 7408 LUMENS, 3000K CCT, UNIVERSAL 120-277 VOLTAGE, TYPE 3 DISTRIBUTION MCGRAW-EDISON #GLEON-SA1C-730-U-T3 POLE: 30', ROUND, STEEL POLE | LED | 59W |

CALCULATION SUMMARY

| LABEL | CALCTYPE | UNITS | AVERAGE | MAX/MIN | MIN/MIN | AVG/MIN | MAX/MIN |
|---|---|---|---|---|---|---|---|
| Back of Property | Illuminance | Fc | 0.00 | 0.0 | 0.0 | N/A | N/A |
| Parking Lot | Illuminance | Fc | 0.00 | 0.0 | 0.0 | 0.00 | 17.28 |

# PHOTOMETRIC PLAN WITH ELECTRONIC MESSAGE BOARD LOCATION

# MATERIALS BOARD







# RECOMMENDATION

ZONE CHANGE AMENDMENT

(2022-ZCA-018)

**ORDINANCE NO._____**

**AN ORDINANCE AMENDING THE CITY ZONING MAP BY AMENDING THE HUMANE SOCIETY PLANNED DEVELOPMENT COMMERCIAL (PD-C) ZONE ON APROXIMATELY 2.35 ACRES, GENERALLY LOCATED AT THE NORTWEST CORNER OF 2860 EAST STREET AND 850 NORTH STREET, AND TO APPROVE THE DESIGN FOR A MEDICAL CLINIC AND PET RESOURCE CENTER.**

(Humane Society Medical Clinic))

**WHEREAS**, the property owner has requested to amend the Planned Development Commercial (PD-C) zone on approximately 2.35 acres, generally located at the northwest corner of 2860 East Street and 850 North Street to build a medical clinic and pet resource center; and

**WHEREAS**, the Planning Commission held a public hearing on this request on April 12, 2022; and

**WHEREAS,** the City Council held a public meeting on this request on May 5, 2022; and

**WHEREAS,** the City Council has determined that the requested amendment to the Zoning Map is justified at this time, and is in the best interest of the health, safety, and welfare of the citizens of the City of St. George.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City Code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The City Zoning Map is hereby ordered to be changed to reflect the zone change amendment to the Planned Development Commercial (PD-C) zone, on approximately 2.35 acres, generally located at the northwest corner of 2860 East Street and 850 North Street. The property affected by this zone change amendment is more specifically described on the legal description, incorporated herein as Exhibit “A”, and parcel exhibit, incorporated herein as Exhibit “B”.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately on the date executed below, and upon posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

APPROVED AS TO FORM:
City Attorney's Office

_____

ATTEST:

_____
Christina Fernandez, City Recorder

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# Exhibit “A” – Legal Description

The Land, situated in Washington County, Utah, is described as follows:

Lot One (1), "TUSCANY COMMERCIAL SUBDIVISION", according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

**Exhibit "B" – Parcel Exhibit**

The Human Society of Utah Zone Change from C-3 to PD-C




June 8, 2021

1:9,028

0 0.05 0.1 0.2 mi

0 0.07 0.15 0.3 km

9/2018

Made by the City of St. George GIS Department
SGCityMaps - https://maps.sgcity.org/sgcitymaps

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 12

**Subject:**

Consider approval of an ordinance amending the Atkinville Planned Development Commercial (PD-C) zone to allow construction of two new commercial buildings on approximately 9.41 acres located at 4400 South Desert Color Parkway.

**Item at-a-glance:**

Staff Contact: Carol Davidson

Applicant Name: Smith Payne Investments, LLC

Reference Number: 2022-ZCA-012

Address/Location:

4400 South Desert Color Parkway

**Item History (background/project status/public process):**

The Atkinville Interchange Area Zone Plan was approved in 2007 and at this location, allows uses that are permitted in the C-2 zone. This proposal is to allow for two new commercial buildings. The underlying general plan is Visitor Commerce Commercial (VC2) and Employment (E). At their meeting held on March 8, 2022, the Planning Commission held a public hearing and recommended approval with conditions.

**Staff Narrative (need/purpose):**

The purpose of this proposed zone change request is to allow for two new building to be built. Currently, the lot is vacant.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

The Planning Commission recommended approval of this Zone Change Amendment with the following conditions:1.The applicant meets all requirements found in Section 10-8D of the Zoning Regulations.2.The applicant meets the street tree requirement along Desert Color Parkway.3.That any business to occupy space in building #2 is a use allowed in the C-2 zone as required in the Atkinville Interchange area zone plan and that any use proposing to occupy space in building #2 meets the parking requirements set forth in section 10-19 of the St. George city code. 4.That the area labeled Demo Test Track is constructed and maintained to keep any dust down. If this area is at any point abandoned, it is landscaped with plantings and trees.5.That if vehicles are to be displayed, that they display area is shown on the site plan. If no display area is shown and approved on the approved site plan, no outdoor display shall be permitted until such a time that the site is amended.6.There is a shared parking agreement between building 1 and building 2.7.There is a shared access agreement between this lot and the vacant lot to the south for the shared entrance onto Desert Color Parkway.

St.George
Community Development

# Zone Change Amendment

PLANNING COMMISSION AGENDA REPORT: 03/08/2022
PLANNING COMMISSION CONTINUED: 04/12/2022
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

| **Moto United Business Park**<br>Zone Change Amendment (Case No. 2022-ZCA-012) | | |
|---|---|---|
| | This is a request to amend the Atkinville Planned Development Commercial (PD-C) to approve a design for two new commercial buildings. | |
| **Applicant:** | Smith Payne Investments, LLC | |
| **Representative:** | Civil Science | |
| **Location:** | The project is located at 4400 South Desert Color Parkway | |
| **General Plan:** | VC2 (Visitor Commerce Commercial) and E (Employment) | |
| **Existing Zoning:** | PD-C (Planned Development Commercial) | |
| **Surrounding Zoning:** | North | PD-C (Planned Development Commercial) |
| | South | PD-C (Planned Development Commercial) |
| | East | PD-C (Planned Development Commercial) |
| | West | PD-C (Planned Development Commercial) |
| **Land Area:** | Approximately 9.41 acres total property area | |



**BACKGROUND:**
This amendment proposes two new buildings on the site. A mix of retail, auto-sales, warehousing and office are proposed in building number one which is adjacent to the freeway. The second building will be a multi-tenant building which is proposed to handle office/retail uses. The proposed building one will be a height of approximately 45' and will front on I-15. Building two will be approximately 42' in height and will front Desert Color Parkway.

The Atkinville Interchange Area Zone Plan, which was approved in 2007 and covers this area, allows uses that are permitted in the C-2 zone. The C-2 zone permits "Automobile and other similar vehicle sales lots" with specific standards. One of those standards states that this use is allowed only on certain streets. Desert Color Parkway (north of the Southern Parkway underpass, approximately three-thousand four hundred (3,400) feet in length to the north end of the former "Welcome Center" parcel) is one of those designated streets. Building two will be a shell that will house office/retail and warehousing. All businesses that wish to occupy that building will be subject to the C-2 use restrictions.

Please see the zoning requirement details below:

| Zoning Requirements | | | |
|---|---|---|---|
| **Regulation** | **Section Number** | **Proposal** | **Staff Comments** |
| **Setbacks** | | - 86' to DC Pkwy<br>- 131' to I-15 ROW<br>- 60' & 51' on closest sides | The required setbacks will be:<br>Front: 20' (on Desert Color Pkwy and I-15)<br>Side: 10' or 0'<br>Rear: 10' |
| **Temporary Buildings, including Cargo Containers** | 10-8-4 | None | N/A |
| **Pedestrian Circulation Plan** | 10-8-6 | This site will likely not see much pedestrian use. That said, the designer has shown walkways throughout the site to the public right-of-way. | Applicant should, at site plan stage, show clear connections of the sidewalks through striping or material changes. |
| **Uses** | 10-8D-2 | Existing uses in Atkinville refer to C-2 zoning uses. | C-2 uses are applicable. |
| **Height and Elevation** | 10-8D-2 | Bldg 1 = approx. 45'<br>Bldg 2 = approx. 42' | The PD-C zone allows for a 50' height. This meets regulations. |
| **Phasing Plan** | 10-8D-2 | No phasing | N/A |

| | | | |
|---|---|---|---|
| **Landscape Plan** | 10-8D-2 | A concept landscape plan is provided. | The property adjacent to Desert Color Pkwy will be landscaped with a 15' average landscape area. The area adjacent to I-15 will have a Demo/Test Track for the vehicles being sold. There will need to be landscaping in that area. This will be vetted during the site plan process. |
| **Utilities** | 10-8D-2 | Electrical shown | All utilities will be required to be underground, and all transformer equipment must be screened. We will ensure this is completed during site plan approval process. |
| **Signs** | 10-8D-2 | No signage has been provided. | The applicants will be required to pull a sign permit when they are ready to put in their signs. All signs must meet the provisions of the sign code. |
| **Lighting** | 10-8D-2 | A photometric plan has not been provided. | The parking lot lighting will be required to meet the regulations and be 1.0-foot candle or less at the property line. Staff will ensure it meets the regulations during the site plan process. |
| **Lot Coverage** | 10-8D-6 | See attached site plan. | The PD-C zone allows coverage up to 50%. At 33%, the site meets the zoning regulation. |
| **Dumpster** | 10-8D-6 | The site plan shows the locations for solid waste. | The dumpster locations appear to have fences around them which meets regulations. |
| **Buffer Protection of Residential Property** | 10-8D-6 | N/A | N/A |
| **Overlay Zones** | 10-13 | N/A | N/A |
| **Parking** | 10-19-5 | Parking provided:<br>Bldg 1: 148 stalls<br>Bldg 2: 88 stalls | See site plan and narrative for parking breakdown. Because there is very little excess parking, uses will be limited in the second building and staff will have to keep track of parking and uses. |

| | | | |
|---|---|---|---|
| **EVCS And Bike Parking** | 10-19-6 | They have not shown Electric conduit or Bike parking on the site. | They will be required to provide conduit for future electrical charging station for at least 1 parking stall and bicycle parking. |

**RECOMMENDATION:**
The Planning Commission recommended approval of this Zone Change Amendment with the following conditions:

1. The applicant meets all requirements found in Section 10-8D of the Zoning Regulations.
2. The applicant meets the street tree requirement along Desert Color Parkway.
3. That any business to occupy space in building #2 is a use allowed in the C-2 zone as required in the Atkinville Interchange area zone plan and that any use proposing to occupy space in building #2 meets the parking requirements set forth in section 10-19 of the St. George city code.
4. That the area labeled “Demo Test Track” is constructed and maintained to keep any dust down. If this area is at any point abandoned, it is landscaped with plantings and trees.
5. That if vehicles are to be displayed, that they display area is shown on the site plan. If no display area is shown and approved on the approved site plan, no outdoor display shall be permitted until such a time that the site is amended.
6. There is a shared parking agreement between building 1 and building 2.
7. There is a shared access agreement between this lot and the vacant lot to the south for the shared entrance onto Desert Color Parkway.

**ALTERNATIVES:**
1. Approve as presented.
2. Approve with additional conditions.
3. Deny this zone change amendment.
4. Table the proposed zone change amendment to a specific date.

**POSSIBLE MOTION:**
I move we approve this amendment to the Atkinville Interchange Area Planned Development Commercial (PD-C) zone and to approve the design for two new buildings located on the 9.41 acre site with staff’s recommendations.

**FINDINGS FOR APPROVAL:**
1. The proposed amendment meets the requirements of the original zone change as approved by City Council.
2. There will be adequate parking on site to facilitate the development.
3. The increase in height will fit harmoniously into the neighborhood, minimizing any negative impacts by considering the proposed setbacks provide an appropriate buffer to neighboring properties.

# Exhibit A
# Applicant's Narrative

# Detailed Narrative – Moto United

## Lot 3 – Kenworth Commercial Subdivision (Parcel: SG-KENW-3)

The site has a total of 9.41 acres with 2 proposed buildings providing a total combined area of 193,524 square feet that has a lot coverage of 32.82%. The site is planned to have 22.89% of landscaping.

The west building (Building 1) is designed for a single use for the sales – parts – support – service for all types of powersports vehicles and totals 127,276 square feet. This building will have 148 parking spaces with 12 spaces for sales, 42 spaces for parts/gear sales, 35 spaces for service and prep., and 59 spaces for the warehouse. There are areas for pick-up – drop-off delivery and including a customer Demo Track on the far west side of the property.

The east building (Building 2) is designed as a multi-tenant facility with uses ranging in sales – storage/warehouse and/or service and totals 66,248 square feet. This building will have 88 parking spaces with 16 dedicated for Office and 72 for the warehouse area.

The site is located on the east side of Interstate-15 to provide the best visibility of the powersports vehicles. Kenworth Sales and Service is located on the north side of this facility, as a similar use, the proposed development is in harmony with building size and use. The property to the south and west has yet to be developed.

# Exhibit B
# PowerPoint Presentation

# MOTO UNITED BUSINESS PARK

2022-ZCA-012

# AERIAL MAP

Moto United Business Park Zone Change Amendment




February 22, 2022

1:16,810

0 0.13 0.25 0.5 mi

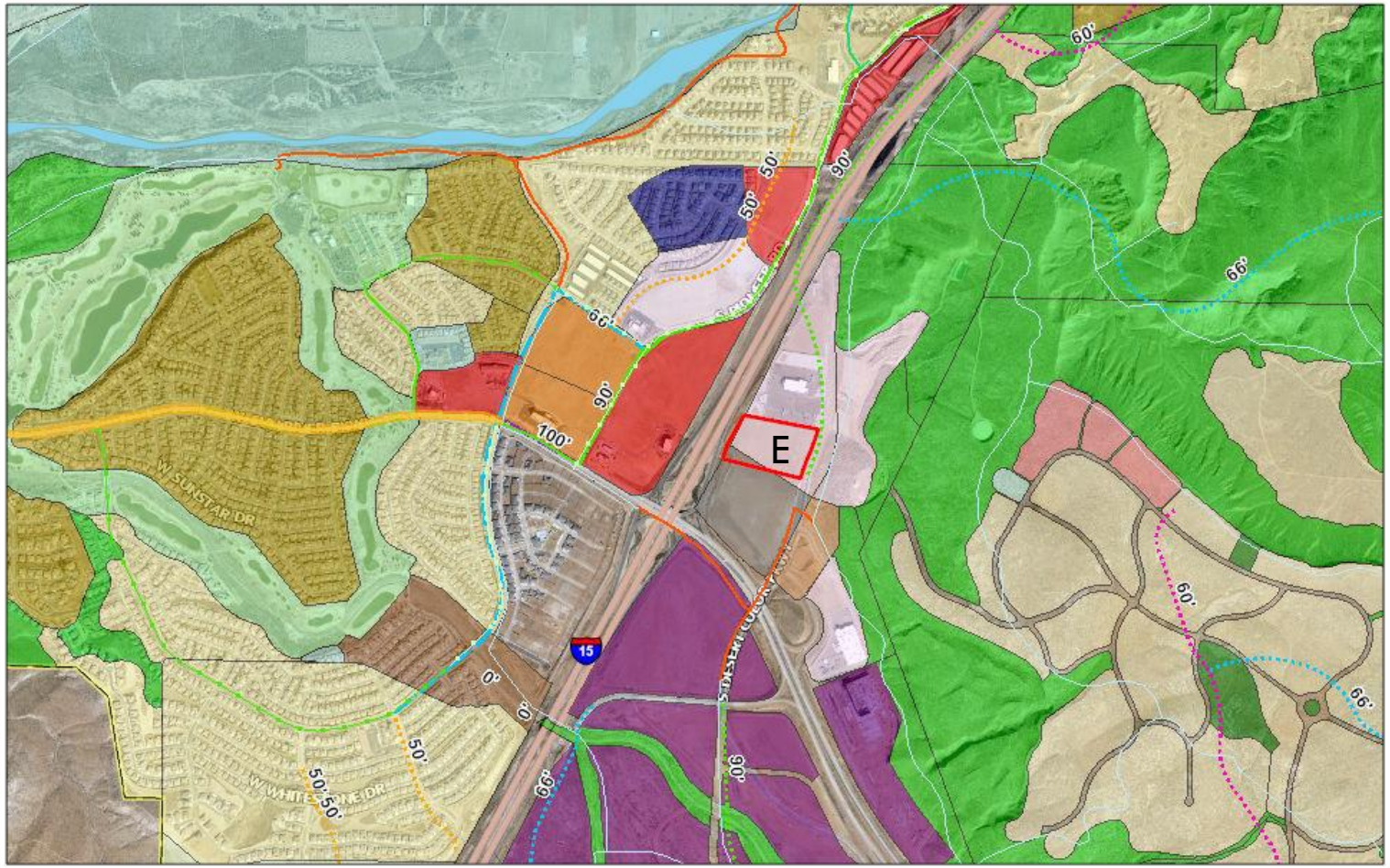
0 0.23 0.45 0.9 km

City of St. George GIS

Made by the City of St. George GIS Department
SGCityMaps - https://maps.sgcity.org/sgcitymaps

# GENERAL PLAN MAP

Moto United Business Park Zone Change Amendment




February 22, 2022

1:16,810

0 0.13 0.25 0.5 mi

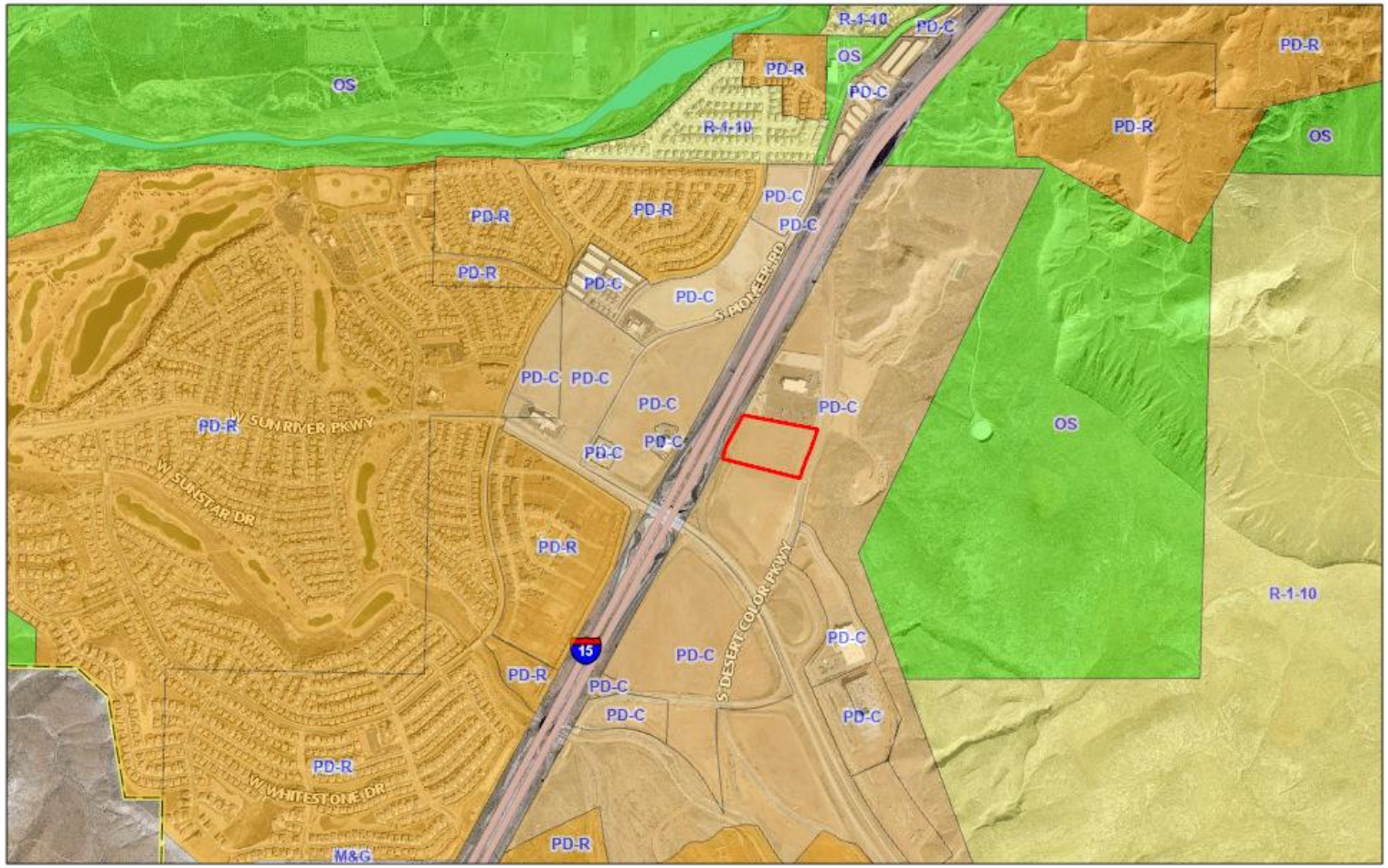
0 0.23 0.45 0.9 km

City of St. George GIS

Made by the City of St. George GIS Department
SGCityMaps - https://maps.sgcity.org/sgcitymaps

# ZONING MAP

Moto United Business Park Zone Change Amendment




February 22, 2022

1:16,810

0 0.13 0.25 0.5 mi

0 0.23 0.45 0.9 km

City of St. George GIS

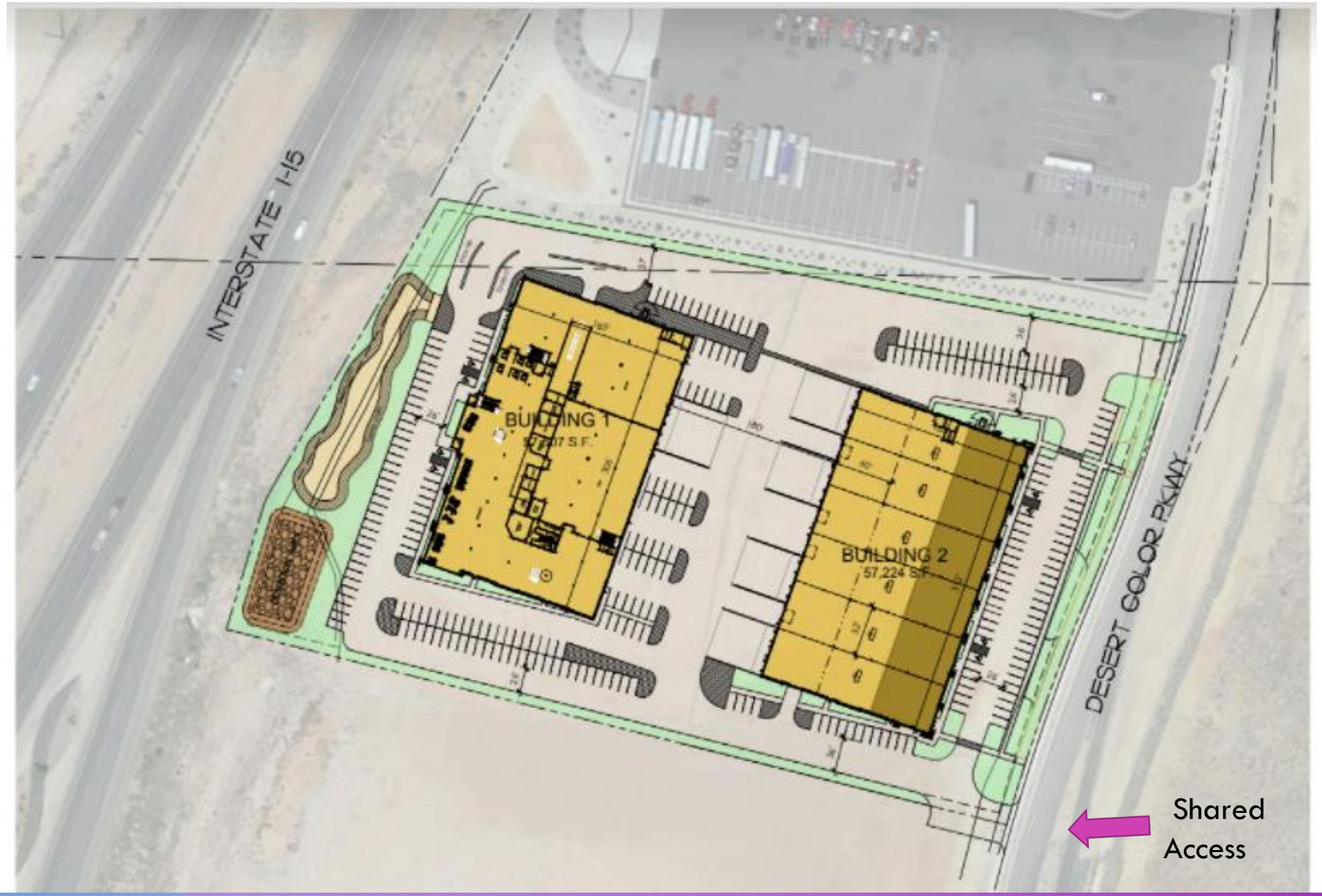
Made by the City of St. George GIS Department
SGCityMaps - https://maps.sgcity.org/sgcitymaps

Atkinville Interchange Area Zone Plan

# SITE PLAN

<u>Building 1</u>
Main Level: 57,507
Upper Level: 49,436
Height: 45’

<u>Building 2</u>
Main Level: 57,224
Height: 42’



# PARKING

## PARKING/BUILDING DATA

| | |
|---|---|
| BUILDING 1 | 106,943 S.F. |
| MAIN LEVEL | 57,507 S.F. |
| UPPER LEVEL | 49,436 S.F. |
| TOTAL PARKING | 140 SPACES |

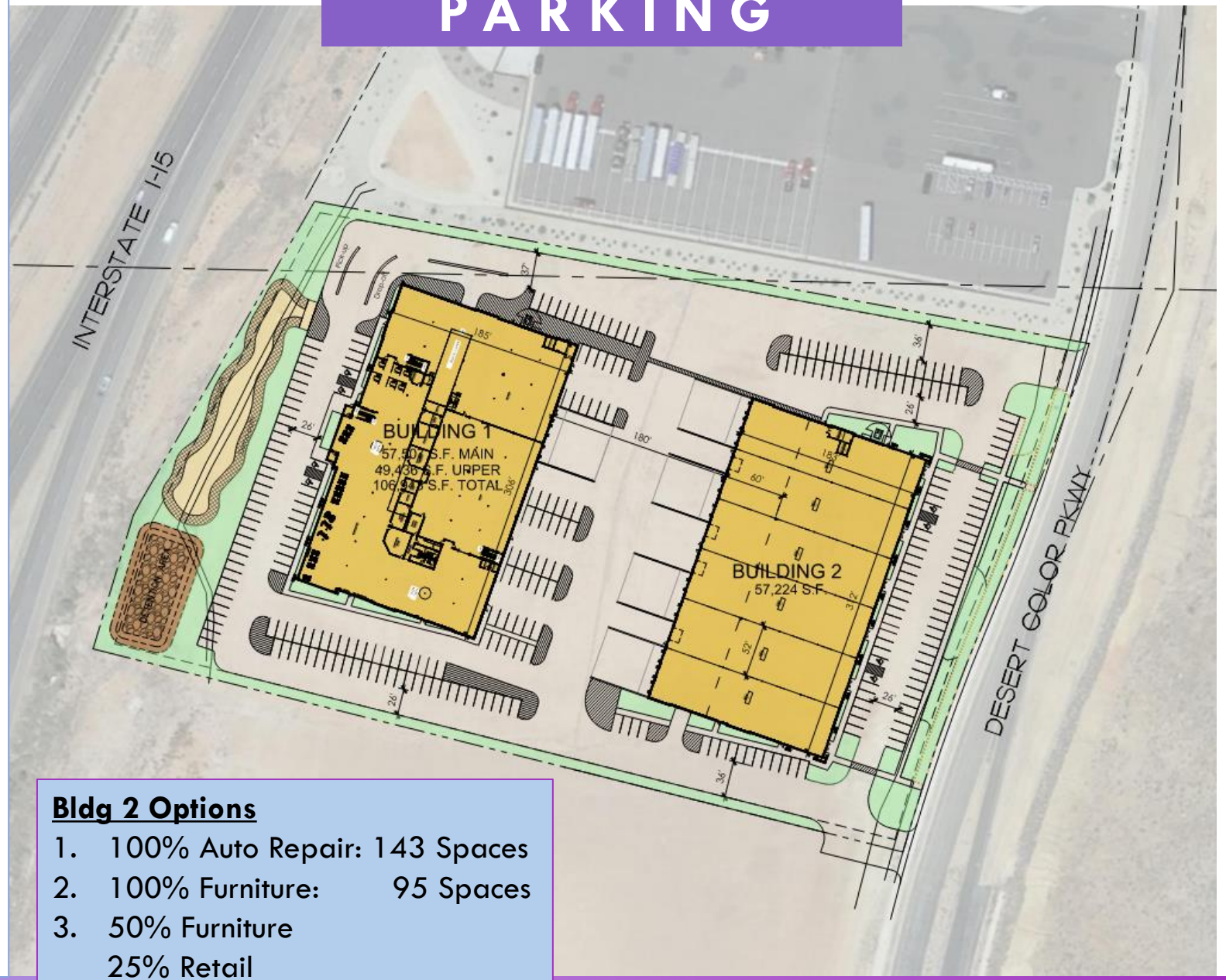
| | | | | |
|---|---|---|---|---|
| Indoor Unit Sales | 30,173 S.F. | 66 Units | 1/7 Units | 10 Spaces |
| Sales + OFFICE | 8,780 S.F. | | 4/1000 | 36 Spaces |
| Service / Prep | 16,903 S.F. | | 2.5/1000 | 43 Spaces |
| Warehouse | 51,087 S.F. | | 1/1000 | 51 Spaces |
| | | | Total Parking Required | 140 Spaces |
| | | | Total Parking Provided | 140 Spaces |

| | |
|---|---|
| BUILDING 2 | 57,224 SF |
| TOTAL PARKING | 150 SPACES |
| RATIO | 2.48/1,000 S.F. |

| | |
|---|---|
| BUILDING TOTAL | 164,992 S.F. |
| BUILDING COVERAGE | 40.37% |
| LANDSCAPING | 15.61% |

| | |
|---|---|
| BUILDING 1 PARKING | 140 SPACES |
| BUILDING 2 PARKING | 150 SPACES |
| TOTAL SITE PARKING | 290 SPACES |

285 Spaces Shown




**Bldg 2 Options**

1. 100% Auto Repair: 143 Spaces
2. 100% Furniture: 95 Spaces
3. 50% Furniture
   25% Retail
   25% Auto Repair 141 Spaces

TEST TRACK

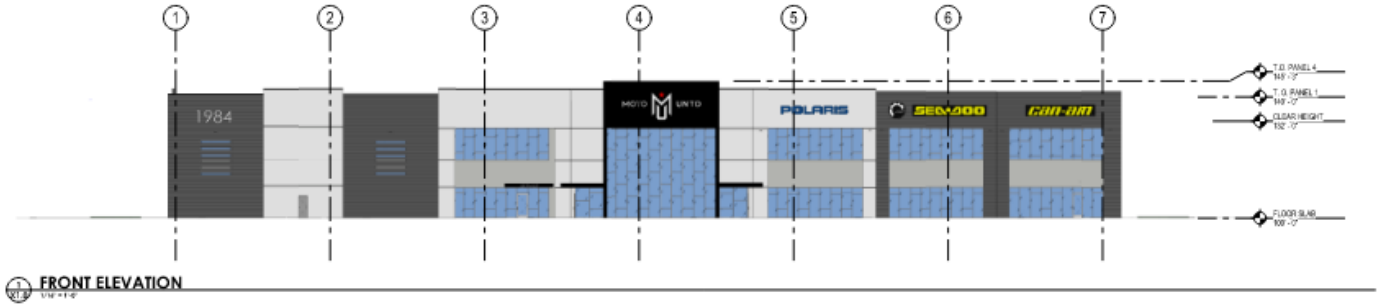
# TEST TRACK

DUST: There will be no dust.  The track is made of concrete.

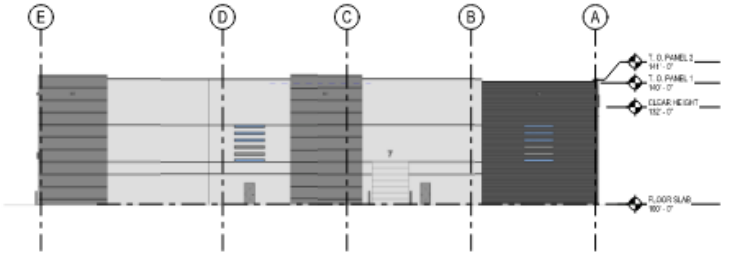
NOISE: In terms of noise, it is next to a freeway and there aren't any residences in the area.  The average UTV is around 70 db.  The average freeway is around 80 db.  We are open during the middle of the day 9:00 am to 6:00 pm.  We will not be open outside of business hours.  UTV's are quieter on average than a freeway so it is really a non-issue.

# BUILDING1 ELEVATIONS

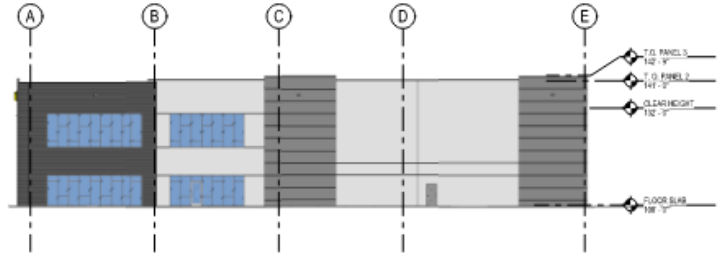
I-15



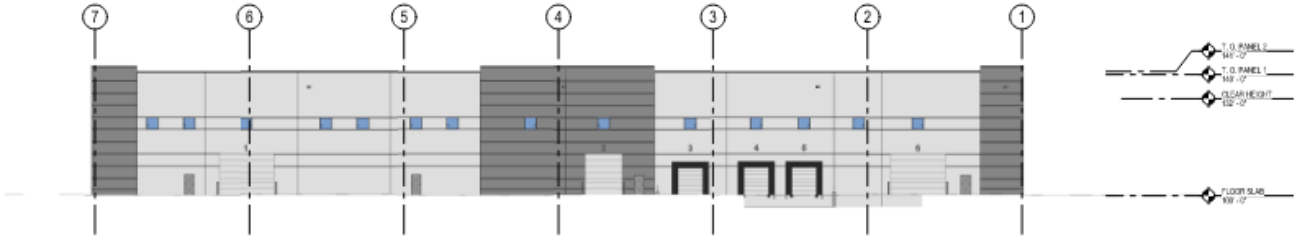

FRONT ELEVATION




SIDE ELEVATION - A



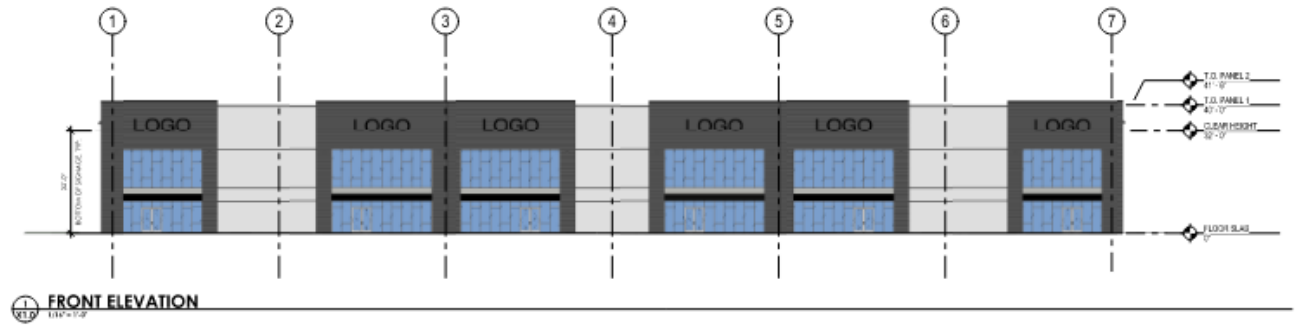

SIDE ELEVATION - B



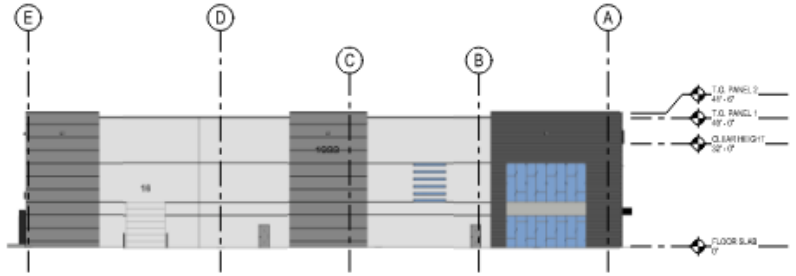

BACK ELEVATION

# BUILDING2 ELEVATIONS

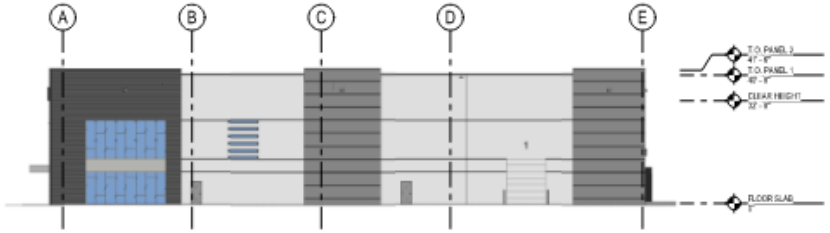
Desert Color Parkway



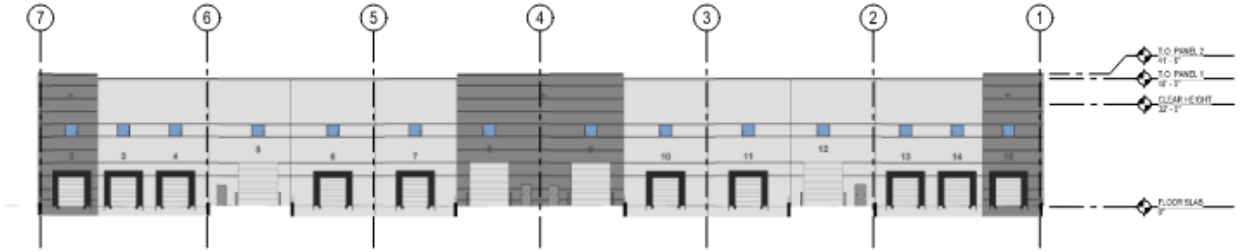

1 FRONT ELEVATION




2 SIDE ELEVATION - A




3 SIDE ELEVATION - B




4 BACK ELEVATION

# BUILDING2 ELEVATIONS



# BUILDING2 ELEVATIONS



# BUILDING 1 ELEVATIONS

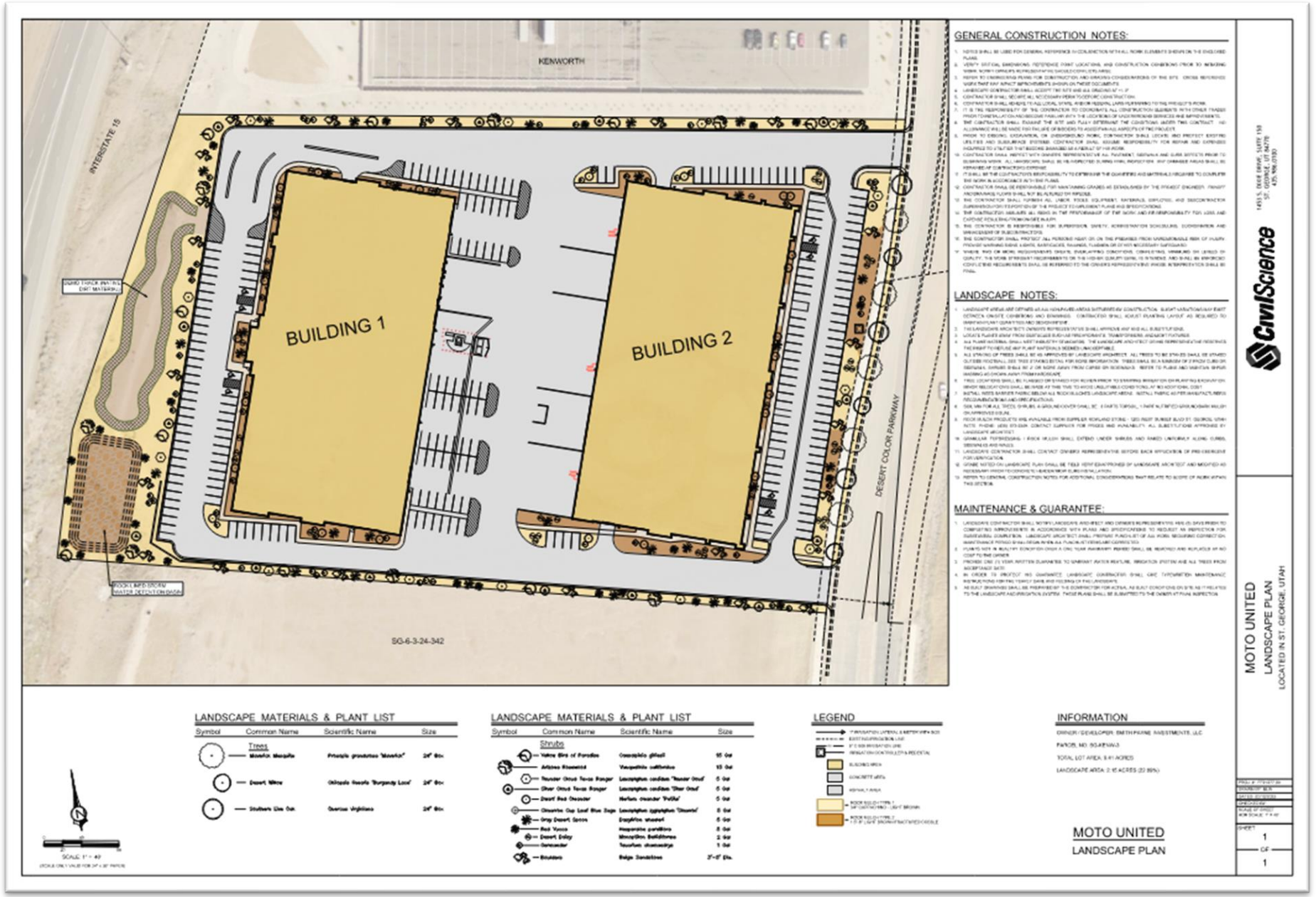


# BUILDING2 ELEVATIONS



# BUILDING 1 ELEVATIONS






# LANDSCAPE PLAN

# RECOMMENDATION

**Planning Commission recommended approval of this Zone Change Amendment with the following conditions:**

1. The applicant meets all requirements found in Section 10-8D of the Zoning Regulations.
2. The applicant meets the street tree requirement along Desert Color Parkway.
3. That any business to occupy space in building #2 is a use allowed in the C-2 zone as required in the Atkinville Interchange area zone plan and that any use proposing to occupy space in building #2 meets the parking requirements set forth in section 10-19 of the St. George city code.
4. That the area labeled “Demo Test Track” is constructed and maintained to keep any dust down. If this area is at any point abandoned, it is landscaped with plantings and trees.
5. That if vehicles are to be displayed, that they display area is shown on the site plan **and meets the requirements of Section 10-17A-5 E**. If no display area is shown and approved on the approved site plan, no outdoor display shall be permitted until such a time that the site is amended.
6. The applicant works with staff and the Developer of Desert Color on the access locations since the shown access locations do not match with the approved Aktinville Interchange Area Zone Plan.
7. There will be a shared parking agreement between building 1 and 2
8. There will be a shared access agreement between this lot and the vacant lot to the south.

**ORDINANCE NO._____**

**AN ORDINANCE AMENDING THE CITY ZONING MAP BY AMENDING THE ATKINVILLE PLANNED DEVELOPMENT COMMERCIAL (PD-C) ZONE ON APROXIMATELY 9.41 ACRES, GENERALLY LOCATED AT 4400 SOUTH DESERT COLOR PARKWAY, AND TO APPROVE THE DESIGN FOR TWO NEW COMMERCIAL BUILDINGS.**

(Moto United Business Park))

**WHEREAS**, the property owner has requested to amend the Planned Development Commercial (PD-C) zone on approximately 9.41 acres, generally located at 4400 South Desert Color Parkway to build two new commercial buildings; and

**WHEREAS**, the Planning Commission held a public hearing on this request on March 8, 2022; and

**WHEREAS,** the City Council held a public meeting on this request on May 5, 2022; and

**WHEREAS,** the City Council has determined that the requested amendment to the Zoning Map is justified at this time, and is in the best interest of the health, safety, and welfare of the citizens of the City of St. George.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City Code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The City Zoning Map is hereby ordered to be changed to reflect the zone change amendment to the Planned Development Commercial (PD-C) zone, on approximately 9.41 acres, generally located at 4400 South Desert Color Parkway. The property affected by this zone change amendment is more specifically described on the legal description, incorporated herein as Exhibit “A”, and parcel exhibit, incorporated herein as Exhibit “B”.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately on the date executed below, and upon posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:
City Attorney's Office

_____

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

# Exhibit “A” – Legal Description

(Parcel: SG-KENW-3)

Lot Three (3), "KENWORTH COMMERCIAL SUBDIVISION", according to the Official Plat thereof, on file in the Office of the Recorder of Washington County, State of Utah.

Contains 9.41 Acres

**Exhibit "B" – Parcel Exhibit**

Moto United Business Park Zone Change Amendment




February 22, 2022

1:16,810

0 0.13 0.25 0.5 mi

0 0.23 0.45 0.9 km

City of St. George GIS

Made by the City of St. George GIS Department
SGCityMaps - https://maps.sgcity.org/sgcitymaps

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 13

**Subject:**

Consider approval of an ordinance amending the Rim Rock Commercial Planned Development Commercial (PD-C) zone to allow the extension of drive-up parking stalls including covered stalls for Target on approximately 8.71 acres located at 275 South River Road for a project to be known as Target Drive Up.

**Item at-a-glance:**

Staff Contact: Carol Davidson

Applicant Name: Joanna Graham, Kimley-Horn

Reference Number: 2022-ZCA-014

Address/Location:

275 South River Road

**Item History (background/project status/public process):**

The applicant is requesting to amend the Rim Rock Commercial (Target/Lowes) Planned Development Commercial (PD-C) zone for the purpose of converting 16 parking stalls to drive-up parking stalls designated for online shoppers only. In addition to the new designated parking, the applicant would also like to add a covering for 12 of the stalls. There are currently eight drive-up parking stalls designated for online shoppers, and the applicant would like to add four more stalls to the west of the existing ones and then put a shade structure over those stalls. They would also like to add 12 additional stalls in the parking row to the north of the existing ones. Please refer to the exhibit provided by the applicant for the location of the rows. At their meeting on March 22, 2022, the Planning Commission held a public hearing and recommended approval with the condition that all drive-up parking stalls, including the existing ones, be moved and added to the north side of the store.

**Staff Narrative (need/purpose):**

The purpose of this proposed zone change request is to add additional drive-up stalls for use of the online shoppers which Target is anticipating an increase in online shopping.

**Name of Legal Dept approver:** Jami Brackin

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

The Planning Commission recommended approval of adding additional drive-up parking stalls including the covered parking with the condition that all drive-up parking stalls, including the existing ones, be moved and added to the north side of the store.

St.George
Community Development

Zone Change Amendment

PLANNING COMMISSION AGENDA REPORT: 03/22/2022
**CITY COUNCIL AGENDA REPORT: 05/05/2022**

| **Target Drive Up**<br>Zone Change Amendment (Case No. 2022-ZCA-014) | | |
|---|---|---|
| **Request:** | This is a request to amend the Rim Rock Commercial (Target/Lowes) Planned Development Commercial (PD-C) zone to extend and add coverings to the drive-up parking stalls. | |
| **Applicant:** | Joanna Graham, Kimley-Horn | |
| **Representative:** | Joanna Graham | |
| **Location:** | 275 S. River Road | |
| **General Plan:** | Commercial (COM) | |
| **Existing Zoning:** | Planned Development Commercial (PD-C) | |
| **Surrounding Zoning:** | North | General Commercial (C-3) |
| | South | Planned Development Commercial (PD-C) |
| | East | Planned Development Commercial (PD-C), General Commercial (C-3) |
| | West | Planned Development Commercial (PD-C) |
| **Land Area:** | Approximately 8.71 acres | |



**BACKGROUND:**
The applicant is requesting to amend the Rim Rock Commercial (Target/Lowes) Planned Development Commercial (PD-C) zone for the purpose of converting 16 parking stalls to drive-up parking stalls designated for online shoppers only. In addition to the new designated parking, the applicant would also like to add a covering for 12 of the stalls. There are currently eight drive-up parking stalls designated for online shoppers, and the applicant would like to add four more stalls to the west of the existing ones and then put a covering over those stalls. They would also like to add 12 additions stalls in the parking row to the north of the existing ones. Please refer to the exhibit provided by the applicant for the location of the rows.

When meeting with the applicants during a Planning Staff Review meeting, staff expressed their concern with the location of this proposal. The St. George Target is a very busy store, and this shopping center typically experiences high volumes of traffic (please refer to the aerial image). With a high volume of traffic, safety becomes a concern. Pushing the available parking spaces for the in-store customers further out means the customers will be travelling longer distances through the parking lot which will in turn increase the chance of pedestrian accidents to occur.

Two good examples in St. George of safe drive-up locations are the Bloomington Walmart and Smiths Marketplace at Dinosaur Crossing. Both stores have their drive-up stalls located off to the side of each building. On the north side of Target, there appears to be ample space for drive-up parking that would provide safe access for the workers and keep the west parking available for the in-store customers.

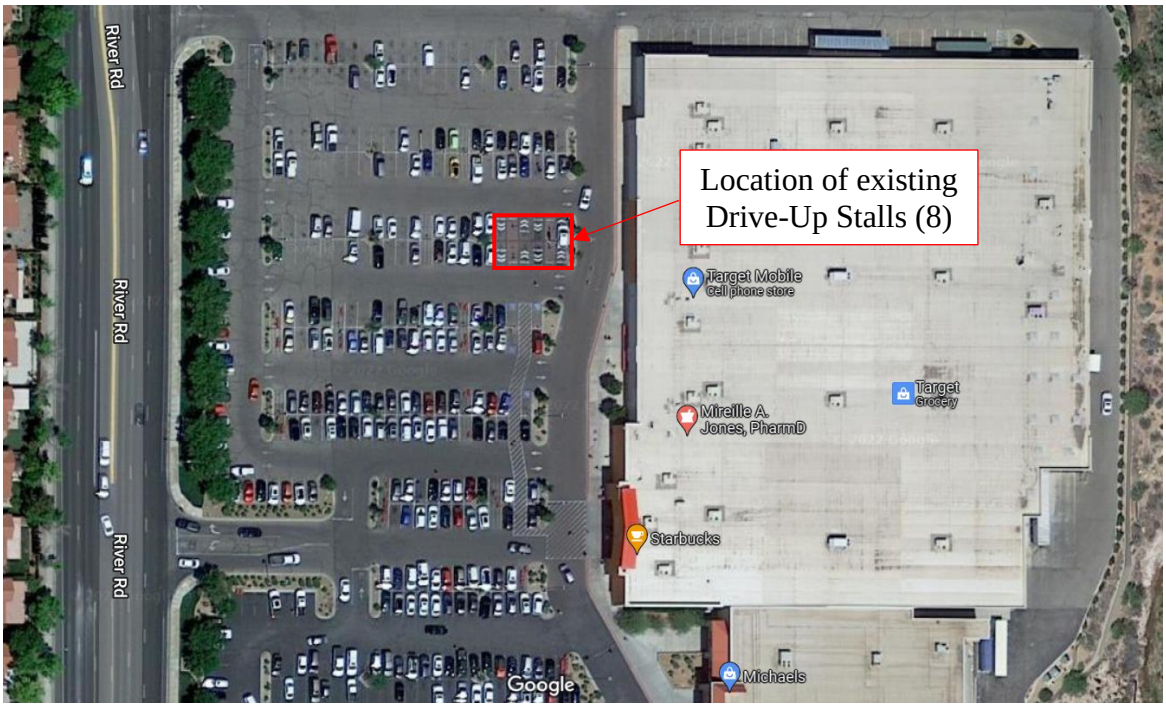
**RECOMMENDATION:**
The Planning Commission recommended approval of adding additional drive-up parking stalls including the covered parking with the condition that all drive-up parking stalls, including the existing ones, be moved and added to the north side of the store.

**ALTERNATIVES:**
1. Approve as presented or with conditions.
2. Approve as recommended by Planning Commission.
3. Deny amendment.
4. Table the proposed zone change amendment to a specific date.

**POSSIBLE MOTION:**
I move we approve to amend the Rim Rock Commercial PD-C to allow additional drive-up parking stalls with the condition that all drive-up stalls, including the existing ones, be moved and added to the north side of the store.

**FINDINGS FOR APPROVAL:**
1. The proposed amendment meets the requirements of the original zone change as approved by City Council.
2. The proposed use will blend harmoniously with the development.

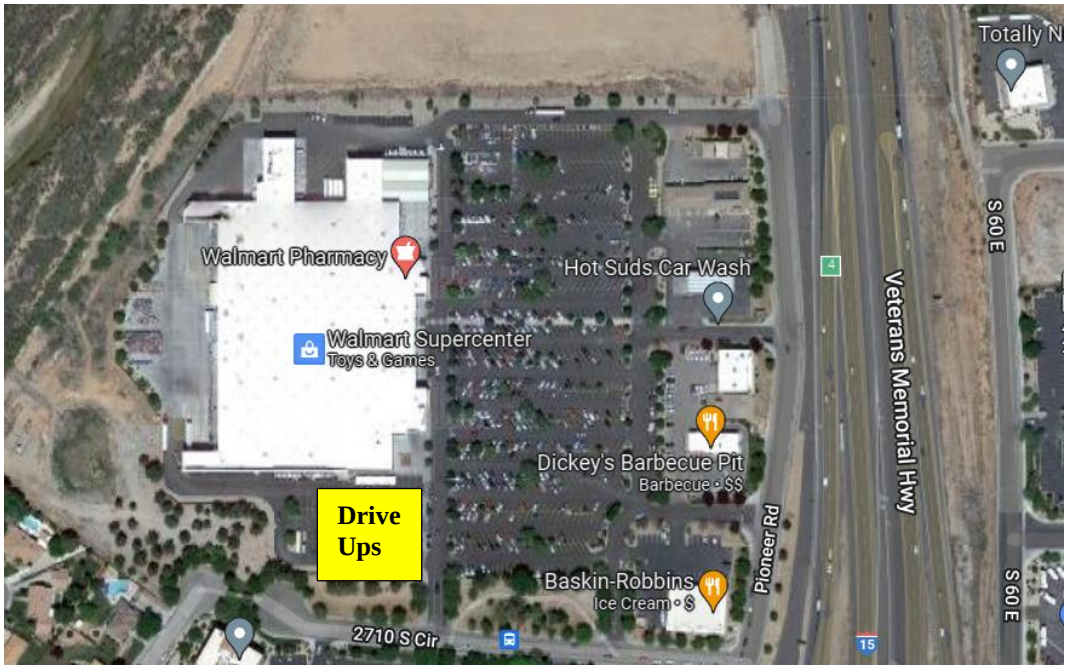
# Exhibit A
# Aerial



# Exhibit B
# Location of New Drive-Up Aisles



# Exhibit C
# Local Examples of Drive-Up Locations




East Riverside Dr
St. George Dinosaur Discovery Site at...
Dinosaur tracks & fossilized remains
The Church of Jesus Christ of Latter...
Taco Bell
Fast Food • $
Drive-Ups
Gray
Nail Spa
Beans & Brews Coffeehouse
Smith's Marketplace
Mall Dr
East Riverside Dr
Kneaders Bakery & Cafe
S 2200 E St
Great Clips
Maverik Adventure's First Stop
Bucks Ace Hardware
Hardware store
Swig
Smith's Fuel Center
Middleton Wash
Zao Asian Cafe
Asian Fusion • $
Panda Express
Chinese Takeout • $

# Exhibit D
# PowerPoint Presentation



# Target Drive Up

Zone Change Amendment

2022-ZCA-014

E 100 S ST
S 1000 E ST
S 1200 E ST
S 1470 E ST
S EASTRIDGE DR
S CREST LINE DR
S ACANTILADO DR
15
E 400 S ST
E 400 S ST
S 900 E ST
S 1100 E ST
S RIVER RD
S EASTRIDGE DR
S FIVESISTERS D


Location of existing
Drive-Up Stalls (8)
River Rd
River Rd
River Rd
Cell phone store
Target
Grocery
Mireille A.
Jones, PharmD
Starbucks
Michaels
Google


drive up
Location of existing
Drive-Up Stalls (8)


3 RIVER RD
Add 12 new spaces
Existing: 8 Spaces
Add 4 spaces plus canopy over all 12 spaces




**Canopy Design**

**Will remove 4 additional stalls and 1 tree to install**







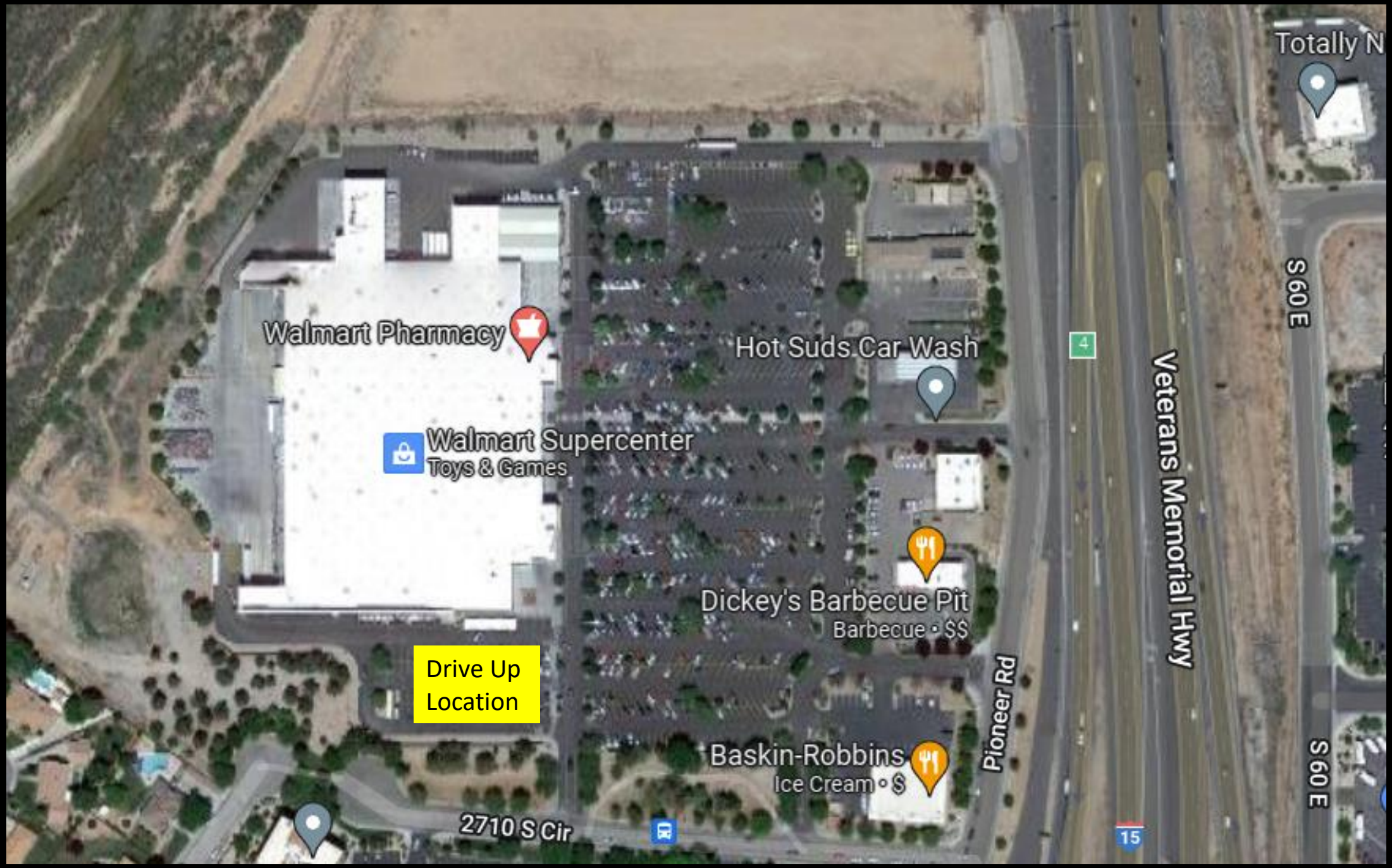
**Canopy Demolition Plans**

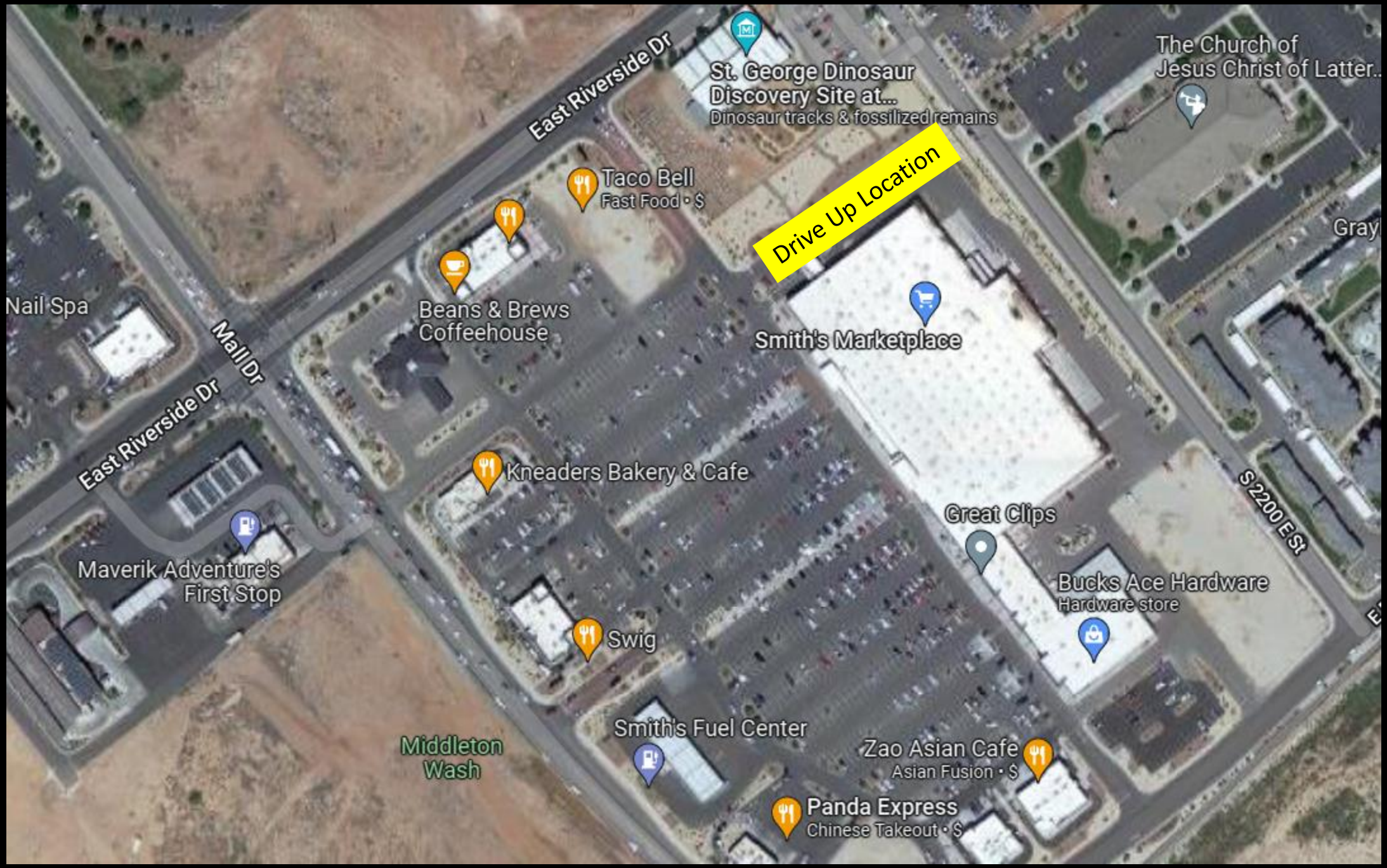
**Plans show the disturbance of 6 additional stalls**

**12 New Spaces**

**16 existing parking stalls will be removed**


BUFFALO WILD WINGS
BUFFALO WILD WINGS
Location of 12 new Drive-Up Stalls
(will remove 16 existing stalls)


Totally N
S 60 E
Walmart Pharmacy
Hot Suds Car Wash
Walmart Supercenter
Toys & Games
Veterans Memorial Hwy
4
Dickey's Barbecue Pit
Barbecue • $$
Drive Up
Location
Pioneer Rd
Baskin-Robbins
Ice Cream • $
2710 S Cir
15
S 60 E


East Riverside Dr
St. George Dinosaur Discovery Site at...
Dinosaur tracks & fossilized remains
The Church of Jesus Christ of Latter...
Drive Up Location
Taco Bell
Fast Food • $
Gray
Nail Spa
Mall Dr
Beans & Brews Coffeehouse
Smith's Marketplace
East Riverside Dr
Kneaders Bakery & Cafe
S 2200 E St
Great Clips
Maverik Adventure's First Stop
Bucks Ace Hardware
Hardware store
Swig
Smith's Fuel Center
Middleton Wash
Zao Asian Cafe
Asian Fusion • $
Panda Express
Chinese Takeout • $


S 147OE ST

**ORDINANCE NO._____**

**AN ORDINANCE AMENDING THE CITY ZONING MAP BY AMENDING THE RIM ROCK COMMERCIAL PLANNED DEVELOPMENT COMMERCIAL (PD-C) ZONE ON APROXIMATELY 8.71 ACRES, GENERALLY LOCATED AT 275 SOUTH RIVER ROAD, AND TO APPROVE THE EXTENSION WITH COVERINGS OF THE DESIGNATED DRIVE-UP PARKING STALLS.**

(Target Drive Up))

**WHEREAS**, the property owner has requested to amend the Planned Development Commercial (PD-C) zone on approximately 8.71 acres, generally located at 275 South River Road. The review includes the extension with coverings of the designated drive-up parking stalls; and

**WHEREAS**, the Planning Commission held a public hearing on this request on March 22, 2022; and

**WHEREAS,** the City Council held a public meeting on this request on May 5, 2022; and

**WHEREAS,** the City Council has determined that the requested amendment to the Zoning Map is justified at this time, and is in the best interest of the health, safety, and welfare of the citizens of the City of St. George.

**NOW, THEREFORE, BE IT ORDAINED**, by the St. George City Council, as follows:

**Section 1. Repealer.** Any provision of the St. George City Code found to be in conflict with this Ordinance is hereby repealed.

**Section 2. Enactment.** The City Zoning Map is hereby ordered to be changed to reflect the zone change amendment to the Planned Development Commercial (PD-C) zone, on approximately 8.71 acres, generally located at 275 South River Road. The property affected by this zone change amendment is more specifically described on the legal description, incorporated herein as Exhibit “A”, and parcel exhibit, incorporated herein as Exhibit “B”.

**Section 3. Severability.** If any provision of this Ordinance is declared to be invalid by a court of competent jurisdiction, the remainder shall not be affected thereby.

**Section 4. Effective Date.** This Ordinance shall take effect immediately on the date executed below, and upon posting in the manner required by law.

APPROVED AND ADOPTED by the St. George City Council, this 5th day of May 2022.

ST. GEORGE CITY:

_____
Michele Randall, Mayor

ATTEST:

_____
Christina Fernandez, City Recorder

APPROVED AS TO FORM:
City Attorney's Office

_____

VOTING OF CITY COUNCIL:

Councilmember Hughes _____
Councilmember McArthur _____
Councilmember Larkin _____
Councilmember Larsen _____
Councilmember Tanner _____

**Exhibit “A” – Legal Description**

S: 29 T: 42S R: 15W BEG S 01*02'13 E ALG SEC/L 125.72 FT &W 870.85 FT FM E1/4 COR SEC 29 T42S R15WTH N 89*51'16 W 731 FT TO ELY R/W RIVER RD; TH N 0*08'44 E ALG RIVER RD 250 FT; TH S 89*15'16 E 731 FT; TH S 0*08'44 W 250 FT TO POB. LESS: W 8 FT St. George, Washington County, Utah

**Exhibit "B" – Parcel Exhibit**

Target Drive Up Zone Change Amendment




March 9, 2022

1:8,405

0 0.05 0.1 0.2 mi

0 0.1 0.2 0.4 km

City of St. George GIS

Made by the City of St. George GIS Department
SGCityMaps - https://maps.sgcity.org/sgcitymaps

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 14

**Subject:**

Consider approval of the preliminary plat for Divario (PA-18), a 1-lot residential subdivision located within the Divario development.

**Item at-a-glance:**

Staff Contact: Wes Jenkins

Applicant Name: Allen Hall, Rosenberg Associates

Reference Number: Case No. 2022-PP-020

Address/Location:

Approximately the intersection of Sunbrook Drive and Gap Canyon Parkway within the Divario development

**Item History (background/project status/public process):**

As part of the development agreement between the City and Divario, the developer is required to plat each planning area prior to selling the property to a third party.

**Staff Narrative (need/purpose):**

The preliminary plat is to show the one-lot subdivision that will be created with the recording of the final plat. This will allow the developer to sell the one-lot subdivision to a third party for development.

**Name of Legal Dept approver:** N/A

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission recommends approval

St.George
Community Development

**ITEM**

PRELIMINARY PLAT

PLANNING COMMISSION AGENDA REPORT: **04/26/2022**
CITY COUNCIL **05/05/2022**

PRELIMINARY PLAT
Divario (PA-18)
**Case No. 2022-PP-020**

**Request:** To approve a preliminary plat for a one (1) lot residential subdivision.

**Location**: The site is located on the southwest corner of the intersection of Divario Canyon Drive and Gap Canyon Drive.

**Property:** 9.43 acres

**Number of Lots:** 1

**Density:** N/A

**Zoning**: R-1-10

**Adjacent zones:** This plat is surrounded by the following zones:
North – PD–R
South – OS
East – PD–R
West – PD–R

**General Plan:** HDR

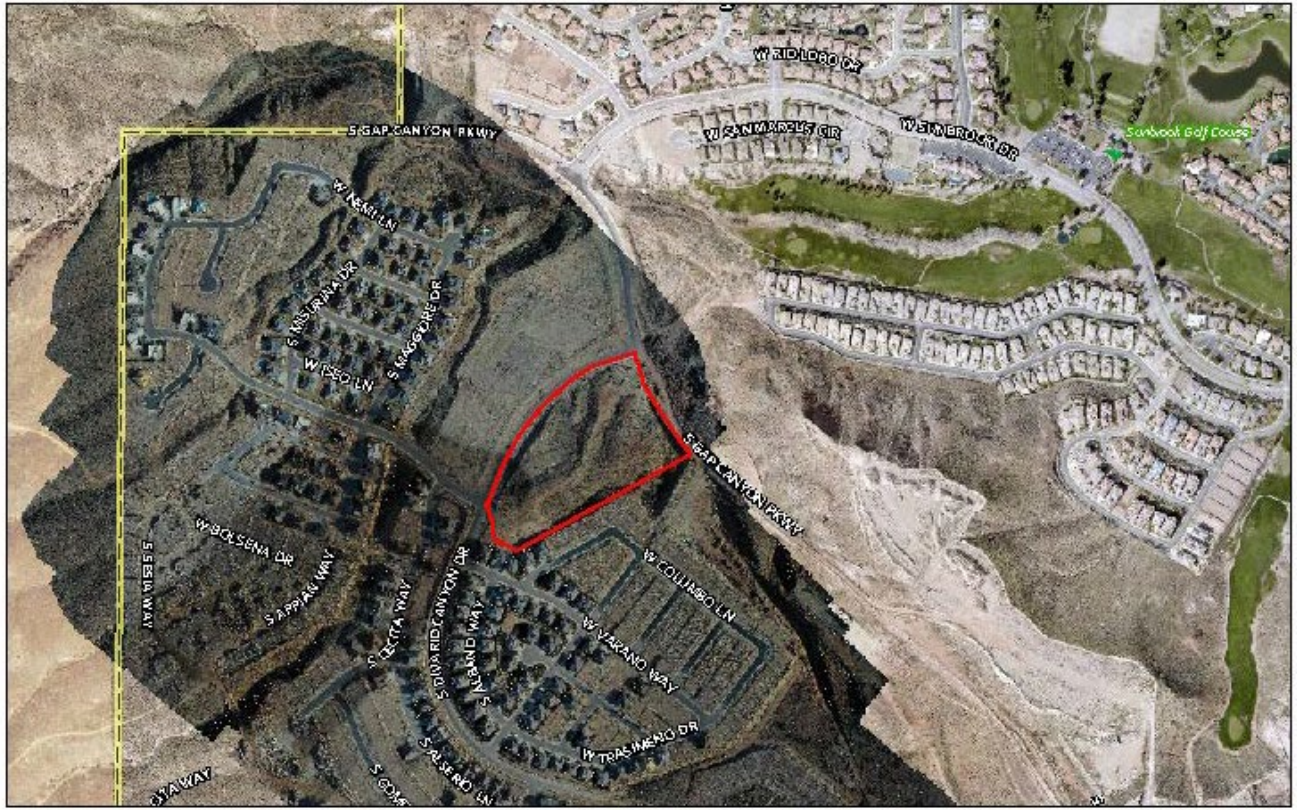
**Applicant:** Rosenberg Associates

**Representative:** Allen Hall

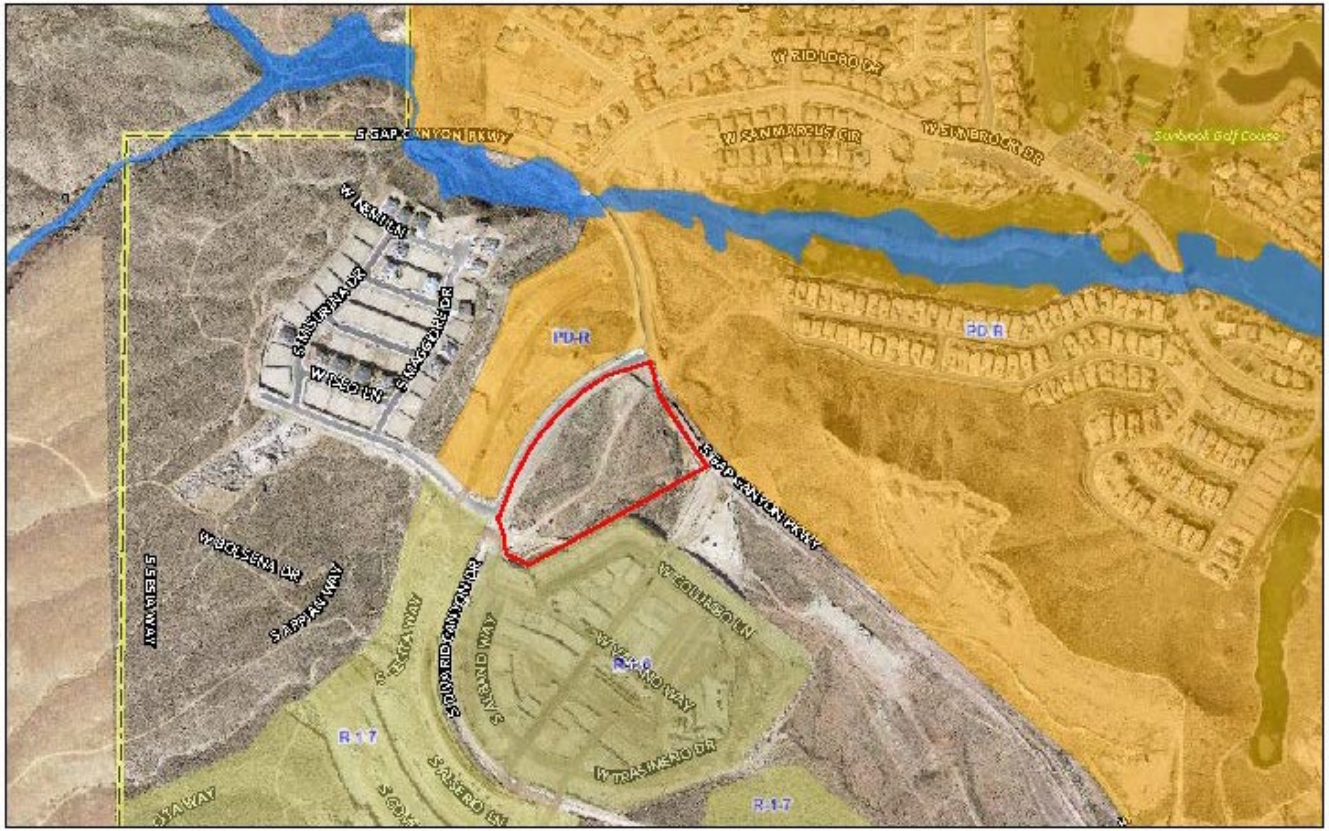
**Comments:**

# Preliminary Plats

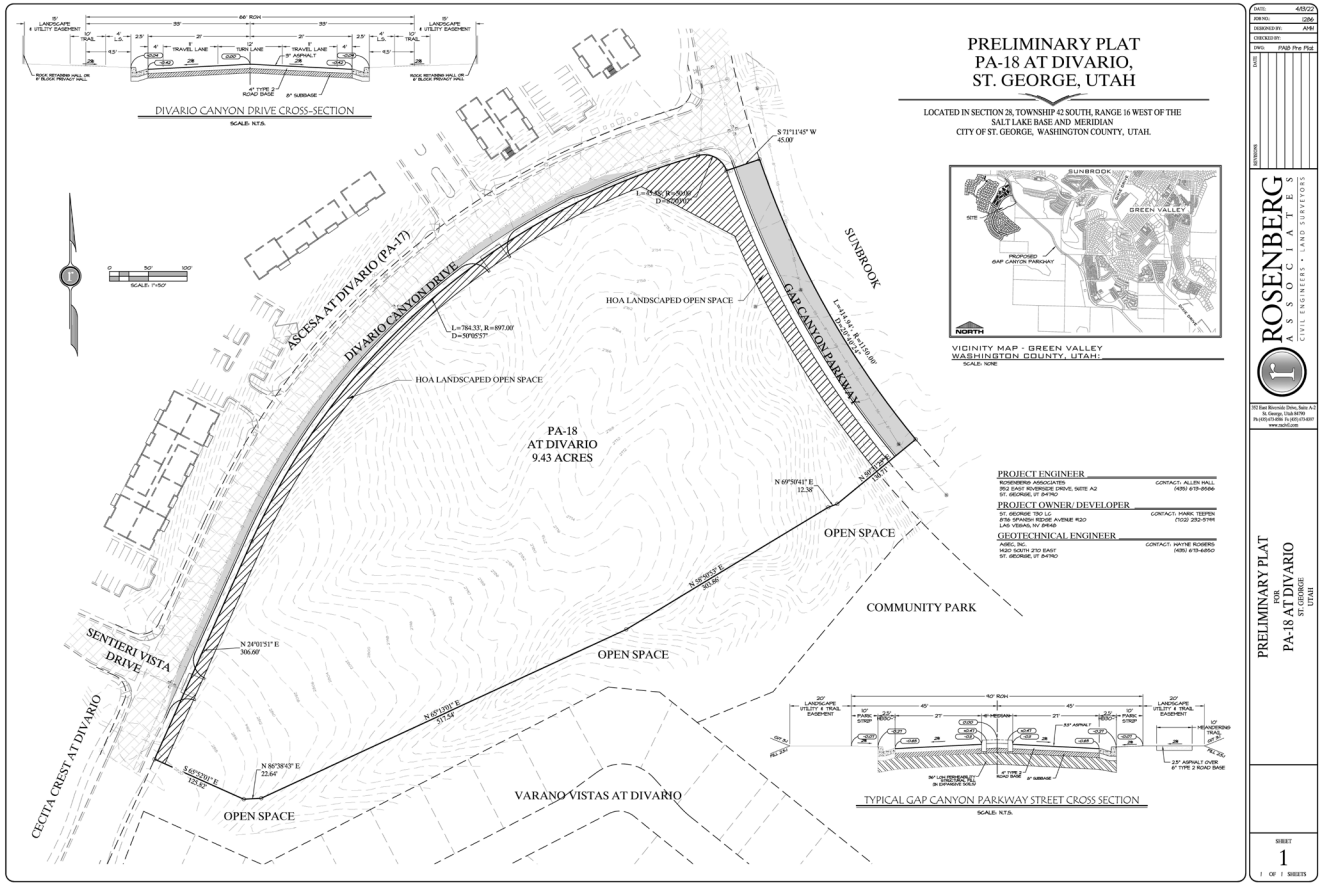
April 26, 2022




# Preliminary Plat – Divario (PA 18)




# Preliminary Plat – Divario (PA 18)




# Preliminary Plat – Divario (PA 18)

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 15

**Subject:**

Consider approval of the preliminary plat for Divario Open Space, which is to create eight (8) open space parcels located at the intersection of Sunbrook Drive and Gap Canyon Drive within the Divario development.

**Item at-a-glance:**

Staff Contact: Wes Jenkins

Applicant Name: Rick Rosenberg

Reference Number: Case No. 2022-PP-016

Address/Location:

Located within the Divario Development which is at the intersection of Sunbrook Drive and Gap Canyon Drive

**Item History (background/project status/public process):**

As part of the development agreement between the City and Divario, the developer is to dedicate certain areas as shown on the master plan for the project as open space parcels, which are to remain as natural areas. The preliminary plat shows the 8 open space parcels which will be created with the recording of the final plat.

**Staff Narrative (need/purpose):**

The purpose of the preliminary plat is to create 8 open space parcels within the Divario development.

**Name of Legal Dept approver:** N/A

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission recommends approval.

St.George
Community Development

**ITEM**
PRELIMINARY PLAT

PLANNING COMMISSION AGENDA REPORT: **04/26/2022**
CITY COUNCIL **05/05/2022**

PRELIMINARY PLAT
Divario Open Space Dedication Plat
**Case No. 2022-PP-016**

**Request:** To approve a preliminary plat to dedicate eight (8) open space parcels.

**Location**: The proposed open space parcels are located west of Diavrio Canyon Drive between Sunbrook Drive and Alienta Drive, within the Divario development.

**Property:**

**Number of Parcels:** 8

**Density:** N/A

**Zoning**: R-1-10

**Adjacent zones:** The proposed open space parcels are surrounded by the following zones: R-1-10, R-1-7, R-1-6, PD-R

**General Plan:** OS (Open Space)

**Applicant:** Rosenberg Associates

**Representative:** Rick Rosenberg

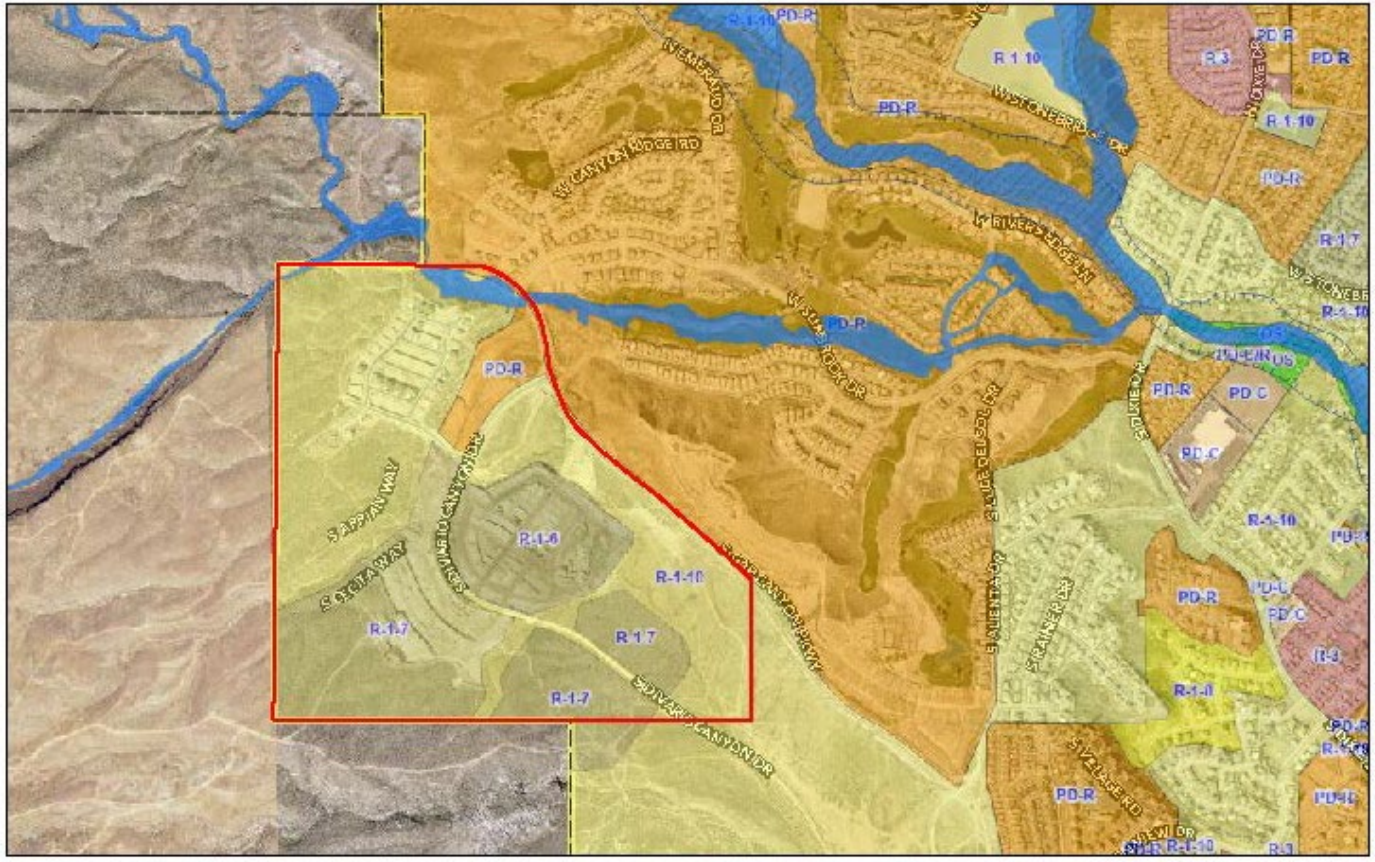
**Comments:**

# Preliminary Plats

April 26, 2022




# Preliminary Plat – Divario Open Space Dedication




# Preliminary Plat – Divario Open Space Dedication




# Preliminary Plat – Divario Open Space Dedication

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 16

**Subject:**

Consider approval of the preliminary plat for Glenview, a 4-lot residential subdivision located at 2262 South and 2100 East.

**Item at-a-glance:**

Staff Contact: Wes Jenkins

Applicant Name: Rick Meyer, Bush and Gudgell

Reference Number: Case No. 2022-PP-015

Address/Location:

The site is located at 2262 South and 2100 East.

**Item History (background/project status/public process):**

The subject property is zoned R-1-10 and the General Plan is LDR which matches the proposed preliminary plat. At their meeting held on April 26, 2022, the Planning Commission recommended approval. The developer will be required to dedicate right-of-way for a future roadway that will provide access to the properties to the west.

**Staff Narrative (need/purpose):**

The purpose of this preliminary plat is to subdivide the property into 4 lots and dedicate a future roadway on the south side of the development.

**Name of Legal Dept approver:** N/A

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission recommends approval. The developer will be required to dedicate right-of-way for a future roadway that will provide access to the properties to the west.

St.George
Community Development

**ITEM**
PRELIMINARY PLAT

PLANNING COMMISSION AGENDA REPORT: **04/26/2022**
CITY COUNCIL **05/05/2022**

PRELIMINARY PLAT
Glenview
**Case No. 2022-PP-015**

**Request:** To approve a preliminary plat for a four (4) lot residential subdivision.

**Location**: The site is located at 2262 South and 2100 East.

**Property:** 2.58 acres

**Number of Lots:** 4

**Density:** 0.54 DU/AC

**Zoning**: R-1-10

**Adjacent zones:** This plat is surrounded by the following zones:
North – R-1-10
South – R-1-10
East – R-1-10
West – R-1-10

**General Plan:** LDR

**Applicant:** Bush & Gudgell

**Representative:** Rick Meyer

**Comments:**

# Preliminary Plats

April 26, 2022



# Preliminary Plat – Glenview




# Preliminary Plat – Glenview

B&G PROJECT NUMBER 211280

# GLENVIEW

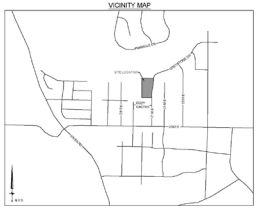
## PRELIMINARY PLAT

### LOCATED IN ST GEORGE, UTAH

SOUTHWEST 1/4 OF SECTION 4, T 43S, R 15 W, SLB&M

PARCEL # SG-5-3-4-320012

VICINITY MAP



**LEGAL DESCRIPTION**

COMMENCING AT THE NORTHEAST CORNER OF SECTIONAL LOT 5 WHICH LIES NORTH 69°34'19" EAST ALONG THE CENTER SECTION LINE 1290.73 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 4, TOWNSHIP 43 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 39°43'14" WEST ALONG THE NORTH LINE SAID LOT 5 141.40 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 39°43'14" EAST ALONG SAID LINE 236.83 FEET TO SAID NORTH LINE OF SECTIONAL LOT 6; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES: (1) SOUTH 19°13'01" WEST 72.65 FEET; (2) SOUTHWESTERLY ALONG A 425.00 FOOT RADIUS CURVE TO THE LEFT, (LONG CHORD BEARS SOUTH 67°53'07" WEST A DISTANCE OF 126.63 FEET); CENTER POINT LIES SOUTH 73°57'05" EAST THROUGH A CENTRAL ANGLE OF 16°19'46", A DISTANCE OF 121.01 FEET; (3) SOUTH 59°48'14" EAST 70.13 FEET, AND (4) SOUTHERLY ALONG A 175.00 FOOT RADIUS CURVE TO THE RIGHT, (LONG CHORD BEARS SOUTH 09°33'29" EAST A DISTANCE OF 169.00 FEET); CENTER POINT LIES SOUTH 30°41'08" WEST THROUGH A CENTRAL ANGLE OF 74°30'31", A DISTANCE OF 18.48 FEET; THENCE SOUTH 70°34'39" WEST 264.67 FEET; THENCE NORTH 84°00'39" WEST 215.06 FEET; THENCE NORTH 09°34'09" EAST 500.69 FEET TO SAID NORTH LINE OF SECTIONAL LOT 6; THENCE SOUTH 69°34'19" EAST ALONG SAID LINE 238.60 FEET TO THE POINT OF BEGINNING.

CONTAINING 112,421 SQUARE FEET OR 2.58 ACRES.

| PROJECT INFORMATION | |
|---|---|
| ZONING | R-1-10 |
| TOTAL AREA | 2.14 ACRES |
| TOTAL LOTS | 4 |
| DENSITY | 0.54 D.U./ ACRE |

PROJECT MAP




**GENERAL NOTES**

1) CONTRACTOR IS RESPONSIBLE TO VERIFY LOCATIONS OF ALL UTILITIES PRIOR TO COMMENCEMENT OF WORK IN ANY ZONE.
2) ALL WORK AND MATERIALS SHALL COMPLY WITH ST. GEORGE CITY STANDARD SPECIFICATIONS.
3) PROJECTS SHALL INSTALL AN INFORMATIONAL SIGN ON SITE BEFORE CONSTRUCTION BEGINS. THIS SIGN WILL HAVE A MINIMUM SIZE, PLACEMENT LOCATION AND CONTENT INFORMATION WITH THE COMPANY NAME, PHONE NUMBER AND PERMIT NUMBER.
4) PROJECTS SHALL SUBMIT A DUST CONTROL PLAN WITH DETAILS ON EQUIPMENT, SCHEDULING AND REPORTING OF DUST CONTROL ACTIVITIES.
5) A MANDATORY PRE-CONSTRUCTION MEETING WILL BE REQUIRED ON ALL PROJECTS PRIOR TO ANY GRUBBING, GRADING OR CONSTRUCTION ACTIVITIES. THE PERMIT HOLDER WILL BE REQUIRED TO NOTIFY THE CITY TO SCHEDULE THIS MEETING.
6) FOLLOW APPENDIX J ST INSPIRER FOUND IN THIS IBC.
7) ALL OBJECTS SHALL BE KEPT OUT OF THE SIGHT DISTANCE CORRIDORS THAT MAY OBSTRUCT THE DRIVER'S VIEW.

**DUST CONTROL**

THESE DUST CONTROL MEASURES MUST BE OBSERVED AT ALL TIMES.

EARTH MOVING ACTIVITIES:
1) APPLY WATER BY MEANS OF TRUCKS, HOSES AND/OR SPRINKLERS AT SUFFICIENT FREQUENCY AND QUANTITY TO KEEP ALL AREAS OF EARTH MOVING ACTIVITY MOIST DURING ACTIVITIES.
2) PRE-APPLY WATER TO THE DEPTH OF THE PROPOSED CUTS OR EQUIPMENT PENETRATION.
3) APPLY WATER AS NECESSARY AND PRIOR TO EXPECTED WIND EVENTS.
4) OPERATE HAUL VEHICLES APPROPRIATELY IN ORDER TO MINIMIZE FUGITIVE DUST AND APPLY WATER AS NECESSARY DURING LOADING OPERATIONS.

DISTURBED SURFACE AREAS OR INACTIVE CONSTRUCTION SITES:
1) WHEN ACTIVE CONSTRUCTION OPERATIONS HAVE CEASED, APPLY WATER AT SUFFICIENT FREQUENCY AND QUANTITY TO KEEP ALL AREAS MOIST DURING AND PRIOR TO EXPECTED WIND EVENTS.
2) INSTALL FENCE BARRIER AND/OR "NO TRESPASSING" SIGNS TO PREVENT ACCESS TO DISTURBED SURFACE AREAS.

APRIL 2022

BUSH & GUDGELL, INC.
Engineers - Planners - Surveyors
205 East Tabernacle #4
St. George, Utah 84770
Phone (435) 673-2337

AVOID CUTTING UNDERGROUND UTILITY LINES. IT'S SIMPLE
Call before you Dig
1-800-662-4111

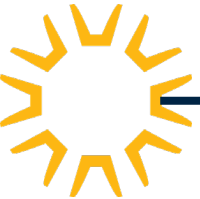
**OWNER / DEVELOPER**
JMCO, LLC
JAMES SULLIVAN
(435) 628-1961
1393 E. RIVERSIDE DR. #31
ST. GEORGE, UTAH 84790

**ENGINEERING CONTACT**
BUSH AND GUDGELL, INC.
205 EAST TABERNACLE #4
ST. GEORGE, UTAH
RICK MEYER - PROJECT MANAGER
(435)-673-2337

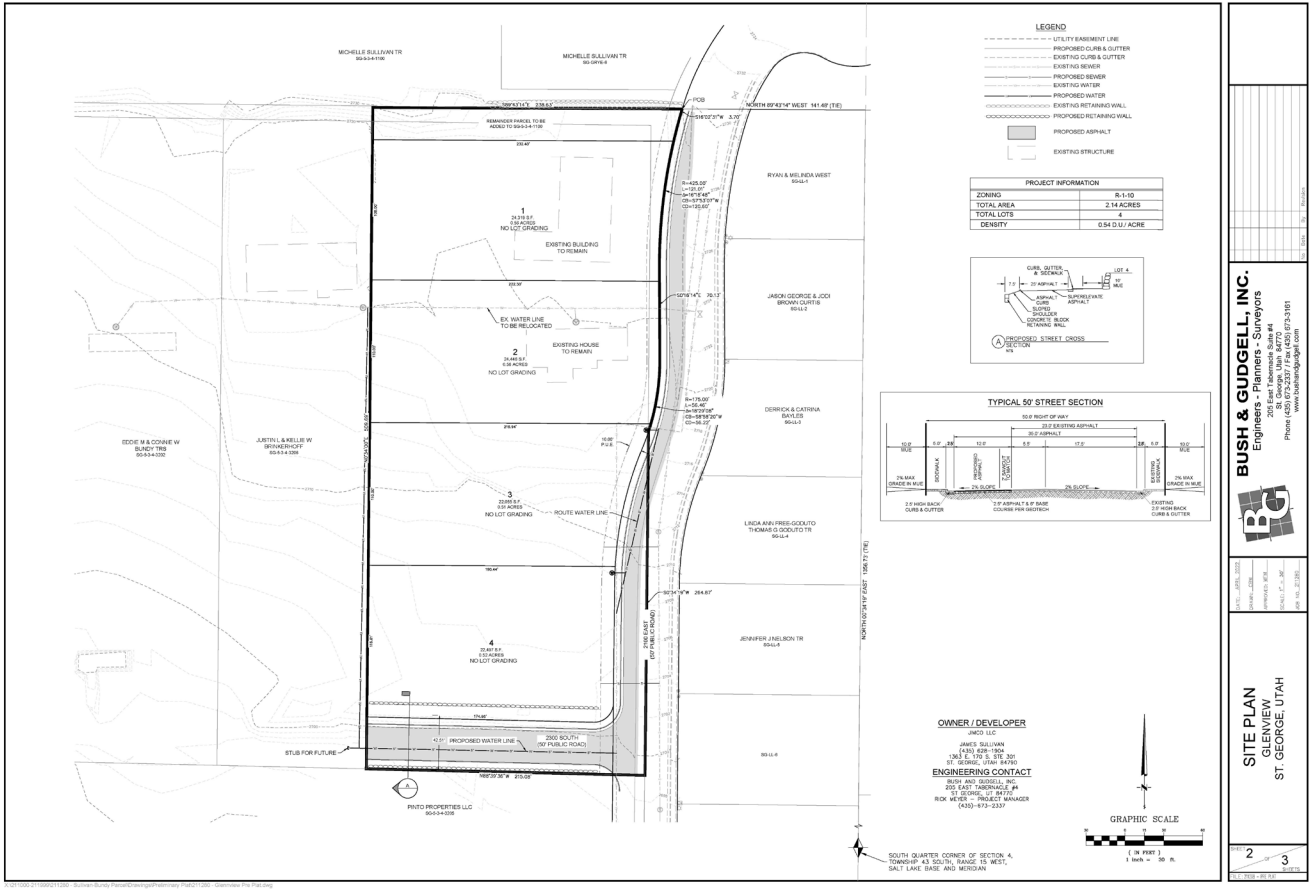
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Phone (435) 673-2337 Fax (435) 673-3161
www.bushandgudgell.com

PRELIMINARY PLAT
GLENVIEW
ST. GEORGE, UTAH

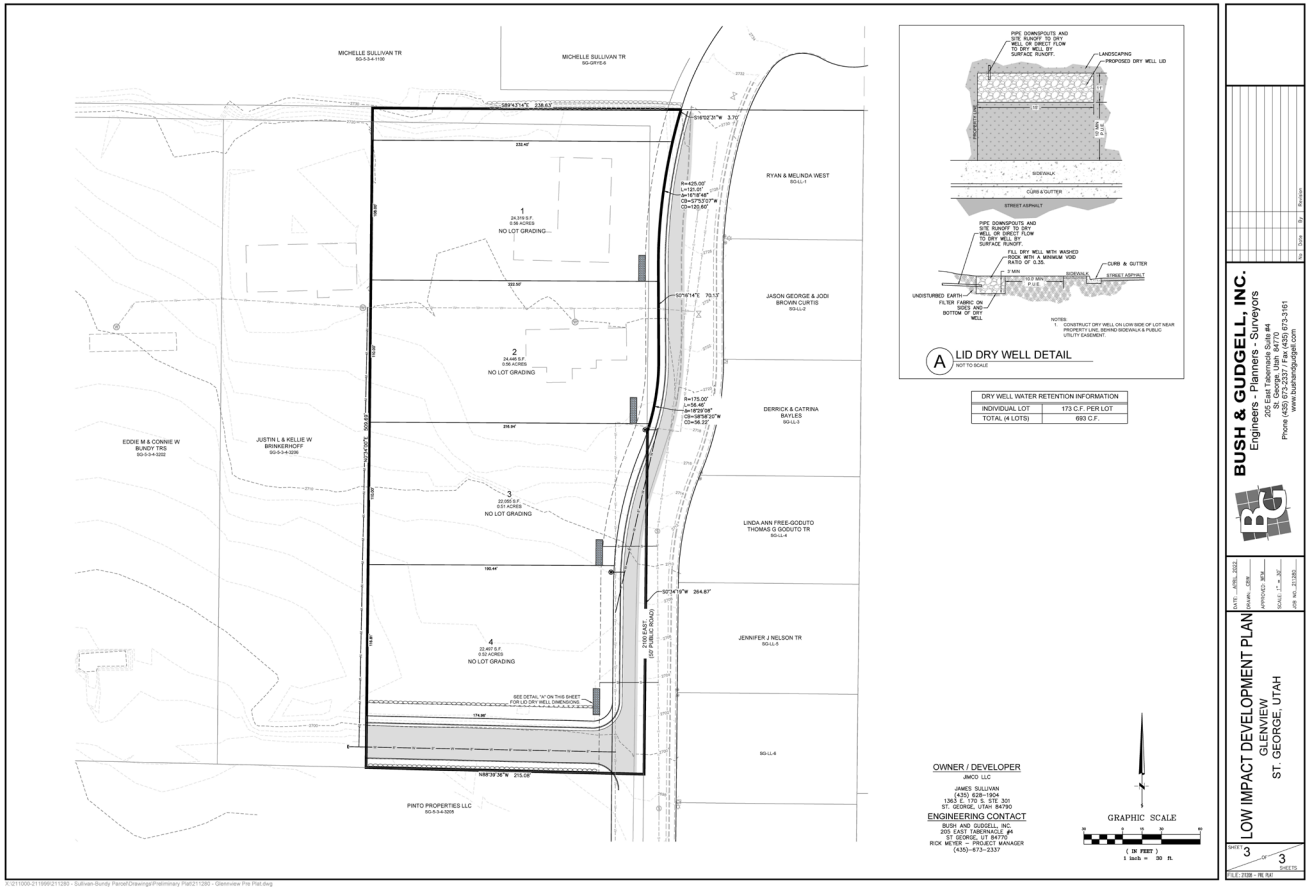
SHEET 1 OF 3 SHEETS



# Preliminary Plat – Glenview




# Preliminary Plat – Glenview




# Preliminary Plat – Glenview

**Agenda Date:** 05/05/2022 **Agenda Item Number:** 17

**Subject:**

Consider approval of the preliminary plat for Staybridge, a 2-lot commercial subdivision located at approximately 1301 South Sunland Drive.

**Item at-a-glance:**

Staff Contact: Wes Jenkins

Applicant Name: Bob Hermandson

Reference Number: Case No. 2022-PP-023

Address/Location:

1301 South Sunland Drive

**Item History (background/project status/public process):**

The General Plan land use designation for this property is commercial and the zoning is C-3, which matches what is shown on the preliminary plat. When the Staybridge Hotel was constructed, the owner left a portion of the property undeveloped for a possible future commercial building. At their meeting held on April 26, 2022, the Planning Commission recommended approval. The owner will be required to provide cross utility and access easement with the final plat between the two parcels for utility and vehicle access at the two existing driveway locations to Sunland Drive and the private drive between Staybridge Hotel and the hotel to the northeast.

**Staff Narrative (need/purpose):**

The purpose of the preliminary plat is to show the subdivision of the property where the Staybridge hotel is located into two lots so that the additional lot can be sold and developed into a commercial project with the recording of the final plat.

**Name of Legal Dept approver:** N/A

**Budget Impact:** No Impact

**Recommendation (Include any conditions):**

Planning Commission recommends approval. The owner will be required to provide cross utility and access easement with the final plat between the two parcels for utility and vehicle access at the two existing driveway locations to Sunland Drive and the private drive between Staybridge Hotel and the hotel to the northeast.

St.George
Community Development

**ITEM**
PRELIMINARY PLAT

PLANNING COMMISSION AGENDA REPORT: **04/26/2022**
CITY COUNCIL **05/05/2022**

PRELIMINARY PLAT
Staybridge
**Case No. 2022-PP-023**

**Request:** To approve a preliminary plat for a two (2) lot commercial subdivision.

**Location**: The site is located at 1301 Sunland Drive.

**Property:** 3.50 acres

**Number of Lots:** 2

**Density:** N/A

**Zoning**: C-3

**Adjacent zones:** This plat is surrounded by the following zones:
North – C-3
South – C-3
East – C-3
West – C-3

**General Plan:** COM

**Applicant:** Bush & Gudgell

**Representative:** Bob Hermandson

**Comments:**

# Preliminary Plats

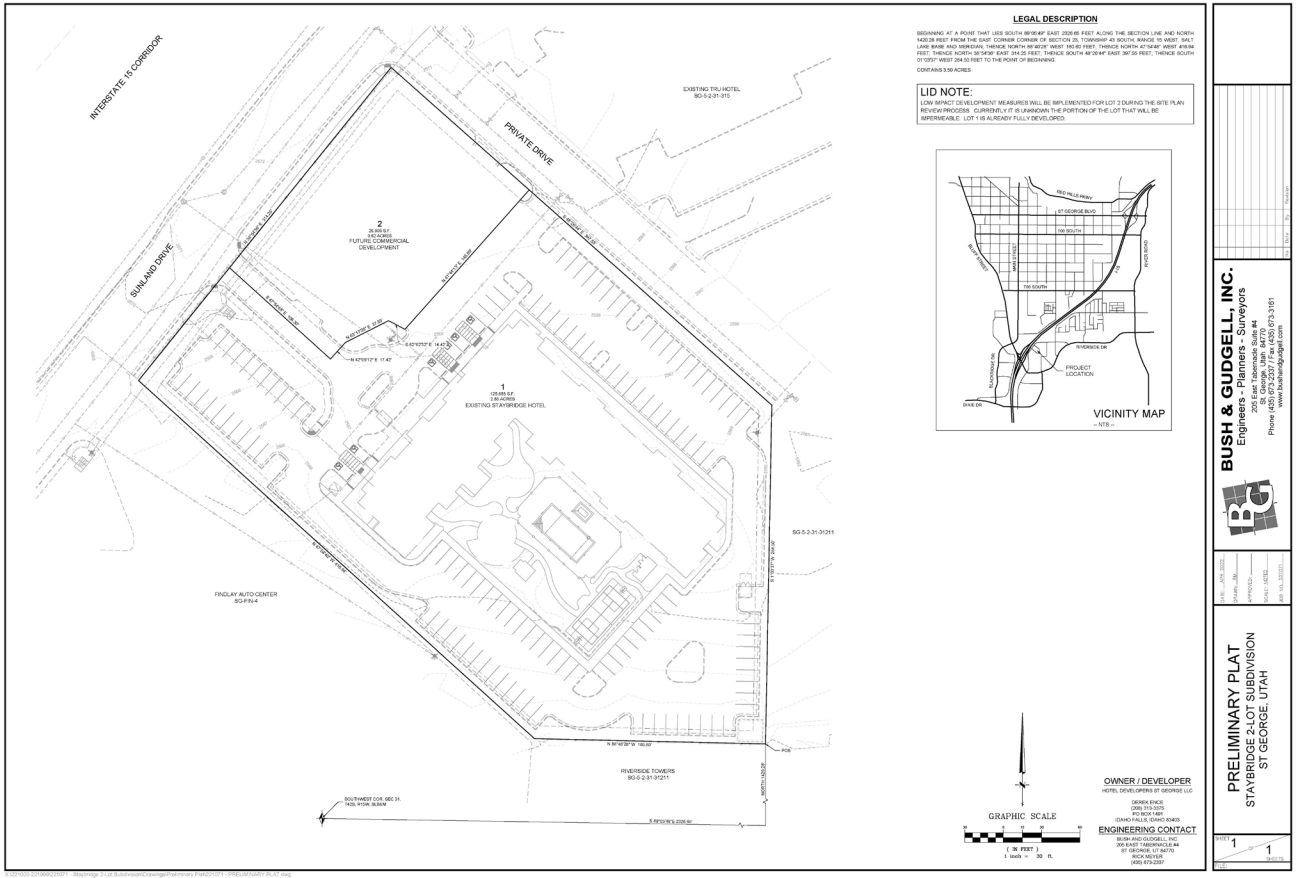
April 26, 2022




# Preliminary Plat – Staybridge




# Preliminary Plat – Staybridge




# Preliminary Plat – Staybridge