**MASTER OPERATING AGREEMENT FOR THE HIVE**

This Master Operating Agreement (“Agreement”) is dated for reference June 1, 2022, and is entered between the City of Nephi (“City”) and Juab School District (“JSD”). The date of this Agreement above is for reference only. This Agreement shall become effective on the date both parties have signed the Agreement.

**PREAMBLE**

The Hive is the result of an unprecedented cooperative effort between private donors, JSD, and City. This project would not have happened but for the participation of all three groups. The intent of these three groups is to create a facility that will be the jewel of Juab County and benefit students, City residents, and the local economy for decades to come. The Hive is the first facility in the State of Utah that will be equally owned by a city and a school district. JSD and City recognize that they serve the same children. The parties further recognize that each party is generally supported by the same taxpayers. With such recognition, JSD and City enter this Agreement with a willingness to sacrifice their own interests at times to benefit the children and residents of east Juab County.

## RECITALS

**WHEREAS**, in early 2020, JSD and City were contacted by private parties about the possibility of a joint venture between City, JSD, and private donors for the construction of building that would house athletic courts and facilities;

**WHEREAS**, City is in need of recreation facilities to serve the youth and adults of the community;

**WHEREAS**, City is in need of office space for its recreation program;

**WHEREAS**, JSD is in need of classrooms for student instruction;

**WHEREAS**, JSD is in need of education-related athletic facilities;

**WHEREAS**, private parties agreed to donate a substantial amount of money toward the construction of an education and athletic facility if JSD and City agreed to contribute funds toward the project;

**WHEREAS**, JSD and City agreed to contribute equal resources and funds toward the construction of the education and athletic facility with the understanding they would be 50/50 owners of the facility;

**WHEREAS**, the agreed upon name for the education and athletic facility is the “Hive.” The facility was named the Hive as it will be “a place swarming with activity;”

**WHEREAS**, private donors contributed over four million dollars toward the construction of the Hive;

**WHEREAS**, as set forth in this Agreement, City and JSD are contributing equal resources and funds to the construction of the Hive;

**WHEREAS,** the Hive was constructed in two phases with private donors paying primarily for phase 1 and JSD, City, and private donors paying for phase 2. *See* Exhibit “A” for a History of Planning and Construction of the Hive;

**WHEREAS**, JSD and City are equal (50/50) owners of the Hive;

**WHEREAS**, City and JSD will jointly operate the Hive pursuant to the terms of this Agreement;

**WHEREAS**, the Hive is a “Civic Center” as defined in Utah Code Ann. § 53G-7-209 because it is co-owned by JSD;

**WHEREAS**, it is the parties’ intent that the Hive provide education and athletic space for JSD students;

**WHEREAS**, it is the parties’ intent that the Hive provide recreation opportunities for the youth and adults of the City;

**WHEREAS**, it is the parties’ intent that the Hive assist in the economic development of the community by hosting athletic tournaments, cultural events, community events, conferences, and other events;

**WHEREAS**, to minimize the use of tax dollars, it is the parties’ intent that operations of the Hive be paid for in part or full through the hosting of athletic tournaments, cultural events, community events, conferences, and other events;

**WHEREAS**, the Hive could not have been constructed without financial contributions from private donors, JSD, and City; and

**WHEREAS**, JSD and City believe the Hive will be a great benefit to the community and its residents for decades to come.

## TERMS

**NOW THEREFORE**, the parties hereto agree to the following terms and conditions:

## Section 1 – Recitals.

## The above recitals are hereby made a part of and incorporated into the terms of this Agreement.

## Section 2 – Financial Contribution to Cost of the Hive.

2.1 At the time the parties entered this Agreement, the Hive was not fully constructed. The total cost for construction of the Hive will be between Ten Million Dollars and Eleven Million Dollars. The final price of the Hive and the amount paid by each party will be attached hereto as Exhibit “B” when the Hive is completed;

2.2 Through donations and grants, private parties have contributed over Four Million Dollars toward the construction of the Hive. This includes cash and in-kind donations.

2.3 The parties agree that all private donations and grants received after April 1, 2020, will be used to reduce equally what JSD and City are required to pay toward the cost of construction, regardless of who provided the donation or grant. For example, if either party received a grant or donation after April 1, 2020, for $100,000 and applied that money to the cost to construct the Hive, then that money would be applied to the cost of construction, but it would not be counted as money paid by the party who obtained the grant or donation. After the completion of the Hive, all donations, grants, and/or contributions obtained or received that are specifically designated for the Hive regardless of who obtained such donation, grant, or contribution shall be used for Hive improvements, maintenance, and/or operations of the Hive as mutually agreed upon by the parties. If either party receives a donation, grant, or contribution that is not specifically designated for Hive use, then such party may use that money as it deems proper.

2.4 After reducing the cost of construction by the amount paid by third parties in donations or grants, the parties shall be equally (50/50) responsible for the remaining cost to construct the Hive. The cost incurred by each party for bond issuance shall be included in the total cost of the Hive.

2.5 JSD contributed the land where the Hive was constructed. The agreed upon value of the land JSD contributed to the Hive is Five Hundred Thousand Dollars ($500,000). Accordingly, JSD shall be credited $500,000 toward its share of the cost to construct the Hive. Additionally, as a result of JSD relinquishing its bus barn property for the Hive, JSD is having to expend substantial funds to relocate and construct a new bus barn. Therefore, for its new bus barn expenses, JSD shall be credited Four Hundred Thousand Dollars ($400,000) toward its share of the cost to construct the Hive.

2.6 JSD desires to purchase from the Corporation of the Presiding Bishopric the old seminary building immediately west of the Hive. City has agreed to loan JSD money to purchase the old seminary building from its sales-tax bond to make such purchase.

2.6.1 The amount City shall loan JSD for the purchase of the old seminary building is $350,000.

2.6.2 JSD will pay City the sales-tax bond debt service payment for the amount it borrows from City for the old seminary building for the life of the sales-tax bond, which is twenty (20) years. JSD’s annual sales-tax bond debt service payment to the City shall be its proportionate share of the sales-tax bond debt service payment set forth in the bond payment schedule attached hereto as Exhibit “C,” which is incorporated herein by reference. JSD shall make this payment on or before May 1st of each year beginning on May 1st, 2023. Upon request, City shall provide JSD with an accounting of payments made by JSD and remaining payments to be made.

2.6.3 JSD agrees City may use up to half of the old seminary building for storage until JSD repurposes the building for classrooms or until JSD completes the storage shed described in section 2.6.4 herein, whichever occurs first.

2.6.4 When JSD repurposes the old seminary buildings for classrooms, it shall construct a storage shed (“Storage Shed”) on its property next to the Hive and convey such shed and land to City.

2.6.4.1 The Storage Shed shall 1) have a concrete floor, 2) be made of sufficient quality to keep the contents of the shed dry, 3) be at least 600 square feet, and 4) have a ceiling that is at least ten (10) feet high.

2.6.4.2 In exchange for the Storage Shed and corresponding land it is conveying to City, JSD shall be credited Forty Thousand Dollars ($40,000) toward its portion of the cost to construct the Hive. The parties agree JSD shall be credited $40,000 for the Storage Shed and land regardless if the actual cost of the Storage Shed and land is more or less than $40,000.

2.6.4.3 City may not store anything in the Storage Shed that would be a material disruption to the school day or cause a substantial risk to students.

2.6.4.4 City shall be responsible to run and connect any needed utilities to the Storage Shed.

2.6.5. Section 2.6 herein shall be void if the old seminary building is not purchased or if City funds are not used to purchase the old seminary building.

2.7 City’s sales-tax bond is on a 20-year repayment plan. *See* City Sales-tax Bond Payment Schedule attached hereto as Exhibit “C” and incorporated herein by reference. JSD agrees that in the event City reasonably believes that it cannot make its scheduled payment for this sales-tax bond, then JSD will pay one-half (1/2) of the scheduled bond payment for any given year.

2.7.1 This backstop payment provision shall be rarely, if ever, invoked. Under no circumstance shall this provision be invoked more than three (3) times in any ten (10) year period.

2.7.2 Any payment by JSD toward the City sales-tax bond (excluding the payments it is obligated to make for the old seminary building under section 2.6.2 herein) shall be credited toward JSD’s portion of the construction cost of the Hive. If JSD has already paid its one-half of the Hive construction cost, then City shall repay JSD in full within three (3) years of JSD making such payment toward the sales-tax bond. JSD may charge City two percent (2%) simple interest on any amount it is owed under this provision.

2.8 It is anticipated that at the time construction of the Hive is complete, City will have paid more than fifty percent (50%) of the construction costs to be paid by City and JSD. If this is case, then the following shall apply until JSD has paid its one-half (1/2) of the Hive construction costs to be borne by the parties:

2.8.1 City will receive all the money generated by the Hive in excess of the Hive operation costs and the amount the parties have agreed should be set aside for a building-replacement fund. This calculation and payment shall be made annually. Fifty percent (50%) of the money paid to City under this provision should be counted toward the amount JSD owes for its portion of the Hive construction costs.

2.8.2 If JSD has not paid its full portion of the Hive construction costs by July 1, 2042, then it shall pay City on or before December 31, 2042, the remaining balance it owes for its portion of the Hive construction cost.

2.8.3 JSD shall pay City the same interest rate the City is paying on the sales-tax bond for any amount JSD owes City under this section 2.8.

**Section 3 – Ownership.**

3.1 The Hive and the land where it is located (collectively the “Hive”) shall be owned equally (50/50) by JSD and City. To qualify for the bond it took out to pay some of its portion of the Hive construction costs, JSD is required to be the titled owner of the Hive. As such, JSD is identified as the titled owner of the Hive. However, City has an equitable fifty percent (50%) ownership interest in the Hive.

3.2 City may record a notice of interest in the Hive at the Juab County Recorder’s Office.

3.3 Once JSD’s current bond, that is secured by the Hive, is paid in full, then City shall be added to the title as a fifty percent (50%) owner of the Hive.

**Section 4 – Operations.**

4.1 The intent of the parties is that revenue generated by the Hive be used to pay the operation costs of the Hive. The parties shall be equally responsible for all operation costs of the Hive not paid by revenue from the Hive. Utility costs are not included as Hive operation costs and will be divided as set forth herein.

4.2 Because the parties desire that revenue from the Hive pay as much of the operation costs as possible, the parties shall set aside substantial use time in the Hive for Capital-Replacement Funding activities.

4.3 Operation costs of the Hive include, but are not limited to, all expenses and costs directly related to the Hive including, but not limited to, the following

a) Building maintenance and repair,

b) Janitorial services,

c) Supervision expenses for tournaments and events that are not under the direction of JSD or City,

d) Maintenance and repair of the parking spots on the south side of the Hive and the parking spots on the east side of the old seminary building,

e) Maintenance, repair, purchase, and replacement of equipment that is used primarily in the Hive and for Hive activities,

f) Insurance costs related directly to the Hive and use of the Hive regardless of which party incurs the insurance cost,

g) Hive grounds maintenance, and

h) Building-replacement fund.

4.4 To compensate City for the net 13% of the Hive that is exclusively for JSD use, JSD shall be responsible for sixty (60%) and City shall be responsible for forty percent (40%) of the Hive utility costs. Additionally, JSD will not charge City for the use of JSD parking lots that will be impacted by Hive activities.

4.5 Every year the parties shall contribute to a building-replacement fund in the amounts set forth in the table attached hereto as Exhibit “D” and incorporated herein by reference. Only upon the approval of both the JSD Board and the City Council may the parties contribute to the building-replacement fund an amount less than the amount set forth in Exhibit “D.” Unless agreed to by both the JSD Board and the City Council, money in the building-replacement fund shall only be used for replacement expenses as set forth in Exhibit “D” and not for building improvements. Money for the building-replacement fund shall be included as part of the operation costs of the Hive. The City shall be responsible for maintaining the account for the building-replacement fund (“Building-replacement Account”). Upon request, City shall provide JSD a full accounting of the Building-replacement Account.

4.6 City shall be responsible for maintaining an account for the benefit of the Hive (the “Hive Account”). All expenses for the Hive shall come out of the Hive Account. All revenue from the Hive shall be deposited into the Hive Account. Upon request, City shall provide JSD with a full accounting of the Hive Account.

4.7 JSD shall employ the individual(s) assigned to provide janitorial services to the Hive. All Hive janitorial services shall be included as Hive operation costs. JSD shall seek and consider City’s input when hiring an individual to provide janitorial services to the Hive.

**Section 5 – Capital-Replacement Funding to Cover Hive Operation Costs.**

5.1 It is intended that the Hive will be used for a number of Capital-Replacement Funding activities to pay for all or a portion of the Hive operation costs.

5.2 JSD and City desire to operate the Hive in a fiscally responsible manner that limits the Hive’s impact on taxpayers and frees up money for other education and public service functions. Accordingly, all funds received from Hive Capital-Replacement Funding activities shall be used to pay Hive operation costs. Money from Hive Capital-Replacement Funding activities shall be deposited into a Hive Account and be allocated pursuant to the terms of this Agreement.

5.3 Capital-Replacement Funding activities for the Hive include the following:

a) Hive rental and use fees,

b) Money from concessions sold at the Hive unless specifically excluded herein,

c) All other revenue generated at the Hive or from Hive use unless specifically excluded herein.

5.4 Hive Capital-Replacement Funding activities do not include revenue generated by a JSD or City program or event. For example, if a Juab High School basketball tournament is held in the Hive, that is not a Hive Capital-Replacement Funding activity and the proceeds from that event shall go directly to JSD. Similarly, if City holds a City run junior jazz tournament in the Hive, that is not a Hive Capital-Replacement Funding activity and the proceeds from that event shall go directly to City.

5.5 Unless agreed otherwise in writing by the parties, the concessions in the Hive shall be operated by the City. If concessions are for a JSD event, then JSD is entitled to fifty percent (50%) of the net revenue from the concessions for that event. The remaining 50% shall go to the Hive account. If concessions are for a City event, then City is entitled to fifty percent (50%) of the net revenue from the concessions for that event. The remaining 50% shall go to the Hive account. The City shall operate Hive concessions in a consistent manner (staffing, food, etc.) regardless of whether it is a JSD, City, or Capital-Replacement Funding activity.

5.6 JSD programs and City programs are those programs that are under the direct sponsorship of JSD or City. Tournaments, activities, and events that are not under the direct sponsorship of JSD or City are Capital-Replacement Funding activities for the Hive. For example, a volleyball tournament operated by an entity other than JSD or the City is a Capital-Replacement Funding activity even if a JSD or City volleyball team is participating in the tournament.

5.7 Capital-Replacement Funding activities are critical to pay for the operation of the Hive. Accordingly, JSD and City leadership will use best efforts to support, encourage, and make available substantial time in the Hive for Capital-Replacement Funding activities.

**Section 6 – Use of the Hive.**

## 6.1 The three classrooms, the weight room, and the wrestling room in the Hive shall be exclusively for JSD use. However, active City law enforcement officers may use the weight room at reasonable times when regular school is not in session. Up to two (2) immediate family members of City law enforcement may accompany law enforcement officers in weight room use. The law enforcement officer must be present when their family member(s) uses the weight room.

## 6.2 The two small offices in the Hive shall be exclusively for City use. However, JSD can have access to the copy machine in the City office.

## 6.3 “Hive Facilities” is defined as any area in the Hive that is not designated exclusively for JSD or City use.

## 6.4 JSD and City are entitled to equal time using Hive Facilities. If one party consents to a “Use Schedule” that has more time for the other party, then such schedule is acceptable. As a guiding principle, Hive Facilities should generally be available for JSD use during the school day and City use during the evenings.

## 6.5 City and JSD personnel shall meet as often as needed, but at least semi-annually, to establish a Use Schedule for Hive Facilities.

## 6.6 The initial Use Schedule for Hive Facilities is attached hereto as Exhibit “E.” The initial Use Schedule shall be controlling for the first period of Hive operation unless the parties mutually agree to a different Use Schedule prior to the expiration of the period. The parties shall mutually agree on a Use Schedule every year.

## 6.7 Use of Hive Facilities during times not set aside for JSD and City use under the Use Schedule shall be made available for other individuals, groups, organizations, or City or JSD use that was not identified in the Use Schedule.

## 6.8 City and JSD shall work together to develop and follow procedures for scheduling use of Hive Facilities. Leadership will work to accommodate reasonable requests of the other parties.

## 6.9 As the Hive is co-owned by JSD, it is a “Civic Center” and subject to Utah Code Ann. § 53G-7-209.

## 6.10 The Hive may not be rented to any third-party for Sunday use unless such rental and use is approved by both the City Council and the JSD Board. City and JSD may use the Hive on Sunday as they deem appropriate.

## Section 7 – Liability & Insurance.

## 7.1 Pursuant to the parties’ mutual agreement, JSD is responsible for acquiring property insurance coverage for the Hive, which can be provided through the State Risk Management Fund. City shall maintain property insurance for the Hive to the extent JSD or City deem it advisable. Any insurance costs related directly to coverage of the Hive shall be paid out of the Hive operating costs.

## 7.2 Each party shall obtain and maintain liability insurance to cover claims related to use of the Hive.

## 7.3 JSD liability insurance shall cover all claims resulting from JSD’s use of the Hive.

## 7.3.1 JSD shall indemnify City for all claims that are the result of JSD’s use of the Hive.

## 7.3.2 To the fullest extent permitted by law, JSD shall hold harmless, defend at its own expense, and indemnify City, its officials, officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions of JSD or its officials, officers, agents, or employees relating to the use of the Hive, except for such liability, claims, losses, damages, or expenses arising from City’s negligence or willful acts.

## 7.4 City liability insurance shall cover all claims resulting from City’s use of the Hive.

## 7.4.1 City shall indemnify JSD for all claims that are the result of City’s use of the Hive.

## 7.4.2 To the fullest extent permitted by law, City shall hold harmless, defend at its own expense, and indemnify JSD, its officials, officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney’s fees, arising from all acts or omissions of City or its officials, officers, agents, or employees relating to the use of the Hive, except for such liability, claims, losses, damages, or expenses arising from JSD’s negligence or willful acts.

## 7.4 In the event there is a third-party liability claim and it is not clear whether the claim is based on JSD or City actions, then comparative fault shall be allocated between the parties.

## 7.5 JSD and City are each governmental entities in the State of Utah and are bound by the provisions of the Utah Governmental Immunity Act (Title 63G, Chapter 7, Utah Code Annotated, 1953, as amended) and do not waive any procedural or substantive defense or benefit provided or to be provided by the Governmental Immunity Act or comparable legislative enactment, including without limitation, the provisions of Section 63G-7-604 regarding limitation of judgments. Any indemnity and insurance obligations incurred by JSD and/or City under this agreement or use of the Hive are expressly limited to the amounts identified in the Act."

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## 7.6 Any third party using or leasing the Hive shall be required to have commercial general liability insurance in amounts acceptable to JSD and City. The liability insurance provided by the third-party must meet the requirements of the City and JSD. Generally, third-party liability insurance shall have minimum coverage limits of $1,000,000 per occurrence and $3,000,000 aggregate.

## Section 8 – Dispute Resolution.

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## In the event a dispute arises between the parties regarding this Agreement, then the parties shall first attempt to resolve the dispute through face-to-face negotiation between the staff of each entity. If the dispute is not resolved at the staff level, the JSD Superintendent and the City Administrator, shall attempt to resolve the dispute through face-to-face negotiations. If the dispute is not resolved through face-to-face negotiations between the Superintendent and City Administrator, then the parties shall attempt to resolve the dispute through a joint meeting between the JSD Board and the City Council or the designees of such entities. If the dispute is not resolved through a joint meeting between the City Council and the JSD Board or their designees, then the matter shall be submitted to mediation with a qualified mediator mutually agreed upon by the parties. Costs of mediation shall be divided equally between parties. If the parties are unable to resolve the dispute through informal negotiation or mediation, then the parties shall be free to pursue all remedies available at law or equity. Notwithstanding the foregoing, either party has the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitations period, or preserve a superior position with respect to other creditors, although the merits of the underlying dispute will be resolved in accordance with this paragraph.

## Section 9 – General Provisions.

9.1 It is expressly agreed that this Agreement includes the entire agreement of the parties.

9.2 This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of both parties. Each person signing this Agreement specifically affirms that she/he is authorized to sign this Agreement and bind his/her respective entity to its terms.

9.3 This Agreement shall be interpreted and enforced in accordance with the laws of the State of Utah.

9.4 In the event a party enlists the services of an attorney or the court system to enforce the terms of this Agreement, then the prevailing party shall be entitled to recover the reasonable attorney’s fees and costs it incurs in enforcing the Agreement.

9.5 This Agreement may not be changed orally. This Agreement may be modified only by written agreement of the Parties. This Agreement shall supersede and replace any prior agreement treating the same subject and any other previous agreements to the extent they are in conflict with the provisions hereof.

9.6 This Agreement is an integrated agreement and there are no other terms to this Agreement except for those specifically set forth herein.

9.7 In the event any part or parts of this Agreement are found to be void or unenforceable, the remaining portions shall, nonetheless, be binding with the same effect as though the void parts were deleted.

## Section 10 – Legal Representation.

10.1 The parties acknowledge that the initial draft of this Agreement was prepared by Kasey L. Wright who is counsel for City and District.

10.2 The parties acknowledge that Kasey L. Wright has advised each of them to seek independent legal review of this Agreement.

**Section 11 – Communication.**

11.1 JSD and City administrative leadership shall meet as often as necessary to coordinate use and operation of the Hive.

11.2 JSD and City administrative leadership shall meet at least once a year in September to review and discuss the status of the building-replacement fund, Hive operations, the condition of the Hive, potential improvements to the Hive, and any other items related to the joint use and ownership of the Hive.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

Dated this the day of , 2022.

**JUAB SCHOOL DISTRICT**

By: Dale Whitlock

Its: Board President

Dated this the day of , 2022.

## NEPHI CITY



By: Justin Seely

Its: Mayor

ATTEST:



CITY RECORDER